

**Tab 1 CS/SB 630 by HP, Perry (CO-INTRODUCERS) Baxley;** (Similar to CS/CS/H 00451) Nonopioid Alternatives

**Tab 2 CS/SB 1700 by HP, Lee;** (Similar to CS/H 01253) Prescribed Controlled Substances

594726—A S WD JU, Hutson Delete L.33 - 106: 04/08 07:08 PM

**Tab 3 SB 1272 by Gruters;** (Compare to H 00371) Anti-Semitism

287692 D S RCS JU, Gruters Delete everything after 04/10 02:16 PM

**Tab 4 SB 958 by Rouson (CO-INTRODUCERS) Rodriguez;** (Identical to H 00565) Housing Discrimination

**Tab 5 CS/SB 772 by BI, Stargel (CO-INTRODUCERS) Baxley;** (Similar to CS/CS/CS/H 00431) Liens Against Motor Vehicles and Vessels

944116 D S RS JU, Stargel Delete everything after 04/10 02:23 PM

688728 SD S RCS JU, Stargel Delete everything after 04/10 02:23 PM

**Tab 6 CS/SB 862 by BI, Stargel;** (Compare to CS/CS/CS/H 00355) Lessor Liability Under Special Mobile Equipment Leases

672360 A S RCS JU, Stargel Delete L.41: 04/10 02:16 PM

~~358618~~—SA S WD JU, Rodriguez Delete L.41 - 43: 04/10 02:16 PM

~~245436~~—A S WD JU, Rodriguez Delete L.41 - 43: 04/10 02:16 PM

**Tab 7 CS/SB 1400 by CA, Albritton;** (Compare to H 01159) Private Property Rights

888164 A S RCS JU, Albritton btw L.108 - 109: 04/10 02:16 PM

**Tab 8 SB 7086 by CJ;** (Similar to H 07089) Voting Rights Restoration

529536—A S WD JU, Rodriguez Before L.58: 04/10 02:23 PM

171906 A S RCS JU, Simmons Delete L.316 - 345: 04/10 02:23 PM

~~861964~~—A S WD JU, Rodriguez btw L.425 - 426: 04/10 02:23 PM

~~530944~~—A S WD JU, Rodriguez btw L.425 - 426: 04/10 02:23 PM

**Tab 9 SB 1208 by Baxley;** (Identical to H 00975) Aircraft Liens

**Tab 10 CS/SB 1034 by BI, Gruters;** (Identical to CS/H 01039) Assignment of Consumer Debts

664092 A S RCS JU, Gruters Delete L.12 - 23: 04/10 02:16 PM

**Tab 11 CS/SB 920 by CJ, Pizzo;** (Identical to CS/H 01021) DNA Database

**Tab 12 CS/SB 1186 by CJ, Baxley (CO-INTRODUCERS) Perry;** (Compare to H 07081) Criminal Judgments

483852 A S RCS JU, Baxley Delete L.186: 04/08 07:10 PM

**Tab 13 SB 1720 by Lee;** (Compare to CS/H 01383) Property Rights

917246 A S JU, Simmons Delete L.20 - 102: 04/01 01:30 PM

477310 A S JU, Lee Delete L.163 - 169: 04/05 03:41 PM

305214 A S JU, Lee Delete L.169: 04/01 02:05 PM

**Tab 14 SB 990 by Gibson (CO-INTRODUCERS) Berman, Rodriguez;** (Similar to H 00563) Unemployment Compensation

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Simmons, Chair**  
**Senator Rodriguez, Vice Chair**

**MEETING DATE:** Monday, April 8, 2019  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 630</b> Health Policy / Perry (Similar CS/CS/H 451)	Nonopioid Alternatives; Requiring the Department of Health to develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain; requiring that the pamphlet include specified information, including the advantages and disadvantages of the use of such alternatives, etc.  HP 03/25/2019 Not Considered HP 04/01/2019 Fav/CS JU 04/08/2019 Favorable RC	Favorable Yeas 6 Nays 0
2	<b>CS/SB 1700</b> Health Policy / Lee (Similar CS/H 1253)	Prescribed Controlled Substances; Expanding the circumstances under which the Attorney General may request information from the prescription drug monitoring program to include an active investigation or pending civil or criminal litigation involving prescribed controlled substances; requiring the Department of Health to assign each patient a unique identifying number when releasing certain information; authorizing the Attorney General to introduce as evidence in certain actions specified information that is released to the Attorney General from the program's records system, etc.  HP 04/01/2019 Fav/CS JU 04/08/2019 Favorable RC	Favorable Yeas 5 Nays 1
3	<b>SB 1272</b> Gruters (Compare H 371, CS/CS/H 741)	Anti-Semitism; Specifying that the term "religion" includes anti-Semitism; prohibiting discrimination in the Florida K-20 public education system based on religion; requiring a public K-20 educational institution to take into consideration anti-Semitism under certain instances of discrimination, etc.  JU 04/08/2019 Fav/CS ED RC	Fav/CS Yeas 5 Nays 1

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Monday, April 8, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 958</b> Rouson (Similar S 1142, Identical H 565)	Housing Discrimination; Removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice, etc.  JU 04/08/2019 Favorable GO RC	Favorable Yeas 6 Nays 0
5	<b>CS/SB 772</b> Banking and Insurance / Stargel (Similar CS/CS/CS/H 431)	Liens Against Motor Vehicles and Vessels; Authorizing a person claiming a lien against a motor vehicle to obtain the release of the vehicle from a lien claimed by a motor vehicle repair shop under certain circumstances; prohibiting a motor vehicle repair shop from violating certain provisions; revising notice requirements for enforcing a lien by sale of a motor vehicle; revising requirements for notice of lien for recovering, towing, or storing a vehicle or vessel, etc.  BI 03/25/2019 Fav/CS JU 04/08/2019 Fav/CS RC	Fav/CS Yeas 6 Nays 0
6	<b>CS/SB 862</b> Banking and Insurance / Stargel (Compare CS/CS/CS/H 355)	Lessor Liability Under Special Mobile Equipment Leases; Providing that a lessor of special mobile equipment that causes injury, death, or damage is not liable for certain acts of the lessee or lessee's agent if the lease agreement requires documented proof of specified insurance coverage; providing that a lessee's failure to obtain or maintain the required coverage does not impose liability on the lessor, etc.  BI 03/18/2019 Fav/CS JU 04/08/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 1
7	<b>CS/SB 1400</b> Community Affairs / Albritton (Compare H 1159)	Private Property Rights; Deleting a provision that authorizes electric utilities to perform certain right-of-way tree maintenance only if a property owner has received local government approval; prohibiting certain local government ordinances or regulations from requiring a permit, application, notice, fee, or fine for certain activities regarding trees on residential property; authorizing a local government to enforce ordinances or regulations pertaining to the replanting of trees under certain circumstances, etc.  CA 04/02/2019 Fav/CS JU 04/08/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Monday, April 8, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 7086</b> Criminal Justice (Similar H 7089)	Voting Rights Restoration; Revising terminology regarding voting rights restoration to conform to the State Constitution; requiring the voting disqualification of certain felons to be removed and voting rights restored pursuant to s. 4, Art. VI of the State Constitution; requiring the Department of Corrections to inform inmates and offenders of voting rights restoration pursuant to s. 4, Art. VI of the State Constitution, in addition to executive clemency and civil rights restoration, etc.  JU 04/08/2019 Fav/CS RC	Fav/CS Yeas 3 Nays 2
9	<b>SB 1208</b> Baxley (Identical H 975)	Aircraft Liens; Specifying that a lienor is not required to possess an aircraft to perfect certain liens, etc.  BI 04/01/2019 Favorable JU 04/08/2019 Favorable RC	Favorable Yeas 6 Nays 0
10	<b>CS/SB 1034</b> Banking and Insurance / Gruters (Identical CS/H 1039)	Assignment of Consumer Debts; Specifying that certain communications, disclosures, and payments do not constitute an action, etc.  BI 03/18/2019 Not Considered BI 03/25/2019 Fav/CS JU 04/08/2019 Fav/CS RC	Fav/CS Yeas 6 Nays 0
11	<b>CS/SB 920</b> Criminal Justice / Pizzo (Identical CS/H 1021)	DNA Database; Revising legislative findings relating to the use of the DNA database, etc.  CJ 03/18/2019 Fav/CS JU 04/08/2019 Favorable RC	Favorable Yeas 6 Nays 0
12	<b>CS/SB 1186</b> Criminal Justice / Baxley (Compare H 7081)	Criminal Judgments; Requiring that judgments of guilty or not guilty of a felony be in a written record, rather than in writing, or an electronic record with the judge's electronic signature, recorded by the clerk of the circuit court; requiring that for an electronic record of a judgment of guilty, the fingerprints of a defendant be electronically captured and a certain certification be included, etc.  CJ 03/25/2019 Fav/CS JU 04/08/2019 Not Considered RC	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Monday, April 8, 2019, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	<b>SB 1720</b> Lee (Compare CS/H 1383)	Property Rights; Providing applicability relating to claims that involve one or more residential properties which are brought as a result of certain regulations or ordinances; authorizing a property owner to waive a jury and request that the court make a determination of compensation; authorizing a property owner to bring an action to declare a prohibited exaction invalid, etc.  JU 04/01/2019 Temporarily Postponed JU 04/08/2019 Not Considered CA RC	Not Considered
14	<b>SB 990</b> Gibson (Similar H 563)	Unemployment Compensation; Prohibiting certain victims of domestic violence from being disqualified for benefits for voluntarily leaving work; prohibiting the employment record of an employing unit from being charged in certain circumstances, etc.  CM 03/25/2019 Favorable JU 04/08/2019 Favorable RC	Favorable Yeas 6 Nays 0

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Other Related Meeting Documents

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**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Health Policy

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BILL: CS/SB 630

INTRODUCER: Health Policy Committee and Senators Perry and Baxley

SUBJECT: Nonopioid Directives

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 630 amends s. 456.44, F.S., to require the Department of Health (DOH) to develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain. The bill also requires a health care practitioner to, prior to treating a patient with anesthesia or a Schedule II opioid medication in a non-emergency situation: inform the patient of available nonopioid alternatives for the treatment of pain; discuss the advantages and disadvantages of the use of nonopioid alternatives; provide the patient with the pamphlet created by the DOH; and document any alternatives considered in the patient's record.

The bill provides an effective date of July 1, 2019.

**II. Present Situation:**

**Opioid Abuse**

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2016, 2017 saw:

- 6,178 (8 percent more) opioid-related deaths;
- 6,932 (4 percent more) individuals died with one or more prescription drugs in their system;<sup>1</sup>

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<sup>1</sup> The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

- 3,684 (4 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;
- Occurrences of heroin increased by 3 percent and deaths caused by heroin increased by 1 percent;
- Occurrences of fentanyl increased by 27 percent and deaths caused by fentanyl increased by 25 percent;
- Occurrences hydrocodone increased by 6 percent while deaths caused by hydrocodone decreased by 8 percent;
- Occurrences of buprenorphine and deaths caused by buprenorphine increased by 19 percent.<sup>2</sup>

The federal Centers for Disease Control and Prevention (CDC) estimates that the nationwide cost of opioid misuse at \$78.5 billion per year.<sup>3</sup>

### History of the Opioid Crisis in Florida

“In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates.”<sup>4</sup> “This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.”<sup>5</sup> Between the early 2000s and the early 2010s, Florida was infamous as the “pill mill capital” of the country. At the peak of the pill mill crisis, doctors in Florida bought 89 percent of all the oxycodone sold in the county.<sup>6</sup>

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics; creating the Prescription Drug Monitoring Program (PDMP); and stricter regulation on selling, distributing, and dispensing controlled substances.<sup>7</sup> “In 2016, the opioid prescription rate was 75 per 100 persons in Florida. This rate was down from a high of 83 per 100.”<sup>8</sup>

As reported by the Florida Attorney General’s Opioid Working Group,

Drug overdose is now the leading cause of non-injury related death in the United States. Since 2000, drug overdose death rates increased by 137 percent, including a 200 percent increase in the rate of overdose deaths involving opioids. In 2015, over 52,000 deaths in the U.S. were attributed to drug poisoning, and over 33,000

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<sup>2</sup> FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2017 Annual Report* (Nov. 2018) <http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2017-Annual-Drug-Report.aspx> (last visited on Apr. 3, 2019).

<sup>3</sup> National Institute on Drug Abuse, *Opioid Overdose Crisis* (Rev. Jan. 2019), <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on Apr. 3, 2019).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Lizette Alvarez, *Florida Shutting ‘Pill Mill’ Clinics*, *The New York Times* (Aug. 31, 2011), available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited on Apr. 3, 2019).

<sup>7</sup> See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

<sup>8</sup> Attorney General’s Opioid Working Group, *Florida’s Opioid Epidemic: Recommendations and Best Practices*, 7 (March 1, 2019), available at [https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/\\$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf](https://myfloridalegal.com/webfiles.nsf/WF/TDGT-B9UTV9/$file/AG+Opioid+Working+Group+Report+Final+2-28-2019.pdf), (last visited on Apr. 3, 2019).

(63 percent) involved an opioid. In 2015, 3,535 deaths occurred in Florida where at least one drug was identified as the cause of death. More specifically, 2,535 deaths were caused by at least one opioid in 2015. Stated differently, seven lives per day were lost to opioids in Florida in 2015. Overall the state had a rate of opioid-caused deaths of 13 per 100,000. The three counties with the highest opioid death rate were Manatee County (37 per 100,000), Dixie County (30 per 100,000), and Palm Beach County (22 per 100,000).<sup>9</sup>

Early in 2017, the Center for Disease Control (CDC) declared the opioid crisis an epidemic.<sup>10</sup> Shortly thereafter, on May 3, 2017, Governor Rick Scott signed Executive Order 17-146 declaring the opioid epidemic a public health emergency in Florida.<sup>11</sup>

### ***House Bill 21***

In 2018, the Florida Legislature passed HB 21 (ch. 2018-13, L.O.F.) to combat the opioid crisis. HB 21:

- Required additional training for practitioners on the safe and effective prescribing of controlled substances;
- Restricted the length of prescriptions for Schedule II opioid medications to 3 days or up to 7 days if medically necessary;
- Reworked the PDMP statute to require that prescribing practitioners check the PDMP prior to prescribing a controlled substance and to allow the integration of PDMP data with electronic health records and the sharing of PDMP data between Florida and other states; and
- Provided for additional funding for treatment and other issues related to opioid abuse.

### **III. Effect of Proposed Changes:**

CS/SB 630 amends s. 456.44, F.S., to establish legislative findings that every competent adult has the right of self-determination regarding healthcare decisions, including the right to refuse treatment with a Schedule II opioid controlled substance.

The bill requires the DOH to develop and publish on its website an educational pamphlet regarding the use of nonopioid alternatives for the treatment of pain. The pamphlet must include:

- Information on available nonopioid alternatives for the treatment of pain, including nonopioid medicinal drugs or drug products and nonpharmacological therapies; and
- The advantages and disadvantages of the use of nonopioid alternatives.

Additionally, the bill requires a health care practitioner, prior to providing anesthesia or ordering, administering, dispensing or prescribing a Schedule II opioid drug to a patient in a nonemergency situation, to:

- Inform the patient of available nonopioid alternatives for the treatment of pain, which may include nonopioid medicinal drugs or drug products, interventional procedures or treatments, acupuncture, chiropractic treatments, massage therapy, physical therapy, occupational therapy, or any other appropriate therapy as determined by the health care practitioner;

<sup>9</sup> *Id.*

<sup>10</sup> See Exec. Order No. 17-146, available at <https://www.flgov.com/wp-content/uploads/2017/05/17146.pdf>.

<sup>11</sup> *Id.*

- Discuss the advantages and disadvantages of the use of nonopioid alternatives, including whether the patient is at a high risk of, or has a history of, controlled substance abuse or misuse and the patient's personal preferences;
- Provide the patient with the educational pamphlet described in paragraph (b); and
- Document the nonopioid alternatives considered in the patient's record.

The bill provides an effective date of July 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

CS/SB 630 may have an indeterminate negative fiscal impact on the DOH related to the development of the educational pamphlet but such impact would likely be absorbed within existing resources.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 456.44 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Policy on April 1, 2019:**

The CS eliminates the requirement that the DOH adopt in rule a voluntary nonopioid directive form and all related requirements placed on a health care practitioner. The CS instead requires the DOH to create and publish an educational pamphlet on its website regarding nonopioid alternatives for the treatment of pain. Additionally, the bill requires a health care practitioner to, prior to treating a patient with anesthesia or a Schedule II opioid medication in a non-emergency situation, inform the patient of available nonopioid alternatives for the treatment of pain, discuss the advantages and disadvantages of the use of nonopioid alternatives, provide the patient with the pamphlet created by the DOH, and document any alternatives considered in the patient's record.

**B. Amendments:**

None.

By the Committee on Health Policy; and Senators Perry and Baxley

588-03681-19

2019630c1

1 A bill to be entitled  
 2 An act relating to nonopioid alternatives; amending s.  
 3 456.44, F.S.; providing a legislative finding;  
 4 requiring the Department of Health to develop and  
 5 publish on its website an educational pamphlet  
 6 regarding the use of nonopioid alternatives for the  
 7 treatment of pain; requiring that the pamphlet include  
 8 specified information, including the advantages and  
 9 disadvantages of the use of such alternatives;  
 10 providing requirements for health care practitioners;  
 11 providing an exception; providing an effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Subsection (7) is added to section 456.44,  
 16 Florida Statutes, to read:  
 17 456.44 Controlled substance prescribing.—  
 18 (7) NONOPIOID ALTERNATIVES.—  
 19 (a) The Legislature finds that every competent adult has  
 20 the fundamental right of self-determination regarding decisions  
 21 pertaining to his or her own health, including the right to  
 22 refuse an opioid drug listed as a Schedule II controlled  
 23 substance in s. 893.03 or 21 U.S.C. s. 812.  
 24 (b) The department shall develop and publish on its website  
 25 an educational pamphlet regarding the use of nonopioid  
 26 alternatives for the treatment of pain. The pamphlet must, at a  
 27 minimum, include:  
 28 1. Information on available nonopioid alternatives for the  
 29 treatment of pain, including nonopioid medicinal drugs or drug

Page 1 of 2

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

588-03681-19

2019630c1

30 products and nonpharmacological therapies; and  
 31 2. The advantages and disadvantages of the use of nonopioid  
 32 alternatives.  
 33 (c) Except in the provision of emergency services and care,  
 34 as defined in s. 395.002, before providing anesthesia or  
 35 ordering, administering, dispensing, or prescribing an opioid  
 36 drug listed as a Schedule II controlled substance in s. 893.03  
 37 or 21 U.S.C. s. 812 for the treatment of pain, a health care  
 38 practitioner shall:  
 39 1. Inform the patient of available nonopioid alternatives  
 40 for the treatment of pain, which may include nonopioid medicinal  
 41 drugs or drug products, interventional procedures or treatments,  
 42 acupuncture, chiropractic treatments, massage therapy, physical  
 43 therapy, occupational therapy, or any other appropriate therapy  
 44 as determined by the health care practitioner;  
 45 2. Discuss the advantages and disadvantages of the use of  
 46 nonopioid alternatives, including whether the patient is at a  
 47 high risk of, or has a history of, controlled substance abuse or  
 48 misuse and the patient's personal preferences;  
 49 3. Provide the patient with the educational pamphlet  
 50 described in paragraph (b); and  
 51 4. Document the nonopioid alternatives considered in the  
 52 patient's record.  
 53 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** April 1, 2019

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I respectfully request that **Senate Bill #630**, relating to Nonopioid Directives, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

*W. Keith Perry*

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Senator Keith Perry  
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.8.19

Meeting Date

630

Bill Number (if applicable)

Topic Nonopioid Alternatives

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

8 APRIL 2019  
Meeting Date

SB630  
Bill Number (if applicable)

Topic NON-OPIOD ALTERNATIVES

Amendment Barcode (if applicable)

Name JACK HEBERT

Job Title GOVT. AFFAIRS DIR.

Address 2861 EXECUTIVE DR #100

Phone 727-560-3323

Street  
City CLEARWATER FL 33762

Email JACK@THEMALLARDGROUP.COM

Speaking:  For  Against  Information

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

Representing FLORIDA CHIROPRACTIC 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/18/19

Meeting Date

SB 630

Bill Number (if applicable)

Topic Nonopioid Alternatives

Amendment Barcode (if applicable)

Name Angela Drzewiecki (Drez-wick-ee)

Job Title

Address 301 S. Bronough St

Phone 850-681-7383

Street

Tallahassee

FL

32301

Email Angela@DSMFI.net

City

State

Zip

Speaking: For Against Information

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

Representing Florida Acupuncture 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)

4/8/19  
Meeting Date

SB 630  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title \_\_\_\_\_

Address 315 S. Calhoun St., Ste. 830

Phone 222-5702

Street

Tallahassee

FL

32301

City

State

Zip

Email clyon@llw-law.com

Speaking:  For  Against  Information

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

Representing Florida Association of Nurse Anesthetists

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**

4/8/2019

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

SB 630

*Meeting Date*

*Bill Number (if applicable)*

Topic SB 630 - Nonopioid Alternatives

*Amendment Barcode (if applicable)*

Name Anita Berry

Job Title Lobbyist

Address 19401 Shumard Oak Drive

Phone (301) 524-0172

*Street*  
Land O'Lakes

Email anita@corcoranfirm.com

*City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip* \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Occupational Therapy Association & Florida State Massage Therapy 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.***

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/9/19

*Meeting Date*

630

*Bill Number (if applicable)*

Topic Non-Opioid Alternatives

*Amendment Barcode (if applicable)*

Name Corinne (core-n) Mixon

Job Title Lobbyist

Address 511 N. Adams St.

Phone 850765795

*Street*

Tallahassee

FL

32301

Email corinnemixon@gmail.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Oriental Medical Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19 Meeting Date

SB 630 Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr

Phone

Street Largo City

FL State

33773 Zip

Email

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

**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 Health Policy

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BILL: CS/SB 1700

INTRODUCER: Health Policy Committee and Senator Lee

SUBJECT: Prescription Drug Monitoring Program

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1700 amends ss. 893.055 and 893.0551, F.S., to expand the Attorney General's (AG's) access to and use of data contained in the prescription drug monitoring program (PDMP) database for use in active investigations or pending civil or criminal litigation against pharmacies and dispensers of prescribed controlled substances (rather than only for Medicaid fraud cases). The bill requires that any patient information released to the AG, other than for Medicaid fraud cases, be de-identified. The Department of Health (DOH) must assign each patient a unique identifying number and may only release that number along with the patient's year of birth and the city, county, and zip code of the patient's residence. Additionally, the bill specifies that the AG may introduce PDMP records released pursuant to the above provision as evidence in a civil, criminal, or administrative action against a dispenser or pharmacy, and provides that the PDMP program manager may be called to testify for purposes of authenticating such records.

The bill takes effect upon becoming law.

**II. Present Situation:**

Chapter 2009-197, Laws of Florida, established the prescription drug monitoring program (PDMP) in s. 893.055, F.S., "to encourage safer prescribing of controlled substances and to

reduce drug abuse and diversion with the State.”<sup>1</sup> The PDMP uses a comprehensive electronic database to monitor the prescribing and dispensing of certain controlled substances.<sup>2</sup> The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.<sup>3</sup> Health care practitioners began accessing the PDMP on October 17, 2011.<sup>4</sup>

The PDMP requires that for each controlled substance<sup>5</sup> dispensed to a patient in Florida, the dispensing practitioner must report specified information<sup>6</sup> by the close of the next business day. All acts of administering a controlled substance, dispensing of a controlled substance to a person under the age of 16, and dispensing of a controlled substance in a health care system of the Department of Corrections are exempt from the requirement to report.<sup>7</sup>

During the 2017-2018 reporting period, there were approximately 33 million controlled substances prescribed to Florida patients. This is a decline of 4.64 percent over the previous reporting period.<sup>8</sup>

### **Protection of Records in the PDMP**

Sections 893.055 and 893.0551, F.S., restrict access to records in the PDMP. Specifically, s. 893.0551(2), F.S., makes confidential and exempt from public records laws the name, address, telephone number, insurance plan number, government-issued identification number, provider number, drug enforcement administration number, and any other unique identifying information or number of a patient or the patient’s agent a health care practitioner, an employee of the health care practitioner who is acting on behalf and at the direction of the health care practitioner, a pharmacist, or a pharmacy.

The Department of Health (DOH) is required to disclose protected information to specified entities in two ways: (1) by providing direct access to the database; or (2) by disclosing information pursuant to a request.<sup>9</sup>

Persons and entities who (1) may have direct access to the PDMP database are:

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<sup>1</sup> Florida Dept. of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report*, 2 (Dec. 1, 2013), available at <http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/documents/2012-2013pdmp-annual-report.pdf> (last visited Apr. 4, 2019).

<sup>2</sup> Section 893.055(2)(a), F.S.

<sup>3</sup> See n. 1, *supra*.

<sup>4</sup> *Id.*

<sup>5</sup> Section 893.055(1)(c), F.S., defines “controlled substance” as “a controlled substance listed in Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03 or 21 U.S.C. s. 812.” Prior to the passage of HB 21 in 2018 controlled substances listed in Schedule V were exempt from reporting. See ch. 2018-13, Laws of Fla.

<sup>6</sup> The information required to be reported under s. 893.055(3)(a)1.-8., F.S., includes identifying information of the prescribing practitioner, patient, prescribed drug, pharmacy, and person picking up the prescription; the dates the prescription was written and filled; the method of payment for the prescription; the quantity and strength of the prescription; whether there any refills permitted or filled; and any other appropriate information as determined by DOH rule.

<sup>7</sup> Section 893.055(3)(b)1.-3., F.S.

<sup>8</sup> Florida Dept. of Health, *2017-2018 Prescription Drug Monitoring Program Annual Report*, 15 (December 1, 2018), available at [http://www.floridahealth.gov/statistics-and-data/e-forcse/health\\_care\\_practitioners/documents/2018-pdmp-annual-report.pdf](http://www.floridahealth.gov/statistics-and-data/e-forcse/health_care_practitioners/documents/2018-pdmp-annual-report.pdf) (last visited Apr. 4, 2019).

<sup>9</sup> Section 893.055(4) & (5), F.S.

- A prescriber, dispenser, or his or her designee;
- An employee of the United States Department of Veterans Affairs, Department of Defense, or Indian Health Services who provides health care services pursuant to such employment and who is authorized to prescribe or dispense controlled substances;
- The PDMP program manager in order to administer the system.<sup>10</sup>

The following entities (2) may request information from the system under specified circumstances:

- The DOH and its health care regulatory boards, as appropriate, for investigations involving licensees authorized to prescribe or dispense controlled substances.
- The AG for Medicaid fraud cases involving prescribed controlled substances.
- A law enforcement agency during active investigations of potential criminal activity, fraud, or theft regarding prescribed controlled substances.
- A medical examiner when conducting an authorized investigation under s. 406.11, F.S., to determine the cause of death of an individual.
- An impaired practitioner consultant who is retained by the DOH under s. 456.076, F.S., to review the system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and who has separately agreed in writing to the consultant's access to and review of such information.
- A patient or the legal guardian or designated health care surrogate of an incapacitated patient who submits a written and notarized request that includes the patient's full name, address, phone number, date of birth, and a copy of a government-issued photo identification.<sup>11</sup>

Section 893.0551(5), F.S., requires that before disclosing information to a criminal justice agency or a law enforcement agency, the disclosing person or entity must take steps to ensure the continued confidentiality of all information. At a minimum, these steps must include redacting any non-relevant information. Also, s. 893.0551(6), F.S., requires an agency or person who obtains any information pursuant to this section to maintain the confidential and exempt status of that information and not disclose such information unless authorized by law.

Additionally, s. 893.055(10), F.S., specifies that information in the PDMP is for informational purposes only and is not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient. The program manager and other authorized persons are also restricted from testifying to any findings, recommendations, evaluations, opinions, or other actions taken in connection with management of the PDMP in any civil or administrative action.

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<sup>10</sup> Section 893.055(4), F.S.

<sup>11</sup> Section 893.055(5), F.S.

## Florida's Opioid Lawsuit

In 2018, AG Pam Bondi filed suit against multiple opioid manufacturers and distributors, including major pharmacies, CVS and Walgreens.<sup>12</sup> The complaint alleges that the defendants caused the opioid crisis by, among other things:

- “Engaging in a campaign of misrepresentations and omissions about opioid use designed to increase opioid prescriptions and opioid use, despite the risks.”
- “Funding ostensibly neutral and independent (but not) front organizations to publish information touting the benefits of opioids for chronic pain while omitting the information about the risks of opioid treatment.”
- “Paying ostensibly neutral medical experts called ‘key opinion leaders’ who were really manufacturer mouthpieces to publish articles promoting the use of opioids to treat pain while omitting information regarding the risks.”<sup>13</sup>

The lawsuit is ongoing.<sup>14</sup>

### III. Effect of Proposed Changes:

CS/SB 1700 amends s. 893.055, F.S. to:

- Divide subsection (5)(b) into two parts to allow the AG to request and receive data from the PDMP pursuant to an active investigation or pending civil or criminal litigation involving prescribed controlled substances, rather than only for Medicaid fraud cases;
- Require the DOH, when releasing information to the AG in cases other than for Medicaid fraud cases, to protect patient information by assigning each patient a unique identifying number. The unique identifier may not identify or provide a reasonable basis to identify the patient, and the DOH may only release the patient’s assigned number, his or her year of birth, and the county, city, and zip code of his or her residence.
- Allow the AG to introduce information released pursuant to the above provision as evidence in a civil, criminal, or administrative action against a dispenser or pharmacy; and
- Provide that the PDMP program manager, or other authorized persons who participate in preparing, reviewing, issuing, or any other activity related to the management of the system, may testify for the purposes of authenticating the records introduced by the AG.

The bill amends s. 893.0551, F.S., to:

- Conform to the change allowing the AG to request and receive data from the PDMP for pending civil and criminal cases involving prescribed controlled substances; and
- Provide that the AG may release information from the system in response to a discovery demand if the information directly relates to the case for which the information is requested.

The bill’s provisions are effective upon becoming law.

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<sup>12</sup> Emily Sullivan, *Florida Sues Walgreens, CVS for Alleged Role in Opioid Crisis*, NATIONAL PUBLIC RADIO (Nov. 19, 2018), available at <https://www.npr.org/2018/11/19/669146432/florida-sues-walgreens-cvs-for-alleged-role-in-opioid-crisis> (last visited Apr. 4, 2019).

<sup>13</sup>Florida Department of Legal Affairs, *Florida’s Opioid Lawsuit*, available at [http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AYSNE/\\$file/Complaint+summary.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MNOS-AYSNE/$file/Complaint+summary.pdf), (last visited Apr. 4, 2019).

<sup>14</sup> To review the amended complaint please, see [http://myfloridalegal.com/webfiles.nsf/WF/GWRY-B6KV32/\\$file/Amended+Complaint+\(Filed\).pdf](http://myfloridalegal.com/webfiles.nsf/WF/GWRY-B6KV32/$file/Amended+Complaint+(Filed).pdf) (last visited on Apr. 4, 2019).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. State Tax or Fee Increases:

None.

## E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

CS/SB 1700 may have an indeterminate negative fiscal impact on the DOH as the DOH may experience an increase in workload related to de-identifying records released to the AG, trial preparation, and travel.<sup>15</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>15</sup> Dept. of Health, *House Bill 1253 Analysis*, (Mar. 22, 2019) (on file with the Senate Health Policy Committee).

**VIII. Statutes Affected:**

This bill substantially amends sections 893.055 and 893.0551 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Health Policy on April 1, 2019:**

The committee substitute:

- Requires that patient information released to the AG for any active investigation or for a civil, criminal, or administrative case, other than for Medicaid fraud cases, be de-identified.
- Narrows the scope of the bill so that only de-identified information released to the AG pursuant to the above provision may be introduced as evidence in a civil, criminal, or administrative suit against a pharmacy or dispenser.
- Revises the effective date.

- B. **Amendments:**

None.



594726

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2019	.	
	.	
	.	
	.	

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The Committee on Judiciary (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 33 - 106

and insert:

Section 1. Subsections (5) and (10) of section 893.055,  
Florida Statutes, are amended to read:

893.055 Prescription drug monitoring program.—

(5) The following entities may not directly access  
information in the system, but may request an individual record  
~~information~~ from the program manager or designated program and  
support staff:



594726

12 (a) The department and its health care regulatory boards,  
13 as appropriate, for investigations involving licensees  
14 authorized to prescribe or dispense controlled substances.

15 (b) The Attorney General for:

16 1. Medicaid fraud cases involving prescribed controlled  
17 substances.

18 2. An active investigation or pending civil or criminal  
19 litigation involving prescribed controlled substances, other  
20 than Medicaid fraud cases, but only pursuant to a subpoena  
21 issued after a showing that the information is not available  
22 through any other means and an order of a court of competent  
23 jurisdiction. When releasing information pursuant to this  
24 subparagraph, the department must assign each patient whose  
25 information is released a unique identifying number that does  
26 not identify, or provide a reasonable basis to identify, the  
27 patient to whom the unique identifying number is assigned. The  
28 department may not release any patient information pursuant to  
29 this subparagraph other than the patient's unique identifying  
30 number.

31 (c) A law enforcement agency during active investigations  
32 of potential criminal activity, fraud, or theft regarding  
33 prescribed controlled substances.

34 (d) A medical examiner when conducting an authorized  
35 investigation under s. 406.11, to determine the cause of death  
36 of an individual.

37 (e) An impaired practitioner consultant who is retained by  
38 the department under s. 456.076 to review the system information  
39 of an impaired practitioner program participant or a referral  
40 who has agreed to be evaluated or monitored through the program



594726

41 and who has separately agreed in writing to the consultant's  
42 access to and review of such information.

43 (f) A patient or the legal guardian or designated health  
44 care surrogate of an incapacitated patient who submits a written  
45 and notarized request that includes the patient's full name,  
46 address, phone number, date of birth, and a copy of a  
47 government-issued photo identification.

48 (10) Information in the prescription drug monitoring  
49 program's system may be released only as provided in this  
50 section and s. 893.0551.

51 (a) Except as provided in paragraph (b), the content of the  
52 system is intended to be informational only. Information in the  
53 system is not subject to discovery or introduction into evidence  
54 in any civil or administrative action against a prescriber,  
55 dispenser, pharmacy, or patient arising out of matters that are  
56 the subject of information in the system. The program manager  
57 and authorized persons who participate in preparing, reviewing,  
58 issuing, or any other activity related to management of the  
59 system may not be permitted or required to testify in any such  
60 civil or administrative action as to any findings,  
61 recommendations, evaluations, opinions, or other actions taken  
62 in connection with management of the system.

63 (b) The Attorney General may introduce information from the  
64 system released to him or her pursuant to subparagraph (5) (b)2.  
65 as evidence in a criminal or an administrative action against a  
66 prescriber, dispenser, or pharmacy. The program manager and  
67 authorized persons who participate in preparing, reviewing,  
68 issuing, or any other activity related to the management of the  
69 system may testify for purposes of authenticating the records



594726

70 introduced into evidence pursuant to this paragraph.

71 Section 2. Paragraph (e) of subsection (3) and subsection  
72 (6) of section 893.0551, Florida Statutes, are amended to read:

73 893.0551 Public records exemption for the prescription drug  
74 monitoring program.—

75 (3) The department shall disclose such information to the  
76 following persons or entities upon request and after using a  
77 verification process to ensure the legitimacy of the request as  
78 provided in s. 893.055:

79 (e) The Attorney General or his or her designee:

80 1. When working on Medicaid fraud cases involving  
81 prescribed controlled substances or when the Attorney General  
82 has initiated a review of specific identifiers of Medicaid fraud  
83 or specific identifiers that warrant a Medicaid investigation  
84 regarding prescribed controlled substances. The Attorney  
85 General's Medicaid fraud investigators may not have direct  
86 access to the department's system. The Attorney General or his  
87 or her designee may disclose to a criminal justice agency, as  
88 defined in s. 119.011, only the information received from the  
89 department that is relevant to an identified active  
90 investigation that prompted the request for the information.

91 2. When pursuing an active investigation or pending civil  
92 or criminal litigation involving prescribed controlled  
93 substances, but only pursuant to a subpoena or an order of a  
94 court of competent jurisdiction. Except for Medicaid fraud  
95 cases, when releasing information pursuant to this subparagraph,  
96 the department must assign each patient whose information is  
97 released a unique identifying number that does not identify, or  
98 provide a reasonable basis to identify, the patient to whom the



594726

99 unique identifying number is assigned. The department may not  
100 release any patient information pursuant to this subparagraph  
101 other than the patient's unique identifying number.

102  
103 ===== T I T L E A M E N D M E N T =====

104 And the title is amended as follows:

105 Delete line 3

106 and insert:

107 amending s. 893.055, F.S.; specifying that certain  
108 entities that are prohibited from directly accessing  
109 information in the system may request individual  
110 records from the program manager or designated program  
111 and support staff; expanding the circumstances

By the Committee on Health Policy; and Senator Lee

588-03691-19

20191700c1

1 A bill to be entitled  
 2 An act relating to prescribed controlled substances;  
 3 amending s. 893.055, F.S.; expanding the circumstances  
 4 under which the Attorney General may request  
 5 information from the prescription drug monitoring  
 6 program to include an active investigation or pending  
 7 civil or criminal litigation involving prescribed  
 8 controlled substances; requiring the Department of  
 9 Health to assign each patient a unique identifying  
 10 number when releasing certain information; limiting  
 11 the information of a patient the department may  
 12 release; authorizing the Attorney General to introduce  
 13 as evidence in certain actions specified information  
 14 that is released to the Attorney General from the  
 15 program's records system; authorizing certain persons  
 16 to testify as to the authenticity of certain records;  
 17 amending s. 893.0551, F.S.; expanding the  
 18 circumstances under which the department must disclose  
 19 certain information to the Attorney General to include  
 20 active investigations or pending civil or criminal  
 21 litigation involving prescribed controlled substances;  
 22 requiring the department to assign each patient a  
 23 unique identifying number when releasing certain  
 24 information; providing an exception; limiting the  
 25 information of a patient the department may release;  
 26 authorizing the release of specified information  
 27 shared with a state attorney only in response to a  
 28 discovery demand under certain circumstances;  
 29 providing an effective date.

Page 1 of 5

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

588-03691-19

20191700c1

30  
 31 Be It Enacted by the Legislature of the State of Florida:  
 32  
 33 Section 1. Paragraph (b) of subsection (5) and subsection  
 34 (10) of section 893.055, Florida Statutes, are amended to read:  
 35 893.055 Prescription drug monitoring program.—  
 36 (5) The following entities may not directly access  
 37 information in the system, but may request information from the  
 38 program manager or designated program and support staff:  
 39 (b) The Attorney General for:  
 40 1. Medicaid fraud cases involving prescribed controlled  
 41 substances.  
 42 2. An active investigation or pending civil or criminal  
 43 litigation involving prescribed controlled substances other than  
 44 Medicaid fraud cases. When releasing information pursuant to  
 45 this subparagraph, the department must assign each patient whose  
 46 information is released a unique identifying number that does  
 47 not identify, or provide a reasonable basis to identify, the  
 48 patient to whom the identifying number is assigned. The  
 49 department may not release any patient information pursuant to  
 50 this subparagraph other than the patient's unique identifying  
 51 number, year of birth, and the county, city, and zip code where  
 52 the patient resides.  
 53 (10) Information in the prescription drug monitoring  
 54 program's system may be released only as provided in this  
 55 section and s. 893.0551.  
 56 (a) Except as provided in paragraph (b), the content of the  
 57 system is intended to be informational only. Information in the  
 58 system is not subject to discovery or introduction into evidence

Page 2 of 5

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

588-03691-19 20191700c1

59 in any civil or administrative action against a prescriber,  
60 dispenser, pharmacy, or patient arising out of matters that are  
61 the subject of information in the system. The program manager  
62 and authorized persons who participate in preparing, reviewing,  
63 issuing, or any other activity related to management of the  
64 system may not be permitted or required to testify in any such  
65 civil or administrative action as to any findings,  
66 recommendations, evaluations, opinions, or other actions taken  
67 in connection with management of the system.

68 (b) The Attorney General may introduce information from the  
69 system released to him or her pursuant to subparagraph (5)(b)2.  
70 as evidence in a civil, criminal, or administrative action  
71 against a dispenser or a pharmacy. The program manager and  
72 authorized persons who participate in preparing, reviewing,  
73 issuing, or any other activity related to the management of the  
74 system may testify for purposes of authenticating the records  
75 introduced into evidence pursuant to this paragraph.

76 Section 2. Paragraph (e) of subsection (3) and subsection  
77 (6) of section 893.0551, Florida Statutes, are amended to read:  
78 893.0551 Public records exemption for the prescription drug  
79 monitoring program.—

80 (3) The department shall disclose such information to the  
81 following persons or entities upon request and after using a  
82 verification process to ensure the legitimacy of the request as  
83 provided in s. 893.055:

84 (e) The Attorney General or his or her designee:  
85 1. When working on Medicaid fraud cases involving  
86 prescribed controlled substances or when the Attorney General  
87 has initiated a review of specific identifiers of Medicaid fraud

588-03691-19 20191700c1

88 or specific identifiers that warrant a Medicaid investigation  
89 regarding prescribed controlled substances. The Attorney  
90 General's Medicaid fraud investigators may not have direct  
91 access to the department's system. The Attorney General or his  
92 or her designee may disclose to a criminal justice agency, as  
93 defined in s. 119.011, only the information received from the  
94 department that is relevant to an identified active  
95 investigation that prompted the request for the information.

96 2. When pursuing an active investigation or pending civil  
97 or criminal litigation involving prescribed controlled  
98 substances. Except for Medicaid fraud cases, when releasing  
99 information pursuant to this subparagraph, the department must  
100 assign each patient whose information is released a unique  
101 identifying number that does not identify, or provide a  
102 reasonable basis to identify, the patient to whom the  
103 identifying number is assigned. The department may not release  
104 any patient information pursuant to this subparagraph other than  
105 the patient's unique identifying number, year of birth, and the  
106 county, city, and zip code where the patient resides.

107 (6) An agency or person who obtains any information  
108 pursuant to this section must maintain the confidential and  
109 exempt status of that information and may not disclose such  
110 information unless authorized by law. Information shared with a  
111 state attorney pursuant to paragraph (3)(f), ~~or~~ paragraph  
112 (3)(h), or with the Attorney General or his or her designee  
113 pursuant to subparagraph (3)(e)2. may be released only in  
114 response to a discovery demand if such information is directly  
115 related to the ~~criminal~~ case for which the information was  
116 requested. Unrelated information may be released only upon an

588-03691-19

20191700c1

117 order of a court of competent jurisdiction.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** April 3, 2019

---

I respectfully request that **Senate Bill #1700**, relating to Prescribed Controlled Substances, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "Tom Lee".

---

Senator Tom Lee  
Florida Senate, District 20

# APPEARANCE RECORD

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

April 8, 2019  
Meeting Date

SB 1700  
Bill Number (if applicable)

#594726  
Amendment Barcode (if applicable)

Topic Prescribed Controlled Substances

Name William Lange

Job Title President

Address 210 S. Monroe St.  
Street

Phone 850-222-0770

Tallahassee FL. 32308  
City State Zip

Email william@flyctive.org

Speaking:  For  Against  Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

1700

Bill Number (if applicable)

594726

Amendment Barcode (if applicable)

Topic Prescribed Controlled Substances

Name John Guard

Job Title Chief Deputy Attorney General

Address 400 S. Monroe Phone

Street

Tallahassee

FL

32399

City

State

Zip

Email

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

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

Representing Office of the Attorney General

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

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

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4.8.19

*Meeting Date*

1700

*Bill Number (if applicable)*

Topic Prescribed Controlled Substances

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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)

04.08.19

Meeting Date

1700

Bill Number (if applicable)

Topic Prescribed Controlled Substances

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/8/2019

*Meeting Date*

1700

*Bill Number (if applicable)*

Topic Prescribed Controlled Substances

*Amendment Barcode (if applicable)*

Name John Guard

Job Title Chief Deputy Attorney General

Address 400 S Monroe

*Street*

Tallahassee

*City*

FL

*State*

32309

*Zip*

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Office of the Attorney General

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: CS/SB 1272

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Anti-Semitism

DATE: April 9, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	<b>Fav/CS</b>
2.			ED	
3.			RC	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1272 prohibits discrimination in the K-20 public education system against a student or employee based on religion. The bill further provides that a public K-20 educational institution must treat discrimination by student or employees resulting from institutional policies based on anti-Semitism in the same way it treats discrimination based on race.

For purposes of the hate crime statute and the prohibition against discrimination in the K-20 public education system, the bill lists examples of conduct or speech evidencing anti-Semitism.

**II. Present Situation:**

**Non-Discrimination in Public Education**

Section 1000.05, F.S., is a general non-discrimination statute relating to this state's public school system. It prohibits discrimination in this state's public K-20 education system on the basis of race, national origin, gender, disability, or marital status. As such, this section does not expressly prohibit discrimination on the basis of religion.<sup>1</sup>

---

<sup>1</sup> Accordingly, s. 1002.20, F.S., which sets forth K-12 student and parent rights, does not include the right to be free from religious discrimination, though it does include the right to be free from other types of discrimination, such as racial discrimination.

However, s. 1002.206, F.S., prohibits discrimination in public schools against a student, parent, or school personnel based on a “religious viewpoint or religious expression.”<sup>2</sup> Beyond this broad prohibition, the statute’s focus is on protecting the rights of students, staff, and others to express their religious views and to participate in religious activities to the same extent that a person may express secular views and engage in secular activities. Accordingly, the statute specifies that a student may:

- Express his or her religious beliefs in coursework and in other ways “free from discrimination”;
- Wear clothing, accessories, and jewelry that display a religious message or symbol to the same extent that a student may wear items that display a secular message or symbol; and
- Pray or engage in religious activities or religious expression before, during, or after the school day to the same extent that a student may engage in secular activities or expression.<sup>3</sup>

Moreover, a school district may not prevent its personnel from participating in student-initiated religious activities on school grounds, and may not prohibit an outside group from using school facilities merely because the group is religious.<sup>4</sup>

### **III. Effect of Proposed Changes:**

#### **Prohibiting Anti-Semitism in the Public School System**

The bill amends s. 1000.05, F.S., to add discrimination based on religion to the forms of discrimination which is prohibited in the public school system. Additionally, the bill requires that discrimination in the public school system “by students or employees or resulting from institutional policies motivated by anti-Semitic intent” be treated identically to “discrimination motivated by race.” The bill declares that nothing in this provision shall be construed to:

- Diminish or infringe upon any right protected under the First Amendment to the United States Constitution, or the State Constitution; or
- Conflict with federal or state discrimination laws.

For the purposes of s. 1000.05, F.S., the bill provides that “anti-Semitism” includes:

- A certain perception of the Jewish people, which may be expressed as hatred toward Jewish people.
- Rhetorical and physical manifestations of anti-Semitism directed toward a person, his or her property, or toward Jewish community institutions or religious facilities.

The bill provides that examples of anti-Semitism include:

- Calling for, aiding, or justifying the killing or harming of Jews, often in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective, especially, but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government, or other societal institutions.

---

<sup>2</sup> Section 1002.206(2), F.S.

<sup>3</sup> Section 1002.206(3)-(4), F.S.

<sup>4</sup> Section 1002.206(4)(b)1., and (c), F.S.

- Accusing Jews as a people of being responsible for real or imagined wrongdoings committed by a single Jewish person or group, the State of Israel, or even for acts committed by non-Jews.
- Accusing Jews as a people or the State of Israel of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or the alleged priorities of Jews worldwide, than to the interest of their own nations.

The bill also provides that examples of anti-Semitism related to Israel include:

- Demonizing Israel by using the symbols and images associated with classic anti-Semitism to characterize Israel or Israelis, drawing comparisons of contemporary Israeli policy to that of the Nazis, or blaming Israel for all inter-religious or political tensions.
- Applying a double standard to Israel by requiring behavior of Israel that is not expected or demanded of any other democratic nation, or focusing peace or human rights investigations only on Israel.
- Delegitimizing Israel by denying the Jewish people their right to self-determination and denying Israel the right to exist.

Finally, the bill amends s. 1002.20, F.S., which describes student and parent rights within the K-12 public school system, to specify that students and parents have a right to be free of discrimination based on religion.

#### **Effective Dates**

The changes made by the bill to the hate crimes statute are effective October 1, 2019. The remainder of the bill takes effect July 1, 2019.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This 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:

The Criminal Justice Impact Conference reviewed HB 741, a similar bill to SB 1272, to determine the impact of the bill on prison beds. The conference determined that the bill will have a positive insignificant impact on prison beds.<sup>5</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1000.05, and 1002.20.

**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 April 8, 2019:**

The committee substitute removes the definition of religion from the underlying bill. Additionally, the committee substitute declares that its provision requiring public school anti-Semitic discrimination to be treated identically to race-motivated discrimination is consistent with the state and federal constitutions and other laws.

---

<sup>5</sup> Criminal Justice Impact Conference, Narrative Analysis of HB 741 – Anti-Semitism (Similar to SB 1272) (Feb. 27, 2019), <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB741.pdf>.

B. Amendments:

None.

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

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287692

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

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The Committee on Judiciary (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Present subsection (7) of section 1000.05,  
Florida Statutes, is redesignated as subsection (8), a new  
subsection (7) is added to that section, and paragraphs (a),  
(b), (c), and (e) of subsection (2) are amended, to read:

1000.05 Discrimination against students and employees in  
the Florida K-20 public education system prohibited; equality of  
access required.—



287692

12 (2) (a) Discrimination on the basis of race, ethnicity,  
13 national origin, gender, disability, religion, or marital status  
14 against a student or an employee in the state system of public  
15 K-20 education is prohibited. No person in this state shall, on  
16 the basis of race, ethnicity, national origin, gender,  
17 disability, religion, or marital status, be excluded from  
18 participation in, be denied the benefits of, or be subjected to  
19 discrimination under any public K-20 education program or  
20 activity, or in any employment conditions or practices,  
21 conducted by a public educational institution that receives or  
22 benefits from federal or state financial assistance.

23 (b) The criteria for admission to a program or course shall  
24 not have the effect of restricting access by persons of a  
25 particular race, ethnicity, national origin, gender, disability,  
26 religion, or marital status.

27 (c) All public K-20 education classes shall be available to  
28 all students without regard to race, ethnicity, national origin,  
29 gender, disability, religion, or marital status; however, this  
30 is not intended to eliminate the provision of programs designed  
31 to meet the needs of students with limited proficiency in  
32 English, gifted students, or students with disabilities or  
33 programs tailored to students with specialized talents or  
34 skills.

35 (e) Guidance services, counseling services, and financial  
36 assistance services in the state public K-20 education system  
37 shall be available to students equally. Guidance and counseling  
38 services, materials, and promotional events shall stress access  
39 to academic and career opportunities for students without regard  
40 to race, ethnicity, national origin, gender, disability,



287692

41 religion, or marital status.

42 (7) A public K-20 educational institution must treat  
43 discrimination by students or employees or resulting from  
44 institutional policies motivated by anti-Semitic intent in an  
45 identical manner to discrimination motivated by race. For  
46 purposes of this section, the term "anti-Semitism" includes a  
47 certain perception of the Jewish people, which may be expressed  
48 as hatred toward Jewish people, rhetorical and physical  
49 manifestations of anti-Semitism directed toward a person, his or  
50 her property, or toward Jewish community institutions or  
51 religious facilities.

52 (a) Examples of anti-Semitism include:

53 1. Calling for, aiding, or justifying the killing or  
54 harming of Jews, often in the name of a radical ideology or an  
55 extremist view of religion.

56 2. Making mendacious, dehumanizing, demonizing, or  
57 stereotypical allegations about Jews as such or the power of  
58 Jews as a collective, especially, but not exclusively, the myth  
59 about a world Jewish conspiracy or of Jews controlling the  
60 media, economy, government, or other societal institutions.

61 3. Accusing Jews as a people of being responsible for real  
62 or imagined wrongdoings committed by a single Jewish person or  
63 group, the State of Israel, or even for acts committed by non-  
64 Jews.

65 4. Accusing Jews as a people or the State of Israel of  
66 inventing or exaggerating the Holocaust.

67 5. Accusing Jewish citizens of being more loyal to Israel,  
68 or the alleged priorities of Jews worldwide, than to the  
69 interest of their own nations.



287692

70 (b) Examples of anti-Semitism related to Israel include:

71 1. Demonizing Israel by using the symbols and images  
72 associated with classic anti-Semitism to characterize Israel or  
73 Israelis, drawing comparisons of contemporary Israeli policy to  
74 that of the Nazis, or blaming Israel for all interreligious or  
75 political tensions.

76 2. Applying a double standard to Israel by requiring  
77 behavior of Israel that is not expected or demanded of any other  
78 democratic nation, or focusing peace or human rights  
79 investigations only on Israel.

80 3. Delegitimizing Israel by denying the Jewish people their  
81 right to self-determination and denying Israel the right to  
82 exist.

83  
84 However, criticism of Israel that is similar to criticism toward  
85 any other country may not be regarded as anti-Semitic.

86 (c) Nothing in this subsection shall be construed to  
87 diminish or infringe upon any right protected under the First  
88 Amendment to the United States Constitution, or the State  
89 Constitution. Nothing in this subsection shall be construed to  
90 conflict with federal or state discrimination laws.

91 Section 2. Subsection (7) of section 1002.20, Florida  
92 Statutes, is amended to read:

93 1002.20 K-12 student and parent rights.—Parents of public  
94 school students must receive accurate and timely information  
95 regarding their child's academic progress and must be informed  
96 of ways they can help their child to succeed in school. K-12  
97 students and their parents are afforded numerous statutory  
98 rights including, but not limited to, the following:



287692

99           (7) NONDISCRIMINATION.—All education programs, activities,  
100 and opportunities offered by public educational institutions  
101 must be made available without discrimination on the basis of  
102 race, ethnicity, national origin, gender, disability, religion,  
103 or marital status, in accordance with the provisions of s.  
104 1000.05.

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

106  
107 ===== T I T L E   A M E N D M E N T =====

108 And the title is amended as follows:

109           Delete everything before the enacting clause  
110 and insert:

111                           A bill to be entitled  
112           An act relating to anti-Semitism; amending s. 1000.05,  
113           F.S.; prohibiting discrimination in the Florida K-20  
114           public education system based on religion; requiring  
115           public K-20 educational institutions to take into  
116           consideration anti-Semitism under certain instances of  
117           discrimination; defining the term "anti-Semitism";  
118           providing an exception; providing construction;  
119           amending s. 1002.20, F.S.; conforming provisions to  
120           changes made by the act; providing an effective date.

By Senator Gruters

23-01559A-19

20191272\_\_

1 A bill to be entitled  
 2 An act relating to anti-Semitism; amending s. 775.085,  
 3 F.S.; specifying that the term "religion" includes  
 4 anti-Semitism; defining the term "anti-Semitism";  
 5 specifying duties of law enforcement agencies;  
 6 providing construction; amending s. 1000.05, F.S.;  
 7 prohibiting discrimination in the Florida K-20 public  
 8 education system based on religion; requiring a public  
 9 K-20 educational institution to take into  
 10 consideration anti-Semitism under certain instances of  
 11 discrimination; defining the term "anti-Semitism";  
 12 providing construction; amending s. 1002.20, F.S.;  
 13 conforming provisions to changes made by the act;  
 14 providing effective dates.  
 15  
 16 Be It Enacted by the Legislature of the State of Florida:  
 17  
 18 Section 1. Effective October 1, 2019, section 775.085,  
 19 Florida Statutes, is amended to read:  
 20 775.085 Evidencing prejudice while committing offense;  
 21 reclassification.-  
 22 (1) (a) The penalty for any felony or misdemeanor shall be  
 23 reclassified as provided in this subsection if the commission of  
 24 such felony or misdemeanor evidences prejudice based on the  
 25 race, color, ancestry, ethnicity, religion, sexual orientation,  
 26 national origin, homeless status, or advanced age of the victim:  
 27 1. A misdemeanor of the second degree is reclassified to a  
 28 misdemeanor of the first degree.  
 29 2. A misdemeanor of the first degree is reclassified to a

Page 1 of 8

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23-01559A-19

20191272\_\_

30 felony of the third degree.  
 31 3. A felony of the third degree is reclassified to a felony  
 32 of the second degree.  
 33 4. A felony of the second degree is reclassified to a  
 34 felony of the first degree.  
 35 5. A felony of the first degree is reclassified to a life  
 36 felony.  
 37 (b) As used in paragraph (a), the term:  
 38 1. "Advanced age" means that the victim is older than 65  
 39 years of age.  
 40 2. "Homeless status" means that the victim:  
 41 a. Lacks a fixed, regular, and adequate nighttime  
 42 residence; or  
 43 b. Has a primary nighttime residence that is:  
 44 (I) A supervised publicly or privately operated shelter  
 45 designed to provide temporary living accommodations; or  
 46 (II) A public or private place not designed for, or  
 47 ordinarily used as, a regular sleeping accommodation for human  
 48 beings.  
 49 3. "Religion" includes, but is not limited to, anti-  
 50 Semitism. The term "anti-Semitism" means a perception of Jewish  
 51 people, which may be expressed as hatred toward Jewish people.  
 52 Rhetorical or physical manifestations of anti-Semitism may be  
 53 directed toward Jewish or non-Jewish individuals or their  
 54 property, or toward Jewish community institutions and religious  
 55 facilities. For purposes of this section, the term "anti-  
 56 Semitism" includes all of the following:  
 57 a. Calling for, aiding, or justifying the killing or  
 58 harming of Jewish people, often in the name of a radical

Page 2 of 8

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23-01559A-19

20191272\_\_

59 ideology or an extremist view of religion.

60 b. Making mendacious, dehumanizing, demonizing, or  
 61 stereotypical allegations about Jewish people as such or the  
 62 power of Jewish people as a collective, including allegations  
 63 such as the myth about a world Jewish conspiracy or of Jewish  
 64 people controlling the media, economy, government, or other  
 65 societal institutions.

66 c. Accusing the Jewish people as a people of being  
 67 responsible for real or imagined wrongdoing committed by a  
 68 single Jewish person or group, the State of Israel, or even for  
 69 acts committed by non-Jewish people.

70 d. Accusing the Jewish people as a people or the State of  
 71 Israel of inventing or exaggerating the Holocaust.

72 e. Accusing Jewish citizens of countries other than Israel  
 73 of being more loyal to Israel, or the alleged priorities of  
 74 Jewish people worldwide, than to the interest of their own  
 75 nations.

76 f. Demonizing Israel by using the symbols and images  
 77 associated with classic anti-Semitism to characterize Israel,  
 78 Israelis, drawing comparisons of contemporary Israeli policy to  
 79 that of the Nazis, or blaming Israel for all inter-religious or  
 80 political tensions.

81 g. Applying a double standard to Israel by requiring  
 82 behavior of Israel that is not expected or demanded of any other  
 83 democratic nation, or focusing peace or human rights  
 84 investigations only on Israel.

85 h. Delegitimizing Israel by denying the Jewish people their  
 86 right to self-determination and denying Israel the right to  
 87 exist.

23-01559A-19

20191272\_\_

88

89 However, criticism of Israel which is similar to criticism  
 90 toward any other country may not be regarded as anti-Semitic.

91 (2) A person or organization that establishes by clear and  
 92 convincing evidence that it has been coerced, intimidated, or  
 93 threatened in violation of this section has a civil cause of  
 94 action for treble damages, an injunction, or any other  
 95 appropriate relief in law or in equity. Upon prevailing in such  
 96 civil action, the plaintiff may recover reasonable attorney fees  
 97 and costs.

98 (3) It is an essential element of this section that the  
 99 record reflect that the defendant perceived, knew, or had  
 100 reasonable grounds to know or perceive that the victim was  
 101 within the class delineated in this section.

102 (4) (a) In investigating an alleged violation of law, a law  
 103 enforcement agency shall take into consideration the  
 104 requirements of this section and the definition of anti-Semitism  
 105 for purposes of determining whether the alleged violation was  
 106 motivated by anti-Semitism or other intent sufficient to fall  
 107 within this section, consistent with federal statutes  
 108 prohibiting hate crimes.

109 (b) This section does not diminish or infringe upon any  
 110 right protected under the First Amendment to the Constitution of  
 111 the United States or the State Constitution. This section may  
 112 not be construed to conflict with federal or state  
 113 discrimination laws.

114 Section 2. Present subsection (7) of section 1000.05,  
 115 Florida Statutes, is redesignated as subsection (8), a new  
 116 subsection (7) is added to that section, and paragraphs (a),

23-01559A-19

20191272\_\_

117 (b), (c), and (e) of subsection (2) of that section are amended,  
118 to read:

119 1000.05 Discrimination against students and employees in  
120 the Florida K-20 public education system prohibited; equality of  
121 access required.—

122 (2) (a) Discrimination on the basis of race, ethnicity,  
123 national origin, gender, disability, religion, or marital status  
124 against a student or an employee in the state system of public  
125 K-20 education is prohibited. No person in this state shall, on  
126 the basis of race, ethnicity, national origin, gender,  
127 disability, religion, or marital status, be excluded from  
128 participation in, be denied the benefits of, or be subjected to  
129 discrimination under any public K-20 education program or  
130 activity, or in any employment conditions or practices,  
131 conducted by a public educational institution that receives or  
132 benefits from federal or state financial assistance.

133 (b) The criteria for admission to a program or course shall  
134 not have the effect of restricting access by persons of a  
135 particular race, ethnicity, national origin, gender, disability,  
136 religion, or marital status.

137 (c) All public K-20 education classes shall be available to  
138 all students without regard to race, ethnicity, national origin,  
139 gender, disability, religion, or marital status; however, this  
140 is not intended to eliminate the provision of programs designed  
141 to meet the needs of students with limited proficiency in  
142 English, gifted students, or students with disabilities or  
143 programs tailored to students with specialized talents or  
144 skills.

145 (e) Guidance services, counseling services, and financial

Page 5 of 8

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23-01559A-19

20191272\_\_

146 assistance services in the state public K-20 education system  
147 shall be available to students equally. Guidance and counseling  
148 services, materials, and promotional events shall stress access  
149 to academic and career opportunities for students without regard  
150 to race, ethnicity, national origin, gender, disability,  
151 religion, or marital status.

152 (7) A public K-20 educational institution must treat  
153 discrimination by students or employees or resulting from  
154 institutional policies based on anti-Semitism in an identical  
155 manner to discrimination based on race. For purposes of this  
156 section, the term "anti-Semitism" includes all of the following:

157 (a) A certain perception of the Jewish people, which may be  
158 expressed as hatred toward Jewish people.

159 (b) Rhetorical and physical manifestations of anti-Semitism  
160 directed toward a Jewish or non-Jewish individual or his or her  
161 property or toward Jewish community institutions or religious  
162 facilities.

163 (c) Calling for, aiding, or justifying the killing or  
164 harming of a Jewish person, often in the name of a radical  
165 ideology or an extremist view of religion.

166 (d) Making mendacious, dehumanizing, demonizing, or  
167 stereotypical allegations about a Jewish person as such or the  
168 power of the Jewish community as a collective, especially, but  
169 not exclusively, the myth about a world Jewish conspiracy or of  
170 the Jewish community controlling the media, economy, government  
171 or other societal institutions.

172 (e) Accusing the Jewish people as a people of being  
173 responsible for real or imagined wrongdoing committed by a  
174 single Jewish person or group, by the State of Israel, or even

Page 6 of 8

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23-01559A-19

20191272\_\_

175 for acts committed by non-Jewish people.

176 (f) Accusing the Jewish people as a people or the State of  
 177 Israel of inventing or exaggerating the Holocaust.

178 (g) Accusing Jewish citizens of being more loyal to Israel,  
 179 or the alleged priorities of Jewish people worldwide, than to  
 180 the interest of their own nations.

181 (h) Demonizing Israel by using the symbols and images  
 182 associated with classic anti-Semitism to characterize Israel,  
 183 Israelis, drawing comparisons of contemporary Israeli policy to  
 184 that of the Nazis, or blaming Israel for all inter-religious or  
 185 political tensions.

186 (i) Applying a double standard to Israel by requiring  
 187 behavior of Israel that is not expected or demanded of any other  
 188 democratic nation, or focusing peace or human rights  
 189 investigations only on Israel.

190 (j) Delegitimizing Israel by denying the Jewish people  
 191 their right to self-determination and denying Israel the right  
 192 to exist.

193  
 194 However, criticism of Israel that is similar to criticism toward  
 195 any other country may not be regarded as anti-Semitic.

196 Section 3. Subsection (7) of section 1002.20, Florida  
 197 Statutes, is amended to read:

198 1002.20 K-12 student and parent rights.—Parents of public  
 199 school students must receive accurate and timely information  
 200 regarding their child's academic progress and must be informed  
 201 of ways they can help their child to succeed in school. K-12  
 202 students and their parents are afforded numerous statutory  
 203 rights including, but not limited to, the following:

Page 7 of 8

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23-01559A-19

20191272\_\_

204 (7) NONDISCRIMINATION.—All education programs, activities,  
 205 and opportunities offered by public educational institutions  
 206 must be made available without discrimination on the basis of  
 207 race, ethnicity, national origin, gender, disability, religion,  
 208 or marital status, in accordance with the provisions of s.  
 209 1000.05.

210 Section 4. Except as expressly provided in this act, this  
 211 act shall take effect July 1, 2019.

Page 8 of 8

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Commerce and Tourism, *Chair*  
Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Banking and Insurance

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

### SENATOR JOE GRUTERS

23rd District

March 11, 2019

The Honorable David Simmons, Chair  
Judiciary Committee  
515 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that Senate Bill 1272, Anti-Semitism, be placed on the agenda of the next Judiciary Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

cc: Tom Cibula, Staff Director  
Joyce Butler, Committee Administrative Assistant

**REPLY TO:**

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

April 8, 2019

*Meeting Date*

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

SB 1272

*Bill Number (if applicable)*

Topic Adding religion to 1000.05 of the Florida Statute

*Amendment Barcode (if applicable)*

Name Susan Aertker

Job Title \_\_\_\_\_

Address 10178 Foxcroft Road West

Phone 904-262-5124

*Street*

Jacksonville

FL

32257

Email SusanInFlorida@gmail.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/8/2019  
Meeting Date

SB 1272  
Bill Number (if applicable)

Topic SB 1272

Amendment Barcode (if applicable)

Name Reem Zaitoon

Job Title Student

Address 2421 Jackson Bluff Rd.  
Street

Phone 201-314-6767

Tallahassee  
City

Email r215e@my.fsu.edu

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)

# APPEARANCE RECORD

4-8-19

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

SB 1272

Meeting Date

Bill Number (if applicable)

Topic Anti Semitism

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retired Scientist

Address \_\_\_\_\_

Phone <sup>850</sup> 322-7599

Street

Tallahassee

Email amalie.datz@mac.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Retired Member of National Council of Jewish Women

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19  
Meeting Date

SB 1272  
Bill Number (if applicable)

Topic Anti-Semitism

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr

Phone

Street

Largo

City

FL

State

33773

Zip

Email

Speaking:  For  Against  Information

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

Representing

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 958

INTRODUCER: Senators Rouson and Rodriguez

SUBJECT: Housing Discrimination

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	<b>Favorable</b>
2.			GO	
3.			RC	

---

**I. Summary:**

SB 958 clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;
- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of housing discrimination must essentially chose whether to pursue remedies in a judicial proceeding or an administrative proceeding.

**II. Present Situation:**

**Overview**

This state's District Courts of Appeal have held that the Florida Fair Housing Act (FFHA) requires an alleged victim of housing discrimination to exhaust his or her administrative remedies before filing a civil action under the FFHA. However, federal District Courts (trial courts) in Florida have repeatedly disagreed with this interpretation, as has the U.S. Department of Housing and Urban Development (HUD).

HUD has also repeatedly stated that the FFHA, as interpreted by the DCAs, is inconsistent with the federal Fair Housing Act. Accordingly, HUD has advised the Commission for several years

that the Commission may be disqualified from receiving federal funding from HUD through the Fair Housing Assistance Program if Florida law is not conformed to the federal act.

### **The Florida Fair Housing Act (FFHA)**

#### ***Purpose of the FFHA***

The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable, a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.<sup>1</sup> In addition, the FFHA affords protection to persons who are pregnant or in the process of becoming legal custodians of children of 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.<sup>2</sup>

#### ***Timeline for Filing and Processing Claims***

A person alleging discrimination under the FFHA has 1 year after the discriminatory housing practice to file a complaint with the Commission.<sup>3</sup> The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.<sup>4</sup> The Commission may also decide to resolve the complaint and eliminate or correct the discriminatory housing practice through conciliation.<sup>5</sup> If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the victim may initiate a civil action or file petition for an administrative determination.<sup>6</sup> If the Commission finds reasonable cause to believe that housing discrimination has occurred, the claimant may request that the Attorney General bring an action against the respondent.<sup>7</sup>

A civil action must be commenced within 2 years after the alleged discriminatory act occurred.<sup>8</sup> The court may continue a civil case if conciliation efforts by the Commission or by the local housing agency are likely to result in a satisfactory settlement.<sup>9</sup> If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief, which may include compensatory or punitive damages.<sup>10</sup> If the Commission is unable to obtain voluntary compliance or has reasonable cause to believe that a discriminatory act has occurred, the Commission may institute an administrative proceeding. Alternatively, the aggrieved person may request administrative relief under ch. 120, F.S., within 30 days after receiving notice that the Commission has concluded its investigation.<sup>11</sup>

The Commission may institute a civil action if it is unable to achieve voluntary compliance with the FFHA and the Commission is not required to have petitioned for an administrative hearing or

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<sup>1</sup> Section 760.23(1), F.S.

<sup>2</sup> Sections 760.23(6)-(9), F.S.

<sup>3</sup> Section 760.34(1) and (2), F.S.

<sup>4</sup> Section 760.34(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 760.34(4), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Section 760.35(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 760.35(2), F.S.

<sup>11</sup> Section 760.35(3), F.S.

exhausted its administrative remedies prior to bringing a civil action.<sup>12</sup> Remedies available under the FFHA include fines and actual and punitive damages.<sup>13</sup> The court may also award reasonable attorney fees and costs to the Commission.<sup>14</sup>

The Commission, or any local agency certified as substantially equivalent may institute a civil action in an appropriate court if it is unable to obtain voluntary compliance with the local fair housing law.<sup>15</sup> The local agency does not have to petition for an administrative hearing or exhaust its administrative remedies prior to bringing civil action.<sup>16</sup>

### **State and Federal Courts Disagree Regarding the Need to Exhaust Administrative Remedies**

In at least three cases, the District Courts of Appeal have held that a person must exhaust his or her administrative remedies before filing a civil action alleging housing discrimination under the FFHA.<sup>17</sup> However, the United States District Courts (federal trial courts) for the Middle and Southern Districts of Florida have held the opposite.<sup>18</sup> The different outcomes are the result of different interpretations of the FFHA, thus suggesting that the FFHA could be clearer as to whether a person must exhaust his or her administrative remedies before filing a civil action.

### **The Fair Housing Assistance Program**

#### ***Eligibility for Participation in the FHAP***

The federal Fair Housing Assistance Program (FHAP) permits the United States Department of Housing and Urban Development (HUD) to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act.<sup>19</sup> To be eligible for participation in the FHAP, a state or local agency must enforce a fair housing law that is substantially equivalent to the federal Fair Housing Act.<sup>20</sup> HUD will then certify these agencies as substantially equivalent, qualifying the agencies for federal funding.<sup>21</sup>

<sup>12</sup> Section 760.34(7)(a), F.S.

<sup>13</sup> Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to \$10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to \$25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to \$50,000, if the respondent has had two or more violations of the Fair Housing Act. Section 760.34(7)(b), F.S.

<sup>14</sup> Section 760.34(7)(c), F.S.

<sup>15</sup> Sections 760.22(9) and 760.34(8), F.S.

<sup>16</sup> Section 760.34(8), F.S.

<sup>17</sup> See *Housing Opportunities Project v. SPV Realty, LC* 212 So. 3d 419 (Fla. 3d DCA 2016); *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); *Sun Harbor Homeowners' Ass'n, Inc. v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012).

<sup>18</sup> See *Milsap v. Cornerstone Residential Mgmt., Inc.*, 2010 WL 427436 (S.D. Fla. 2010); *Serota v. Carriage Hills Condominium Ass'n, Inc.* 2014 WL 3894264 (S.D. Fla. 2014); *Floyd v. City of Sanibel*, 2017 WL 78638 (S.D. Fla. 2017).

<sup>19</sup> United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP)*, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP) (last visited Apr. 4, 2019).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

### ***The Florida Commission on Human Relations, and its Prospects for Continued Eligibility***

In this state, the Florida Commission on Human Relations is the main agency certified as substantially equivalent.<sup>22</sup> Monies the Commission receives from HUD under the FHAP are placed into the Commission's Operating Trust Fund. However, HUD has warned the Commission that it is at risk of suspension and withdrawal from the FHAP because the FFHA, which the Commission administers, is not substantially equivalent to the federal Fair Housing Act.<sup>23</sup> Particularly, HUD states that the laws are not substantially equivalent because the federal Fair Housing Act permits a person alleging housing discrimination to file a civil action regardless of whether he or she has exhausted administrative remedies, while the FFHA, as interpreted by the DCAs, requires the exhaustion of administrative remedies before filing a civil action.<sup>24</sup>

### ***HUD's Reimbursement of the Commission under the FHAP, by the Numbers***

As part of the Fair Housing Assistance Program, HUD reimburses the Commission for resolving housing cases. The reimbursement monies are placed into the Human Relation's Operating Trust Fund. In Fiscal Year 2017-18, these payments totaled \$611,721, which was 49.89 % of the Commission's Operating Trust Fund.<sup>25</sup> In Fiscal Year 2017-18, the Commission received \$605,404 from HUD, which was 48.10 % of the Commission's Operating Trust Fund for that year.<sup>26</sup>

### **III. Effect of Proposed Changes:**

The bill clarifies that under the Florida Fair Housing Act (FFHA) an alleged victim of housing discrimination may file a civil action regardless of whether the victim has exhausted his or her administrative remedies. Accordingly, the person may file a civil action regardless of whether:

- He or she has filed a complaint with the Florida Commission on Human Relations;
- The Commission has resolved a complaint (if the victim chose to file one); or
- Any particular amount of time has passed since the victim filed a complaint with the Commission.

Under the bill, a victim may also proceed directly to filing a petition with the Division of Administrative Hearings. However, if an administrative law judge has commenced a hearing on the matter, the victim may not commence a civil action. Accordingly, it appears that a victim of

<sup>22</sup> Six local agencies also qualify: the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. See United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies*, [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/partners/FHAP/agencies#FL](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL) (last visited Apr. 4, 2019).

<sup>23</sup> See Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (Mar. 16, 2016); Letter from Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, to Michelle Wilson, Executive Director, Florida Commission on Human Relations (July 2, 2015) (on file with the Senate Committee on Judiciary).

<sup>24</sup> *Id.*

<sup>25</sup> Email from Christopher Turner, Deputy Director of External and Legislative Affairs, Florida Commission on Human Relations (April 5, 2019) (on file with the Senate Committee on Judiciary).

<sup>26</sup> *Id.*

housing discrimination must essentially whether to pursue remedies in court or through an administrative proceeding.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

This 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:

The passage of the bill might be necessary to allow the Florida Commission on Human Relations to continue to receive federal reimbursement for the Commission's resolution of housing discrimination cases. Without the bill, the Commission may be disqualified from receiving this funding.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 760.07, 760.34, and 760.35.

**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.

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

---

By Senator Rouson

19-00358-19

2019958\_\_

A bill to be entitled

An act relating to housing discrimination; amending s. 760.07, F.S.; removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; amending s. 760.34, F.S.; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; providing that the aggrieved person does not need to pursue certain other remedies before commencing a civil action; making technical changes; amending s. 760.35, F.S.; authorizing, rather than requiring, a civil action to commence within a specified period after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of whether a specified complaint has been filed and regardless of the status of any such complaint; prohibiting an aggrieved person from filing a specified action in certain circumstances; providing an exception; prohibiting an aggrieved person from commencing a specified civil action if an administrative law judge has commenced a hearing on the record on the allegation; providing an effective date.

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

Section 1. Section 760.07, Florida Statutes, is amended to

Page 1 of 6

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

19-00358-19

2019958\_\_

read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute that makes ~~making~~ unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, ~~housing~~, or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 2. Subsections (2) and (4) of section 760.34, Florida Statutes, are amended, and subsections (5) and (6) of that section are republished, to read:

760.34 Enforcement.—

(2) Any person who files a complaint under subsection (1) must ~~do so be filed~~ within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it

Page 2 of 6

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19-00358-19

2019958\_\_

59 would be reasonable and fair to do so, may amend his or her  
60 answer at any time. Both the complaint and the answer must ~~shall~~  
61 be verified.

62 (4) ~~If, within 180 days after a complaint is filed with the~~  
63 ~~commission or within 180 days after expiration of any period of~~  
64 ~~reference under subsection (3), the commission has been unable~~  
65 ~~to obtain voluntary compliance with ss. 760.20-760.37, The~~  
66 ~~person~~ aggrieved person may commence a civil action in any  
67 appropriate court against the respondent named in the complaint  
68 or petition for an administrative determination pursuant to s.  
69 760.35 to enforce the rights granted or protected by ss. 760.20-  
70 760.37 and is not required to petition for an administrative  
71 hearing or exhaust administrative remedies before commencing  
72 such action. If, as a result of its investigation under  
73 subsection (1), the commission finds there is reasonable cause  
74 to believe that a discriminatory housing practice has occurred,  
75 at the request of the person aggrieved, the Attorney General may  
76 bring an action in the name of the state on behalf of the  
77 aggrieved person to enforce ~~the provisions of~~ ss. 760.20-760.37.

78 (5) In any proceeding brought pursuant to this section or  
79 s. 760.35, the burden of proof is on the complainant.

80 (6) Whenever an action filed in court pursuant to this  
81 section or s. 760.35 comes to trial, the commission shall  
82 immediately terminate all efforts to obtain voluntary  
83 compliance.

84 Section 3. Section 760.35, Florida Statutes, is amended to  
85 read:

86 760.35 Civil actions and relief; administrative  
87 procedures.—

19-00358-19

2019958\_\_

88 (1) An aggrieved person may commence a civil action ~~shall~~  
89 ~~be commenced~~ no later than 2 years after an alleged  
90 discriminatory housing practice has occurred. However, the court  
91 shall continue a civil case brought pursuant to this section or  
92 s. 760.34 from time to time before bringing it to trial if the  
93 court believes that the conciliation efforts of the commission  
94 or local agency are likely to result in satisfactory settlement  
95 of the discriminatory housing practice complained of in the  
96 complaint made to the commission or to the local agency and  
97 which practice forms the basis for the action in court. Any  
98 sale, encumbrance, or rental consummated before ~~prior to~~ the  
99 issuance of any court order issued under the authority of ss.  
100 760.20-760.37 and involving a bona fide purchaser, encumbrancer,  
101 or tenant without actual notice of the existence of the filing  
102 of a complaint or civil action under ~~the provisions of~~ ss.  
103 760.20-760.37 is ~~shall~~ not ~~be~~ affected.

104 (2) An aggrieved person may commence a civil action under  
105 this section regardless of whether a complaint has been filed  
106 under s. 760.34(1) and regardless of the status of any such  
107 complaint. If the commission has obtained a conciliation  
108 agreement with the consent of an aggrieved person under s.  
109 760.36, the aggrieved person may not file any action under this  
110 section regarding the alleged discriminatory housing practice  
111 that forms the basis for the complaint except for the purpose of  
112 enforcing the terms of the conciliation agreement.

113 (3) An aggrieved person may not commence a civil action  
114 under this section regarding an alleged discriminatory housing  
115 practice if an administrative law judge has commenced a hearing  
116 on the record on the allegation.

19-00358-19

2019958\_\_

117 (4)(2) If the court finds that a discriminatory housing  
 118 practice has occurred, it shall issue an order prohibiting the  
 119 practice and providing affirmative relief from the effects of  
 120 the practice, including injunctive and other equitable relief,  
 121 actual and punitive damages, and reasonable attorney ~~attorney's~~  
 122 fees and costs.

123 (5)(a)(3)(a) If the commission is unable to obtain  
 124 voluntary compliance with ss. 760.20-760.37 or has reasonable  
 125 cause to believe that a discriminatory practice has occurred:

126 1. The commission may institute an administrative  
 127 proceeding under chapter 120; or

128 2. The person aggrieved may request administrative relief  
 129 under chapter 120 within 30 days after receiving notice that the  
 130 commission has concluded its investigation under s. 760.34.

131 (b) Administrative hearings shall be conducted pursuant to  
 132 ss. 120.569 and 120.57(1). The respondent must be served written  
 133 notice by certified mail. If the administrative law judge finds  
 134 that a discriminatory housing practice has occurred or is about  
 135 to occur, he or she shall issue a recommended order to the  
 136 commission prohibiting the practice and recommending affirmative  
 137 relief from the effects of the practice, including quantifiable  
 138 damages and reasonable attorney ~~attorney's~~ fees and costs. The  
 139 commission may adopt, reject, or modify a recommended order only  
 140 as provided under s. 120.57(1). Judgment for the amount of  
 141 damages and costs assessed pursuant to a final order by the  
 142 commission may be entered in any court having jurisdiction  
 143 thereof and may be enforced as any other judgment.

144 (c) The district courts of appeal may, upon the filing of  
 145 appropriate notices of appeal, review final orders of the

Page 5 of 6

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19-00358-19

2019958\_\_

146 commission pursuant to s. 120.68. Costs or fees may not be  
 147 assessed against the commission in any appeal from a final order  
 148 issued by the commission under this subsection. Unless  
 149 specifically ordered by the court, the commencement of an appeal  
 150 does not suspend or stay an order of the commission.

151 (d) This subsection does not prevent any other legal or  
 152 administrative action provided by law.

153 Section 4. This act shall take effect upon becoming a law.

Page 6 of 6

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The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Judiciary Committee

**Subject:** Committee Agenda Request

**Date:** February 19, 2019

---

I respectfully request that **Senate Bill # 958**, relating to Housing Discrimination, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Darryl Rouson".

---

Senator Darryl Rouson  
Florida Senate, District 19

**Stallard, Adam**

---

**From:** Turner, Christopher <Christopher.Turner@fchr.myflorida.com>  
**Sent:** Friday, April 5, 2019 2:51 PM  
**To:** Stallard, Adam  
**Subject:** Information requested

Adam,

Please call me at the cell number listed below if you need anything additionally. Thank you.

<b>All Revenues</b>	<b>2016/2017</b>	<b>2017/2018</b>
EEOC Federal Contract	653,150	614,500
HUD Contract / Grant	605,404	611,721
HUD Registration	0	0
<i>HUD percentage</i>	<i>0.4810</i>	<i>0.4989</i>

**Christopher C. Turner**

Deputy Director of External and Legislative  
Affairs  
Florida Commission on Human Relations

4075 Esplanade Way, Room 110  
Tallahassee, FL 32399

o: 850-907-6848  
c: 850-901-8761  
f: 850-487-1007

*United in One Goal: Equal Opportunity  
and Mutual Respect*



*Correspondence made or received in connection with the transaction of official business by a state agency, unless exempt or made confidential by law, is considered a public record and may be subject to disclosure upon request.*



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

July 2, 2015

Ms. Michelle Wilson  
Executive Director  
Florida Commission on Human Relations  
2009 Apalachee Parkway  
Tallahassee, FL 32301-4857

Dear Ms. Wilson:

This letter pertains to the issue of the judicially-created requirement that Florida state court plaintiffs exhaust their administrative remedies under the Florida Fair Housing Act (FFHA) as a precondition to filing a claim in state court.<sup>1</sup> While this issue has been the subject of correspondence between HUD and the Florida Commission on Human Relations (FCHR) since at least 2008,<sup>2</sup> as of this date the issue remains unresolved.<sup>3</sup> By letter of July 10, 2013, FCHR was advised that in order to ensure continued substantial equivalence between the FFHA and the federal Fair Housing Act, and by extension, to ensure continued participation in the Fair Housing Assistance Program, "Florida should enact an amendment or regulation effectively addressing this issue prior to FCHR's due date for recertification, which is [January 25, 2016]."<sup>4</sup>

Pursuant to the regulations at 24 C.F.R. part 115 governing participation in the Fair Housing Assistance Program (FHAP), this letter will serve as official notification that HUD will proceed to suspend the participation of the FCHR in the Fair Housing Assistance Program (FHAP) unless the issue of exhaustion of administrative remedies is resolved to HUD's satisfaction or before January 25, 2016. HUD will continue to refer complaints to FCHR in the interim.

## I. Background

As you know, in 2004 the Florida District Court of Appeals for the Fourth District dismissed a case brought by a plaintiff under the Florida Fair Housing Act alleging eviction because of a disability. The court held that plaintiff was barred from filing in state court by the doctrine of exhaustion of administrative remedies because he had not availed himself of the administrative process afforded by the FFHA. The court's holding was not based on any analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a cursory analysis of what it considered to be an analogous provision of the Florida Civil Rights Act.

<sup>1</sup> *Belletete v. Halford*, 866 So.2d 308 (Fla. Dist. Ct. App. 2004)

<sup>2</sup> Letter from Ken Carroll to Derick Daniel (May 1, 2008)

<sup>3</sup> FCHR has made several attempts to seek a legislative cure, however, none have been successful.

<sup>4</sup> Letter from Ken Carroll to Michelle Wilson (July 10, 2013); The date in the letter, December 23, 2015, is inaccurate; FCHR's current certification expires on January 25, 2016.

The Belletete holding has been criticized by the Attorney General of Florida, and has been rejected by the U.S. District Court for the Southern District of Florida.<sup>5</sup> It has, however, been followed in Florida state courts, both in and outside of Florida's fourth district. As set forth more fully below, the Belletete holding is fundamentally inconsistent with both the letter and spirit of the federal Fair Housing Act.

## II. Analysis

### A. Federal Statutory Language and Case Law

The ability to directly file a civil action was present in the original 1968 Fair Housing Act. *See*, former 42 U.S.C. §3612(a) (“The rights granted by sections 803, 804, 805, and 806 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction.”). The Supreme Court, in Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91 (1979), squarely rejected an argument that administrative exhaustion was required under the Act. Of particular note, the court stated:

The most plausible inference to be drawn from Title VIII is that Congress intended to provide all victims of Title VIII violations two alternative mechanisms by which to seek redress: immediate suit in federal district court, or a simple, inexpensive, informal conciliation procedure, to be followed by litigation should conciliation fail.

Gladstone at 103-104.

In rejecting an administrative exhaustion requirement, the court stated:

[The Act] provides substantial and rather specific support for the view that §§810 and 812 are available to precisely the same class of plaintiffs ... There is no evidence that Congress intended to condition access to the courts on a prior resort to the federal agency. To the contrary, the history suggests that all Title VIII complaints were to have available immediate judicial review. The alternative, administrative remedy was then offered as an option to those who desired to use it.

Gladstone at 105-106.

The Supreme Court concluded that the Court of Appeals correctly interpreted §§3610 and 3612 as providing alternative remedies to precisely the same class of plaintiffs. The court reasoned that this broad construction was consistent with both the language and legislative history of the Act.<sup>6</sup>

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<sup>5</sup> In Milsap, et al. v. Cornerstone Residential Management, Inc., et al., 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on Belletete as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General argued that Belletete was wrongly decided, the court reversed itself and reinstated the FFHA claims. *See*, 2010 WL 427436 (S.D. Fla. 2010).

<sup>6</sup> The legislative history of the 1968 Fair Housing Act further supports complainants' direct access to courts without filing an administrative complaint. In describing the enforcement of the Act, Representative Celler stated: “In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged

In addition to Gladstone, considerable federal court precedent exists that recognizes a complainant's right to proceed directly to court without first pursuing a HUD complaint. *See, e.g., Huntington Branch, NAACP v. Town of Huntington*, 689 F.2d 391, 394 n.3 (2<sup>nd</sup> Cir. 1982)(citing Gladstone, the court stated "appellants sued under Section 812 of the Act, a specific alternative to Section 810 which allows plaintiffs to seek 'immediate judicial review' in a federal action."); *see also, Royster v. Martin*, 562 F. Supp. 623, 624 (S.D. Ohio 1983)(concludes that the complaint procedures set forth in §3610 are permissive and not mandatory and are recognized as distinct and separate and alternative remedies to the filing of the law suit in district court); Oliver v. Foster, 524 F. Supp. 927, 929 (S.D. Tex. 1981)("[Administrative and civil remedies] are independent remedies, and the administrative remedies need not be exhausted prior to the filing of a civil action in federal court."); Crim v. Glover, 338 F.Supp. 823, 825 (S.D. Ohio 1972)(holding that Congress intended the remedies provided for in §§3610 and 3612 to be separate and distinct, therefore, plaintiffs have the right to bring a suit in federal district court alleging racial discrimination before exhausting or attempting to exhaust the remedies provided for in §3610).

#### B. Florida Statutory Language and Case Law

As noted *supra.*, the Florida Fair Housing Act does not expressly require the exhaustion of administrative remedies as a precondition to filing a private civil action in state court. The relevant portion of the FFHA ("Enforcement") states:

Any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur *may file* a complaint with the commission.

Fla. Statutes § 760.34 (1) (emphasis added)

In fact, at least two provisions of the FFHA stand in direct opposition to the idea that exhaustion of administrative remedies is a statutory requirement. First, the enforcement provisions go on to state:

Whenever an action filed in court pursuant to this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

Fla. Statutes § 760.34 (6)

This subsection explicitly anticipates that a complaint may be pending simultaneously in both the administrative and judicial forum. Note that this provision is also completely consistent with the federal law, in which the administrative forum is divested of jurisdiction only at such time as a trial in court actually commences ("comes to trial"). Second, the section on "Civil actions and relief" states:

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discriminatory housing practice occurred ..." 114 Cong.Rec. 9560 (1968). In addition, the House Judiciary Committee Report stated: "Section 812 states what is apparently an alternative to the conciliation-then-litigation approach [of §810]: an aggrieved person within 180 days after the alleged discriminatory practice occurred, may, *without complaining to HUD*, file an action in the appropriate U.S. district court." *Id.* at 9612 (emphasis added).

A civil action shall be commenced no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court.

Fla. Statutes § 760.35 (1)

As with § 760.34(6) above, the only logical reading of this text indicates that a complaint may be pending simultaneously in both the administrative and judicial forum. Thus, on the issue of exhaustion of remedies the FFHA is, on its face, consistent with the federal Fair Housing Act. It is only the judicial holding of Belletete and its progeny that endangers the continued substantial equivalence of Florida's law and FCHR's continued participation in the Fair Housing Assistance Program.

Unfortunately, as noted above, the court in Belletete did not analyze the language or legislative intent of the FFHA in reaching its holding. While the holding has been rejected in federal court (*see, fn. 6*), it remains the law in Florida courts. The Florida Supreme Court has held that "[t]he decisions of the district courts of appeal represent the law of Florida unless and until they are overruled by this Court." *See, Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992).

Our research has uncovered at least two cases adopting Belletete in Florida's Fourth District Court of Appeals, *see, State v. Leisure Village, Inc.*, 40 Fla. L. Weekly D934 (Fla. 4th DCA April 22, 2015); *Sun Harbor Homeowners' Ass'n. v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012), and we are aware of a similar ruling dismissing FFHA claims because of a failure to exhaust administrative remedies in the Eleventh Judicial Circuit, HOPE v. SPV Realty, L.C., CASE NO.: 14-32184-CA-01 (April 30, 2015). Because the Eleventh Judicial District is covered by the Third District Court of Appeals, this dismissal means that the Belletete holding has spread beyond the Fourth District Court of Appeals.

### **III. Conclusion**

Both the plain language of the Fair Housing Act and relevant case law clearly indicate that the Act does not require administrative exhaustion prior to the filing of a private civil action. Because of the importance that Congress ascribed to allowing individuals to pursue a private civil action without having to first exhaust administrative remedies – in both the express text of the federal Fair Housing Act and in its legislative history – the judicial interpretation of the Florida statute that requires administrative exhaustion renders the Florida law fundamentally inconsistent with federal law.

The Department hereby notifies FCHR that it will take action to suspend its participation in the Fair Housing Assistance Program if the issue is not satisfactorily resolved through a statutory

amendment to the Florida Fair Housing Act on or before January 25, 2016.<sup>7</sup> HUD will continue to refer complaints to FCHR in the interim. In the event the issue is not satisfactorily revised by the deadline, HUD will proceed to suspension and ultimately to withdrawal from the program under 24 C.F.R. § 115.211(b)(2) and (3).

If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at 202- 402-2126 or at Joseph.A.Pelletier@hud.gov.

Sincerely,



Sara K. Pratt  
Deputy Assistant Secretary for Enforcement  
and Programs

cc: Carlos Osegueda, FHEO Region IV Director

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<sup>7</sup> While the July 2013 letter from Ken Carroll indicates that a regulation may suffice, the Department believes that only a legislative amendment to the statute will be effective in resolving the issue. This position was also expressed in a March 2013 email from FCHR's General Counsel.



OFFICE OF FAIR HOUSING  
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-2000

MAR 16 2016

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FLORIDA COMMISSION ON  
HUMAN RELATIONS  
2016 MAR 21 AM 10:59

Michelle Wilson, Executive Director  
Florida Commission on Human Relations  
4075 Esplanade Way Room 110  
Tallahassee, FL 32399

**Subject: Florida Fair Housing Act – Exhaustion of Administrative Remedies**

Dear Ms. Wilson:

This letter follows up on recent correspondence between HUD and the Florida Commission on Human Relations with respect to legislative revisions to the Florida Fair Housing Act necessary to overcome the judicially-created requirement that Florida state court plaintiffs exhaust their administrative remedies as a precondition to filing a housing discrimination claim in state court.

The Department has notified FCHR that unless such legislation was enacted on or before March 12, 2016, FCHR risked suspension and withdrawal from the FHAP program. I am aware of the extensive efforts of FCHR to secure such legislation during the 2016 session of the Florida General Assembly, which were unfortunately unsuccessful. I am also aware, however, that FCHR is actively working with the appellant in a case pending in Florida's Third District Court of Appeals that, if successful, would create a split in Florida's intermediate appellate courts on the issue. It is my understanding that FCHR has filed an amicus brief with the Third DCA, and that oral arguments are scheduled in the very near future.

Taking all of the above into consideration, and in the absence of any intervening occurrence or event, the Department will refrain from making any decision regarding suspension and withdrawal during the pendency of the judicial proceedings. The Department values its existing partnership with the Florida Commission on Human Relations and is hopeful that the issue will be favorably resolved by the courts. If you have any questions please contact Joseph Pelletier, Director, Fair Housing Assistance Program. Mr. Pelletier can be reached at (202) 402-2126 or at [Joseph.A.Pelletier@hud.gov](mailto:Joseph.A.Pelletier@hud.gov).

Sincerely,

Lynn Grosso, Acting Deputy Assistant Secretary  
for Enforcement and Programs

cc: Carlos Osegueda, FHEO Region IV Director

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

958

Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

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Phone 850-425-1344

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Tallahassee FL 32301

Email Tcglobby@aol.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida State Conference of NAACP

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.

# APPEARANCE RECORD

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

4/8/19

Meeting Date

958

Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Alicia Vickers

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Speaking:  For  Against  Information

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

Representing FL Alliance for Consumer Protection

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

04/08/15  
Meeting Date

958  
Bill Number (if applicable)

Topic Housing Discrimination

Amendment Barcode (if applicable)

Name Christopher C. Turner

Job Title Deputy Legislative Affairs Director

Address 4075 Esplanade Way

Phone 850-901-0761

Tallahassee FL 32399  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Florida Commission on Human Relations

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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 772

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Stargel

SUBJECT: Liens Against Motor Vehicles and Vessels

DATE: April 10, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 772 revises several vehicle and vessel lien statutes used by motor vehicle repair shops and towing-storage companies to recover their costs.

The bill:

- Allows a lienholder to post a bond and obtain the release of a vehicle subject to a motor vehicle repair shop lien claimed for repair work;
- Requires additional information that must be included in notices of liens for recovering, towing, or storing vehicles and vessels and notices for enforcing a lien by selling a motor vehicle;
- Revises procedures for identifying unknown vehicle and vessel owners and lienholders;
- Requires notices of claim of lien and sale to be sent within specified timeframes;
- Allows both electronic and paper title to evidence an interest in a vehicle or vessel;
- Requires repair shops to allow inspection of vehicles subject to a sale to enforce a lien following a written inspection request;
- Requires motor vehicle repair shops to release all personal property found in the vehicle to the owner or lienholder;
- Permits administrative fees of no more than \$250 that may be added to the amount due for storage, repairs, adjustments, or modifications to vehicles;
- Allows owners and lienholders to post a bond for the release of a vehicle or vessel subject to a claim of lien for towing and storage charges at any time before the sale of the vehicle or vessel;

- Requires lienors to file specified documentation with the Department of Highway Safety and Motor Vehicles (DHSMV) prior to transferring title to a vehicle or vessel sold to satisfy a lien for repairs, towing, or storage;
- Prohibits the DHSMV from transferring title to a vehicle or vessel without certain required documents; and
- Requires a third-party mailing service certified by the DHSMV to send all notices of lien and sale.

The bill provides an effective date of January 1, 2020.

## II. Present Situation:

### Liens

Liens are claims against property that evidence a debt, obligation, or duty. Liens can be created by judgment, equity, agreement, or statute. The rights and duties of a lienholder depend on the type of lien created and are generally set out in the order, agreement, or statute creating the lien.

Motor vehicle repair shops (repair shops) may place liens on motor vehicles (vehicles) for labor or services performed on the vehicles under a written repair estimate to recover the costs of repair and storage. Similarly, the operators of towing and storage companies (towing-storage operators) may place liens on vehicles or vessels to recover the costs of towing and storage. Notice of the claim of lien must be sent to interested parties by certified mail within a specified timeframe, and the vehicle or vessel may be sold if no one claims it or the balance owed for repairs, towing, or storage remains unpaid. Notice of the sale must be sent to interested parties and published in a newspaper in the county where the sale is to occur prior to the date of the sale.

### Motor Vehicle Repair Shops

Motor vehicle repair shops<sup>1</sup> (repair shops) are regulated by the Department of Agriculture and Consumer Services under the Florida Motor Vehicle Repair Act,<sup>2</sup> which requires all repair shops, with minor exceptions, to register with the Department of Agriculture and Consumer Services.

When a customer<sup>3</sup> requests that a repair shop perform repairs to a motor vehicle<sup>4</sup> (vehicle) that will cost more than \$100, the repair shop must prepare a written estimate of the cost of the

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<sup>1</sup> Section 559.903(6), F.S., defines “motor vehicle repair shop” as any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work.

<sup>2</sup> Ss. 559.901 through 559.9221, F.S.

<sup>3</sup> “Customer” means the person who signs the written repair estimate or any other person whom the person who signs the written repair estimate designates on the written repair estimate as a person who may authorize repair work. S. 559.903(1), F.S.

<sup>4</sup> “Motor vehicle” means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons and property, and propelled by power other than muscular power. “Motor vehicle” also means a recreational vehicle primarily used as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. S. 320.01(1)(a) and (b), F.S.

repairs before beginning any work, unless the customer waives his or her right to such an estimate.<sup>5</sup> Following the completion of any repairs, the repair shop must give each customer a legible copy of an invoice for the repairs.<sup>6</sup>

### ***Unlawful Acts and Practices***

It is unlawful for any repair shop or its employees to:

- Make or charge for repairs not expressly or impliedly authorized by the customer;<sup>7</sup>
- Misrepresent that repairs have been made to a vehicle;<sup>8</sup>
- Fraudulently alter a customer contract, estimate, invoice, or other document;<sup>9</sup> or
- Make or authorize a false, deceptive, or misleading written or oral statement.<sup>10</sup>

### **Liens Claimed by Motor Vehicle Repair Shop**

#### ***Claim of Lien; Notice***

At any time after completion of repairs made to a motor vehicle under a written estimate, a repair shop may claim a lien on the vehicle for the cost of the repairs.<sup>11</sup> A repair shop must give notice of a claim of lien to:

- The registered owner of the vehicle;
- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
  - The Department of Highway Safety and Motor Vehicles (DHSMV); and
  - Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the National Motor Vehicle Title Information System<sup>12</sup> (NMVTIS) or an equivalent commercially available system.<sup>13</sup>

The notice of claim of lien must be sent by certified mail within 7 business days, excluding Saturdays and Sundays, from the date storage charges begin to accrue and must contain:

- The vehicle's description;<sup>14</sup>
- The name and address of the vehicle's owner, the customer listed on the repair order, and any person claiming an interest in or lien on the vehicle;<sup>15</sup>

<sup>5</sup> Ss. 559.905(1) and 559.905(3), F.S.

<sup>6</sup> S. 559.911, F.S.

<sup>7</sup> S. 559.920(2), F.S.

<sup>8</sup> S. 559.920(3), F.S.

<sup>9</sup> S. 559.920(6), F.S.

<sup>10</sup> S. 559.920(8), F.S.

<sup>11</sup> This is a possessory lien, meaning a repair shop can only claim a lien on a vehicle if it has actual or constructive possession of the vehicle. Ss. 713.58(1) and (3), F.S.; *State v. Miller*, 373 So.2d 677, 678 (Fla. 1979) (“appellee invoked the provisions of s. 713.58, F.S., which grants a possessory lien in favor of persons providing labor and services on personal property”).

<sup>12</sup> “National Motor Vehicle Title Information System” means the federally authorized electronic National Motor Vehicle Title Information System. S. 713.78(1)(d), F.S.

<sup>13</sup> “Equivalent commercially available system” means a service that charges a fee to provide vehicle information and that, at a minimum, maintains records from those states participating in data sharing with the NMVTIS. Sections 713.78(1)(e) and 713.78(4)(a), F.S.

<sup>14</sup> S. 713.585(1)(a), F.S.

<sup>15</sup> S. 713.585(1)(b), F.S.

- The repair shop's name, address, and telephone number;<sup>16</sup>
- The date, time, and location of proposed or scheduled sale of the vehicle, if known;<sup>17</sup> and
- Notice that:
  - The repair shop claims a lien on the vehicle for labor and services performed and storage charges, if any, and the amount that, if paid, would satisfy the lien;<sup>18</sup>
  - The lien is subject to enforcement and the vehicle may be sold to satisfy the lien;<sup>19</sup>
  - The owner of the vehicle or any person claiming an interest in or lien on the vehicle has a right to a hearing at any time before the sale;<sup>20</sup>
  - The owner of the vehicle has a right to recover possession of the vehicle without instituting judicial proceedings by posting a bond;<sup>21</sup>
  - Any proceeds from the sale of the vehicle remaining after payment of the amount claimed to be owed to the lienor will be deposited with the clerk of the circuit court for disposition;<sup>22</sup> and
  - A lienholder, if any, has the right to demand a hearing or to post a bond.<sup>23</sup>

If a repair shop fails to give notice of the claim of lien to any person claiming a lien on the vehicle within 7 business days after the storage charges begin to accrue, the repair shop is precluded from charging for more than 7 days of storage.<sup>24</sup> However, failure to timely provide the notice does not affect charges owed for repairs.<sup>25</sup>

#### ***Unidentified Owner or Lienholder***

A repair shop that cannot identify a vehicle's owner or lienholder must, after 7 business days from the date storage charges begin to accrue on the vehicle, notify local law enforcement by certified mail or acknowledged hand delivery that:

- The repair shop was unable to identify the owner or lienholder;
- A physical search of the vehicle did not disclose ownership information; and
- The repair shop made a good faith effort to identify the owner or lienholder.<sup>26</sup>

A good faith effort means the repair shop checked the:

- DHSMV database for the identity of the owner and lienholder;<sup>27</sup>
- NMVTIS or an equivalent commercially available system to determine the state of registration if there is no current registration on file with the DHSMV;<sup>28</sup> and
- Vehicle for:

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<sup>16</sup> S. 713.585(1)(c), F.S.

<sup>17</sup> S. 713.585(1)(f), F.S.

<sup>18</sup> S. 713.585(1)(d), F.S.

<sup>19</sup> S. 713.585(1)(e), F.S.

<sup>20</sup> S. 713.585(1)(g), F.S.

<sup>21</sup> S. 713.585(1)(h), F.S.

<sup>22</sup> S. 713.585(1)(i), F.S.

<sup>23</sup> S. 713.585(1)(j), F.S.

<sup>24</sup> S. 713.585(13), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> S. 713.585(2), F.S.

<sup>27</sup> S. 713.585(2)(a), F.S.

<sup>28</sup> S. 713.585(2)(b), F.S.

- Any type of tag, tag record, temporary tag, or regular tag;<sup>29</sup>
- An inspection sticker or other stickers and decals that could indicate the state of possible registration;<sup>30</sup> and
- Any papers that could be in the glove box, trunk, or other areas for the state of registration.<sup>31</sup>

Failure of the repair shop to make a good faith effort to identify the owner or lienholder of the vehicle precludes it from assessing any storage charges.<sup>32</sup>

### ***Inspection of Vehicle; Release of Personal Property***

Currently, registered owners, customers, and persons claiming an interest in or lien on a vehicle on which a repair shop claims a lien for repairs and storage do not have a statutory right to inspect the vehicle. Neither do they have an express statutory right to retrieve personal property left in a vehicle at the time the vehicle came into the possession of a repair shop before the release of the vehicle. Further, repair shops are not required to accept title<sup>33</sup> in a specified form as evidence of a person's interest in a vehicle.

### ***Bond to Release Vehicle***

A customer may have his or her vehicle released from a lien claimed by a repair shop for repair work performed under a written estimate by filing with the clerk of the court in the circuit in which the repairs occurred a bond, payable to the shop claiming the lien and conditioned for the payment of any judgment which may be entered on the lien.<sup>34</sup> When a customer posts such a bond, the clerk of the court must notify the repair shop of the bond and direct the repair shop to release the vehicle.<sup>35</sup> The shop has 60 days to file suit to recover the bond, or else the bond will be discharged.<sup>36</sup> The prevailing party in the suit may be awarded damages, court costs, and reasonable attorney fees.<sup>37</sup>

A customer may also initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to do so.<sup>38</sup> If the customer prevails in such proceedings, he or she may be entitled to damages, court costs, and reasonable attorney fees.<sup>39</sup> If the repair shop prevails, the repair shop may be entitled to its reasonable attorney fees.<sup>40</sup>

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<sup>29</sup> S. 713.585(2)(c), F.S.

<sup>30</sup> S. 713.585(2)(d), F.S.

<sup>31</sup> S. 713.585(2)(e), F.S.

<sup>32</sup> S. 713.585(13), F.S.

<sup>33</sup> Section 319.001(1), F.S., defines "certificate of title" as the record that evidences ownership of a vehicle, and can be either a paper certificate authorized by the DHSMV or an electronic certificate stored in the DHSMV database.

<sup>34</sup> S. 559.917(1)(a), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> S. 559.917(1)(b), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> S. 559.917(2), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

However, persons of record claiming a lien against a vehicle are not entitled to post a bond for the release of the vehicle or to initiate judicial proceedings pursuant to this section.

### ***Sale of the Vehicle; Notice***

If the date of the sale was not included in the notice of claim of lien, the repair shop must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:

- The customer listed on the repair order; and
- All other persons claiming an interest in or lien on the vehicle, as disclosed by the records of:
  - The DHSMV; or
  - A corresponding agency of any other state in which the vehicle appears to have been registered after checking the NMVTIS or an equivalent commercially available system.<sup>41</sup>

The repair shop must also publish notice of the time and place of the sale, at least 15 days before the date of the sale, in a newspaper of general circulation in the county in which the vehicle is held.<sup>42</sup>

### ***Proceeds of Sale***

Following the sale of a vehicle to satisfy a lien for repairs or storage, the repair shop must deposit the proceeds of the sale, minus the amount owed for repairs and storage and all reasonable costs incurred in conducting the sale, with the clerk of the circuit court.<sup>43</sup> The clerk of the circuit court must hold the proceeds for the owner of the vehicle or any lienholder whose lien is discharged by the sale and may disburse the proceeds only upon a court order.<sup>44</sup>

### ***Transfer of Title***

When a vehicle is sold to satisfy a lien for repairs or storage, the purchaser takes title to the vehicle free and clear of all liens unless otherwise provided by court order.<sup>45</sup>

To transfer title to the vehicle following a sale, the repair shop must file with the DHSMV:

- A certified copy of:
  - The certificate of compliance filed with the clerk of court; and
  - The report of sale;
- Proof of the required check of the NMVTIS or an equivalent commercially available system; and
- Any other proof required by DHSMV rules and regulations.<sup>46</sup>

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<sup>41</sup> S. 713.585(3), F.S.

<sup>42</sup> S. 713.585(4), F.S.

<sup>43</sup> S. 713.585(8), F.S.

<sup>44</sup> *Id.*

<sup>45</sup> S. 713.585(12), F.S.

<sup>46</sup> S. 713.585(9), F.S.

## Towing and Wrecker Companies

Towing and wrecker companies are licensed and regulated by the counties in which they operate and are regulated by county ordinances.<sup>47</sup> These ordinances may establish license application procedures and fees, maximum towing rates, towing authorization requirements, and penalties for ordinance violations, among other things.<sup>48</sup>

There is no right at common law to a lien on a vehicle or vessel for towing and storage charges.<sup>49</sup> Such a lien is instead a statutory creation.<sup>50</sup>

## Liens for Recovering, Towing, or Storing Vehicles and Vessels

### *Claim of Lien; Notice*

A person who regularly engages in transporting vehicles<sup>51</sup> or vessels<sup>52</sup> by wrecker,<sup>53</sup> tow truck, or car carrier (towing-storage operator) may claim a lien for reasonable towing and storage fees upon any vehicle or vessel recovered, removed, or stored for more than 6 hours at the request of:

- The owner of the vehicle or vessel;<sup>54</sup>
- The owner or lessor, or a person authorized by the owner or lessor, of property on which the vehicle or vessel is wrongfully parked;<sup>55</sup>
- A landlord, or a person authorized by a landlord, when the vehicle or vessel remained on leased premises after the tenancy terminated;<sup>56</sup> or
- A law enforcement agency.<sup>57</sup>

A towing-storage operator who claims a lien for recovery, towing, or storing services must send notice of the claim of lien to:

- The registered owner;
- The insurance company insuring the vehicle or vessel; and
- All persons claiming a lien on the vehicle or vessel, as disclosed by the records of:
  - The DHSMV; or

<sup>47</sup> See, e.g., Hillsborough County, *Towing Companies*, <https://www.hillsboroughcounty.org/en/residents/citizens/consumer-issues/towing-companies> (last visited March 21, 2019); Orange County, *Towing Information*, <http://www.orangecountyfl.net/traffictransportation/towingandparkinginformation/towinginformation.aspx#.XHdwbVxKiUk> (last visited March 21, 2019).

<sup>48</sup> See, e.g., Miami-Dade County, *Towing License*, [https://www8.miamidade.gov/global/license.page?Mduid\\_license=lic1495741572333567](https://www8.miamidade.gov/global/license.page?Mduid_license=lic1495741572333567) (last visited March 21, 2019).

<sup>49</sup> Fla. Jur. 2d Liens for Recovering, Towing, or Storing Vehicle, Generally s. 31.

<sup>50</sup> S. 713.78, F.S.

<sup>51</sup> “Vehicle” means any mobile item, whether motorized or not, which is mounted on wheels. S. 713.78(1)(a), F.S.

<sup>52</sup> “Vessel” means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a “documented vessel” as defined in s. 327.02, F.S., and s. 713.78(1)(b), F.S.

<sup>53</sup> “Wrecker” means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways of this state and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment. S. 713.78(1)(c), F.S.

<sup>54</sup> S. 713.78(2)(a), F.S.

<sup>55</sup> S. 713.78(2)(b), F.S. Removal must comply with s. 715.07, F.S.

<sup>56</sup> S. 713.78(2)(c), F.S. Removal must comply with ss. 83.806 or 715.104, F.S.

<sup>57</sup> S. 713.78(2)(d), F.S.

- Any corresponding agency in another state in which the vehicle is identified as being titled or registered by the NMVTIS or an equivalent commercially available system.<sup>58</sup>

The notice of claim of lien must be sent by certified mail within 7 business days after the date of storage of the vehicle or vessel and state:

- The towing-storage operator possesses the vehicle or vessel;
- That a lien is claimed on the vehicle or vessel;
- That charges have accrued, and the amount of the charges;
- That the lien is subject to enforcement by law;
- That the owner and any lienholder have the right to a hearing; and
- That any vehicle or vessel that remains unclaimed, or for which the charges remain unpaid, may be sold.<sup>59</sup>

If a law enforcement agency authorized a towing-storage operator to remove a vehicle or vessel, or a towing-storage operator notifies a law enforcement agency of possession of a towed vehicle or vessel,<sup>60</sup> the law enforcement agency where the vehicle or vessel is stored must contact the DHSMV, or the appropriate agency in the state of registration, if known, within 24 hours and provide a full description of the vehicle or vessel.<sup>61</sup> The DHSMV, or appropriate state agency, must search its records to determine the identity of the owner, the company insuring the vehicle or vessel, and any lienholders and provide the information to the law enforcement agency within 72 hours.<sup>62</sup> The towing-storage operator must obtain such information from the law enforcement agency within 5 days after the date of storage and provide the required notice.<sup>63</sup>

#### ***Unidentified Owner or Lienholder***

Any towing-storage operator who cannot identify the owner or lienholder of a vehicle or vessel must, after 7 working days of the initial tow or storage, notify law enforcement in the jurisdiction where the vehicle or vessel is stored by certified mail or acknowledged hand delivery that:

- The towing-storage operator was unable to identify the owner or lienholder;
- A physical search of the vehicle or vessel did not disclose ownership information; and
- The towing-storage operator made a good faith effort to identify the owner or lienholder.<sup>64</sup>

A good faith effort means the towing-storage operator checked the:

- DHSMV database;<sup>65</sup>

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<sup>58</sup> S. 713.78(4)(a), F.S.

<sup>59</sup> S. 713.78(4)(c), F.S.

<sup>60</sup> Within 30 minutes after completion of a tow or removal from private property without the consent of the registered owner or other legally authorized person, a towing-storage operator must notify the municipal police department, or, in an unincorporated area, the sheriff, of the tow or removal, the storage site, the time of the tow or removal, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. S. 715.07(2)(a)2., F.S.

<sup>61</sup> S. 713.78(4)(b), F.S.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> S. 713.78(4)(d), F.S.

<sup>65</sup> S. 713.78(4)(d)1., F.S.

- Electronic NMVTIS or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle on file with the DHSMV;<sup>66</sup>
- Vehicle or vessel for:
  - Any type of tag, tag record, temporary tag, or regular tag;<sup>67</sup>
  - An inspection sticker or other stickers and decals that may indicate the state of registration;<sup>68</sup>
  - Any papers that may be in the glove box, trunk, or other areas for a state registration;<sup>69</sup> and
  - A vehicle identification number,<sup>70</sup> a vessel registration number,<sup>71</sup> or a hull identification number;<sup>72</sup>
- If towed at the request of law enforcement, any law enforcement report:
  - For a tag number or other information identifying the vehicle or vessel, if the vessel was towed at the request of a law enforcement officer;<sup>73</sup>
  - To see if any driver's license information indicates an out-of-state address, if there is no address on the impound report;<sup>74</sup> and
  - Trip sheet or tow ticket of the tow truck operator to see if a tag was on the vehicle or vessel at the beginning of the tow.<sup>75</sup>

Failure of the towing-storage operator to make a good faith effort to identify the owner or lienholder of the vehicle or vessel precludes the towing-storage operator from assessing any storage charges.<sup>76</sup>

### ***Inspection of Vehicles and Vessels; Release of Property***

A towing-storage operator must permit vehicle or vessel owners, lienholders, insurance company representatives, or their agents,<sup>77</sup> to inspect the towed vehicle or vessel.<sup>78</sup> A towing-storage operator must also release to the owner, lienholder, or the agent of the owner or lienholder all personal property not affixed to a vehicle or vessel that was in the vehicle or vessel at the time the towing-storage operator obtained possession of it.<sup>79</sup> However, the towing-storage operator is not required to accept an electronic title as proof of ownership or lien; thus, the towing-storage operator may require parties wishing to inspect the vehicle or vessel to present a paper title before allowing the inspection.

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<sup>66</sup> S. 713.78(4)(d)2., F.S.

<sup>67</sup> S. 713.78(4)(d)3., F.S.

<sup>68</sup> S. 713.78(4)(d)7., F.S.

<sup>69</sup> S. 713.78(4)(d)8., F.S.

<sup>70</sup> S. 713.78(4)(d)9., F.S.

<sup>71</sup> S. 713.78(4)(d)10., F.S.

<sup>72</sup> S. 713.78(4)(d)11., F.S.

<sup>73</sup> S. 713.78(4)(d)4., F.S.

<sup>74</sup> S. 713.78(4)(d)6., F.S.

<sup>75</sup> S. 713.78(4)(d)5., F.S.

<sup>76</sup> S. 713.78(9), F.S.

<sup>77</sup> An agency is evidenced by an original writing acknowledged by the owner before a notary public or other person empowered by law to administer oaths.

<sup>78</sup> S. 713.78(10), F.S.

<sup>79</sup> *Id.*

### ***Bond to Release Vehicle or Vessel***

The owner or lienholder of a vehicle or vessel subject to a lien for towing and storage charges may, within 10 days after learning of the location of the vehicle or vessel, file a complaint in the county court of the county where the vehicle or vessel is stored to determine whether the vehicle or vessel was wrongfully taken or withheld.<sup>80</sup> The vehicle or vessel must be released if, after filing a complaint, the owner or lienholder files a bond with the clerk of the court to ensure the payment of charges owed for towing and storage should the owner or lienholder not prevail in litigation.<sup>81</sup> After posting bond, the clerk must issue a notice of the bond to the towing-storage operator and direct the towing-storage operator to release the vehicle or vessel.<sup>82</sup>

### ***Sale of Vehicles and Vessels; Notice***

A towing-storage operator may sell at public auction a stored vehicle or vessel which remains unclaimed, or for which charges for recovery, towing, or storage remain unpaid, after:

- 35 days from the date of storage if the vehicle or vessel is more than 3 years old; or
- 50 days from the date of storage if the vehicle or vessel is 3 years old or less.<sup>83</sup>

If a law enforcement agency notified of a towing-storage operator's inability to identify an owner or lienholder pursuant to s. 713.78(4)(d), F.S., fails to respond to such notice prior to the date of sale, the towing-storage operator may proceed with the sale.<sup>84</sup>

If the date of the sale was not included in the notice of claim of lien, the towing-storage operator must send a notice of sale by certified mail, no less than 15 days before the date of the sale, to:

- The person in whose name the vehicle or vessel is registered; and
- All persons claiming a lien on the vehicle or vessel as shown in the records of the DHSMV or any corresponding agency in any other state in which the vehicle is identified as being titled by a records check of the NMVTIS or an equivalent commercially available system.<sup>85</sup>

The towing-storage operator must also publish notice of the time and place of the sale, at least 10 days before the date of the sale, in a newspaper of general circulation in the county where the sale will occur.<sup>86</sup>

### ***Proceeds of Sale***

If the owner or lienholder of the vehicle or vessel sold at auction is absent, the proceeds of the sale of the vehicle or vessel, minus any reasonable towing and storage charges owed and costs of the sale, must be deposited with the clerk of the court for the county where the sale occurred.<sup>87</sup> The clerk must hold the proceeds for the benefit of the owner or lienholder whose interest in the vehicle or vessel was destroyed by the sale.<sup>88</sup>

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<sup>80</sup> S. 713.78(5)(a), F.S.

<sup>81</sup> S. 713.78(5)(b), F.S.

<sup>82</sup> *Id.*

<sup>83</sup> S. 713.78(6), F.S.

<sup>84</sup> Department of Highway Safety and Motor Vehicles, Procedure TL-26-09.

<sup>85</sup> *Id.*, Exhibits D and E; Section 713.78(6), F.S.

<sup>86</sup> S. 713.78(6), F.S.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

### ***Transfer of Title***

Title to a vehicle or vessel sold to satisfy a lien for recovery, towing, or storage transfers to the purchaser free of all liens unless otherwise provided by court order.<sup>89</sup> To transfer title to such a vehicle, the towing-storage operator must apply to the tax collector or local license plate agency.<sup>90</sup> However, if the vehicle does not sell, the towing-storage operator must apply for a certificate of title in its own name.<sup>91</sup>

### **Fraud Allegations**

Some repair shops and towing-storage operators have been accused of exploiting existing lien law by dishonestly placing a lien on a customer's vehicle or even selling a customer's vehicle without properly notifying an existing lienholder of the new lien or the impending sale of the vehicle. These practices allegedly take several forms, some of which are fraudulently inflating charges or charging for services that were not provided, while billing the consumer and placing a lien on the vehicle.<sup>92</sup>

In some instances, lenders allegedly receive an envelope by certified mail, sign for its receipt, and open it to discover the envelope is empty or contains meaningless documents. However, the service provider may use the signed certified mail receipt as proof the lender received a notice of claim of lien and proceed with the sale of the vehicle when it goes unclaimed. In this situation, a lender is effectively denied the opportunity to satisfy the lien or challenge it in court and may be ultimately forced to abandon its interest in the vehicle because it failed to take action within statutorily prescribed timeframes.

Another allegation is that in other instances, the service provider gives proper notice of claim of lien to the owner, lender, and other interested parties; however, the costs associated with the services provided may be fraudulent or significantly inflated. In such cases, the cost to satisfy the lien may exceed the amount owed to the lender by the owner and, in some cases, the market value of the vehicle. Lenders receiving notice of lien in these circumstances must decide whether to satisfy the lien and recover the vehicle, post a bond to recover the vehicle and challenge the lien in court, or abandon the vehicle. However, the lender may have limited information about the accuracy of the charges to use in making its decision.

Such lien fraud allegedly costs consumer and lenders tens of millions of dollars every year and increases the cost of credit for consumers wishing to finance the purchase of a motor vehicle.<sup>93</sup>

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<sup>89</sup> *Id.*

<sup>90</sup> DHSMV, *supra*, at 87.

<sup>91</sup> *Id.*

<sup>92</sup> Letter from Danielle Arlowe, Senior Vice President, State Government Affairs, American Financial Services Association (Feb. 11, 2019) (on file with the Senate Committee on Judiciary).

<sup>93</sup> *Id.*

### III. Effect of Proposed Changes:

#### **Liens Claimed by Motor Vehicle Repair Shops (Section 3)**

##### *Claim of Lien; Notice*

The bill continues to require notices of claims of lien required by s. 713.585(1), F.S., to be sent to the registered owner, the customer, and all other persons claiming an interest in or lien on the vehicle within 7 business days, excluding Saturdays and Sundays, after the date storage charges begin to accrue on the vehicle. However, the bill requires such notice to be sent by certified mail at least 30 days before the date of the sale and allows repair shop agents to provide the notice.

The bill revises content requirements for a notice of claim of lien. In addition to existing requirements, the notice must:

- Include the last eight digits of the vehicle identification number (VIN) of the vehicle subject to the lien clearly identified and printed in the delivery address box and on the outside of the envelope; and
- Contain:
  - The repair shop's registration number, owner's name, and physical address and the entity name of the business as registered with the Department of Agriculture and Consumer Services where the repairs or storage occurred, which must also be on the outside of the envelope;
  - The name of the person or entity that authorized the labor or services;
  - The date the vehicle was dropped off for repairs and the date the repairs were completed;
  - The date the customer was notified of the completion of the repairs;
  - An itemized statement of the amount claimed to be owed to the repair shop;
  - Notice that the repair shop will make the vehicle available for inspection during regular business hours within 3 business days after receiving a written inspection request upon presentation of a copy of an electronic or paper title; and
  - The address where the vehicle is physically located.

##### *Inspection of Vehicles; Release of Personal Property and Vehicle*

The bill authorizes the registered owner, customer, and persons claiming an interest in or lien on a vehicle subject to a lien for repairs or storage to request an inspection of the vehicle at any time before the proposed or scheduled date of sale of the vehicle. The bill requires repair shops to make the vehicle available for inspection during regular business hours within 3 business days after receiving a written inspection request from such persons, and requires a repair shop to accept either an electronic or paper title as evidence of a person's interest in a vehicle.

The bill also requires a repair shop to release to a vehicle's owner or lienholder, or the agent of an owner or lienholder:

- All personal property found in but not affixed to a vehicle; and
- The vehicle, upon payment of the charges owed.

##### *Bond to Release Vehicle (Section 1)*

The bill amends s. 559.917, F.S., to add any person of record claiming a lien against a vehicle to the list of persons who may have a vehicle released by filing a bond with the clerk of the court in

the circuit in which the repairs occurred. The bill also allows such persons to initiate judicial proceedings against a repair shop that does not release or return the vehicle after receiving notice of the bond and a directive to release the vehicle.

***Enforcement of Lien by Sale of Motor Vehicles; Notice (Section 3)***

The bill amends s. 713.585(3), F.S., and prohibits sale of a vehicle to satisfy a lien for repairs or storage earlier than 60 days after completion of the repair work. The bill clarifies the timeframe applicable to notices of sale required by s. 713.585(3), F.S., by specifying that the requisite parties must receive the notice of sale *at least* 15 days before the date of the sale.

The bill adds requirements for the notice of sale, which must be sent by certified mail. The notice must contain:

- The last eight digits of the VIN of the vehicle subject to the sale clearly identified and printed in the delivery address box and on the outside of the envelope;<sup>94</sup> and
- The repair shop’s registration number, owner’s name, and physical address, and the entity name of the business, as registered with the Department of Agriculture and Consumer Services, where the repair work or storage occurred, which must also be on the outside of the envelope containing the notice of sale.

The bill requires a repair shop to publish a notice of sale in a newspaper circulated in the county where the repair shop completed the repairs and in the county where the sale of the vehicle will occur. The bill also adds to the list of items in s. 713.585(9), F.S., what must be included in or filed with DHSMV to demonstrate proof for application for a transfer of title. Those additional items are:

- The certificate of compliance filed with the clerk of the court following publication;
- The VIN of the vehicle to be sold; and
- A copy of the notice of lien and the notice of sale.

***Transfer of Title***

DHSMV may not approve a title transfer if the application does not include a copy of:

- The notice of claim of lien, including the VIN; and
- The notice of sale.

The VIN on the notice of lien must match the VIN that is the subject of the transfer of title.

***Fees***

The bill authorizes a repair shop, or its agent, to charge an administrative fee not to exceed \$250. The bill defines “administrative fee” as a lien fee or any fee imposed by the lienor or the lienor’s agent for administrative costs added to the amount due for storage, repairs, adjustments, or modifications to the vehicle. However, the bill precludes the repair shop from charging fees that exceed \$250.

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<sup>94</sup> *Id.*

### ***Third-Party Mailing Service***

The bill requires a repair shop, garage, automotive service facility, or storage operator, to use a third-party mailing service approved by the DHSMV to transmit all notices of lien and sale. If no third-party service is approved by DHSMV, a lienor may mail the notices but must provide evidence of compliance upon submission of an application for certificate of title or certificate of destruction. The bill defines a third-party mailing service as a business entity certified by the DHSMV that, upon receiving a request submitted through a website by a motor vehicle repair shop, garage, or automotive service facility, or storage operator:

- Accesses National Motor Vehicle Title Insurance System records to obtain the last state of record of a vehicle;
- Accesses the owner, lienholder, and insurer information for a vehicle from the DHSMV;
- Electronically generates the notices of lien and sale;
- Prints and sends the notices of lien and sale to each owner, lienholder, and insurer of record by certified mail; and
- Electronically returns tracking information or other proof of mailing and delivery of the notices to the requestor.

The third-party mailing service must electronically report to DHSMV, through an electronic data exchange process using a web interface, the following information related to repair and storage notices:

The VIN;

The license plate number;

The name and address of the repair shop or lienor;

The physical location of the vehicle;

The date the vehicle was dropped off for repairs;

The date the repairs were completed;

The amount due for repairs and the storage amount per day;

The dates the notice was mailed and delivered;

The date that the owner was notified that the repairs were completed; and

Other information required by the department.

The bill requires third-party mailing services to apply to the DHSMV for approval before providing notices of lien and sale on behalf of repair shops. The DHSMV may approve an applicant if it:

- Provides the DHSMV with evidence that it has been issued a \$1 million bond;
- Submits an acceptable internal control and data security audit (Level 2) or equivalent performed by a licensed certified public accountant; and successfully demonstrates the ability to electronically provide required data to the DHSMV via an electronic data exchange process using a web interface.

The bill authorizes DHSMV to deny, suspend, or revoke a third-party mailing service's certification if it determines that the third-party service committed an act of fraud or misrepresentation related to a notice required by this section.

The bill requires a third-party mailing service to maintain all records of notices of lien and of sale for 5 years and allow DHSMV to inspect and copy records upon request. The records may be maintained in an electronic format.

A certification is valid for 1 year. The third-party service must annually provide the department with evidence that it maintains the \$1 million bond and must annually submit a Level 2 audit or equivalent as described above.

The third-party service must maintain a publicly available website that allows owners, registrants, lienholders, insurance companies, or their agents to search for notices sent pursuant to s. 713.585, F.S. The search results must return the same information provided to DHSMV, excluding any personal identifying information.

### ***Unlawful Acts and Practices (Section 2)***

The bill amends s. 559.920, F.S., to make it unlawful for a repair shop and its employees to violate any provision of s. 713.585, F.S., regarding the enforcement of liens for repair and storage costs by sale of the vehicles subject to the liens. A violation of s. 713.585, F.S., also constitutes a violation of the Florida Motor Vehicle Repair Act.

### **Liens for Recovering, Towing, or Storing Vehicles and Vessels (Section 4)**

#### ***Claim of Lien; Notice***

The bill requires towing-storage operators to send the notice of claim of lien required by s. 713.78(4), F.S., by certified mail, to the registered owner, the insurance company insuring the vehicle, and all lienholders within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, the bill requires such notice to be sent at least 30 days before the date of the sale.

The bill revises requirements for a notice of claim of lien. In addition to existing requirements, a notice must:

- Include the last eight digits of the VIN, if the claim of lien is for a vehicle, or the hull identification number if the subject of the lien is a vessel :
  - Clearly printed in the delivery address box; and;
- On the outside of the envelope. State the name, physical address, and telephone number of the towing-storage operator and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope;
- State the name of the person or entity that authorized the towing-storage operator to take possession of the vehicle or vessel;
- List the address where the vehicle or vessel is physically located;
- State that charges have accrued and include an itemized statement of said charges; and
- State that any vehicle or vessel that goes unclaimed, or for which the charges owed remain unpaid, may be sold:
  - 35 days after the vehicle or vessel is stored if the vehicle or vessel is more than 3 years old; or
  - 50 days after the vehicle or vessel is stored if the vehicle or vessel is 3 years old or less.

The notice of lien may not be sent less than 30 days before the sale of the vehicle or vessel.

The bill amends s. 713.78(9), F.S., to prohibit a towing-storage operator that fails to provide a notice of claim of lien from charging for more than 7 days of storage. Such failure does not prohibit the towing-storage operator from charging for towing the vehicle or vessel.

### ***Inspection of Vehicles and Vessels; Release of Property***

The bill requires a towing-storage operator to accept either an electronic or paper title as evidence of a person's interest in a vehicle or vessel.

### ***Bond to Release Vehicles or Vessels***

The bill, in s. 713.78(5), F.S., authorizes an owner or lienholder to post a bond for release of a vehicle or vessel with the clerk of the court at any time before the sale of the vehicle or vessel. The owner or lienholder is no longer required to file a complaint before posting such a bond.

### ***Sale of Vehicles; Notice***

The bill adds requirements for a notice of sale required by s. 713.78(6), F.S. The notice must be sent by certified mail and:

- Include the last eight digits of the VIN of the vehicle or the hull identification number of a vessel subject to sale in the delivery address box and on the outside of the envelope; and
- State the name, physical address, and telephone number of the towing-storage operator, the VIN for a vehicle and the hull identification number if a vessel on the outside of the envelope containing the notice of sale.

### ***Transfer of Title***

The bill adds subsection (14) to s. 713.78, F.S., which provides that to transfer title to a vehicle or vessel after a public sale to satisfy a lien for recovery, towing, or storage charges, a towing-storage operator must file with the DHSMV:

- Copies of:
  - The notice of lien;
  - The notice of sale which must include the VIN if the claim of lien is for a vehicle or the hull identification number if the claim of lien is for a vessel; and
- Proof of the required check of the records of the NMVTIS or an equivalent commercially available system.

The bill also prohibits the DHSMV from approving a title transfer if the application does not include copies of:

- The notice of lien;
- The notice of sale; and
- The vehicle or hull identification number on the notice of lien must match the vehicle or vessel that is the subject of the transfer.

***Fees***

The bill authorizes a towing-storage operator, or its agent, to charge an administrative fee not to exceed \$250 to the registered owner, the insurance company, or a person claiming a lien against the vehicle or vessel to obtain its release. The bill defines “administrative fee” as a lien fee or any fee imposed by the lienor or the lienor’s agent for administrative costs added to the amount for towing and storing the vehicle or vessel. However, the bill precludes the towing-storage operator from charging fees not authorized by s. 125.013, F.S., general obligation bonds, and s. 166.043, F.S., ordinances and rules imposing price controls. Further, the bill prohibits towing-storage operators from charging fees authorized by these sections which exceed \$250.

***Third-Party Mailing Service***

The bill requires towing-storage operators to use a third-party mailing service certified by the DHSMV to transmit notices of lien and sale. The definition of “third-party mailing service,” the requirements for certification and the denial, revocation, and renewal of certification, and the record maintenance provisions are identical to the bill’s provisions applicable to third-party mailing services sending notices of lien and sale for a repair shop. The bill provides an effective date of January 1, 2020.

**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:**

The bill may reduce losses experienced by motor vehicle and vessel lienholders, including lenders, because it may reduce fraudulent practices relating to notices of lien and sale. The bill may also reduce costs to consumers hoping to finance the purchase of a vehicle.

The bill may impact repair shops and towing-storage operators by capping the amount of administrative costs and fees they may add to the amount due for repair, towing, or storage of a vehicle or vessel.

**C. Government Sector Impact:**

The bill requires DHSMV to certify a third-party mailing service before it can send notices of lien and sale on behalf of lienors. Currently DHSMV does not certify third-party mailing services. The bill will likely have a negative fiscal impact on DHSMV; however, the actual fiscal impact is unknown at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 559.917, 559.920, 713.585, and 713.78.

**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 April 8, 2019:**

The committee substitute to the committee substitute:

- Changes references from the Division of Corporations to the Department of Agriculture and Consumer Services to correctly note where vehicle repair shops must register their business information with the state;
- Removes the unnecessary requirement that lien notices be sent “return receipt requested” because the notices will be sent by a third-party mailing service that will electronically track the notices;
- Requires that only the last eight digits of a VIN, and not the complete VIN, be printed on a notice and outside envelope;  
Requires the hull identification number of a vessel to be included in a notice of sale to enforce a lien, an application for transfer of title to DHSMV, and a third-party mail service notice when a vessel is involved;

- Revises criteria that must be contained in the itemized statement of the amount the lienor claims to be owed;
- Revises the information the third party service must report to DHSMV to include the date that a vehicle was dropped off for repairs, when those repairs were completed, the amount due for repairs and storage, the date the owner was notified that the repairs were completed, and other information required by DHSMV;
- Revises the time to 30 days from 15 days that a notice of lien must be sent before a sale may occur; and
- Makes technical changes to correctly place different business entities into the correct sections of the bill to accurately reflect the services they provide.

**CS by Banking and Insurance on March 25, 2019:**

The CS:

- Replaces references to the date a notice of lien or sale is received with references to the dates such notices are sent;
- Eliminates an alternative 10-day timeframe for lienors to provide a notice of lien;
- Adds information that must be in a notice of lien, including the date the vehicle was dropped off for repairs, the date the repairs were completed, and the address where the vehicle is physically located;
- Requires a towing-storage operator to send a notice of lien at least 15 days before the date of the sale of a vehicle or vessel;
- Requires motor vehicle repair shops to make a vehicle available for inspection within 3 business days after receipt of a written inspection request from the owner, the customer, or a person claiming an interest in the vehicle;
- Requires lienors to accept either an electronic or paper title as evidence of a person's interest in a vehicle or vessel;
- Requires lienors to use a third-party mailing service, certified by DHSMV, to send notices of lien and sale, defined the term "third-party mailing service," and established a certification process;
- Requires motor vehicle repair shops to release to the owner, lienholder, or their respective agents all personal property found in but not affixed to a vehicle;
- Requires motor vehicle repair shops to release a vehicle upon payment of the charges owed for services;
- Changes the effective date from July 1, 2019, to January 1, 2020; and
- Makes non-substantive grammatical changes.

**B. Amendments:**

None.



944116

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/10/2019	.	
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The Committee on Judiciary (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 559.917, Florida Statutes, is amended to  
read:

559.917 Bond to release possessory lien claimed by motor  
vehicle repair shop.—

(1) (a) A ~~Any~~ customer or a person of record claiming a lien  
against a motor vehicle may obtain the release of the ~~her or his~~  
motor vehicle from any lien claimed under part II of chapter 713



944116

12 by a motor vehicle repair shop for repair work performed under a  
13 written repair estimate by filing with the clerk of the court in  
14 the circuit in which the disputed transaction occurred a cash or  
15 surety bond, payable to the person claiming the lien and  
16 conditioned for the payment of any judgment which may be entered  
17 on the lien. The bond shall be in the amount stated on the  
18 invoice required by s. 559.911, plus accrued storage charges, if  
19 any, less any amount paid to the motor vehicle repair shop as  
20 indicated on the invoice. The customer or person shall not be  
21 required to institute judicial proceedings in order to post the  
22 bond in the registry of the court and shall not, ~~nor shall the~~  
23 ~~customer~~ be required to use a particular form for posting the  
24 bond, ~~unless the clerk provides~~ ~~shall provide~~ such form to the  
25 customer or person for filing. Upon the posting of such bond,  
26 the clerk of the court shall automatically issue a certificate  
27 notifying the lienor of the posting of the bond and directing  
28 the lienor to release the ~~customer's~~ motor vehicle.

29 (b) The lienor shall have 60 days to file suit to recover  
30 the bond. The prevailing party in that action may be entitled to  
31 damages plus court costs and reasonable attorney ~~attorney's~~  
32 fees. If the lienor fails to file suit within 60 days after the  
33 posting of such bond, the bond shall be discharged by the clerk.

34 (2) The failure of a lienor to release or return to the  
35 customer or person the motor vehicle upon which any lien is  
36 claimed, upon receiving a copy of a certificate giving notice of  
37 the posting of the bond and directing release of the motor  
38 vehicle, shall subject the lienor to judicial proceedings which  
39 may be brought by the customer or person to compel compliance  
40 with the certificate. Whenever a customer or person brings an



944116

41 action to compel compliance with the certificate, the customer  
42 or person need only establish that:

43 (a) Bond in the amount of the invoice, plus accrued storage  
44 charges, if any, less any amount paid to the motor vehicle  
45 repair shop as indicated on the invoice, was posted;

46 (b) A certificate was issued pursuant to this section;

47 (c) The motor vehicle repair shop, or any employee or agent  
48 thereof who is authorized to release the motor vehicle, received  
49 a copy of a certificate issued pursuant to this section; and

50 (d) The motor vehicle repair shop or employee authorized to  
51 release the motor vehicle failed to release the motor vehicle.

52

53 The customer or person, upon a judgment in her or his favor in  
54 an action brought under this subsection, may be entitled to  
55 damages plus court costs and reasonable attorney ~~attorney's~~ fees  
56 sustained by her or him by reason of such wrongful detention or  
57 retention. Upon a judgment in favor of the motor vehicle repair  
58 shop, the shop may be entitled to reasonable attorney ~~attorney's~~  
59 fees.

60 (3) A ~~Any~~ motor vehicle repair shop that ~~which~~, or an ~~any~~  
61 employee or agent thereof who is authorized to release the motor  
62 vehicle who, upon receiving a copy of a certificate giving  
63 notice of the posting of the bond in the required amount and  
64 directing release of the motor vehicle, fails to release or  
65 return the property to the customer or person pursuant to this  
66 section commits ~~is guilty of~~ a misdemeanor of the second degree,  
67 punishable as provided in s. 775.082 or s. 775.083.

68 (4) A ~~Any~~ customer or person who stops payment on a credit  
69 card charge or a check drawn in favor of a motor vehicle repair



944116

70 shop on account of an invoice or who fails to post a cash or  
71 surety bond pursuant to this section shall be prohibited from  
72 any recourse under this section with respect to the motor  
73 vehicle repair shop.

74 Section 2. Section 559.920, Florida Statutes, is amended to  
75 read:

76 559.920 Unlawful acts and practices.—It shall be a  
77 violation of this act for any motor vehicle repair shop or  
78 employee thereof to do any of the following:

79 (1) Engage or attempt to engage in repair work for  
80 compensation of any type without first being registered with or  
81 having submitted an affidavit of exemption to the department.†

82 (2) Make or charge for repairs which have not been  
83 expressly or impliedly authorized by the customer.†

84 (3) Misrepresent that repairs have been made to a motor  
85 vehicle.†

86 (4) Misrepresent that certain parts and repairs are  
87 necessary to repair a vehicle.†

88 (5) Misrepresent that the vehicle being inspected or  
89 diagnosed is in a dangerous condition or that the customer's  
90 continued use of the vehicle may be harmful or cause great  
91 damage to the vehicle.†

92 (6) Fraudulently alter any customer contract, estimate,  
93 invoice, or other document.†

94 (7) Fraudulently misuse any customer's credit card.†

95 (8) Make or authorize in any manner or by any means  
96 whatever any written or oral statement which is untrue,  
97 deceptive or misleading, and which is known, or which by the  
98 exercise of reasonable care should be known, to be untrue,



944116

99 deceptive or misleading.†

100 (9) Make false promises of a character likely to influence,  
101 persuade, or induce a customer to authorize the repair, service,  
102 or maintenance of a motor vehicle.†

103 (10) Substitute used, rebuilt, salvaged, or straightened  
104 parts for new replacement parts without notice to the motor  
105 vehicle owner and to her or his insurer if the cost of repair is  
106 to be paid pursuant to an insurance policy and the identity of  
107 the insurer or its claims adjuster is disclosed to the motor  
108 vehicle repair shop.†

109 (11) Cause or allow a customer to sign any work order that  
110 does not state the repairs requested by the customer or the  
111 automobile's odometer reading at the time of repair.†

112 (12) Fail or refuse to give to a customer a copy of any  
113 document requiring the customer's signature upon completion or  
114 cancellation of the repair work.†

115 (13) Willfully depart from or disregard accepted practices  
116 and professional standards.†

117 (14) Have repair work subcontracted without the knowledge  
118 or consent of the customer unless the motor vehicle repair shop  
119 or employee thereof demonstrates that the customer could not  
120 reasonably have been notified.†

121 (15) Conduct the business of motor vehicle repair in a  
122 location other than that stated on the registration  
123 certificate.†

124 (16) Rebuild or restore a rebuilt vehicle without the  
125 knowledge of the owner in such a manner that it does not conform  
126 to the original vehicle manufacturer's established repair  
127 procedures or specifications and allowable tolerances for the



944116

128 particular model and year. ~~or~~

129 (17) Perform any other act that is a violation of this part  
130 or that constitutes fraud or misrepresentation.

131 (18) Violate any provision of s. 713.585.

132 Section 3. Subsections (1) through (4), (9), and (13) of  
133 section 713.585, Florida Statutes, are amended, and subsections  
134 (14) through (18) are added to that section, to read:

135 713.585 Enforcement of lien by sale of motor vehicle.—A  
136 person claiming a lien under s. 713.58 for performing labor or  
137 services on a motor vehicle may enforce such lien by sale of the  
138 vehicle in accordance with the following procedures:

139 (1) The lienor or the lienor's agent must give notice of  
140 the lien, by certified mail, ~~return receipt requested, within 7~~  
141 ~~business days, excluding Saturday and Sunday, from the beginning~~  
142 ~~date of the assessment of storage charges on said motor vehicle,~~  
143 to the registered owner of the vehicle, to the customer as  
144 indicated on the order for repair, and to all other persons  
145 claiming an interest therein ~~in~~ or lien thereon, as disclosed by  
146 the records of the Department of Highway Safety and Motor  
147 Vehicles or as disclosed by the records of any corresponding  
148 agency of any other state in which the vehicle is identified  
149 through a records check of the National Motor Vehicle Title  
150 Information System or an equivalent commercially available  
151 system as being the current state where the vehicle is titled.  
152 Such notice must ~~contain~~:

153 (a) Be sent to the registered owner, the customer, and all  
154 other persons claiming an interest therein or lien thereon  
155 within 7 business days, excluding Saturday and Sunday, after the  
156 date on which storage charges begin to accrue on the vehicle.



944116

157 However, in no event shall the notice of lien be sent less than  
158 30 days before the sale of the motor vehicle.

159 (b) Be sent by certified mail with the last eight digits of  
160 the vehicle identification number of the motor vehicle subject  
161 to the lien clearly printed in the delivery address box and on  
162 the outside of the envelope sent to the registered owner, the  
163 customer, and all other persons claiming an interest therein or  
164 lien thereon.

165 (c) ~~(a)~~ Contain a description of the vehicle, including, at  
166 minimum, its year, make, vehicle identification number, and ~~the~~  
167 vehicle's location.

168 (d) ~~(b)~~ Contain the name and address of the owner of the  
169 vehicle, the customer as indicated on the order for repair, and  
170 any person claiming an interest therein ~~in~~ or lien thereon.

171 (e) ~~(c)~~ Contain the name, address, and telephone number of  
172 the lienor.

173 (f) ~~(d)~~ Contain notice that the lienor claims a lien on the  
174 vehicle for labor and services performed and storage charges, if  
175 any, and the cash sum which, if paid to the lienor, would be  
176 sufficient to redeem the vehicle from the lien claimed by the  
177 lienor.

178 (g) Contain the motor vehicle repair shop's registration  
179 number, owner's name, and physical address and the entity name,  
180 as registered with the Department of Agriculture and Consumer  
181 Services, of the business where the repair work or storage  
182 occurred, which must also appear on the outside of the envelope  
183 sent to the registered owner, the customer, and all other  
184 persons claiming an interest in or lien on the vehicle.

185 (h) Contain the name of the person or entity that



944116

186 authorized the labor or services on the vehicle.

187 (i) Contain an itemized statement of the amount claimed to  
188 be owed to the lienor, including the date the vehicle was  
189 dropped off for repairs; the date the repairs were completed;  
190 the date the customer was notified of the completion of the  
191 repairs; the amount due for repairs, adjustments, or  
192 modifications to the vehicle; any administrative fees; and any  
193 daily storage charges.

194 (j)~~(e)~~ Contain notice that the lien claimed by the lienor  
195 is subject to enforcement pursuant to this section and that the  
196 vehicle may be sold to satisfy the lien.

197 (k)~~(f)~~ Contain ~~If known,~~ the date, time, and location of  
198 any proposed or scheduled sale of the vehicle. A vehicle may not  
199 be sold earlier than 60 days after completion of the repair  
200 work.

201 (l)~~(g)~~ Contain notice that the owner of the vehicle or any  
202 person claiming an interest therein ~~in~~ or lien thereon has a  
203 right to a hearing at any time before the scheduled date of sale  
204 by filing a demand for hearing with the clerk of the circuit  
205 court in the county in which the vehicle is held and mailing  
206 copies of the demand for hearing to all other owners and lienors  
207 as reflected on the notice.

208 (m)~~(h)~~ Contain notice that the owner of the vehicle has a  
209 right to recover possession of the vehicle without instituting  
210 judicial proceedings by posting bond in accordance with s.  
211 559.917.

212 (n)~~(i)~~ Contain notice that any proceeds from the sale of  
213 the vehicle remaining after payment of the amount claimed to be  
214 due and owing to the lienor will be deposited with the clerk of



944116

215 the circuit court for disposition upon court order pursuant to  
216 subsection (8).

217 (o) ~~(j)~~ Contain notice that a lienholder, if any, has the  
218 right, as specified in subsection (5), to demand a hearing or to  
219 post a bond.

220 (p) Contain a statement that the lienor will make the  
221 vehicle available for inspection during regular business hours  
222 within 3 business days after receiving a written request to  
223 inspect the vehicle from a notice recipient, who may present  
224 either a copy of an electronic title or a paper title as  
225 evidence of his or her interest in and right to inspect the  
226 vehicle.

227 (q) Contain the address at which the vehicle is physically  
228 located.

229 (2) If attempts to locate the owner or lienholder are  
230 unsuccessful after a check of the records of the Department of  
231 Highway Safety and Motor Vehicles and any state disclosed by the  
232 check of the National Motor Vehicle Title Information System or  
233 an equivalent commercially available system, the lienor must  
234 notify the local law enforcement agency in writing by certified  
235 mail or acknowledged hand delivery that the lienor has been  
236 unable to locate the owner or lienholder, that a physical search  
237 of the vehicle has disclosed no ownership information, and that  
238 a good faith effort, including records checks of the Department  
239 of Highway Safety and Motor Vehicles database and the National  
240 Motor Vehicle Title Information System or an equivalent  
241 commercially available system, has been made. A description of  
242 the motor vehicle which includes the year, make, and  
243 identification number must be given on the notice. This



944116

244 notification must take place within 7 business days, excluding  
245 Saturday and Sunday, after ~~from~~ the beginning date on which ~~of~~  
246 ~~the assessment of~~ storage charges begin to accrue on the ~~said~~  
247 ~~motor~~ vehicle. For purposes of this subsection ~~paragraph~~, the  
248 term "good faith effort" means that the following checks have  
249 been performed by the company to establish the prior state of  
250 registration and title:

251 (a) A check of the department's ~~Department of Highway~~  
252 ~~Safety and Motor Vehicles~~ database for the owner and any  
253 lienholder. ~~†~~

254 (b) A check of the federally mandated electronic National  
255 Motor Vehicle Title Information System or an equivalent  
256 commercially available system to determine the state of  
257 registration when there is not a current title or registration  
258 record for the vehicle on file with the department. ~~of Highway~~  
259 ~~Safety and Motor Vehicles;†~~

260 (c) A check of the vehicle for any type of tag, tag record,  
261 temporary tag, or regular tag. ~~†~~

262 (d) A check of the vehicle for an inspection sticker or  
263 other stickers and decals that could indicate the state of  
264 possible registration. ~~† and~~

265 (e) A check of the interior of the vehicle for any papers  
266 that could be in the glove box, trunk, or other areas for the  
267 state of registration.

268 (3) A vehicle may not be sold earlier than 60 days after  
269 completion of the repair work. If the date of the sale was not  
270 included in the notice of lien required in subsection (1),  
271 notice of the sale must be sent by certified mail at least  
272 ~~return receipt requested, not less than~~ 15 days before the date



944116

273 of sale~~r~~ to the customer as indicated on the order for repair~~r~~  
274 and to all other persons claiming an interest in or lien on the  
275 motor vehicle, as disclosed by the records of the Department of  
276 Highway Safety and Motor Vehicles or of a corresponding agency  
277 of any other state in which the vehicle appears to have been  
278 registered after completion of a check of the National Motor  
279 Vehicle Title Information System or an equivalent commercially  
280 available system. Such notice must:

281 (a) Be sent by certified mail with the last eight digits of  
282 the vehicle identification number of the motor vehicle subject  
283 to the sale clearly identified and printed in the delivery  
284 address box and on the outside of the envelope sent to the  
285 registered owner, the customer, and all other persons claiming  
286 an interest therein or lien thereon.

287 (b) Contain the motor vehicle repair shop's registration  
288 number, owner's name, and physical address and the entity name,  
289 as registered with the Department of Agriculture and Consumer  
290 Services, of the business where the repair work or storage  
291 occurred, which must also appear on the outside of the envelope  
292 containing the notice of sale in the return address section of  
293 the envelope.

294 (4) The lienor, at least 15 days before the proposed or  
295 scheduled date of sale of the vehicle, shall publish the notice  
296 required by this section once in a newspaper circulated in the  
297 county where the vehicle repair work was completed and where the  
298 sale is to take place ~~held~~. A certificate of compliance with the  
299 notification provisions of this section, which includes the  
300 vehicle identification number, verified by the lienor, together  
301 with a copy of the notice of lien required by subsection (1) and



944116

302 the notice of sale required by subsection (3), which must  
303 include and return receipt for mailing of the notice required by  
304 this section, proof of publication, and checks of the Department  
305 of Highway Safety and Motor Vehicles and the National Motor  
306 Vehicle Title Information System or an equivalent commercially  
307 available system, must be duly and expeditiously filed with the  
308 clerk of the circuit court in the county where the vehicle is  
309 held. The lienor, at the time of filing the certificate of  
310 compliance, must pay to the clerk of that court a service charge  
311 of \$10 for indexing and recording the certificate.

312 (9) (a) A copy of the certificate of compliance, which must  
313 include the vehicle identification number, and the report of  
314 sale, certified by the clerk of the court, a copy of the notice  
315 of lien required by subsection (1) and the notice of sale  
316 required by subsection (3), and proof of the required check of  
317 the National Motor Vehicle Title Information System or an  
318 equivalent commercially available system shall constitute  
319 satisfactory proof for application to the Department of Highway  
320 Safety and Motor Vehicles for transfer of title, together with  
321 any other proof required by any rules and regulations of the  
322 department.

323 (b) The Department of Highway Safety and Motor Vehicles may  
324 not approve an application for transfer of title if the  
325 application fails to include a copy of the notice of lien  
326 required by subsection (1) and the notice of sale required by  
327 subsection (3). The vehicle identification number on the notice  
328 of lien must match the vehicle identification number of the  
329 vehicle that is the subject of the transfer of title.

330 (13) A failure to make good faith efforts as defined in



944116

331 subsection (2) precludes the imposition of any storage charges  
332 against the vehicle. If a lienor fails to provide notice to any  
333 person claiming a lien on a vehicle under subsection (1) within  
334 7 business days after the date assessment of storage of the  
335 vehicle charges has begun, then the lienor may not charge the  
336 person is precluded from charging for more than 7 days of  
337 storage, but such failure to provide timely notice does not  
338 affect charges made for repairs, adjustments, or modifications  
339 to the vehicle or the priority of liens on the vehicle.

340 (14) At any time before the proposed or scheduled date of  
341 sale of a vehicle, the owner, the customer, or a person claiming  
342 an interest therein or lien thereon may request to inspect the  
343 vehicle. The lienor must make the vehicle available for  
344 inspection during regular business hours within 3 business days  
345 after receiving a written request to inspect the vehicle.

346 (15) (a) A lienor or the lienor's agent may charge an  
347 administrative fee to the registered owner, the insurance  
348 company insuring the vehicle, or a person of record claiming a  
349 lien against the vehicle to obtain release of the vehicle. Such  
350 administrative fee may not exceed \$250. For purposes of this  
351 paragraph, the term "administrative fee" means a lien fee or any  
352 fee imposed by the lienor or the lienor's agent for  
353 administrative costs added to the amount due for storage,  
354 repairs, adjustments, or modifications to the vehicle.

355 (b) A lienor or the lienor's agent may not charge fees or  
356 costs, other than those authorized in this section, that exceed  
357 \$250.

358 (16) A motor vehicle repair shop, garage, automotive  
359 service facility, or storage operator must use a third-party



944116

360 service approved by the Department of Highway Safety and Motor  
361 Vehicles to transmit all notices required by this section. If  
362 there is no third-party service approved by the department, the  
363 motor vehicle repair shop, garage, automotive service facility,  
364 or storage operator may mail the notices and provide evidence of  
365 compliance with this section upon submission of an application  
366 for certificate of title or certificate of destruction.

367 (a) For purposes of this subsection, the term "third-party  
368 service" means a qualified business entity that, upon a request  
369 submitted through a website by a motor vehicle repair shop,  
370 garage, automotive service facility, or storage operator:

371 1. Accesses the National Motor Vehicle Title Information  
372 System records to obtain the last state of record of the  
373 vehicle.

374 2. Accesses the owner, lienholder, and insurer information,  
375 as applicable, for a vehicle from the department.

376 3. Electronically generates the notices required of a motor  
377 vehicle repair shop and a towing-storage operator by this  
378 section through the website.

379 4. Prints and sends the notices required under this section  
380 to each owner, lienholder, and insurer of record by certified  
381 mail.

382 5. Electronically returns tracking information or other  
383 proof of mailing and delivery of the notices to the motor  
384 vehicle repair shop and towing-storage operator.

385 6. Electronically reports to the department, via an  
386 electronic data exchange process using a web interface, the  
387 following information related to the repair and storage notices:

388 a. The vehicle identification number.



- 389        b. The license plate number.
- 390        c. The name and address of the repair shop or lienor.
- 391        d. The physical location of the vehicle.
- 392        e. The date on which the vehicle was dropped off for  
393 repairs.
- 394        f. The date on which the repairs were completed.
- 395        g. The amount due for repairs and the storage amount per  
396 day.
- 397        h. The dates on which the notice was mailed and delivered.
- 398        i. The date on which the owner was notified that the  
399 repairs were completed.
- 400        j. Other information required by the department.
- 401        (b) A third-party service must apply to and be approved by  
402 the department in order to provide notices under this section.  
403 The department shall prescribe the format for the application.  
404 The department may approve the applicant as qualified to perform  
405 the services provided in paragraph (a) if the applicant:
- 406        1. Provides the department with a \$1 million bond.
- 407        2. Submits an acceptable internal control and data security  
408 audit (Level 2) or its equivalent performed by a licensed  
409 certified public accountant.
- 410        3. Successfully demonstrates the ability to electronically  
411 provide required data to the department via an electronic data  
412 exchange process using a web interface.
- 413        (c) The department may deny, suspend, or revoke approval of  
414 a third-party service if the department determines that the  
415 third-party service has committed an act of fraud or  
416 misrepresentation related to a notice required by this section.
- 417        (d) A third-party service must maintain all records related



944116

418 to providing notices under this section for 5 years and allow  
419 the department to inspect and copy such records upon request.  
420 The records may be maintained in an electronic format.

421 (e) A third-party service must annually provide the  
422 department with evidence that it maintains a \$1 million bond and  
423 must annually submit an internal control and data security audit  
424 (Level 2) or its equivalent performed by a licensed certified  
425 public accountant to continue its approved status each year.

426 (f) A third-party service must maintain a publicly  
427 available website that allows owners, registrants, lienholders,  
428 insurance companies, or their agents to search for notices sent  
429 pursuant to this section. The search results must exclude  
430 personal identifying information but provide the same  
431 information provided to the department.

432 (17) A lienor must release to the owner, lienholder, or  
433 agent thereof all of the personal property found in but not  
434 affixed to the vehicle. Upon payment of the charges owed, the  
435 lienor must release the vehicle to the paying owner, lienholder,  
436 or agent thereof.

437 (18) A lienor must accept either a copy of an electronic  
438 title or a paper title as evidence of a person's interest in a  
439 vehicle.

440 Section 4. Subsection (4), paragraphs (a) and (b) of  
441 subsection (5), and subsections (6) and (9) of section 713.78,  
442 Florida Statutes, are amended, and subsections (14) through (17)  
443 are added to that section, to read:

444 713.78 Liens for recovering, towing, or storing vehicles  
445 and vessels.-

446 (4) (a) A ~~Any~~ person regularly engaged in the business of



944116

447 recovering, towing, or storing vehicles or vessels who comes  
448 into possession of a vehicle or vessel pursuant to subsection  
449 (2), and who claims a lien for recovery, towing, or storage  
450 services, shall give notice, by certified mail, to the  
451 registered owner, the insurance company insuring the vehicle  
452 notwithstanding ~~the provisions of s. 627.736~~, and ~~to~~ all persons  
453 claiming a lien thereon, as disclosed by the records in the  
454 Department of Highway Safety and Motor Vehicles or as disclosed  
455 by the records of any corresponding agency in any other state in  
456 which the vehicle is identified through a records check of the  
457 National Motor Vehicle Title Information System or an equivalent  
458 commercially available system as being titled or registered.

459 (b) Whenever a ~~any~~ law enforcement agency authorizes the  
460 removal of a vehicle or vessel or whenever a ~~any~~ towing service,  
461 garage, repair shop, or automotive service, storage, or parking  
462 place notifies the law enforcement agency of possession of a  
463 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law  
464 enforcement agency of the jurisdiction where the vehicle or  
465 vessel is stored shall contact the Department of Highway Safety  
466 and Motor Vehicles, or the appropriate agency of the state of  
467 registration, if known, within 24 hours through the medium of  
468 electronic communications, giving the full description of the  
469 vehicle or vessel. Upon receipt of the full description of the  
470 vehicle or vessel, the department shall search its files to  
471 determine the owner's name, the insurance company insuring the  
472 vehicle or vessel, and whether any person has filed a lien upon  
473 the vehicle or vessel as provided in s. 319.27(2) and (3) and  
474 notify the applicable law enforcement agency within 72 hours.  
475 The person in charge of the towing service, garage, repair shop,



944116

476 or automotive service, storage, or parking place shall obtain  
477 such information from the applicable law enforcement agency  
478 within 5 days after the date of storage and shall give notice  
479 pursuant to paragraph (a). The department may release the  
480 insurance company information to the requestor notwithstanding  
481 ~~the provisions of s. 627.736.~~

482 (c) The notice of lien must be sent by certified mail to  
483 the registered owner, the insurance company insuring the vehicle  
484 notwithstanding s. 627.736, and all other persons claiming a  
485 lien thereon shall be sent within 7 business days, excluding  
486 Saturday and Sunday, after the date of storage of the vehicle or  
487 vessel. However, in no event shall the notice of lien be sent  
488 less than 30 days before the sale of ~~to the registered owner,~~  
489 ~~the insurance company insuring the vehicle notwithstanding the~~  
490 ~~provisions of s. 627.736, and all persons of record claiming a~~  
491 ~~lien against~~ the vehicle or vessel. The notice must state:

492 1. If the claim of lien is for a vehicle, the last eight  
493 digits of the vehicle identification number of the vehicle  
494 subject to the lien, or, if the claim of lien is for a vessel,  
495 the hull identification number of the vessel subject to the  
496 lien, clearly printed in the delivery address box and on the  
497 outside of the envelope sent to the registered owner and all  
498 other persons claiming an interest therein or lien thereon.

499 2. The name, physical address, and telephone number of the  
500 lienor, and the entity name, as registered with the Division of  
501 Corporations, of the business where the towing and storage  
502 occurred, which must also appear on the outside of the envelope  
503 sent to the registered owner and all other persons claiming an  
504 interest in or lien on the vehicle or vessel.



944116

505        3. ~~It shall state~~ The fact of possession of the vehicle or  
506 vessel.

507        4. The name of the person or entity that authorized the  
508 lienor to take possession of the vehicle or vessel.

509        5. That a lien as provided in subsection (2) is claimed.

510        6. That charges have accrued and include an itemized  
511 statement of the amount thereof.

512        7. That the lien is subject to enforcement ~~under~~ pursuant  
513 ~~to~~ law, and that the owner or lienholder, if any, has the right  
514 to a hearing as set forth in subsection (5). ~~and~~

515        8. That any vehicle or vessel ~~that~~ ~~which~~ remains unclaimed,  
516 or for which the charges for recovery, towing, or storage  
517 services remain unpaid, may be sold free of all prior liens  
518 ~~after~~ 35 days after the vehicle or vessel is stored by the  
519 lienor if the vehicle or vessel is more than 3 years of age or  
520 ~~after~~ 50 days after the vehicle or vessel is stored by the  
521 lienor if the vehicle or vessel is 3 years of age or less.

522        9. The address at which the vehicle or vessel is physically  
523 located.

524        (d) The notice of lien may not be sent to the registered  
525 owner, the insurance company insuring the vehicle or vessel, and  
526 all other persons claiming a lien thereon less than 30 days  
527 before the sale of the vehicle or vessel.

528        (e) ~~(d)~~ If attempts to locate the name and address of the  
529 owner or lienholder prove unsuccessful, the towing-storage  
530 operator shall, after 7 business ~~working~~ days, excluding  
531 Saturday and Sunday, after ~~of~~ the initial tow or storage, notify  
532 the public agency of jurisdiction where the vehicle or vessel is  
533 stored in writing by certified mail or acknowledged hand



944116

534 delivery that the towing-storage company has been unable to  
535 locate the name and address of the owner or lienholder and a  
536 physical search of the vehicle or vessel has disclosed no  
537 ownership information and a good faith effort has been made,  
538 including records checks of the Department of Highway Safety and  
539 Motor Vehicles database and the National Motor Vehicle Title  
540 Information System or an equivalent commercially available  
541 system. For purposes of this paragraph and subsection (9), the  
542 term "good faith effort" means that the following checks have  
543 been performed by the company to establish the prior state of  
544 registration and for title:

545 1. A check of the department's ~~Department of Highway Safety~~  
546 ~~and Motor Vehicles~~ database for the owner and any lienholder.

547 2. A check of the electronic National Motor Vehicle Title  
548 Information System or an equivalent commercially available  
549 system to determine the state of registration when there is not  
550 a current registration record for the vehicle or vessel on file  
551 with the department ~~of Highway Safety and Motor Vehicles~~.

552 3. A check of the vehicle or vessel for any type of tag,  
553 tag record, temporary tag, or regular tag.

554 4. A check of the law enforcement report for a tag number  
555 or other information identifying the vehicle or vessel, if the  
556 vehicle or vessel was towed at the request of a law enforcement  
557 officer.

558 5. A check of the trip sheet or tow ticket of the tow truck  
559 operator to determine whether ~~see if~~ a tag was on the vehicle or  
560 vessel at the beginning of the tow, if a private tow.

561 6. If there is no address of the owner on the impound  
562 report, a check of the law enforcement report to determine



944116

563 whether ~~see~~ if an out-of-state address is indicated from driver  
564 license information.

565 7. A check of the vehicle or vessel for an inspection  
566 sticker or other stickers and decals that may indicate a state  
567 of possible registration.

568 8. A check of the interior of the vehicle or vessel for any  
569 papers that may be in the glove box, trunk, or other areas for a  
570 state of registration.

571 9. A check of the vehicle for a vehicle identification  
572 number.

573 10. A check of the vessel for a vessel registration number.

574 11. A check of the vessel hull for a hull identification  
575 number which should be carved, burned, stamped, embossed, or  
576 otherwise permanently affixed to the outboard side of the  
577 transom or, if there is no transom, to the outmost seaboard side  
578 at the end of the hull that bears the rudder or other steering  
579 mechanism.

580 (5) (a) The owner of a vehicle or vessel removed pursuant to  
581 ~~the provisions of~~ subsection (2), or any person claiming a lien,  
582 other than the towing-storage operator, within 10 days after the  
583 time she or he has knowledge of the location of the vehicle or  
584 vessel, may file a complaint in the county court of the county  
585 in which the vehicle or vessel is stored to determine whether ~~if~~  
586 her or his property was wrongfully taken or withheld ~~from her or~~  
587 ~~him~~.

588 (b) At any time before the sale of the vehicle or vessel  
589 ~~Upon filing of a complaint~~, an owner or lienholder may have her  
590 or his vehicle or vessel released upon posting with the court a  
591 cash or surety bond or other adequate security equal to the



944116

592 amount of the charges for towing or storage and lot rental  
593 amount to ensure the payment of such charges in the event she or  
594 he does not prevail. Upon the posting of the bond and the  
595 payment of the applicable fee set forth in s. 28.24, the clerk  
596 of the court shall issue a certificate notifying the lienor of  
597 the posting of the bond and directing the lienor to release the  
598 vehicle or vessel. At the time of such release, after reasonable  
599 inspection, she or he shall give a receipt to the towing-storage  
600 company reciting any claims she or he has for loss or damage to  
601 the vehicle or vessel or the contents thereof.

602 (6) A ~~Any~~ vehicle or vessel that ~~which~~ is stored pursuant  
603 to subsection (2) and ~~which~~ remains unclaimed, or for which  
604 reasonable charges for recovery, towing, or storing remain  
605 unpaid, and any contents not released pursuant to subsection  
606 (10), may be sold by the owner or operator of the storage space  
607 for such towing or storage charge ~~after~~ 35 days after ~~from the~~  
608 ~~time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if  
609 the vehicle or vessel is more than 3 years of age or ~~after~~ 50  
610 days after ~~following the time~~ the vehicle or vessel is stored by  
611 the lienor ~~therein~~ if the vehicle or vessel is 3 years of age or  
612 less. The sale shall be at public sale for cash. If the date of  
613 the sale was not included in the notice required in subsection  
614 (4), notice of the sale shall be given to the person in whose  
615 name the vehicle or vessel is registered and to all persons  
616 claiming a lien on the vehicle or vessel as shown on the records  
617 of the Department of Highway Safety and Motor Vehicles or of any  
618 corresponding agency in any other state in which the vehicle is  
619 identified through a records check of the National Motor Vehicle  
620 Title Information System or an equivalent commercially available



944116

621 system as being titled. Notice of the sale must ~~shall~~ be sent by  
622 certified mail. The notice must have clearly identified and  
623 printed, if the claim of lien is for a motor vehicle, the last  
624 eight digits of the vehicle identification number of the motor  
625 vehicle subject to the lien, or, if the claim of lien is for a  
626 vessel, the hull identification number of the vessel subject to  
627 the lien, in the delivery address box and on the outside of the  
628 envelope sent to the registered owner and all other persons  
629 claiming an interest therein or lien thereon. The notice must be  
630 sent to the owner of the vehicle or vessel and the person having  
631 the recorded lien on the vehicle or vessel at the address shown  
632 on the records of the registering agency at least ~~and shall be~~  
633 ~~mailed not less than~~ 15 days before the sale of the vehicle or  
634 vessel ~~date of the sale~~. The notice must state the name,  
635 physical address, and telephone number of the lienor, and the  
636 vehicle identification number if the claim of lien is for a  
637 vehicle or the hull identification number if the claim of lien  
638 is for a vessel, all of which must also appear in the return  
639 address section on the outside of the envelope containing the  
640 notice of sale. After diligent search and inquiry, if the name  
641 and address of the registered owner or the owner of the recorded  
642 lien cannot be ascertained, the requirements of notice by mail  
643 may be dispensed with. In addition to the notice by mail, public  
644 notice of the time and place of sale shall be made by publishing  
645 a notice thereof one time, at least 10 days before ~~prior to~~ the  
646 date of the sale, in a newspaper of general circulation in the  
647 county in which the sale is to be held. The proceeds of the  
648 sale, after payment of reasonable towing and storage charges,  
649 and costs of the sale, in that order of priority, shall be



944116

650 deposited with the clerk of the circuit court for the county if  
651 the owner or lienholder is absent, and the clerk shall hold such  
652 proceeds subject to the claim of the owner or lienholder legally  
653 entitled thereto. The clerk shall be entitled to receive 5  
654 percent of such proceeds for the care and disbursement thereof.  
655 The certificate of title issued under this law shall be  
656 discharged of all liens unless otherwise provided by court  
657 order. The owner or lienholder may file a complaint after the  
658 vehicle or vessel has been sold in the county court of the  
659 county in which it is stored. Upon determining the respective  
660 rights of the parties, the court may award damages, attorney  
661 ~~attorney's~~ fees, and costs in favor of the prevailing party.

662 (9) Failure to make good faith ~~best~~ efforts to comply with  
663 the notice requirements of this section precludes ~~shall preclude~~  
664 the imposition of any storage charges against the ~~such~~ vehicle  
665 or vessel. If a lienor fails to provide notice to a person  
666 claiming a lien on a vehicle or vessel in accordance with  
667 subsection (4), the lienor may not charge the person for more  
668 than 7 days of storage, but such failure does not affect charges  
669 made for towing the vehicle or vessel or the priority of liens  
670 on the vehicle or vessel.

671 (14) (a) A copy of the notice of lien required by subsection  
672 (4) and the notice of sale required by subsection (6), which  
673 must include the vehicle identification number if the claim of  
674 lien is for a vehicle or the hull identification number if the  
675 claim of lien is for a vessel, and proof of the required check  
676 of the National Motor Vehicle Title Information System or an  
677 equivalent commercially available system shall constitute  
678 satisfactory proof for application to the Department of Highway



944116

679 Safety and Motor Vehicles for transfer of title, together with  
680 any other proof required by any rules and regulations of the  
681 department.

682 (b) The Department of Highway Safety and Motor Vehicles may  
683 not approve an application for transfer of title if the  
684 application fails to include a copy of the notice of lien  
685 required by subsection (4) and the notice of sale required by  
686 subsection (6). The vehicle or hull identification number on the  
687 notice of lien must match the vehicle or hull identification  
688 number of the vehicle or vessel that is the subject of the  
689 transfer of title.

690 (15) (a) A lienor or the lienor's agent may charge an  
691 administrative fee to the registered owner, the insurance  
692 company insuring the vehicle or vessel, or a person claiming a  
693 lien against the vehicle or vessel to obtain release of the  
694 vehicle or vessel. Such administrative fee may not exceed \$250.  
695 For purposes of this paragraph, the term "administrative fee"  
696 means a lien fee or any fee imposed by the lienor or the  
697 lienor's agent for administrative costs added to the amount due  
698 for towing and storing the vehicle or vessel.

699 (b) A lienor or the lienor's agent may not charge fees or  
700 costs, other than those authorized in this section or ss.  
701 125.0103 and 166.043, that exceed \$250.

702 (16) A towing-storage operator must use a third-party  
703 service approved by the Department of Highway Safety and Motor  
704 Vehicles to transmit all notices required by this section. If  
705 there is no third-party service approved by the department, the  
706 towing-storage operator may mail the notices and provide  
707 evidence of compliance with this section upon submission of an



944116

708 application for certificate of title or certificate of  
709 destruction.

710 (a) For purposes of this subsection, the term "third-party  
711 service" means a qualified business entity that, upon a request  
712 submitted through a website by a towing-storage operator:

713 1. Accesses the National Motor Vehicle Title Information  
714 System records to obtain the last state of record of the  
715 vehicle.

716 2. Accesses the owner, lienholder, and insurer information,  
717 as applicable, for a vehicle or vessel from the department.

718 3. Electronically generates the notices required of a  
719 towing-storage operator by this section through the website.

720 4. Prints and sends the notices required under this section  
721 to each owner, lienholder, and insurer of record by certified  
722 mail.

723 5. Electronically returns tracking information or other  
724 proof of mailing and delivery of the notices to the towing-  
725 storage operator.

726 6. Electronically reports to the department, via an  
727 electronic data exchange process using a web interface, the  
728 following information related to the towing and storage notice:

729 a. The vehicle identification number or vessel hull  
730 identification number.

731 b. The license plate number, if applicable.

732 c. The name and address of the towing-storage operator or  
733 lienor.

734 d. The physical location of the vehicle or vessel.

735 e. The date on which the vehicle or vessel was towed.

736 f. The amount of storage fees owed at the time of the



944116

737 notice.  
738 g. The date of assessment of storage charges.  
739 h. The dates on which the notice was mailed and delivered.  
740 i. Other information required by the department.  
741 (b) A third-party service must apply to and be approved by  
742 the department in order to provide notices under this section.  
743 The department shall prescribe the format for the application.  
744 The department may approve the applicant as qualified to perform  
745 the services provided in paragraph (a) if the applicant:  
746 1. Provides the department with a \$1 million bond.  
747 2. Submits an acceptable internal control and data security  
748 audit (Level 2) or its equivalent performed by a licensed  
749 certified public accountant.  
750 3. Successfully demonstrates the ability to electronically  
751 provide required data to the department via an electronic data  
752 exchange process using a web interface.  
753 (c) The department may deny, suspend, or revoke approval of  
754 a third-party service if the department determines that the  
755 third-party service has committed an act of fraud or  
756 misrepresentation related to a notice required by this section.  
757 (d) A third-party service must maintain all records related  
758 to providing notices under this section for 5 years and allow  
759 the department to inspect and copy such records upon request.  
760 The records may be maintained in an electronic format.  
761 (e) A third-party service must annually provide the  
762 department with evidence that it maintains a \$1 million bond and  
763 must annually submit an internal control and data security audit  
764 (Level 2) or its equivalent performed by a licensed certified  
765 public accountant to continue its approved status each year.



944116

766           (f) A third-party service must maintain a publicly  
767 available website that allows owners, registrants, lienholders,  
768 insurance companies, or their agents to search for notices sent  
769 pursuant to this section. The search results must exclude  
770 personal identifying information but provide the same  
771 information provided to the department.

772           (17) A lienor must accept either a copy of an electronic  
773 title or a paper title as evidence of a person's interest in a  
774 vehicle or vessel.

775           Section 5. This act shall take effect January 1, 2020.

776  
777 ===== T I T L E   A M E N D M E N T =====

778 And the title is amended as follows:

779           Delete everything before the enacting clause  
780 and insert:

781                                   A bill to be entitled  
782           An act relating to liens against motor vehicles and  
783           vessels; amending s. 559.917, F.S.; authorizing a  
784           person claiming a lien against a motor vehicle to  
785           obtain the release of the vehicle from a lien claimed  
786           by a motor vehicle repair shop under certain  
787           circumstances; amending s. 559.920, F.S.; prohibiting  
788           a motor vehicle repair shop from violating certain  
789           provisions; amending s. 713.585, F.S.; revising notice  
790           requirements for enforcing a lien by sale of a motor  
791           vehicle; revising requirements for notice of lien and  
792           notice of sale of a motor vehicle; requiring a lienor  
793           to make the motor vehicle available for inspection by  
794           notice recipients; revising requirements for transfer



944116

795 of title; authorizing a lienor to charge an  
796 administrative fee up to a certain amount; defining  
797 the term "administrative fee"; requiring a motor  
798 vehicle repair shop, garage, automotive service  
799 facility, or storage operator to use a third-party  
800 service to provide notices of lien and sale; providing  
801 an exception; defining the term "third-party service";  
802 requiring a third-party service to apply to and be  
803 approved by the Department of Highway Safety and Motor  
804 Vehicles; providing requirements; authorizing the  
805 department to deny, suspend, or revoke approval under  
806 certain circumstances; providing recordkeeping  
807 requirements; providing requirements for retaining  
808 approved status; requiring maintenance of a website  
809 for access to certain information; requiring a lienor  
810 to release certain personal property; requiring the  
811 lienor to release the vehicle upon payment of charges;  
812 requiring a lienor to accept a copy of an electronic  
813 title or a paper title as evidence of a person's  
814 interest in a vehicle; amending s. 713.78, F.S.;  
815 revising requirements for notice of lien for  
816 recovering, towing, or storing a vehicle or vessel;  
817 revising requirements for notice of the sale of such  
818 vehicle or vessel; revising requirements for transfer  
819 of title; authorizing a lienor to charge an  
820 administrative fee up to a certain amount; defining  
821 the term "administrative fee"; requiring a towing-  
822 storage operator to use a third-party service to  
823 provide notices of lien and sale; providing an



944116

824           exception; defining the term "third-party service";  
825           requiring a third-party service to apply to and be  
826           approved by the department; providing requirements;  
827           authorizing the department to deny, suspend, or revoke  
828           approval under certain circumstances; providing  
829           recordkeeping requirements; providing requirements for  
830           retaining approved status; requiring maintenance of a  
831           website for access to certain information; requiring a  
832           lienor to accept a copy of an electronic title or a  
833           paper title as evidence of a person's interest in a  
834           vehicle or vessel; providing an effective date.



688728

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
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The Committee on Judiciary (Stargel) recommended the following:

1           **Senate Substitute for Amendment (944116) (with title**  
2 **amendment)**

3  
4           Delete everything after the enacting clause  
5 and insert:

6           Section 1. Section 559.917, Florida Statutes, is amended to  
7 read:

8           559.917 Bond to release possessory lien claimed by motor  
9 vehicle repair shop.—

10           (1) (a) A Any customer or a person of record claiming a lien  
11 against a motor vehicle may obtain the release of the ~~her or his~~



688728

12 motor vehicle from any lien claimed under part II of chapter 713  
13 by a motor vehicle repair shop for repair work performed under a  
14 written repair estimate by filing with the clerk of the court in  
15 the circuit in which the disputed transaction occurred a cash or  
16 surety bond, payable to the person claiming the lien and  
17 conditioned for the payment of any judgment which may be entered  
18 on the lien. The bond shall be in the amount stated on the  
19 invoice required by s. 559.911, plus accrued storage charges, if  
20 any, less any amount paid to the motor vehicle repair shop as  
21 indicated on the invoice. The customer or person shall not be  
22 required to institute judicial proceedings in order to post the  
23 bond in the registry of the court and shall not, ~~nor shall the~~  
24 ~~customer~~ be required to use a particular form for posting the  
25 bond, ~~unless the clerk provides~~ ~~shall provide~~ such form to the  
26 customer or person for filing. Upon the posting of such bond,  
27 the clerk of the court shall automatically issue a certificate  
28 notifying the lienor of the posting of the bond and directing  
29 the lienor to release the ~~customer's~~ motor vehicle.

30 (b) The lienor shall have 60 days to file suit to recover  
31 the bond. The prevailing party in that action may be entitled to  
32 damages plus court costs and reasonable attorney ~~attorney's~~  
33 fees. If the lienor fails to file suit within 60 days after the  
34 posting of such bond, the bond shall be discharged by the clerk.

35 (2) The failure of a lienor to release or return to the  
36 customer or person the motor vehicle upon which any lien is  
37 claimed, upon receiving a copy of a certificate giving notice of  
38 the posting of the bond and directing release of the motor  
39 vehicle, shall subject the lienor to judicial proceedings which  
40 may be brought by the customer or person to compel compliance



688728

41 with the certificate. Whenever a customer or person brings an  
42 action to compel compliance with the certificate, the customer  
43 or person need only establish that:

44 (a) Bond in the amount of the invoice, plus accrued storage  
45 charges, if any, less any amount paid to the motor vehicle  
46 repair shop as indicated on the invoice, was posted;

47 (b) A certificate was issued pursuant to this section;

48 (c) The motor vehicle repair shop, or any employee or agent  
49 thereof who is authorized to release the motor vehicle, received  
50 a copy of a certificate issued pursuant to this section; and

51 (d) The motor vehicle repair shop or employee authorized to  
52 release the motor vehicle failed to release the motor vehicle.

53  
54 The customer or person, upon a judgment in her or his favor in  
55 an action brought under this subsection, may be entitled to  
56 damages plus court costs and reasonable attorney ~~attorney's~~ fees  
57 sustained by her or him by reason of such wrongful detention or  
58 retention. Upon a judgment in favor of the motor vehicle repair  
59 shop, the shop may be entitled to reasonable attorney ~~attorney's~~  
60 fees.

61 (3) A ~~Any~~ motor vehicle repair shop that ~~which~~, or an ~~any~~  
62 employee or agent thereof who is authorized to release the motor  
63 vehicle who, upon receiving a copy of a certificate giving  
64 notice of the posting of the bond in the required amount and  
65 directing release of the motor vehicle, fails to release or  
66 return the property to the customer or person pursuant to this  
67 section commits ~~is guilty of~~ a misdemeanor of the second degree,  
68 punishable as provided in s. 775.082 or s. 775.083.

69 (4) A ~~Any~~ customer or person who stops payment on a credit



688728

70 card charge or a check drawn in favor of a motor vehicle repair  
71 shop on account of an invoice or who fails to post a cash or  
72 surety bond pursuant to this section shall be prohibited from  
73 any recourse under this section with respect to the motor  
74 vehicle repair shop.

75 Section 2. Section 559.920, Florida Statutes, is amended to  
76 read:

77 559.920 Unlawful acts and practices.—It shall be a  
78 violation of this act for any motor vehicle repair shop or  
79 employee thereof to do any of the following:

80 (1) Engage or attempt to engage in repair work for  
81 compensation of any type without first being registered with or  
82 having submitted an affidavit of exemption to the department.†

83 (2) Make or charge for repairs which have not been  
84 expressly or impliedly authorized by the customer.†

85 (3) Misrepresent that repairs have been made to a motor  
86 vehicle.†

87 (4) Misrepresent that certain parts and repairs are  
88 necessary to repair a vehicle.†

89 (5) Misrepresent that the vehicle being inspected or  
90 diagnosed is in a dangerous condition or that the customer's  
91 continued use of the vehicle may be harmful or cause great  
92 damage to the vehicle.†

93 (6) Fraudulently alter any customer contract, estimate,  
94 invoice, or other document.†

95 (7) Fraudulently misuse any customer's credit card.†

96 (8) Make or authorize in any manner or by any means  
97 whatever any written or oral statement which is untrue,  
98 deceptive or misleading, and which is known, or which by the



688728

99 exercise of reasonable care should be known, to be untrue,  
100 deceptive or misleading.†

101 (9) Make false promises of a character likely to influence,  
102 persuade, or induce a customer to authorize the repair, service,  
103 or maintenance of a motor vehicle.†

104 (10) Substitute used, rebuilt, salvaged, or straightened  
105 parts for new replacement parts without notice to the motor  
106 vehicle owner and to her or his insurer if the cost of repair is  
107 to be paid pursuant to an insurance policy and the identity of  
108 the insurer or its claims adjuster is disclosed to the motor  
109 vehicle repair shop.†

110 (11) Cause or allow a customer to sign any work order that  
111 does not state the repairs requested by the customer or the  
112 automobile's odometer reading at the time of repair.†

113 (12) Fail or refuse to give to a customer a copy of any  
114 document requiring the customer's signature upon completion or  
115 cancellation of the repair work.†

116 (13) Willfully depart from or disregard accepted practices  
117 and professional standards.†

118 (14) Have repair work subcontracted without the knowledge  
119 or consent of the customer unless the motor vehicle repair shop  
120 or employee thereof demonstrates that the customer could not  
121 reasonably have been notified.†

122 (15) Conduct the business of motor vehicle repair in a  
123 location other than that stated on the registration  
124 certificate.†

125 (16) Rebuild or restore a rebuilt vehicle without the  
126 knowledge of the owner in such a manner that it does not conform  
127 to the original vehicle manufacturer's established repair



688728

128 procedures or specifications and allowable tolerances for the  
129 particular model and year. ~~7-08~~

130 (17) Perform any other act that is a violation of this part  
131 or that constitutes fraud or misrepresentation.

132 (18) Violate any provision of s. 713.585.

133 Section 3. Subsections (1) through (4), (9), and (13) of  
134 section 713.585, Florida Statutes, are amended, and subsections  
135 (14) through (18) are added to that section, to read:

136 713.585 Enforcement of lien by sale of motor vehicle.—A  
137 person claiming a lien under s. 713.58 for performing labor or  
138 services on a motor vehicle may enforce such lien by sale of the  
139 vehicle in accordance with the following procedures:

140 (1) The lienor or the lienor's agent must give notice of  
141 the lien, by certified mail, ~~return receipt requested, within 7~~  
142 ~~business days, excluding Saturday and Sunday, from the beginning~~  
143 ~~date of the assessment of storage charges on said motor vehicle,~~  
144 to the registered owner of the vehicle, to the customer as  
145 indicated on the order for repair, and to all other persons  
146 claiming an interest therein ~~in~~ or lien thereon, as disclosed by  
147 the records of the Department of Highway Safety and Motor  
148 Vehicles or as disclosed by the records of any corresponding  
149 agency of any other state in which the vehicle is identified  
150 through a records check of the National Motor Vehicle Title  
151 Information System or an equivalent commercially available  
152 system as being the current state where the vehicle is titled.  
153 Such notice must ~~contain~~:

154 (a) Be sent to the registered owner, the customer, and all  
155 other persons claiming an interest therein or lien thereon  
156 within 7 business days, excluding Saturday and Sunday, after the



688728

157 date on which storage charges begin to accrue on the vehicle.  
158 However, in no event shall the notice of lien be sent less than  
159 30 days before the sale of the motor vehicle.

160 (b) Be sent by certified mail with the last eight digits of  
161 the vehicle identification number of the motor vehicle subject  
162 to the lien clearly printed in the delivery address box and on  
163 the outside of the envelope sent to the registered owner, the  
164 customer, and all other persons claiming an interest therein or  
165 lien thereon.

166 (c) ~~(a)~~ Contain a description of the vehicle, including, at  
167 minimum, its year, make, vehicle identification number, and ~~the~~  
168 vehicle's location.

169 (d) ~~(b)~~ Contain the name and address of the owner of the  
170 vehicle, the customer as indicated on the order for repair, and  
171 any person claiming an interest therein ~~in~~ or lien thereon.

172 (e) ~~(c)~~ Contain the name, address, and telephone number of  
173 the lienor.

174 (f) ~~(d)~~ Contain notice that the lienor claims a lien on the  
175 vehicle for labor and services performed and storage charges, if  
176 any, and the cash sum which, if paid to the lienor, would be  
177 sufficient to redeem the vehicle from the lien claimed by the  
178 lienor.

179 (g) Contain the motor vehicle repair shop's registration  
180 number, owner's name, and physical address and the entity name,  
181 as registered with the Department of Agriculture and Consumer  
182 Services, of the business where the repair work or storage  
183 occurred, which must also appear on the outside of the envelope  
184 sent to the registered owner, the customer, and all other  
185 persons claiming an interest in or lien on the vehicle.



688728

186        (h) Contain the name of the person or entity that  
187 authorized the labor or services on the vehicle.

188        (i) Contain an itemized statement of the amount claimed to  
189 be owed to the lienor, including the date the vehicle was  
190 dropped off for repairs; the date the repairs were completed;  
191 the date the customer was notified of the completion of the  
192 repairs; the amount due for repairs, adjustments, or  
193 modifications to the vehicle; any administrative fees; and any  
194 daily storage charges.

195        (j)~~(e)~~ Contain notice that the lien claimed by the lienor  
196 is subject to enforcement pursuant to this section and that the  
197 vehicle may be sold to satisfy the lien.

198        (k)~~(f)~~ Contain ~~if known,~~ the date, time, and location of  
199 any proposed or scheduled sale of the vehicle. A vehicle may not  
200 be sold earlier than 60 days after completion of the repair  
201 work.

202        (l)~~(g)~~ Contain notice that the owner of the vehicle or any  
203 person claiming an interest therein ~~in~~ or lien thereon has a  
204 right to a hearing at any time before the scheduled date of sale  
205 by filing a demand for hearing with the clerk of the circuit  
206 court in the county in which the vehicle is held and mailing  
207 copies of the demand for hearing to all other owners and lienors  
208 as reflected on the notice.

209        (m)~~(h)~~ Contain notice that the owner of the vehicle has a  
210 right to recover possession of the vehicle without instituting  
211 judicial proceedings by posting bond in accordance with s.  
212 559.917.

213        (n)~~(i)~~ Contain notice that any proceeds from the sale of  
214 the vehicle remaining after payment of the amount claimed to be



215 due and owing to the lienor will be deposited with the clerk of  
216 the circuit court for disposition upon court order pursuant to  
217 subsection (8).

218 (o)~~(j)~~ Contain notice that a lienholder, if any, has the  
219 right, as specified in subsection (5), to demand a hearing or to  
220 post a bond.

221 (p) Contain a statement that the lienor will make the  
222 vehicle available for inspection during regular business hours  
223 within 3 business days after receiving a written request to  
224 inspect the vehicle from a notice recipient, who may present  
225 either a copy of an electronic title or a paper title as  
226 evidence of his or her interest in and right to inspect the  
227 vehicle.

228 (q) Contain the address at which the vehicle is physically  
229 located.

230 (2) If attempts to locate the owner or lienholder are  
231 unsuccessful after a check of the records of the Department of  
232 Highway Safety and Motor Vehicles and any state disclosed by the  
233 check of the National Motor Vehicle Title Information System or  
234 an equivalent commercially available system, the lienor must  
235 notify the local law enforcement agency in writing by certified  
236 mail or acknowledged hand delivery that the lienor has been  
237 unable to locate the owner or lienholder, that a physical search  
238 of the vehicle has disclosed no ownership information, and that  
239 a good faith effort, including records checks of the Department  
240 of Highway Safety and Motor Vehicles database and the National  
241 Motor Vehicle Title Information System or an equivalent  
242 commercially available system, has been made. A description of  
243 the motor vehicle which includes the year, make, and



688728

244 identification number must be given on the notice. This  
245 notification must take place within 7 business days, excluding  
246 Saturday and Sunday, after from the beginning date on which of  
247 ~~the assessment of~~ storage charges begin to accrue on the said  
248 ~~motor~~ vehicle. For purposes of this subsection ~~paragraph~~, the  
249 term "good faith effort" means that the following checks have  
250 been performed by the company to establish the prior state of  
251 registration and title:

252 (a) A check of the department's ~~Department of Highway~~  
253 ~~Safety and Motor Vehicles~~ database for the owner and any  
254 lienholder. ~~;~~

255 (b) A check of the federally mandated electronic National  
256 Motor Vehicle Title Information System or an equivalent  
257 commercially available system to determine the state of  
258 registration when there is not a current title or registration  
259 record for the vehicle on file with the department. ~~of Highway~~  
260 ~~Safety and Motor Vehicles;~~

261 (c) A check of the vehicle for any type of tag, tag record,  
262 temporary tag, or regular tag. ~~;~~

263 (d) A check of the vehicle for an inspection sticker or  
264 other stickers and decals that could indicate the state of  
265 possible registration. ~~;~~ ~~and~~

266 (e) A check of the interior of the vehicle for any papers  
267 that could be in the glove box, trunk, or other areas for the  
268 state of registration.

269 (3) A vehicle may not be sold earlier than 60 days after  
270 completion of the repair work. If the date of the sale was not  
271 included in the notice of lien required in subsection (1),  
272 notice of the sale must be sent by certified mail at least ~~;~~



688728

273 ~~return receipt requested, not less than~~ 15 days before the date  
274 of sale, to the customer as indicated on the order for repair,  
275 and to all other persons claiming an interest in or lien on the  
276 motor vehicle, as disclosed by the records of the Department of  
277 Highway Safety and Motor Vehicles or of a corresponding agency  
278 of any other state in which the vehicle appears to have been  
279 registered after completion of a check of the National Motor  
280 Vehicle Title Information System or an equivalent commercially  
281 available system. Such notice must:

282 (a) Be sent by certified mail with the last eight digits of  
283 the vehicle identification number of the motor vehicle subject  
284 to the sale clearly identified and printed in the delivery  
285 address box and on the outside of the envelope sent to the  
286 registered owner, the customer, and all other persons claiming  
287 an interest therein or lien thereon.

288 (b) Contain the motor vehicle repair shop's registration  
289 number, owner's name, and physical address and the entity name,  
290 as registered with the Department of Agriculture and Consumer  
291 Services, of the business where the repair work or storage  
292 occurred, which must also appear on the outside of the envelope  
293 containing the notice of sale in the return address section of  
294 the envelope.

295 (4) The lienor, at least 15 days before the proposed or  
296 scheduled date of sale of the vehicle, shall publish the notice  
297 required by this section once in a newspaper circulated in the  
298 county where the vehicle repair work was completed and where the  
299 sale is to take place held. A certificate of compliance with the  
300 notification provisions of this section, which includes the  
301 vehicle identification number, verified by the lienor, together



688728

302 with a copy of the notice of lien required by subsection (1) and  
303 the notice of sale required by subsection (3), which must  
304 include and return receipt for mailing of the notice required by  
305 ~~this section,~~ proof of publication, and checks of the Department  
306 of Highway Safety and Motor Vehicles and the National Motor  
307 Vehicle Title Information System or an equivalent commercially  
308 available system, must be duly and expeditiously filed with the  
309 clerk of the circuit court in the county where the vehicle is  
310 held. The lienor, at the time of filing the certificate of  
311 compliance, must pay to the clerk of that court a service charge  
312 of \$10 for indexing and recording the certificate.

313 (9) (a) A copy of the certificate of compliance, which must  
314 include the vehicle identification number, and the report of  
315 sale, certified by the clerk of the court, a copy of the notice  
316 of lien required by subsection (1) and the notice of sale  
317 required by subsection (3), and proof of the required check of  
318 the National Motor Vehicle Title Information System or an  
319 equivalent commercially available system shall constitute  
320 satisfactory proof for application to the Department of Highway  
321 Safety and Motor Vehicles for transfer of title, together with  
322 any other proof required by any rules and regulations of the  
323 department.

324 (b) The Department of Highway Safety and Motor Vehicles may  
325 not approve an application for transfer of title if the  
326 application fails to include a copy of the notice of lien  
327 required by subsection (1) and the notice of sale required by  
328 subsection (3). The vehicle identification number on the notice  
329 of lien must match the vehicle identification number of the  
330 vehicle that is the subject of the transfer of title.



688728

331           (13) A failure to make good faith efforts as defined in  
332 subsection (2) precludes the imposition of any storage charges  
333 against the vehicle. If a lienor fails to provide notice to any  
334 person claiming a lien on a vehicle under subsection (1) within  
335 7 business days after the date assessment of storage of the  
336 vehicle charges has begun, then the lienor may not charge the  
337 person is precluded from charging for more than 7 days of  
338 storage, but such failure to provide timely notice does not  
339 affect charges made for repairs, adjustments, or modifications  
340 to the vehicle or the priority of liens on the vehicle.

341           (14) At any time before the proposed or scheduled date of  
342 sale of a vehicle, the owner, the customer, or a person claiming  
343 an interest therein or lien thereon may request to inspect the  
344 vehicle. The lienor must make the vehicle available for  
345 inspection during regular business hours within 3 business days  
346 after receiving a written request to inspect the vehicle.

347           (15) (a) A lienor or the lienor's agent may charge an  
348 administrative fee to the registered owner, the insurance  
349 company insuring the vehicle, or a person of record claiming a  
350 lien against the vehicle to obtain release of the vehicle. Such  
351 administrative fee may not exceed \$250. For purposes of this  
352 paragraph, the term "administrative fee" means a lien fee or any  
353 fee imposed by the lienor or the lienor's agent for  
354 administrative costs added to the amount due for storage,  
355 repairs, adjustments, or modifications to the vehicle.

356           (b) A lienor or the lienor's agent may not charge fees or  
357 costs, other than those authorized in this section, that exceed  
358 \$250.

359           (16) A motor vehicle repair shop, garage, automotive



688728

360 service facility, or storage operator must use a third-party  
361 service approved by the Department of Highway Safety and Motor  
362 Vehicles to transmit all notices required by this section. If  
363 there is no third-party service approved by the department, the  
364 motor vehicle repair shop, garage, automotive service facility,  
365 or storage operator may mail the notices and provide evidence of  
366 compliance with this section upon submission of an application  
367 for certificate of title or certificate of destruction.

368 (a) For purposes of this subsection, the term "third-party  
369 service" means a qualified business entity that, upon a request  
370 submitted through a website by a motor vehicle repair shop,  
371 garage, automotive service facility, or storage operator:

372 1. Accesses the National Motor Vehicle Title Information  
373 System records to obtain the last state of record of the  
374 vehicle.

375 2. Accesses the owner, lienholder, and insurer information,  
376 as applicable, for a vehicle from the department.

377 3. Electronically generates the notices required of a motor  
378 vehicle repair shop, a garage, an automotive service facility,  
379 and a storage operator by this section through the website.

380 4. Prints and sends the notices required under this section  
381 to each owner, lienholder, and insurer of record by certified  
382 mail.

383 5. Electronically returns tracking information or other  
384 proof of mailing and delivery of the notices to the motor  
385 vehicle repair shop, the garage, the automotive service  
386 facility, and the storage operator.

387 6. Electronically reports to the department, via an  
388 electronic data exchange process using a web interface, the



389 following information related to the repair and storage notices:

390 a. The vehicle identification number.

391 b. The license plate number.

392 c. The name and address of the repair shop or lienor.

393 d. The physical location of the vehicle.

394 e. The date on which the vehicle was dropped off for  
395 repairs.

396 f. The date on which the repairs were completed.

397 g. The amount due for repairs and the storage amount per  
398 day.

399 h. The dates on which the notice was mailed and delivered.

400 i. The date on which the owner was notified that the  
401 repairs were completed.

402 j. Other information required by the department.

403 (b) A third-party service must apply to and be approved by  
404 the department in order to provide notices under this section.

405 The department shall prescribe the format for the application.

406 The department may approve the applicant as qualified to perform  
407 the services provided in paragraph (a) if the applicant:

408 1. Provides the department with a \$1 million bond.

409 2. Submits an acceptable internal control and data security  
410 audit (Level 2) or its equivalent performed by a licensed  
411 certified public accountant.

412 3. Successfully demonstrates the ability to electronically  
413 provide required data to the department via an electronic data  
414 exchange process using a web interface.

415 (c) The department may deny, suspend, or revoke approval of  
416 a third-party service if the department determines that the  
417 third-party service has committed an act of fraud or



688728

418 misrepresentation related to a notice required by this section.

419 (d) A third-party service must maintain all records related  
420 to providing notices under this section for 5 years and allow  
421 the department to inspect and copy such records upon request.  
422 The records may be maintained in an electronic format.

423 (e) A third-party service must annually provide the  
424 department with evidence that it maintains a \$1 million bond and  
425 must annually submit an internal control and data security audit  
426 (Level 2) or its equivalent performed by a licensed certified  
427 public accountant to continue its approved status each year.

428 (f) A third-party service must maintain a publicly  
429 available website that allows owners, registrants, lienholders,  
430 insurance companies, or their agents to search for notices sent  
431 pursuant to this section. The search results must exclude  
432 personal identifying information but provide the same  
433 information provided to the department.

434 (17) A lienor must release to the owner, lienholder, or  
435 agent thereof all of the personal property found in but not  
436 affixed to the vehicle. Upon payment of the charges owed, the  
437 lienor must release the vehicle to the paying owner, lienholder,  
438 or agent thereof.

439 (18) A lienor must accept either a copy of an electronic  
440 title or a paper title as evidence of a person's interest in a  
441 vehicle.

442 Section 4. Subsection (4), paragraphs (a) and (b) of  
443 subsection (5), and subsections (6) and (9) of section 713.78,  
444 Florida Statutes, are amended, and subsections (14) through (17)  
445 are added to that section, to read:

446 713.78 Liens for recovering, towing, or storing vehicles



688728

447 and vessels.-

448 (4) (a) A ~~Any~~ person regularly engaged in the business of  
449 recovering, towing, or storing vehicles or vessels who comes  
450 into possession of a vehicle or vessel pursuant to subsection  
451 (2), and who claims a lien for recovery, towing, or storage  
452 services, shall give notice, by certified mail, to the  
453 registered owner, the insurance company insuring the vehicle  
454 notwithstanding ~~the provisions of~~ s. 627.736, and ~~to~~ all persons  
455 claiming a lien thereon, as disclosed by the records in the  
456 Department of Highway Safety and Motor Vehicles or as disclosed  
457 by the records of any corresponding agency in any other state in  
458 which the vehicle is identified through a records check of the  
459 National Motor Vehicle Title Information System or an equivalent  
460 commercially available system as being titled or registered.

461 (b) Whenever a ~~any~~ law enforcement agency authorizes the  
462 removal of a vehicle or vessel or whenever a ~~any~~ towing service,  
463 garage, repair shop, or automotive service, storage, or parking  
464 place notifies the law enforcement agency of possession of a  
465 vehicle or vessel pursuant to s. 715.07(2) (a)2., the law  
466 enforcement agency of the jurisdiction where the vehicle or  
467 vessel is stored shall contact the Department of Highway Safety  
468 and Motor Vehicles, or the appropriate agency of the state of  
469 registration, if known, within 24 hours through the medium of  
470 electronic communications, giving the full description of the  
471 vehicle or vessel. Upon receipt of the full description of the  
472 vehicle or vessel, the department shall search its files to  
473 determine the owner's name, the insurance company insuring the  
474 vehicle or vessel, and whether any person has filed a lien upon  
475 the vehicle or vessel as provided in s. 319.27(2) and (3) and



688728

476 notify the applicable law enforcement agency within 72 hours.  
477 The person in charge of the towing service, garage, repair shop,  
478 or automotive service, storage, or parking place shall obtain  
479 such information from the applicable law enforcement agency  
480 within 5 days after the date of storage and shall give notice  
481 pursuant to paragraph (a). The department may release the  
482 insurance company information to the requestor notwithstanding  
483 ~~the provisions of s. 627.736.~~

484       (c) The notice of lien must be sent by certified mail to  
485 the registered owner, the insurance company insuring the vehicle  
486 notwithstanding s. 627.736, and all other persons claiming a  
487 lien thereon shall be sent within 7 business days, excluding  
488 Saturday and Sunday, after the date of storage of the vehicle or  
489 vessel. However, in no event shall the notice of lien be sent  
490 less than 30 days before the sale of to the registered owner,  
491 the insurance company insuring the vehicle notwithstanding the  
492 provisions of s. 627.736, and all persons of record claiming a  
493 lien against the vehicle or vessel. The notice must state:

494       1. If the claim of lien is for a vehicle, the last eight  
495 digits of the vehicle identification number of the vehicle  
496 subject to the lien, or, if the claim of lien is for a vessel,  
497 the hull identification number of the vessel subject to the  
498 lien, clearly printed in the delivery address box and on the  
499 outside of the envelope sent to the registered owner and all  
500 other persons claiming an interest therein or lien thereon.

501       2. The name, physical address, and telephone number of the  
502 lienor, and the entity name, as registered with the Division of  
503 Corporations, of the business where the towing and storage  
504 occurred, which must also appear on the outside of the envelope



688728

505 sent to the registered owner and all other persons claiming an  
506 interest in or lien on the vehicle or vessel.

507 3. ~~It shall state~~ The fact of possession of the vehicle or  
508 vessel.

509 4. The name of the person or entity that authorized the  
510 lienor to take possession of the vehicle or vessel.

511 5. That a lien as provided in subsection (2) is claimed.

512 6. That charges have accrued and include an itemized  
513 statement of the amount thereof.

514 7. That the lien is subject to enforcement under pursuant  
515 to law, and that the owner or lienholder, if any, has the right  
516 to a hearing as set forth in subsection (5). ~~and~~

517 8. That any vehicle or vessel that ~~which~~ remains unclaimed,  
518 or for which the charges for recovery, towing, or storage  
519 services remain unpaid, may be sold free of all prior liens  
520 after 35 days after the vehicle or vessel is stored by the  
521 lienor if the vehicle or vessel is more than 3 years of age or  
522 after 50 days after the vehicle or vessel is stored by the  
523 lienor if the vehicle or vessel is 3 years of age or less.

524 9. The address at which the vehicle or vessel is physically  
525 located.

526 (d) The notice of lien may not be sent to the registered  
527 owner, the insurance company insuring the vehicle or vessel, and  
528 all other persons claiming a lien thereon less than 30 days  
529 before the sale of the vehicle or vessel.

530 (e) ~~(d)~~ If attempts to locate the name and address of the  
531 owner or lienholder prove unsuccessful, the towing-storage  
532 operator shall, after 7 business ~~working~~ days, excluding  
533 Saturday and Sunday, after ~~of~~ the initial tow or storage, notify



688728

534 the public agency of jurisdiction where the vehicle or vessel is  
535 stored in writing by certified mail or acknowledged hand  
536 delivery that the towing-storage company has been unable to  
537 locate the name and address of the owner or lienholder and a  
538 physical search of the vehicle or vessel has disclosed no  
539 ownership information and a good faith effort has been made,  
540 including records checks of the Department of Highway Safety and  
541 Motor Vehicles database and the National Motor Vehicle Title  
542 Information System or an equivalent commercially available  
543 system. For purposes of this paragraph and subsection (9), the  
544 term "good faith effort" means that the following checks have  
545 been performed by the company to establish the prior state of  
546 registration and for title:

547 1. A check of the department's ~~Department of Highway Safety~~  
548 ~~and Motor Vehicles~~ database for the owner and any lienholder.

549 2. A check of the electronic National Motor Vehicle Title  
550 Information System or an equivalent commercially available  
551 system to determine the state of registration when there is not  
552 a current registration record for the vehicle or vessel on file  
553 with the department ~~of Highway Safety and Motor Vehicles~~.

554 3. A check of the vehicle or vessel for any type of tag,  
555 tag record, temporary tag, or regular tag.

556 4. A check of the law enforcement report for a tag number  
557 or other information identifying the vehicle or vessel, if the  
558 vehicle or vessel was towed at the request of a law enforcement  
559 officer.

560 5. A check of the trip sheet or tow ticket of the tow truck  
561 operator to determine whether ~~see if~~ a tag was on the vehicle or  
562 vessel at the beginning of the tow, if a private tow.



688728

563           6. If there is no address of the owner on the impound  
564 report, a check of the law enforcement report to determine  
565 whether ~~see if~~ an out-of-state address is indicated from driver  
566 license information.

567           7. A check of the vehicle or vessel for an inspection  
568 sticker or other stickers and decals that may indicate a state  
569 of possible registration.

570           8. A check of the interior of the vehicle or vessel for any  
571 papers that may be in the glove box, trunk, or other areas for a  
572 state of registration.

573           9. A check of the vehicle for a vehicle identification  
574 number.

575           10. A check of the vessel for a vessel registration number.

576           11. A check of the vessel hull for a hull identification  
577 number which should be carved, burned, stamped, embossed, or  
578 otherwise permanently affixed to the outboard side of the  
579 transom or, if there is no transom, to the outmost seaboard side  
580 at the end of the hull that bears the rudder or other steering  
581 mechanism.

582           (5) (a) The owner of a vehicle or vessel removed pursuant to  
583 ~~the provisions of~~ subsection (2), or any person claiming a lien,  
584 other than the towing-storage operator, within 10 days after the  
585 time she or he has knowledge of the location of the vehicle or  
586 vessel, may file a complaint in the county court of the county  
587 in which the vehicle or vessel is stored to determine whether if  
588 her or his property was wrongfully taken or withheld ~~from her or~~  
589 ~~him~~.

590           (b) At any time before the sale of the vehicle or vessel  
591 ~~Upon filing of a complaint~~, an owner or lienholder may have her



688728

592 or his vehicle or vessel released upon posting with the court a  
593 cash or surety bond or other adequate security equal to the  
594 amount of the charges for towing or storage and lot rental  
595 amount to ensure the payment of such charges in the event she or  
596 he does not prevail. Upon the posting of the bond and the  
597 payment of the applicable fee set forth in s. 28.24, the clerk  
598 of the court shall issue a certificate notifying the lienor of  
599 the posting of the bond and directing the lienor to release the  
600 vehicle or vessel. At the time of such release, after reasonable  
601 inspection, she or he shall give a receipt to the towing-storage  
602 company reciting any claims she or he has for loss or damage to  
603 the vehicle or vessel or the contents thereof.

604 (6) A ~~Any~~ vehicle or vessel that ~~which~~ is stored pursuant  
605 to subsection (2) and ~~which~~ remains unclaimed, or for which  
606 reasonable charges for recovery, towing, or storing remain  
607 unpaid, and any contents not released pursuant to subsection  
608 (10), may be sold by the owner or operator of the storage space  
609 for such towing or storage charge ~~after~~ 35 days after ~~from the~~  
610 ~~time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if  
611 the vehicle or vessel is more than 3 years of age or ~~after~~ 50  
612 days after ~~following the time~~ the vehicle or vessel is stored by  
613 the lienor ~~therein~~ if the vehicle or vessel is 3 years of age or  
614 less. The sale shall be at public sale for cash. If the date of  
615 the sale was not included in the notice required in subsection  
616 (4), notice of the sale shall be given to the person in whose  
617 name the vehicle or vessel is registered and to all persons  
618 claiming a lien on the vehicle or vessel as shown on the records  
619 of the Department of Highway Safety and Motor Vehicles or of any  
620 corresponding agency in any other state in which the vehicle is



688728

621 identified through a records check of the National Motor Vehicle  
622 Title Information System or an equivalent commercially available  
623 system as being titled. Notice of the sale must ~~shall~~ be sent by  
624 certified mail. The notice must have clearly identified and  
625 printed, if the claim of lien is for a motor vehicle, the last  
626 eight digits of the vehicle identification number of the motor  
627 vehicle subject to the lien, or, if the claim of lien is for a  
628 vessel, the hull identification number of the vessel subject to  
629 the lien, in the delivery address box and on the outside of the  
630 envelope sent to the registered owner and all other persons  
631 claiming an interest therein or lien thereon. The notice must be  
632 sent to the owner of the vehicle or vessel and the person having  
633 the recorded lien on the vehicle or vessel at the address shown  
634 on the records of the registering agency at least ~~and shall be~~  
635 ~~mailed not less than~~ 15 days before the sale of the vehicle or  
636 vessel ~~date of the sale~~. The notice must state the name,  
637 physical address, and telephone number of the lienor, and the  
638 vehicle identification number if the claim of lien is for a  
639 vehicle or the hull identification number if the claim of lien  
640 is for a vessel, all of which must also appear in the return  
641 address section on the outside of the envelope containing the  
642 notice of sale. After diligent search and inquiry, if the name  
643 and address of the registered owner or the owner of the recorded  
644 lien cannot be ascertained, the requirements of notice by mail  
645 may be dispensed with. In addition to the notice by mail, public  
646 notice of the time and place of sale shall be made by publishing  
647 a notice thereof one time, at least 10 days before ~~prior to~~ the  
648 date of the sale, in a newspaper of general circulation in the  
649 county in which the sale is to be held. The proceeds of the



688728

650 sale, after payment of reasonable towing and storage charges,  
651 and costs of the sale, in that order of priority, shall be  
652 deposited with the clerk of the circuit court for the county if  
653 the owner or lienholder is absent, and the clerk shall hold such  
654 proceeds subject to the claim of the owner or lienholder legally  
655 entitled thereto. The clerk shall be entitled to receive 5  
656 percent of such proceeds for the care and disbursement thereof.  
657 The certificate of title issued under this law shall be  
658 discharged of all liens unless otherwise provided by court  
659 order. The owner or lienholder may file a complaint after the  
660 vehicle or vessel has been sold in the county court of the  
661 county in which it is stored. Upon determining the respective  
662 rights of the parties, the court may award damages, attorney  
663 attorney's fees, and costs in favor of the prevailing party.

664 (9) Failure to make good faith ~~best~~ efforts to comply with  
665 the notice requirements of this section precludes ~~shall preclude~~  
666 the imposition of any storage charges against the ~~such~~ vehicle  
667 or vessel. If a lienor fails to provide notice to a person  
668 claiming a lien on a vehicle or vessel in accordance with  
669 subsection (4), the lienor may not charge the person for more  
670 than 7 days of storage, but such failure does not affect charges  
671 made for towing the vehicle or vessel or the priority of liens  
672 on the vehicle or vessel.

673 (14) (a) A copy of the notice of lien required by subsection  
674 (4) and the notice of sale required by subsection (6), which  
675 must include the vehicle identification number if the claim of  
676 lien is for a vehicle or the hull identification number if the  
677 claim of lien is for a vessel, and proof of the required check  
678 of the National Motor Vehicle Title Information System or an



679 equivalent commercially available system shall constitute  
680 satisfactory proof for application to the Department of Highway  
681 Safety and Motor Vehicles for transfer of title, together with  
682 any other proof required by any rules and regulations of the  
683 department.

684 (b) The Department of Highway Safety and Motor Vehicles may  
685 not approve an application for transfer of title if the  
686 application fails to include a copy of the notice of lien  
687 required by subsection (4) and the notice of sale required by  
688 subsection (6). The vehicle or hull identification number on the  
689 notice of lien must match the vehicle or hull identification  
690 number of the vehicle or vessel that is the subject of the  
691 transfer of title.

692 (15) (a) A lienor or the lienor's agent may charge an  
693 administrative fee to the registered owner, the insurance  
694 company insuring the vehicle or vessel, or a person claiming a  
695 lien against the vehicle or vessel to obtain release of the  
696 vehicle or vessel. Such administrative fee may not exceed \$250.  
697 For purposes of this paragraph, the term "administrative fee"  
698 means a lien fee or any fee imposed by the lienor or the  
699 lienor's agent for administrative costs added to the amount due  
700 for towing and storing the vehicle or vessel.

701 (b) A lienor or the lienor's agent may not charge fees or  
702 costs, other than those authorized in this section or ss.  
703 125.0103 and 166.043, that exceed \$250.

704 (16) A towing-storage operator must use a third-party  
705 service approved by the Department of Highway Safety and Motor  
706 Vehicles to transmit all notices required by this section. If  
707 there is no third-party service approved by the department, the



688728

708 towing-storage operator may mail the notices and provide  
709 evidence of compliance with this section upon submission of an  
710 application for certificate of title or certificate of  
711 destruction.

712 (a) For purposes of this subsection, the term "third-party  
713 service" means a qualified business entity that, upon a request  
714 submitted through a website by a towing-storage operator:

715 1. Accesses the National Motor Vehicle Title Information  
716 System records to obtain the last state of record of the  
717 vehicle.

718 2. Accesses the owner, lienholder, and insurer information,  
719 as applicable, for a vehicle or vessel from the department.

720 3. Electronically generates the notices required of a  
721 towing-storage operator by this section through the website.

722 4. Prints and sends the notices required under this section  
723 to each owner, lienholder, and insurer of record by certified  
724 mail.

725 5. Electronically returns tracking information or other  
726 proof of mailing and delivery of the notices to the towing-  
727 storage operator.

728 6. Electronically reports to the department, via an  
729 electronic data exchange process using a web interface, the  
730 following information related to the towing and storage notice:

731 a. The vehicle identification number or vessel hull  
732 identification number.

733 b. The license plate number, if applicable.

734 c. The name and address of the towing-storage operator or  
735 lienor.

736 d. The physical location of the vehicle or vessel.



737       e. The date on which the vehicle or vessel was towed.  
738       f. The amount of storage fees owed at the time of the  
739 notice.  
740       g. The date of assessment of storage charges.  
741       h. The dates on which the notice was mailed and delivered.  
742       i. Other information required by the department.  
743       (b) A third-party service must apply to and be approved by  
744 the department in order to provide notices under this section.  
745 The department shall prescribe the format for the application.  
746 The department may approve the applicant as qualified to perform  
747 the services provided in paragraph (a) if the applicant:  
748       1. Provides the department with a \$1 million bond.  
749       2. Submits an acceptable internal control and data security  
750 audit (Level 2) or its equivalent performed by a licensed  
751 certified public accountant.  
752       3. Successfully demonstrates the ability to electronically  
753 provide required data to the department via an electronic data  
754 exchange process using a web interface.  
755       (c) The department may deny, suspend, or revoke approval of  
756 a third-party service if the department determines that the  
757 third-party service has committed an act of fraud or  
758 misrepresentation related to a notice required by this section.  
759       (d) A third-party service must maintain all records related  
760 to providing notices under this section for 5 years and allow  
761 the department to inspect and copy such records upon request.  
762 The records may be maintained in an electronic format.  
763       (e) A third-party service must annually provide the  
764 department with evidence that it maintains a \$1 million bond and  
765 must annually submit an internal control and data security audit



688728

766 (Level 2) or its equivalent performed by a licensed certified  
767 public accountant to continue its approved status each year.

768 (f) A third-party service must maintain a publicly  
769 available website that allows owners, registrants, lienholders,  
770 insurance companies, or their agents to search for notices sent  
771 pursuant to this section. The search results must exclude  
772 personal identifying information but provide the same  
773 information provided to the department.

774 (17) A lienor must accept either a copy of an electronic  
775 title or a paper title as evidence of a person's interest in a  
776 vehicle or vessel.

777 Section 5. This act shall take effect January 1, 2020.

778  
779 ===== T I T L E A M E N D M E N T =====

780 And the title is amended as follows:

781 Delete everything before the enacting clause  
782 and insert:

783 A bill to be entitled  
784 An act relating to liens against motor vehicles and  
785 vessels; amending s. 559.917, F.S.; authorizing a  
786 person claiming a lien against a motor vehicle to  
787 obtain the release of the vehicle from a lien claimed  
788 by a motor vehicle repair shop under certain  
789 circumstances; amending s. 559.920, F.S.; prohibiting  
790 a motor vehicle repair shop from violating certain  
791 provisions; amending s. 713.585, F.S.; revising notice  
792 requirements for enforcing a lien by sale of a motor  
793 vehicle; revising requirements for notice of lien and  
794 notice of sale of a motor vehicle; requiring a lienor



688728

795 to make the motor vehicle available for inspection by  
796 notice recipients; revising requirements for transfer  
797 of title; authorizing a lienor to charge an  
798 administrative fee up to a certain amount; defining  
799 the term "administrative fee"; requiring a motor  
800 vehicle repair shop, garage, automotive service  
801 facility, or storage operator to use a third-party  
802 service to provide notices of lien and sale; providing  
803 an exception; defining the term "third-party service";  
804 requiring a third-party service to apply to and be  
805 approved by the Department of Highway Safety and Motor  
806 Vehicles; providing requirements; authorizing the  
807 department to deny, suspend, or revoke approval under  
808 certain circumstances; providing recordkeeping  
809 requirements; providing requirements for retaining  
810 approved status; requiring maintenance of a website  
811 for access to certain information; requiring a lienor  
812 to release certain personal property; requiring the  
813 lienor to release the vehicle upon payment of charges;  
814 requiring a lienor to accept a copy of an electronic  
815 title or a paper title as evidence of a person's  
816 interest in a vehicle; amending s. 713.78, F.S.;  
817 revising requirements for notice of lien for  
818 recovering, towing, or storing a vehicle or vessel;  
819 revising requirements for notice of the sale of such  
820 vehicle or vessel; revising requirements for transfer  
821 of title; authorizing a lienor to charge an  
822 administrative fee up to a certain amount; defining  
823 the term "administrative fee"; requiring a towing-



688728

824 storage operator to use a third-party service to  
825 provide notices of lien and sale; providing an  
826 exception; defining the term "third-party service";  
827 requiring a third-party service to apply to and be  
828 approved by the department; providing requirements;  
829 authorizing the department to deny, suspend, or revoke  
830 approval under certain circumstances; providing  
831 recordkeeping requirements; providing requirements for  
832 retaining approved status; requiring maintenance of a  
833 website for access to certain information; requiring a  
834 lienor to accept a copy of an electronic title or a  
835 paper title as evidence of a person's interest in a  
836 vehicle or vessel; providing an effective date.

By the Committee on Banking and Insurance; and Senator Stargel

597-03479-19

2019772c1

1 A bill to be entitled  
 2 An act relating to liens against motor vehicles and  
 3 vessels; amending s. 559.917, F.S.; authorizing a  
 4 person claiming a lien against a motor vehicle to  
 5 obtain the release of the vehicle from a lien claimed  
 6 by a motor vehicle repair shop under certain  
 7 circumstances; amending s. 559.920, F.S.; prohibiting  
 8 a motor vehicle repair shop from violating certain  
 9 provisions; amending s. 713.585, F.S.; revising notice  
 10 requirements for enforcing a lien by sale of a motor  
 11 vehicle; revising requirements for notice of lien and  
 12 notice of sale of a motor vehicle; requiring the  
 13 lienor to make the motor vehicle available for  
 14 inspection by notice recipients; revising requirements  
 15 for transfer of title; authorizing a lienor to charge  
 16 an administrative fee up to a certain amount; defining  
 17 the term "administrative fee"; requiring a lienor to  
 18 use a third-party service to provide notices of lien  
 19 and sale; providing an exception; defining the term  
 20 "third-party service"; establishing qualifications for  
 21 approval of third-party services; authorizing the  
 22 Department of Highway Safety and Motor Vehicles to  
 23 deny, suspend, or revoke approval under certain  
 24 circumstances; providing certain recordkeeping  
 25 requirements; requiring a third-party service to  
 26 annually take certain actions to continue to be  
 27 approved; requiring a third-party service to maintain  
 28 a website that offers specified information; requiring  
 29 a lienor to release certain personal property;

Page 1 of 30

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597-03479-19

2019772c1

30 requiring release of the vehicle upon payment of  
 31 charges; requiring a lienor to accept an electronic or  
 32 paper title as evidence of a person's interest in a  
 33 vehicle; amending s. 713.78, F.S.; revising  
 34 requirements for notice of lien for recovering,  
 35 towing, or storing a vehicle or vessel; revising  
 36 requirements for notice of the sale of such vehicle or  
 37 vessel; revising requirements for transfer of title;  
 38 authorizing a lienor to charge an administrative fee  
 39 up to a certain amount; defining the term  
 40 "administrative fee"; requiring a lienor to use a  
 41 third-party service to provide notices of lien and  
 42 sale; providing an exception; defining the term  
 43 "third-party service"; establishing qualifications for  
 44 approval of third-party services; authorizing the  
 45 department to deny, suspend, or revoke approval under  
 46 certain circumstances; providing certain recordkeeping  
 47 requirements; requiring a third-party service to  
 48 annually take certain actions to continue to be  
 49 approved; requiring a third-party service to maintain  
 50 a website that offers specified information; requiring  
 51 a lienor to accept an electronic or paper title as  
 52 evidence of a person's interest in a vehicle or  
 53 vessel; providing an effective date.

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

56

57 Section 1. Section 559.917, Florida Statutes, is amended to  
 58 read:

Page 2 of 30

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597-03479-19

2019772c1

59 559.917 Bond to release possessory lien claimed by motor  
60 vehicle repair shop.-

61 (1) (a) A ~~Any~~ customer or a person of record claiming a lien  
62 against a motor vehicle may obtain the release of ~~the~~ ~~her or his~~  
63 motor vehicle from any lien claimed under part II of chapter 713  
64 by a motor vehicle repair shop for repair work performed under a  
65 written repair estimate by filing with the clerk of the court in  
66 the circuit in which the disputed transaction occurred a cash or  
67 surety bond, payable to the person claiming the lien and  
68 conditioned for the payment of any judgment which may be entered  
69 on the lien. The bond shall be in the amount stated on the  
70 invoice required by s. 559.911, plus accrued storage charges, if  
71 any, less any amount paid to the motor vehicle repair shop as  
72 indicated on the invoice. The customer or person shall not be  
73 required to institute judicial proceedings in order to post the  
74 bond in the registry of the court and shall not, nor shall the  
75 ~~customer~~ be required to use a particular form for posting the  
76 bond, unless the clerk provides ~~shall provide~~ such form to the  
77 customer or person for filing. Upon the posting of such bond,  
78 the clerk of the court shall automatically issue a certificate  
79 notifying the lienor of the posting of the bond and directing  
80 the lienor to release the ~~customer's~~ motor vehicle.

81 (b) The lienor shall have 60 days to file suit to recover  
82 the bond. The prevailing party in that action may be entitled to  
83 damages plus court costs and reasonable attorney attorney's  
84 fees. If the lienor fails to file suit within 60 days after the  
85 posting of such bond, the bond shall be discharged.

86 (2) The failure of a lienor to release or return to the  
87 customer or person the motor vehicle upon which any lien is

Page 3 of 30

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597-03479-19

2019772c1

88 claimed, upon receiving a copy of a certificate giving notice of  
89 the posting of the bond and directing release of the motor  
90 vehicle, shall subject the lienor to judicial proceedings which  
91 may be brought by the customer or person to compel compliance  
92 with the certificate. Whenever a customer or person brings an  
93 action to compel compliance with the certificate, the customer  
94 or person need only establish that:

95 (a) Bond in the amount of the invoice, plus accrued storage  
96 charges, if any, less any amount paid to the motor vehicle  
97 repair shop as indicated on the invoice, was posted;

98 (b) A certificate was issued pursuant to this section;  
99 (c) The motor vehicle repair shop, or any employee or agent  
100 thereof who is authorized to release the motor vehicle, received  
101 a copy of a certificate issued pursuant to this section; and

102 (d) The motor vehicle repair shop or employee authorized to  
103 release the motor vehicle failed to release the motor vehicle.

104 The customer or person, upon a judgment in her or his favor in  
105 an action brought under this subsection, may be entitled to  
106 damages plus court costs and reasonable attorney attorney's fees  
107 sustained by her or him by reason of such wrongful detention or  
108 retention. Upon a judgment in favor of the motor vehicle repair  
109 shop, the shop may be entitled to reasonable attorney attorney's  
110 fees.

111 (3) A ~~Any~~ motor vehicle repair shop that which, or an any  
112 employee or agent thereof who is authorized to release the motor  
113 vehicle who, upon receiving a copy of a certificate giving  
114 notice of the posting of the bond in the required amount and  
115 directing release of the motor vehicle, fails to release or  
116

Page 4 of 30

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597-03479-19

2019772c1

117 return the property to the customer or person pursuant to this  
 118 section ~~commits is guilty of~~ a misdemeanor of the second degree,  
 119 punishable as provided in s. 775.082 or s. 775.083.

120 (4) ~~A~~ Any customer or person who stops payment on a credit  
 121 card charge or a check drawn in favor of a motor vehicle repair  
 122 shop on account of an invoice or who fails to post a cash or  
 123 surety bond pursuant to this section shall be prohibited from  
 124 any recourse under this section with respect to the motor  
 125 vehicle repair shop.

126 Section 2. Section 559.920, Florida Statutes, is amended to  
 127 read:

128 559.920 Unlawful acts and practices.—It shall be a  
 129 violation of this act for any motor vehicle repair shop or  
 130 employee thereof to do any of the following:

131 (1) Engage or attempt to engage in repair work for  
 132 compensation of any type without first being registered with or  
 133 having submitted an affidavit of exemption to the department.~~‡~~

134 (2) Make or charge for repairs which have not been  
 135 expressly or impliedly authorized by the customer.~~‡~~

136 (3) Misrepresent that repairs have been made to a motor  
 137 vehicle.~~‡~~

138 (4) Misrepresent that certain parts and repairs are  
 139 necessary to repair a vehicle.~~‡~~

140 (5) Misrepresent that the vehicle being inspected or  
 141 diagnosed is in a dangerous condition or that the customer's  
 142 continued use of the vehicle may be harmful or cause great  
 143 damage to the vehicle.~~‡~~

144 (6) Fraudulently alter any customer contract, estimate,  
 145 invoice, or other document.~~‡~~

597-03479-19

2019772c1

146 (7) Fraudulently misuse any customer's credit card.~~‡~~

147 (8) Make or authorize in any manner or by any means  
 148 whatever any written or oral statement which is untrue,  
 149 deceptive or misleading, and which is known, or which by the  
 150 exercise of reasonable care should be known, to be untrue,  
 151 deceptive or misleading.~~‡~~

152 (9) Make false promises of a character likely to influence,  
 153 persuade, or induce a customer to authorize the repair, service,  
 154 or maintenance of a motor vehicle.~~‡~~

155 (10) Substitute used, rebuilt, salvaged, or straightened  
 156 parts for new replacement parts without notice to the motor  
 157 vehicle owner and to her or his insurer if the cost of repair is  
 158 to be paid pursuant to an insurance policy and the identity of  
 159 the insurer or its claims adjuster is disclosed to the motor  
 160 vehicle repair shop.~~‡~~

161 (11) Cause or allow a customer to sign any work order that  
 162 does not state the repairs requested by the customer or the  
 163 automobile's odometer reading at the time of repair.~~‡~~

164 (12) Fail or refuse to give to a customer a copy of any  
 165 document requiring the customer's signature upon completion or  
 166 cancellation of the repair work.~~‡~~

167 (13) Willfully depart from or disregard accepted practices  
 168 and professional standards.~~‡~~

169 (14) Have repair work subcontracted without the knowledge  
 170 or consent of the customer unless the motor vehicle repair shop  
 171 or employee thereof demonstrates that the customer could not  
 172 reasonably have been notified.~~‡~~

173 (15) Conduct the business of motor vehicle repair in a  
 174 location other than that stated on the registration

597-03479-19

2019772c1

175 certificate\_.

176 (16) Rebuild or restore a rebuilt vehicle without the  
177 knowledge of the owner in such a manner that it does not conform  
178 to the original vehicle manufacturer's established repair  
179 procedures or specifications and allowable tolerances for the  
180 particular model and year. ~~or~~

181 (17) Perform any other act that is a violation of this part  
182 or that constitutes fraud or misrepresentation.

183 (18) Violate any provision of s. 713.585.

184 Section 3. Subsections (1) through (4), (9), and (13) of  
185 section 713.585, Florida Statutes, are amended, and subsections  
186 (14) through (18) are added to that section, to read:

187 713.585 Enforcement of lien by sale of motor vehicle.—A  
188 person claiming a lien under s. 713.58 for performing labor or  
189 services on a motor vehicle may enforce such lien by sale of the  
190 vehicle in accordance with the following procedures:

191 (1) The lienor or the lienor's agent must give notice of  
192 the lien, by certified mail, return receipt requested, within 7  
193 business days, excluding Saturday and Sunday, from the beginning  
194 date of the assessment of storage charges on said motor vehicle,  
195 to the registered owner of the vehicle, to the customer as  
196 indicated on the order for repair, and to all other persons  
197 claiming an interest therein ~~in~~ or lien thereon, as disclosed by  
198 the records of the Department of Highway Safety and Motor  
199 Vehicles or as disclosed by the records of any corresponding  
200 agency of any other state in which the vehicle is identified  
201 through a records check of the National Motor Vehicle Title  
202 Information System or an equivalent commercially available  
203 system as being the current state where the vehicle is titled.

Page 7 of 30

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597-03479-19

2019772c1

204 Such notice must ~~contain~~:

205 (a) Be sent to the registered owner, the customer, and all  
206 other persons claiming an interest therein or lien thereon  
207 within 7 business days, excluding Saturday and Sunday, after the  
208 date on which storage charges begin to accrue on the vehicle.  
209 However, in no event shall the notice of lien be sent less than  
210 30 days before the sale of the motor vehicle.

211 (b) Be sent by certified mail, return receipt requested,  
212 with the vehicle identification number of the motor vehicle  
213 subject to the lien clearly printed in the delivery address box  
214 or section of the return receipt card; on the outside of the  
215 envelope sent to the registered owner, the customer, and all  
216 other persons claiming an interest therein or lien thereon; and  
217 on the electronic image of the return receipt card available on  
218 the United States Postal Service website.

219 (c) ~~(a)~~ Contain a description of the vehicle, including, at  
220 minimum, its year, make, vehicle identification number, and ~~the~~  
221 vehicle's location.

222 (d) ~~(b)~~ Contain the name and address of the owner of the  
223 vehicle, the customer as indicated on the order for repair, and  
224 any person claiming an interest therein ~~in~~ or lien thereon.

225 (e) ~~(c)~~ Contain the name, address, and telephone number of  
226 the lienor.

227 (f) ~~(d)~~ Contain notice that the lienor claims a lien on the  
228 vehicle for labor and services performed and storage charges, if  
229 any, and the cash sum which, if paid to the lienor, would be  
230 sufficient to redeem the vehicle from the lien claimed by the  
231 lienor.

232 (g) Contain the motor vehicle repair shop's registration

Page 8 of 30

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597-03479-19

2019772c1

233 number, owner's name, and physical address and the entity name,  
 234 as registered with the Division of Corporations, of the business  
 235 where the repair work or storage occurred, which must also  
 236 appear on the outside of the envelope sent to the registered  
 237 owner, the customer, and all other persons claiming an interest  
 238 in or lien on the vehicle.

239 (h) Contain the name of the person or entity that  
 240 authorized the labor or services on the vehicle.

241 (i) Contain an itemized statement of the amount claimed to  
 242 be owed to the lienor, including the date the vehicle was  
 243 dropped off for repairs; the date the repairs were completed;  
 244 the amount due for repairs, adjustments, or modifications to the  
 245 vehicle; any administrative fees; and any daily storage charges.

246 (j)(e) Contain notice that the lien claimed by the lienor  
 247 is subject to enforcement pursuant to this section and that the  
 248 vehicle may be sold to satisfy the lien.

249 (k)(f) Contain ~~if known,~~ the date, time, and location of  
 250 any proposed or scheduled sale of the vehicle. A vehicle may not  
 251 be sold earlier than 60 days after completion of the repair  
 252 work.

253 (l)(g) Contain notice that the owner of the vehicle or any  
 254 person claiming an interest therein ~~in~~ or lien thereon has a  
 255 right to a hearing at any time before the scheduled date of sale  
 256 by filing a demand for hearing with the clerk of the circuit  
 257 court in the county in which the vehicle is held and mailing  
 258 copies of the demand for hearing to all other owners and lienors  
 259 as reflected on the notice.

260 (m)(h) Contain notice that the owner of the vehicle has a  
 261 right to recover possession of the vehicle without instituting

597-03479-19

2019772c1

262 judicial proceedings by posting bond in accordance with s.  
 263 559.917.

264 (n)(i) Contain notice that any proceeds from the sale of  
 265 the vehicle remaining after payment of the amount claimed to be  
 266 due and owing to the lienor will be deposited with the clerk of  
 267 the circuit court for disposition upon court order pursuant to  
 268 subsection (8).

269 (o)(j) Contain notice that a lienholder, if any, has the  
 270 right, as specified in subsection (5), to demand a hearing or to  
 271 post a bond.

272 (p) Contain a statement that the lienor will make the  
 273 vehicle available for inspection during regular business hours  
 274 within 3 business days after receiving a written request to  
 275 inspect the vehicle from a notice recipient, who may present  
 276 either an electronic or a paper title as evidence of his or her  
 277 interest in and right to inspect the vehicle.

278 (q) Contain the address at which the vehicle is physically  
 279 located.

280 (2) If attempts to locate the owner or lienholder are  
 281 unsuccessful after a check of the records of the Department of  
 282 Highway Safety and Motor Vehicles and any state disclosed by the  
 283 check of the National Motor Vehicle Title Information System or  
 284 an equivalent commercially available system, the lienor must  
 285 notify the local law enforcement agency in writing by certified  
 286 mail or acknowledged hand delivery that the lienor has been  
 287 unable to locate the owner or lienholder, that a physical search  
 288 of the vehicle has disclosed no ownership information, and that  
 289 a good faith effort, including records checks of the Department  
 290 of Highway Safety and Motor Vehicles database and the National

597-03479-19

2019772c1

291 Motor Vehicle Title Information System or an equivalent  
 292 commercially available system, has been made. A description of  
 293 the motor vehicle which includes the year, make, and  
 294 identification number must be given on the notice. This  
 295 notification must take place within 7 business days, excluding  
 296 Saturday and Sunday, ~~after from~~ the beginning date on which of  
 297 ~~the assessment of~~ storage charges begin to accrue on the said  
 298 ~~motor~~ vehicle. For purposes of this subsection paragraph, the  
 299 term "good faith effort" means that the following checks have  
 300 been performed by the company to establish the prior state of  
 301 registration and title:

302 (a) A check of the department's Department of Highway  
 303 Safety and Motor Vehicles database for the owner and any  
 304 lienholder. ~~†~~

305 (b) A check of the federally mandated electronic National  
 306 Motor Vehicle Title Information System or an equivalent  
 307 commercially available system to determine the state of  
 308 registration when there is not a current title or registration  
 309 record for the vehicle on file with the department. of Highway  
 310 Safety and Motor Vehicles; ~~†~~

311 (c) A check of the vehicle for any type of tag, tag record,  
 312 temporary tag, or regular tag. ~~†~~

313 (d) A check of the vehicle for an inspection sticker or  
 314 other stickers and decals that could indicate the state of  
 315 possible registration. ~~†~~ ~~and~~

316 (e) A check of the interior of the vehicle for any papers  
 317 that could be in the glove box, trunk, or other areas for the  
 318 state of registration.

319 (3) A vehicle may not be sold earlier than 60 days after

Page 11 of 30

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597-03479-19

2019772c1

320 completion of the repair work. If the date of the sale was not  
 321 included in the notice of lien required in subsection (1),  
 322 notice of the sale must be sent by certified mail, return  
 323 receipt requested, ~~at least not less than~~ 15 days before the  
 324 date of sale, to the customer as indicated on the order for  
 325 repair, and to all other persons claiming an interest in or lien  
 326 on the motor vehicle, as disclosed by the records of the  
 327 Department of Highway Safety and Motor Vehicles or of a  
 328 corresponding agency of any other state in which the vehicle  
 329 appears to have been registered after completion of a check of  
 330 the National Motor Vehicle Title Information System or an  
 331 equivalent commercially available system. Such notice must:

332 (a) Be sent by certified mail, return receipt requested,  
 333 with the vehicle identification number of the motor vehicle  
 334 subject to the sale clearly identified and printed in the  
 335 delivery address box or section of the return receipt card and  
 336 on the outside of the envelope sent to the registered owner, the  
 337 customer, and all other persons claiming an interest therein or  
 338 lien thereon and clearly visible on the electronic image of the  
 339 return receipt card available on the United States Postal  
 340 Service website.

341 (b) Contain the motor vehicle repair shop's registration  
 342 number, owner's name, and physical address and the entity name,  
 343 as registered with the Division of Corporations, of the business  
 344 where the repair work or storage occurred, which must also  
 345 appear on the outside of the envelope containing the notice of  
 346 sale in the return address section of the envelope.

347 (4) The lienor, at least 15 days before the proposed or  
 348 scheduled date of sale of the vehicle, shall publish the notice

Page 12 of 30

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597-03479-19

2019772c1

349 required by this section once in a newspaper circulated in the  
 350 county where the vehicle repair work was completed and the sale  
 351 is to take place held. A certificate of compliance with the  
 352 notification provisions of this section, which includes the  
 353 vehicle identification number, verified by the lienor, together  
 354 with a copy of the notice of lien required by subsection (1) and  
 355 the notice of sale required by subsection (3), and a copy of all  
 356 return receipts ~~receipt~~ for mailing of the notices ~~notice~~  
 357 required by this section, which must include proof of  
 358 publication, and checks of the Department of Highway Safety and  
 359 Motor Vehicles and the National Motor Vehicle Title Information  
 360 System or an equivalent commercially available system, must be  
 361 duly and expeditiously filed with the clerk of the circuit court  
 362 in the county where the vehicle is held. The lienor, at the time  
 363 of filing the certificate of compliance, must pay to the clerk  
 364 of that court a service charge of \$10 for indexing and recording  
 365 the certificate.

366 (9) (a) A copy of the certificate of compliance, which must  
 367 include the vehicle identification number, and the report of  
 368 sale, certified by the clerk of the court, a copy of the notice  
 369 of lien required by subsection (1) and the notice of sale  
 370 required by subsection (3), and a copy of all return receipts  
 371 for mailing of the notices required by this section, and proof  
 372 of the required check of the National Motor Vehicle Title  
 373 Information System or an equivalent commercially available  
 374 system shall constitute satisfactory proof for application to  
 375 the Department of Highway Safety and Motor Vehicles for transfer  
 376 of title, together with any other proof required by any rules  
 377 and regulations of the department.

Page 13 of 30

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597-03479-19

2019772c1

378 (b) The Department of Highway Safety and Motor Vehicles may  
 379 not approve an application for transfer of title if the  
 380 application fails to include a copy of the notice of lien  
 381 required by subsection (1) and the notice of sale required by  
 382 subsection (3) and a copy of all return receipts for mailing of  
 383 the notices. The vehicle identification number on the return  
 384 receipts must match the vehicle identification number of the  
 385 vehicle that is the subject of the transfer of title and must be  
 386 clearly visible on the electronic image of the return receipt  
 387 card available on the United States Postal Service website.

388 (13) A failure to make good faith efforts as defined in  
 389 subsection (2) precludes the imposition of any storage charges  
 390 against the vehicle. If a lienor fails to provide notice to any  
 391 person claiming a lien on a vehicle under subsection (1) within  
 392 7 business days after the date ~~assessment~~ of storage of the  
 393 vehicle charges has begun, then the lienor may not charge the  
 394 person is precluded from charging for more than 7 days of  
 395 storage, but such failure to provide timely notice does not  
 396 affect charges made for repairs, adjustments, or modifications  
 397 to the vehicle or the priority of liens on the vehicle.

398 (14) At any time before the proposed or scheduled date of  
 399 sale of a vehicle, the owner, the customer, or a person claiming  
 400 an interest therein or lien thereon may request to inspect the  
 401 vehicle. The lienor must make the vehicle available for  
 402 inspection during regular business hours within 3 business days  
 403 after receiving a written request to inspect the vehicle.

404 (15) (a) A lienor or the lienor's agent may charge an  
 405 administrative fee to the registered owner, the insurance  
 406 company insuring the vehicle, or a person of record claiming a

Page 14 of 30

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597-03479-19

2019772c1

407 lien against the vehicle to obtain release of the vehicle. Such  
 408 administrative fee may not exceed \$250. For purposes of this  
 409 paragraph, the term "administrative fee" means a lien fee or any  
 410 fee imposed by the lienor or the lienor's agent for  
 411 administrative costs added to the amount due for storage,  
 412 repairs, adjustments, or modifications to the vehicle.

413 (b) A lienor or the lienor's agent may not charge fees or  
 414 costs, other than those authorized in this section, that exceed  
 415 \$250.

416 (16) A motor vehicle or vessel repair shop; garage;  
 417 automotive service, storage, or parking place; or towing-storage  
 418 operator must use a third-party service approved by the  
 419 Department of Highway Safety and Motor Vehicles to transmit all  
 420 notices required by this section. If there are no third-party  
 421 services approved by the department, a lienor may mail the  
 422 notices and must provide evidence of compliance with this  
 423 section upon submission of an application for certificate of  
 424 title or certificate of destruction.

425 (a) For purposes of this subsection, the term "third-party  
 426 service" means a qualified business entity that, upon a request  
 427 submitted through a website by a motor vehicle or vessel repair  
 428 shop, towing-storage operator, garage, or automotive service,  
 429 storage, or parking place:

430 1. Accesses the National Motor Vehicle Title Information  
 431 System records to obtain the last state of record of the  
 432 vehicle.

433 2. Accesses the owner, lienholder, and insurer information,  
 434 as applicable, for a vehicle or vessel from the Department of  
 435 Highway Safety and Motor Vehicles.

597-03479-19

2019772c1

436 3. Electronically generates the notice required of the  
 437 motor vehicle or vessel repair shop, towing-storage operator,  
 438 garage, or automotive service, storage, or parking place by this  
 439 section through the website.

440 4. Prints and sends the notice required under this section  
 441 to any owner, lienholder, and insurer of record by certified  
 442 mail.

443 5. Electronically returns tracking information or other  
 444 proof of mailing and delivery of the notices to the motor  
 445 vehicle or vessel repair shop, towing-storage operator, garage,  
 446 or automotive service, storage, or parking place.

447 6. Electronically reports to the Department of Highway  
 448 Safety and Motor Vehicles via an electronic data exchange  
 449 process using a web interface the following information related  
 450 to the towing-storage notice, as applicable:

451 a. The vehicle identification number or vessel hull  
 452 identification number;

453 b. The license plate number;

454 c. The name and address of the towing-storage operator or  
 455 lienor;

456 d. The physical location of the vehicle;

457 e. The date of the tow;

458 f. The amount of storage fees owed at the time of the  
 459 notice; and

460 g. The date the notices were mailed and delivered.

461 (b) A third-party service must apply to the department and  
 462 be approved by the department in order to provide notices under  
 463 this section. The department shall prescribe the format for such  
 464 applications. The department may approve a third-party service

597-03479-19

2019772c1

465 applicant as qualified to provide the services described in  
 466 paragraph (a) based upon the following:  
 467 1. Providing the department a \$1 million bond;  
 468 2. Submitting an acceptable Internal Control and Data  
 469 Security Audit (Level 2) or equivalent from a licensed certified  
 470 public accountant; and  
 471 3. Successfully demonstrating the ability to electronically  
 472 provide required data to the department via an electronic data  
 473 exchange process using a web interface.  
 474 (c) The department may deny, suspend, or revoke approval of  
 475 a third-party service if the department determines that the  
 476 third-party service has committed an act of fraud or  
 477 misrepresentation related to a notice required by this section.  
 478 (d) A third-party service must maintain all records related  
 479 to providing notices under this section for 5 years and allow  
 480 the department to inspect and copy such records upon request.  
 481 The records may be maintained in electronic format.  
 482 (e) A third-party service must annually provide the  
 483 department with evidence that it maintains a \$1 million bond and  
 484 must submit an Internal Control and Data Security Audit (Level  
 485 2) or equivalent from a licensed certified public accountant  
 486 annually to continue its approved status each year.  
 487 (f) A third-party service must maintain a publicly  
 488 available website that allows an owner, registrant, lienholder,  
 489 insurance company, or any agent thereof to search for notices  
 490 sent pursuant to this section. The search results must return  
 491 the same information provided to the department, excluding any  
 492 personal identifying information.  
 493 (17) A lienor must release to the owner, lienholder, or

Page 17 of 30

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597-03479-19

2019772c1

494 agent thereof all of the personal property found in but not  
 495 affixed to the vehicle. Upon payment of the charges owed, the  
 496 lienor must release the vehicle to the paying owner, lienholder,  
 497 or agent thereof.  
 498 (18) A lienor must accept either an electronic or a paper  
 499 title as evidence of a person's interest in a vehicle.  
 500 Section 4. Subsection (4), paragraphs (a) and (b) of  
 501 subsection (5), and subsections (6) and (9) of section 713.78,  
 502 Florida Statutes, are amended, and subsections (14) through (17)  
 503 are added to that section, to read:  
 504 713.78 Liens for recovering, towing, or storing vehicles  
 505 and vessels.—  
 506 (4) (a) A ~~Any~~ person regularly engaged in the business of  
 507 recovering, towing, or storing vehicles or vessels who comes  
 508 into possession of a vehicle or vessel pursuant to subsection  
 509 (2), and who claims a lien for recovery, towing, or storage  
 510 services, shall give notice, by certified mail, return receipt  
 511 requested, to the registered owner, the insurance company  
 512 insuring the vehicle notwithstanding ~~the provisions of~~ s.  
 513 627.736, and ~~to~~ all persons claiming a lien thereon, as  
 514 disclosed by the records in the Department of Highway Safety and  
 515 Motor Vehicles or as disclosed by the records of any  
 516 corresponding agency in any other state in which the vehicle is  
 517 identified through a records check of the National Motor Vehicle  
 518 Title Information System or an equivalent commercially available  
 519 system as being titled or registered.  
 520 (b) Whenever a ~~any~~ law enforcement agency authorizes the  
 521 removal of a vehicle or vessel or whenever a ~~any~~ towing service,  
 522 garage, repair shop, or automotive service, storage, or parking

Page 18 of 30

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597-03479-19 2019772c1

523 place notifies the law enforcement agency of possession of a  
 524 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law  
 525 enforcement agency of the jurisdiction where the vehicle or  
 526 vessel is stored shall contact the Department of Highway Safety  
 527 and Motor Vehicles, or the appropriate agency of the state of  
 528 registration, if known, within 24 hours through the medium of  
 529 electronic communications, giving the full description of the  
 530 vehicle or vessel. Upon receipt of the full description of the  
 531 vehicle or vessel, the department shall search its files to  
 532 determine the owner's name, the insurance company insuring the  
 533 vehicle or vessel, and whether any person has filed a lien upon  
 534 the vehicle or vessel as provided in s. 319.27(2) and (3) and  
 535 notify the applicable law enforcement agency within 72 hours.  
 536 The person in charge of the towing service, garage, repair shop,  
 537 or automotive service, storage, or parking place shall obtain  
 538 such information from the applicable law enforcement agency  
 539 within 5 days after the date of storage and shall give notice  
 540 pursuant to paragraph (a). The department may release the  
 541 insurance company information to the requestor notwithstanding  
 542 ~~the provisions of s. 627.736.~~

543 (c) The notice of lien must be sent by certified mail,  
 544 return receipt requested, to the registered owner, the insurance  
 545 company insuring the vehicle notwithstanding s. 627.736, and all  
 546 other persons claiming a lien thereon shall be sent within 7  
 547 business days, excluding Saturday and Sunday, after the date of  
 548 storage of the vehicle or vessel. However, in no event shall the  
 549 notice of lien be sent less than 15 days before the sale of ~~to~~  
 550 ~~the registered owner, the insurance company insuring the vehicle~~  
 551 ~~notwithstanding the provisions of s. 627.736, and all persons of~~

597-03479-19 2019772c1

552 ~~record claiming a lien against~~ the vehicle or vessel. The notice  
 553 must state:

554 1. If the claim of lien is for a vehicle, the vehicle  
 555 identification number of the vehicle subject to the lien clearly  
 556 printed in the delivery address box or section of the return  
 557 receipt card; on the outside of the envelope sent to the  
 558 registered owner and all other persons claiming an interest  
 559 therein or lien thereon; and on the electronic image of the  
 560 return receipt card available on the United States Postal  
 561 Service website.

562 2. The name, physical address, and telephone number of the  
 563 lienor, and the entity name, as registered with the Division of  
 564 Corporations, of the business where the towing and storage  
 565 occurred, which must also appear on the outside of the envelope  
 566 sent to the registered owner and all other persons claiming an  
 567 interest in or lien on the vehicle or vessel.

568 3. ~~It shall state~~ The fact of possession of the vehicle or  
 569 vessel.

570 4. The name of the person or entity that authorized the  
 571 lienor to take possession of the vehicle or vessel.

572 5. That a lien as provided in subsection (2) is claimed.

573 6. That charges have accrued and include an itemized  
 574 statement of the amount thereof.

575 7. That the lien is subject to enforcement under ~~pursuant~~  
 576 ~~to law~~ and that the owner or lienholder, if any, has the right  
 577 to a hearing as set forth in subsection (5) ~~and~~

578 8. That any vehicle or vessel that ~~which~~ remains unclaimed,  
 579 or for which the charges for recovery, towing, or storage  
 580 services remain unpaid, may be sold free of all prior liens

597-03479-19

2019772c1

581 ~~after~~ 35 days after the vehicle or vessel is stored by the  
 582 lienor if the vehicle or vessel is more than 3 years of age or  
 583 ~~after~~ 50 days after the vehicle or vessel is stored by the  
 584 lienor if the vehicle or vessel is 3 years of age or less.

585 9. The address at which the vehicle or vessel is physically  
 586 located.

587 (d) The notice of lien may not be sent to the registered  
 588 owner, the insurance company insuring the vehicle or vessel, and  
 589 all other persons claiming a lien thereon less than 15 days  
 590 before the sale of the vehicle or vessel.

591 (e) ~~(d)~~ If attempts to locate the name and address of the  
 592 owner or lienholder prove unsuccessful, the towing-storage  
 593 operator shall, after 7 business working days, excluding  
 594 Saturday and Sunday, ~~after~~ of the initial tow or storage, notify  
 595 the public agency of jurisdiction where the vehicle or vessel is  
 596 stored in writing by certified mail or acknowledged hand  
 597 delivery that the towing-storage company has been unable to  
 598 locate the name and address of the owner or lienholder and a  
 599 physical search of the vehicle or vessel has disclosed no  
 600 ownership information and a good faith effort has been made,  
 601 including records checks of the Department of Highway Safety and  
 602 Motor Vehicles database and the National Motor Vehicle Title  
 603 Information System or an equivalent commercially available  
 604 system. For purposes of this paragraph and subsection (9), the  
 605 term "good faith effort" means that the following checks have  
 606 been performed by the company to establish the prior state of  
 607 registration and for title:

608 1. A check of the ~~department's~~ Department of Highway Safety  
 609 and Motor Vehicles database for the owner and any lienholder.

Page 21 of 30

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597-03479-19

2019772c1

610 2. A check of the electronic National Motor Vehicle Title  
 611 Information System or an equivalent commercially available  
 612 system to determine the state of registration when there is not  
 613 a current registration record for the vehicle or vessel on file  
 614 with the department ~~of Highway Safety and Motor Vehicles~~.

615 3. A check of the vehicle or vessel for any type of tag,  
 616 tag record, temporary tag, or regular tag.

617 4. A check of the law enforcement report for a tag number  
 618 or other information identifying the vehicle or vessel, if the  
 619 vehicle or vessel was towed at the request of a law enforcement  
 620 officer.

621 5. A check of the trip sheet or tow ticket of the tow truck  
 622 operator to determine whether ~~see if~~ a tag was on the vehicle or  
 623 vessel at the beginning of the tow, if a private tow.

624 6. If there is no address of the owner on the impound  
 625 report, a check of the law enforcement report to determine  
 626 whether ~~see if~~ an out-of-state address is indicated from driver  
 627 license information.

628 7. A check of the vehicle or vessel for an inspection  
 629 sticker or other stickers and decals that may indicate a state  
 630 of possible registration.

631 8. A check of the interior of the vehicle or vessel for any  
 632 papers that may be in the glove box, trunk, or other areas for a  
 633 state of registration.

634 9. A check of the vehicle for a vehicle identification  
 635 number.

636 10. A check of the vessel for a vessel registration number.

637 11. A check of the vessel hull for a hull identification  
 638 number which should be carved, burned, stamped, embossed, or

Page 22 of 30

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597-03479-19

2019772c1

639 otherwise permanently affixed to the outboard side of the  
640 transom or, if there is no transom, to the outmost seaboard side  
641 at the end of the hull that bears the rudder or other steering  
642 mechanism.

643 (5) (a) The owner of a vehicle or vessel removed pursuant to  
644 ~~the provisions of~~ subsection (2), or any person claiming a lien,  
645 other than the towing-storage operator, within 10 days after the  
646 time she or he has knowledge of the location of the vehicle or  
647 vessel, may file a complaint in the county court of the county  
648 in which the vehicle or vessel is stored to determine whether ~~if~~  
649 her or his property was wrongfully taken or withheld ~~from her or~~  
650 ~~him~~.

651 (b) At any time before the sale of the vehicle or vessel  
652 ~~Upon filing of a complaint~~, an owner or lienholder may have her  
653 or his vehicle or vessel released upon posting with the court a  
654 cash or surety bond or other adequate security equal to the  
655 amount of the charges for towing or storage and lot rental  
656 amount to ensure the payment of such charges in the event she or  
657 he does not prevail. Upon the posting of the bond and the  
658 payment of the applicable fee set forth in s. 28.24, the clerk  
659 of the court shall issue a certificate notifying the lienor of  
660 the posting of the bond and directing the lienor to release the  
661 vehicle or vessel. At the time of such release, after reasonable  
662 inspection, she or he shall give a receipt to the towing-storage  
663 company reciting any claims she or he has for loss or damage to  
664 the vehicle or vessel or the contents thereof.

665 (6) A ~~Any~~ vehicle or vessel that ~~which~~ is stored pursuant  
666 to subsection (2) and ~~which~~ remains unclaimed, or for which  
667 reasonable charges for recovery, towing, or storing remain

597-03479-19

2019772c1

668 unpaid, and any contents not released pursuant to subsection  
669 (10), may be sold by the owner or operator of the storage space  
670 for such towing or storage charge ~~after~~ 35 days ~~after~~ ~~from the~~  
671 ~~time~~ the vehicle or vessel is stored by the lienor ~~therein~~ if  
672 the vehicle or vessel is more than 3 years of age or ~~after~~ 50  
673 days after following the time the vehicle or vessel is stored by  
674 the lienor ~~therein~~ if the vehicle or vessel is 3 years of age or  
675 less. The sale shall be at public sale for cash. If the date of  
676 the sale was not included in the notice required in subsection  
677 (4), notice of the sale shall be given to the person in whose  
678 name the vehicle or vessel is registered and to all persons  
679 claiming a lien on the vehicle or vessel as shown on the records  
680 of the Department of Highway Safety and Motor Vehicles or of any  
681 corresponding agency in any other state in which the vehicle is  
682 identified through a records check of the National Motor Vehicle  
683 Title Information System or an equivalent commercially available  
684 system as being titled. Notice of the sale must ~~shall~~ be sent by  
685 certified mail, return receipt requested. If the claim of lien  
686 is for a vehicle, the notice must have clearly identified and  
687 printed the vehicle identification number of the motor vehicle  
688 subject to the lien in the delivery address box or section of  
689 the return receipt card; on the outside of the envelope sent to  
690 the registered owner and all other persons claiming an interest  
691 therein or lien thereon; and on the electronic image of the  
692 return receipt card available on the United States Postal  
693 Service website. The notice must be sent to the owner of the  
694 vehicle or vessel and the person having the recorded lien on the  
695 vehicle or vessel at the address shown on the records of the  
696 registering agency at least ~~and shall be mailed not less than~~ 15

597-03479-19

2019772c1

697 days before the sale of the vehicle or vessel ~~date of the sale~~.

698 The notice must state the name, physical address, and telephone

699 number of the lienor, and the vehicle identification number if

700 the claim of lien is for a vehicle, all of which must also

701 appear on the outside of the envelope containing the notice of

702 sale in the return address section of the envelope. After

703 diligent search and inquiry, if the name and address of the

704 registered owner or the owner of the recorded lien cannot be

705 ascertained, the requirements of notice by mail may be dispensed

706 with. In addition to the notice by mail, public notice of the

707 time and place of sale shall be made by publishing a notice

708 thereof one time, at least 10 days before ~~prior to~~ the date of

709 the sale, in a newspaper of general circulation in the county in

710 which the sale is to be held. The proceeds of the sale, after

711 payment of reasonable towing and storage charges, and costs of

712 the sale, in that order of priority, shall be deposited with the

713 clerk of the circuit court for the county if the owner or

714 lienholder is absent, and the clerk shall hold such proceeds

715 subject to the claim of the owner or lienholder legally entitled

716 thereto. The clerk shall be entitled to receive 5 percent of

717 such proceeds for the care and disbursement thereof. The

718 certificate of title issued under this law shall be discharged

719 of all liens unless otherwise provided by court order. The owner

720 or lienholder may file a complaint after the vehicle or vessel

721 has been sold in the county court of the county in which it is

722 stored. Upon determining the respective rights of the parties,

723 the court may award damages, attorney ~~attorney's~~ fees, and costs

724 in favor of the prevailing party.

725 (9) Failure to make good faith ~~best~~ efforts to comply with

Page 25 of 30

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597-03479-19

2019772c1

726 the notice requirements of this section precludes ~~shall preclude~~

727 the imposition of any storage charges against the ~~such~~ vehicle

728 or vessel. If a lienor fails to provide notice to a person

729 claiming a lien on a vehicle or vessel in accordance with

730 subsection (4), the lienor may not charge the person for more

731 than 7 days of storage, but such failure does not affect charges

732 made for towing the vehicle or vessel or the priority of liens

733 on the vehicle or vessel.

734 (14) (a) A copy of the notice of lien required by subsection

735 (4) and the notice of sale required by subsection (6), and a

736 copy of all return receipts for mailing of the notices required

737 by this section, which must include the vehicle identification

738 number, and proof of the required check of the National Motor

739 Vehicle Title Information System or an equivalent commercially

740 available system shall constitute satisfactory proof for

741 application to the Department of Highway Safety and Motor

742 Vehicles for transfer of title, together with any other proof

743 required by any rules and regulations of the department.

744 (b) The Department of Highway Safety and Motor Vehicles may

745 not approve an application for transfer of title if the

746 application fails to include a copy of the notice of lien

747 required by subsection (4) and the notice of sale required by

748 subsection (6) and a copy of all return receipts for mailing of

749 the notices required by this section. The vehicle identification

750 number on the return receipts must match the vehicle

751 identification number of the vehicle that is the subject of the

752 transfer of title and must be clearly visible on the electronic

753 image of the return receipt card available on the United States

754 Postal Service website.

Page 26 of 30

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597-03479-19

2019772c1

755 (15) (a) A lienor or the lienor's agent may charge an  
 756 administrative fee to the registered owner, the insurance  
 757 company insuring the vehicle or vessel, or a person claiming a  
 758 lien against the vehicle or vessel to obtain release of the  
 759 vehicle or vessel. Such administrative fee may not exceed \$250.  
 760 For purposes of this paragraph, the term "administrative fee"  
 761 means a lien fee or any fee imposed by the lienor or the  
 762 lienor's agent for administrative costs added to the amount due  
 763 for towing and storing the vehicle or vessel.

764 (b) A lienor or the lienor's agent may not charge fees or  
 765 costs, other than those authorized in this section or ss.  
 766 125.0103 and 166.043, that exceed \$250.

767 (16) A motor vehicle or vessel repair shop; garage;  
 768 automotive service, storage, or parking place; or towing-storage  
 769 operator must use a third-party service approved by the  
 770 Department of Highway Safety and Motor Vehicles to transmit all  
 771 notices required by this section. If there are no third-party  
 772 services approved by the department, a lienor may mail the  
 773 notices and must provide evidence of compliance with this  
 774 section upon submission of an application for certificate of  
 775 title or certificate of destruction.

776 (a) For purposes of this subsection, the term "third-party  
 777 service" means a qualified business entity that, upon a request  
 778 submitted through a website by a motor vehicle or vessel repair  
 779 shop, towing-storage operator, garage, or automotive service,  
 780 storage, or parking place:

781 1. Accesses the National Motor Vehicle Title Information  
 782 System records to obtain the last state of record of the  
 783 vehicle.

Page 27 of 30

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597-03479-19

2019772c1

784 2. Accesses the owner, lienholder, and insurer information,  
 785 as applicable, for a vehicle or vessel from the Department of  
 786 Highway Safety and Motor Vehicles.

787 3. Electronically generates the notice required of the  
 788 motor vehicle or vessel repair shop, towing-storage operator,  
 789 garage, or automotive service, storage, or parking place by this  
 790 section through the website.

791 4. Prints and sends the notice required under this section  
 792 to any owner, lienholder, and insurer of record by certified  
 793 mail.

794 5. Electronically returns tracking information or other  
 795 proof of mailing and delivery of the notices to the motor  
 796 vehicle or vessel repair shop, towing-storage operator, garage,  
 797 or automotive service, storage, or parking place.

798 6. Electronically reports to the Department of Highway  
 799 Safety and Motor Vehicles via an electronic data exchange  
 800 process using a web interface the following information related  
 801 to the repair and storage notice, as applicable:

802 a. The vehicle identification number or vessel hull  
 803 identification number;

804 b. The license plate number;

805 c. The name and address of the repair shop or lienor;

806 d. The physical location of the vehicle or vessel;

807 e. The date the vehicle or vessel was dropped off for  
 808 repairs;

809 f. The date the repairs were completed;

810 g. The amount owed for the repairs;

811 h. The date of the assessment of storage charges;

812 i. The amount of storage fees at the time of the notice;

Page 28 of 30

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

597-03479-19

2019772c1

813 and

814 j. The date the notices were mailed and delivered.

815 (b) A third-party service must apply to the department and

816 be approved by the department in order to provide notices under

817 this section. The department shall prescribe the format for such

818 applications. The department may approve a third-party service

819 applicant as qualified to provide the services described in

820 paragraph (a) based upon the following:

821 1. Providing the department a \$1 million bond;

822 2. Submitting an acceptable Internal Control and Data

823 Security Audit (Level 2) or equivalent from a licensed certified

824 public accountant; and

825 3. Successfully demonstrating the ability to electronically

826 provide required data to the department via an electronic data

827 exchange process using a web interface.

828 (c) The department may deny, suspend, or revoke approval of

829 a third-party service if the department determines that the

830 third-party service has committed an act of fraud or

831 misrepresentation related to a notice required by this section.

832 (d) A third-party service must maintain all records related

833 to providing notices under this section for 5 years and allow

834 the department to inspect and copy such records upon request.

835 The records may be maintained in electronic format.

836 (e) A third-party service must annually provide the

837 department with evidence that it maintains a \$1 million bond and

838 must submit an Internal Control and Data Security Audit (Level

839 2) or equivalent from a currently licensed certified public

840 accountant annually to continue its approved status each year.

841 (f) A third-party service must maintain a publicly

Page 29 of 30

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597-03479-19

2019772c1

842 available website that allows an owner, registrant, lienholder,

843 insurance company, or any agent thereof to search for notices

844 sent pursuant to this section. The search results must return

845 the same information provided to the department, excluding any

846 personal identifying information.

847 (17) A lienor must accept either an electronic or a paper

848 title as evidence of a person's interest in a vehicle or vessel.

849 Section 5. This act shall take effect January 1, 2020.

Page 30 of 30

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Education, *Chair*  
Appropriations  
Education  
Ethics and Elections  
Finance and Tax  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**SENATOR KELLI STARGEL**  
22nd District

March 28, 2019

The Honorable David Simmons  
Senate Committee on Judiciary, Chair  
404 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chair Simmons:

I respectfully request that SB 772, related to *Liens Against Motor Vehicles and Vessels*, be placed on the Judiciary meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel  
State Senator, District 22

Cc: Tom Cibula/Staff Director  
Joyce Butler/AA

**REPLY TO:**

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore



February 11, 2019

Representative Bob Rommel  
417 House Office Building  
402 South Monroe St.  
Tallahassee, FL 32399-1300

**Re: House Bill 431 – Motor Vehicle Lien Fraud**

Dear Speaker Oliva:

I write on behalf of the American Financial Services Association (“AFSA”)<sup>1</sup> to express our support for HB 431, which would amend state law related to liens on motor vehicles. This bill will make positive changes to help combat Florida’s growing lien fraud issue, keeping costs down for lienholders and borrowers across the state.

Under existing law, a towing service or repair shop may hold a vehicle for at least 30 days and even claim another lien against the vehicle due to nonpayment for services. During this period, the service provider legally must notify all owners and lienholders of the amount due and may eventually hold a public auction for the sale of the vehicle following publication of a notice of sale. Unfortunately, some service providers throughout the state have abused this process by fraudulently placing liens on customers’ vehicles and selling vehicles without properly notifying existing lienholders of the new lien or vehicle sale. This fraud takes many forms; for example, a repair shop may initiate the process without even providing a service, but bill the consumer and claim a lien against the vehicle. The provider could subsequently ignore the public auction and notification requirements and instead sell the vehicle at a steep discount to a known associate, which amounts to outright theft of the vehicle.

This type of lien fraud costs consumers and vehicle finance companies tens of millions of dollars every year and raises the cost of credit for all consumers, even those not directly affected by specific instances of fraud. By tightening existing laws related to fees and notice requirements and extending vehicle recovery rights—which are currently held only by the vehicle owner—to all existing lienholders, HB 431 would give vehicle finance companies more options to detect and fight against fraudulent liens and pursue damages when fraud occurs, keeping costs down for all consumers in the state.

If you have any questions or would like to discuss this further, please do not hesitate to contact me at 952-922-6500 or [dfagre@afsamail.org](mailto:dfagre@afsamail.org).

Sincerely,

---

<sup>1</sup> Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.



Danielle Fagre Arlowe  
Senior Vice President, State Government Affairs  
American Financial Services Association  
919 Eighteenth Street, NW, Suite 300  
Washington, DC 20006-5517

cc: Representative Jason Fischer  
Speaker Jose R. Oliva

THE FLORIDA SENATE

APPEARANCE RECORD

4/8/2019

Meeting Date

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

772

Bill Number (if applicable)

688728

Amendment Barcode (if applicable)

Topic Licenses Against Motor Vehicles & Vessels

Name David Curtin

Job Title David R. Curtin & Associates Inc.

Address 6401 SW 113 PL

Street

Phone 305-607-8526

Miami

FL

33173

City

State

Zip

Email CurtinDR@DavidRCurtin.com

Speaking:  For  Against  Information

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

Representing Beach Towing, Inc. AND Teemont Towing, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

8 Apr 2019

Meeting Date

772

Bill Number (if applicable)

Topic Liens Against Vehicles

Amendment Barcode (if applicable)

Name Sandra Mortham

Job Title

Address 6675 Weeping Willow Way

Phone 850-251-2283

Tallahassee FL 32311

Email smorthem@aol.com

Speaking: [ ] For [ ] Against [ ] Information

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

Representing

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

Lobbyist registered with Legislature: [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)

110824

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

772

Bill Number (if applicable)

Topic Liens Against Motor Vehicles and Vessels

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St.

Phone 224-7173

Street

TLH

City

FL

State

32301

Zip

Email bbevis@aif.com

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

772

Bill Number (if applicable)

Topic Liens against motor vehicles

Amendment Barcode (if applicable)

Name CAROLYN JOHNSON

Job Title Policy Director

Address 134 S BRADDOCK ST

Phone 521-1200

Street

Tallahassee

FL

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

04/082019

SB 772

*Meeting Date*

*Bill Number (if applicable)*

Topic \_\_\_\_\_

*Amendment Barcode (if applicable)*

Name Paul Sanford

Job Title \_\_\_\_\_

Address 106 South Monroe Street

Phone 850-222-7200

*Street*

Tallahassee

FL

32301

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing J.M. Family Enterprises

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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 862

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Stargel

SUBJECT: Lessor Liability Under Special Mobile Equipment Leases

DATE: April 10, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 862 provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee's agent or employee if the lease agreement requires documented proof of insurance coverage with limits of at least \$100,000/\$300,000 for bodily injury liability and \$50,000 for property damage liability, or at least \$500,000 for combined property damage liability and bodily injury liability. The bill provides that the failure of the lessee to maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

Special mobile equipment are vehicles not designed or used primarily to transport persons or property and that are only incidentally operated or moved over a highway. Examples include ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, draglines, self-propelled cranes and earthmoving equipment.

The bill responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corporation*, which found that a loader is a dangerous instrumentality and thus subject to Florida's dangerous instrumentality doctrine.<sup>1</sup> The dangerous instrumentality doctrine imposes "strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another."<sup>2</sup>

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<sup>1</sup> 253 So. 3d 1054 (Fla. 2018).

<sup>2</sup> *Aurback v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000).

## II. Present Situation:

### Dangerous Instrumentality Doctrine

Florida's dangerous instrumentality doctrine imposes "strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another."<sup>3</sup> Liability is applied because a motor vehicle is a potent source of danger that is dangerous in its operation.<sup>4</sup> "Vicarious liability is a form of indirect liability in which a party, who may not have been negligent, can be held liable for the acts of another party."<sup>5</sup> Courts apply the doctrine not only to motor vehicles primarily designed to be used on the roads and highways of the state, but also to certain dangerous vehicles that are frequently operated near the public, such as farm tractors and tow motors.<sup>6</sup>

The Legislature has prohibited application of the dangerous instrumentality doctrine to lessors of motor vehicles designed and required to be licensed to be used on the highways of this state if the lease agreement requires the lessee to obtain bodily injury liability insurance coverage with limits of at least \$100,000 per person injured and \$300,000 per accident.<sup>7</sup> State law also prohibits application of the doctrine to owners of vessels (boats) unless the owner is the operator or present in the vessel,<sup>8</sup> and powered shopping carts provided gratis for use on the premises of the owner.<sup>9</sup> Federal law preempts application of the dangerous instrumentality doctrine to rental car companies that rent or lease a motor vehicle in compliance with state financial responsibility laws.<sup>10</sup> Federal preemption only applies to motor vehicles that are manufactured primarily for use on public streets, roads, and highways.<sup>11</sup>

### *Newton v. Caterpillar Financial Services Corporation*

In *Newton v. Caterpillar Financial Services Corporation*, the Florida Supreme Court held that loaders are dangerous instrumentalities.<sup>12</sup> A loader is a mobile, motorized piece of equipment with a large shovel that is used to transfer material to different areas of a job site.

According to the Florida Supreme Court's recitation of the facts in this case, Caterpillar Financial Services Corporation (Caterpillar) leased a loader to Charles Cram, an agent of C & J Bobcat and Hauling, LLC., tasked with clearing debris from a private lot in a residential area.<sup>13</sup> Anthony Newton, the plaintiff in the lawsuit, is an independent contractor hired by C&J Bobcat and Hauling, LLC, to assist its agent, Charles Cram in accomplishing the job. The loader was used to dump debris into a box trailer for disposal.<sup>14</sup> At the direction of Mr. Cram, Mr. Newton

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<sup>3</sup> *Aurback*, 753 So. 2d at 62.

<sup>4</sup> *Rippy v. Shepard*, 80 So. 3d 305, 306-307 (Fla 2012) (quoting *Southern Cotton Oil Co. v. Anderson*, 86 So. 629, 631 (Fla. 1920)).

<sup>5</sup> *Pembroke Lakes Mall Ltd. V. McGruder*, 137 So. 3d 418, 431 (Fla. 4th DCA 2014).

<sup>6</sup> See *Rippy*, 80 So. 3d at 307-08.

<sup>7</sup> Section 324.021(9), F.S.

<sup>8</sup> Section 327.32, F.S.

<sup>9</sup> Section 768.093, F.S.

<sup>10</sup> 49 USC s. 30106.

<sup>11</sup> 49 USC s. 30102(a)(7).

<sup>12</sup> *Newton v. Caterpillar Financial Services Corp.*, 253 So. 3d 1054 (Fla. 2018).

<sup>13</sup> *Newton*, 253 So. 3d at 1055.

<sup>14</sup> *Id.*

stepped into the disposal box trailer to pack down the debris, but a tree stump was released from the loader Mr. Cram was operating into the disposal trailer and severed Mr. Newton's middle finger.<sup>15</sup> Anthony Newton sued Caterpillar, alleging Caterpillar is liable for the injuries he sustained due to Cram's negligent operation of the loader because the loader was a dangerous instrumentality.<sup>16</sup> The trial court found the loader was not a dangerous instrumentality and thus granted summary judgment for Caterpillar.<sup>17</sup> The Second District Court of Appeals (2nd DCA) affirmed the trial court decision.<sup>18</sup> Mr. Newton sought review of the Second District's decision, and the Supreme Court accepted jurisdiction and reversed the lower courts.<sup>19</sup>

The court stated that in applying the dangerous instrumentality doctrine, Florida courts consider the following factors:

- Whether the instrumentality is a motor vehicle;
- Whether the instrumentality is frequently operated near the public, through the injury need not occur on public property;
- The instrumentality's peculiar dangers relative to other objects found to be dangerous instrumentalities; and
- How extensively the Legislature has regulated the instrumentality.<sup>20</sup>

The Florida Supreme Court first determined that a loader is a motor vehicle by finding that they meet the definition of a motor vehicle set forth in Black's Law Dictionary, and by analogizing loaders to farm tractors and forklifts.<sup>21</sup> The court then determined loaders are frequently operated near the public, finding that they are often used in construction settings and on public rights of way.<sup>22</sup> The court found that loaders are similar to farm tractors, another dangerous instrumentality under Florida law, and that loaders are machines that, due to their size and speed, can be dangerous to others.<sup>23</sup> Based on the foregoing, the court determined that a loader is a dangerous instrumentality as a matter of law, quashed the lower court's decision, and directed that summary judgment be granted in favor of Anthony Newton.<sup>24</sup> Three justices dissented on the basis that the Florida Supreme Court did not have jurisdiction because the 2nd DCA, in determining a loader is not a dangerous instrumentality, had not issued a decision that conflicted with a decision of another DCA or the Florida Supreme Court.<sup>25</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 627.749, F.S., which provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee's agent if the lease agreement requires documented proof of insurance coverage with limits of at least \$100,000/\$300,000 for bodily injury liability and \$50,000 for

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<sup>15</sup> *Newton*, 253 So. 3d at 1056.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Newton v. Caterpillar Financial Services Corp.*, 209 So. 3d 612 (Fla. 2nd DCA 2016).

<sup>19</sup> *Newton*, 253 So. 3d at 1057.

<sup>20</sup> *Newton*, 253 So. 3d at 1056 (citing *Rippy*, 80 So. 3d at 308-309; *Meister v. Fisher*, 462 So. 2d 1071, 1072-73 (Fla. 1984)).

<sup>21</sup> *Newton*, 253 So. 3d at 1056-57.

<sup>22</sup> *Id.* at 1057.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 1058.

<sup>25</sup> *Id.* at 1058-64.

property damage liability, or at least \$500,000 for combined property damage liability and bodily injury liability. The bill provides that the failure of the lessee to maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

The bill defines the terms “lease agreement,” “lessee,” “lessor,” and “special mobile equipment.” “Special mobile equipment” has the same meaning as provided in s. 316.003(75), F.S., which is:

Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earthmoving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

The bill responds to the Florida Supreme Court’s decision in *Newton v. Caterpillar Financial Services Corporation*, which found that a loader is a dangerous instrumentality and thus subject to Florida’s dangerous instrumentality doctrine.<sup>26</sup> The dangerous instrumentality doctrine imposes “strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another.”<sup>27</sup>

**Section 2** provides that the bill is effective July 1, 2019.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

---

<sup>26</sup> 253 So. 3d 1054 (Fla. 2018).

<sup>27</sup> *Aurback*, 753 So. 2d at 62.

E. Other Constitutional Issues:

None identified.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, if the lessee maintains insurance, the insurer of the lessee of special mobile equipment will bear the risk of losses or injuries or damages caused by the negligent operation of special mobile equipment. To the extent that damages exceed the lessee's insurance coverage, those losses will likely be borne by the lessee or other person who negligently operates the equipment. Lessors who require a lessee to provide proof of insurance will not be responsible for the negligence of others.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 627.749 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 April 8, 2019:**

The CS removes reference to obtaining insurance, now providing that a lessee's failure to maintain insurance during the lease will not impose liability on the lessor.

**CS by Banking and Insurance on March 19, 2019:**

The CS removes provisions of the bill stating the lessor is only liable if the lessor is grossly negligent, committed criminal wrongdoing, or the injury occurred while the lessor's employee or contractor was operating, maintaining, or using the special mobile equipment.

B. Amendments:

None.

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

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672360

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

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The Committee on Judiciary (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 41

and insert:

The failure of the lessee to maintain insurance

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

And the title is amended as follows:

Delete line 9

and insert:

providing that a lessee's failure to



358618

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2019	.	
	.	
	.	
	.	

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The Committee on Judiciary (Rodriguez) recommended the following:

1           **Senate Substitute for Amendment (672360) (with title**  
2 **amendment)**

3  
4           Delete lines 41 - 43  
5 and insert:

6 This subsection applies so long as the insurance coverage  
7 meeting such requirements is in effect. The insurance coverage  
8 meeting such requirements may be obtained by the lessor or  
9 lessee and may be provided by a lessor's blanket policy.

10



358618

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

12 And the title is amended as follows:

13       Delete lines 9 - 11

14 and insert:

15       providing applicability; providing that such insurance  
16       coverage may be obtained by the lessor or lessee and  
17       may be provided by a lessor's blanket policy;  
18       providing an effective date.



245436

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2019	.	
	.	
	.	
	.	

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The Committee on Judiciary (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 41 - 43

and insert:

This subsection applies so long as the insurance coverage meeting such requirements is in effect. The insurance coverage meeting such requirements may be obtained by the lessor or lessee and may be provided by a lessor's blanket policy.

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



11 And the title is amended as follows:  
12       Delete lines 9 - 11  
13 and insert:  
14       providing applicability; providing that such insurance  
15       coverage may be obtained by the lessor or lessee and  
16       may be provided by a lessor's blanket policy;  
17       providing an effective date.

By the Committee on Banking and Insurance; and Senator Stargel

597-03201-19

2019862c1

1 A bill to be entitled  
 2 An act relating to lessor liability under special  
 3 mobile equipment leases; creating s. 768.092, F.S.;  
 4 defining terms; providing that a lessor of special  
 5 mobile equipment that causes injury, death, or damage  
 6 is not liable for certain acts of the lessee or  
 7 lessee's agent if the lease agreement requires  
 8 documented proof of specified insurance coverage;  
 9 providing that a lessee's failure to obtain or  
 10 maintain the required coverage does not impose  
 11 liability on the lessor; providing an effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Section 768.092, Florida Statutes, is created to  
 16 read:  
 17 768.092 Special mobile equipment; liability of lessors.—  
 18 (1) As used in this section, the term:  
 19 (a) "Lease agreement" means a written agreement for the  
 20 rental or lease of special mobile equipment, regardless of  
 21 whether the lease is for a fixed term or with an option to  
 22 purchase.  
 23 (b) "Lessee" means a person who rents or leases special  
 24 mobile equipment from the lessor pursuant to a lease agreement.  
 25 (c) "Lessor" means a person who, pursuant to a lease  
 26 agreement, offers or arranges for the rental or lease of special  
 27 mobile equipment by the lessee.  
 28 (d) "Special mobile equipment" has the same meaning as in  
 29 s. 316.003.

Page 1 of 2

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

597-03201-19

2019862c1

30 (2) The lessor of any special mobile equipment that causes  
 31 injury, death, or damage while leased under a lease agreement is  
 32 not liable for acts of the lessee or the lessee's agent or  
 33 employee in connection with the rental or lease, including any  
 34 bodily injury, death, or damage resulting from the operation,  
 35 maintenance, or use of the special mobile equipment, if the  
 36 lease agreement requires documented proof of insurance coverage  
 37 containing limits of at least \$100,000 per person and up to  
 38 \$300,000 per incident for bodily injury liability and up to  
 39 \$50,000 for property damage liability, or at least \$500,000 for  
 40 combined property damage liability and bodily injury liability.  
 41 The failure of the lessee to obtain or maintain insurance  
 42 coverage required by the lease agreement does not impose  
 43 liability on the lessor.  
 44 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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



**THE FLORIDA  
SENATE**

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Education, *Chair*  
Appropriations  
Education  
Ethics and Elections  
Finance and Tax  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Select Committee on Collective  
Bargaining

**SENATOR KELLI STARGEL**  
22nd District

March 20, 2019

The Honorable David Simmons  
Senate Committee on Judiciary, Chair  
404 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Simmons:

I respectfully request that CS/SB 862, related to *Lessor Liability Under Special Mobile Equipment Leases*, be placed on the Judiciary Committee meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Kelli Stargel  
State Senator, District 22

Cc: Tom Cibula/Staff Director  
Joyce Butler/AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

862

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

4/8  
Meeting Date

Bill Number (if applicable)  
672360  
Amendment Barcode (if applicable)

Topic DANGEROUS INSTRUMENTALITY

Name EDORSE VHERDS

Job Title ATTY

Address Street

Phone

City State Zip

Email

Speaking:  For  Against  Information

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

Representing US CHAMBER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/8/19  
Meeting Date

CS/SB 867  
Bill Number (if applicable)

Topic DANGEROUS INSTRUMENTALITY

Amendment Barcode (if applicable)

Name GEORGE MEROS

Job Title ATTY, HOLLAND & KNIGHT

Address 315 S. CALHOUN

Phone 850 212 8235

Street TALLA  
City State Zip

Email

Speaking:  For  Against  Information

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

Representing US CHAMBER

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

08 APR 2019 Meeting Date

CS/SB 862 Bill Number (if applicable)

Topic DANGEROUS INSTRUMENTALITY DOCTRINE

Amendment Barcode (if applicable)

Name PAUL JESS

Job Title

Address 218 S. MONROE ST.

Phone 850-224-9403

Street

TALLAHASSEE FL 32301

Email pjess@floridajusticeassociation.org

City

State

Zip

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

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

Representing FLORIDA JUSTICE ASSOCIATION

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

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

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

04.08.19

*Meeting Date*

862

*Bill Number (if applicable)*

Topic Lessor Liability Under Special Mobile Equipment

*Amendment Barcode (if applicable,*

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

*Street*

Tallahassee

FL

32301

Email William@fljustice.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

***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)

4/8/19

Meeting Date

842

Bill Number (if applicable)

Topic Dangerous Instrumentality

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1200

Street

Tallahassee

City

State

Zip

Email

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

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

Representing FL Chamber of Commerce

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

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

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

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

1105@4

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

862

Bill Number (if applicable)

Topic Lessor Liability Under Special Mobile Equipment Leases

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St.

Phone 224-7173

Street

TLH

City

FL

State

32301

Zip

Email bbevis@aif.com

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1400

INTRODUCER: Judiciary Committee; Community Affairs Committee and Senator Albritton

SUBJECT: Private Property Rights

DATE: April 10, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/CS</b>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1400 provides private property owners a limited reprieve from local ordinances requiring prior permission to trim, prune, or remove trees in two situations. First, the bill amends s. 163.3209, F.S., to allow a year-round reprieve in the case of an adjacent right of way and permits an electric utility to prune trees and maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government when necessary to either restore service or to prevent an imminent, vegetation-caused outage.

Second, the bill creates s. 163.3214, F.S., a temporary reprieve prohibiting a local government in the months leading up to Florida's hurricane season, between March 1 and June 1 of each calendar year, from:

- Enforcing an ordinance or regulation requiring a permit, for
  - Pruning or trimming any tree on residential property; and
  - Removing any tree except heritage, patriarch, or specimen trees on residential property.
- Authorizing removal of heritage, patriarch, or specimen trees.

However, the temporary reprieve from enforcement narrowly applies to property owners who can provide documentation from an arborist certifying that a tree both creates a dangerous condition and is not an endangered species.

The bill also allows local governments to require property owners to "replant" trees that were removed in accordance with these provisions. The bill does not apply to mangrove trees.

The bill also requires each county property appraiser to post a Property Owner Bill of Rights on its website. Such bill of rights does not create a civil cause of action.

The bill is effective July 1, 2019.

## II. Present Situation:

### Home Rule

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>1</sup> Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>2</sup> Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.<sup>3</sup>

County governments have authority to prepare and enforce comprehensive plans for the development of the county and provide fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.<sup>4</sup> Municipalities are afforded broad home rule powers with the exception of annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.<sup>5</sup>

### Local Tree Pruning, Trimming and Removal Regulations

Currently, in Florida there are 67 counties<sup>6</sup> and 412 municipalities.<sup>7</sup> Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Local governments may also afford certain trees protection because they are considered an important

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<sup>1</sup> FLA. CONST. art. VIII, s. 1(f).

<sup>2</sup> FLA. CONST. art. VIII, s. 1(g).

<sup>3</sup> FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

<sup>4</sup> Section 125.01, F.S.

<sup>5</sup> Section 166.021(3), F.S.

<sup>6</sup> *See* ch. 7, F.S.; *The Local Government Formation Manual 2018-2020*, Appx. B, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Apr. 3, 2019).

<sup>7</sup> Florida League of Cities, *Municipal Directory Odering & Advertising Information*, <https://www.flcities.com/resources/municipal-directory/municipal-directory-information> (last visited Apr. 3, 2019). *See also* *The Local Government Formation Manual 2018-2020*, Appx. E, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Apr. 3, 2019).

community resource.<sup>8</sup> The terms used to describe such trees may include heritage,<sup>9</sup> historic, landmark, legacy, patriarch,<sup>10</sup> special interest, significant, or specimen<sup>11</sup> trees.

For example, in Broward County the removal of any historical tree<sup>12</sup> without first obtaining approval from the Board of County Commissioners is prohibited, as is the removal of any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.<sup>13</sup> Furthermore, municipalities within Broward County are authorized to adopt and enforce their own tree preservation regulations in addition to Broward County's regulation of trees.<sup>14</sup>

### ***Mangrove Trimming***

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).<sup>15</sup> “This law regulates the trimming and alteration of mangroves statewide, with the exception of the Delegated Local Governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties, the City of Sanibel, and the Town of Jupiter Island.”<sup>16</sup>

“The heights to which a mangrove tree may be trimmed will depend upon the provisions of the MTPA as well as the species and condition of the tree.”<sup>17</sup> “Projects that involve alterations, and

<sup>8</sup> See generally, American Society of Consulting Arborists, *Tree Ordinances*, available at <https://www.asca-consultants.org/page/TreeOrdinances> (last visited Apr. 3, 2019).

<sup>9</sup> A heritage tree is typically a large, individual tree with unique value, which is considered irreplaceable. The major criteria for heritage tree designation are age, rarity, and size, as well as aesthetic, botanical, ecological, and historical value. See Peter A. Coates, *American Perceptions of Immigrant and Invasive Species: Strangers on the Land*, 140 (University of Ca. Press 2006).

<sup>10</sup> A patriarch tree refers to “the oldest member or representative of a group.” See MERRIAM-WEBSTER DICTIONARY (defining patriarch at 1c(1), noting that “the cypress ... is the *patriarch* of native trees, going back to the time of the dinosaur”), available at <https://www.merriam-webster.com/dictionary/patriarch> (last visited Apr. 4, 2019). In Tallahassee, for example, patriarch live oaks are protected, see Tallahassee Land Dev. Cod. s. 5-83; and a live oak on FSU's campus with a trunk diameter of 72 inches, suggesting it is 160 years old, was deemed a patriarch tree in 2010. See FSU Plants, *FSU's Patriarch Oaks* (Aug. 18, 2011), available at <http://fsuplants.blogspot.com/2011/08/fsus-patriarch-oaks.html> (last visited Apr. 4, 2019).

<sup>11</sup> A specimen tree is a tree with any individual trunk that has a DBH (diameter at breast height) of 18 inches or greater (or a circumference of 56.5 inches or greater) when measured at point 4 1/2 feet from the ground at natural grade. In the case of multiple-trunked trees, the DBH shall mean the sum of each trunk's diameter measured at the point 4 1/2 feet from where the tree emerges from the ground at natural grade. The following trees are not considered specimen: Non-native fruit trees that are cultivated or grown for the specific purpose of producing edible fruit, including, but not limited to, mangos, avocados or species of citrus; Non-native species of the genus *Ficus*; and all multi-trunk palms except *Paurotis palm/Everglades palm (Acoelorrhapha wrightii)* and *Reclinata palm (Phoenix reclinata)*, which have a minimum overall height of 15 feet. See Miami-Dade County, *Tree Removal or Relocation Permits*, available at <https://www.miamidade.gov/permits/tree-removal.asp> (last visited April 3, 2019).

<sup>12</sup> The Broward County Code of Ordinances defines a “historical tree” as “a particular tree or group of trees which has historical value because of its unique relationship to the history of the region, state, nation or world as designated by the Board [of County Commissioners].” See Broward County Code of Ord., ch. 27, Art. XIV, s. 404, available at [https://library.municode.com/fl/broward\\_county/codes/code\\_of\\_ordinances?nodeId=COBRCOFLVOI](https://library.municode.com/fl/broward_county/codes/code_of_ordinances?nodeId=COBRCOFLVOI) (last visited Apr. 3, 2019).

<sup>13</sup> *Id.* at s. 405(a), (b).

<sup>14</sup> *Id.* at s. 407(a).

<sup>15</sup> Chapter 95-299, s. 1, LAWS OF FLA. See ss. 403.9321-403.9333, F.S.

<sup>16</sup> Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, “Introduction,” 4, available at [https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm\\_0.pdf](https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf) (last visited Apr. 3, 2019).

<sup>17</sup> *Id.* at 5 (“Before You Trim”).

trimming projects that exceed the allowances of the exemptions and general permits, may be authorized through individual permits in s. 403.9328, F.S.”<sup>18</sup> “Trimming may be authorized in an Environmental Resource Permit (ERP) along with other ERP activities for the same property. Mangrove impacts associated with and located within the footprint of an ERP authorized activity do not require a separate authorization under the MTPA[.]”<sup>19</sup>

### **Electric Transmission and Distribution Line Right-of-Way Maintenance**

Section 163.3209, F.S., provides that after a right-of-way for an electric transmission or distribution line has been established, a local government may not require any permits or other approvals for vegetation maintenance, tree pruning, or trimming within that right-of-way. This section defines the term “vegetation maintenance and tree pruning or trimming” as the “mowing of vegetation within the right-of-way, and selective removal of tree branches that extend within the right-of-way.”<sup>20</sup> This section requires a utility to provide five business days advance notice to a local government official prior to conducting vegetation maintenance activities within a right-of-way. An exception applies for service restoration, avoidance of imminent vegetation caused outage, or when performed at the request of the property owner adjacent to the right-of-way, provided the owner has approval of the local government if required.<sup>21</sup>

### **Hurricane Season**

According to the National Hurricane center, “[t]he official hurricane season for the Atlantic Basin (the Atlantic Ocean, the Caribbean Sea, and the Gulf of Mexico) is from 1 June to 30 November.”<sup>22</sup>

## **III. Effect of Proposed Changes:**

CS/CS/SB 1400 provides private property owners a limited reprieve from local ordinances requiring prior permission to trim, prune, or remove trees in two situations.

First, **section 1** amends s. 163.3209, F.S., to allow a year-round reprieve in the case of an adjacent right of way. Section 1 permits an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner *without* prior approval from the local government when necessary to either restore service or to prevent an imminent, vegetation-caused outage.

Notably, s. 163.3209, F.S., also expressly references specimen and historical trees (referenced in Section 2). Section 163.3209, F.S., states that “[t]his section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of *specimen trees or historical trees*, as defined in a local government’s ordinances or regulations, or trees within designated canopied protection areas.”

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citing s. 403.9328(5), F.S.).

<sup>20</sup> Section 163.3209, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> National Hurricane Center, *Tropical Cyclone Climatology*, available at <https://www.nhc.noaa.gov/climo/> (last visited Apr. 4, 2019).

Second, **section 2** creates s. 163.3214, F.S., to provide a temporary reprieve to property owners in the months leading up to Florida's hurricane season by prohibiting a local government, between March 1 and June 1 of each calendar year, from:

- Enforcing an ordinance or regulation requiring a permit, for
  - Pruning or trimming any tree on residential property; and
  - Removing any tree except heritage, patriarch, or specimen trees on residential property.
- Authorizing removal of heritage, patriarch, or specimen trees.

However, the temporary reprieve from enforcement narrowly applies to property owners who can provide documentation from an arborist certifying that a tree both creates a dangerous condition and is not an endangered species. If the tree is an endangered species, it appears the local government can enforce its ordinances and possibly prohibit pruning, trimming, or removal notwithstanding any danger created by the tree.

Additionally, the particular wording of the bill appears to ban local governments from authorizing the removal of specimen, heritage, or patriarch trees for any reason from March 1 through June 1 of a calendar year. However, the intent may have been to preserve the authority of local governments to require property owners to obtain permits before these trees are removed.

The bill defers to the definitions of specimen, heritage, and patriarch trees in local ordinances and regulations. If a local ordinance contains an expansive definition of these types of trees, the effect of the bill may be significantly affected.

The bill also provides that a local government may enforce ordinances or regulations pertaining to the "replanting" of trees that have been removed in accordance with this section. This provision appears to refer to the replacement of removed trees.

The bill does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to the Mangrove Trimming and Preservation Act.<sup>23</sup>

Additionally, **section 3** of the bill creates s. 715.015, F.S., establishing a property owner bill of rights to be posted on the website of each county property appraiser. The purpose of the bill of rights is to identify certain existing rights afforded to property owners. The bill provides several disclaimers concerning the bill of rights:

- It is not comprehensive.
- It does not create a civil cause of action.

In addition to the foregoing disclaimers, the required language to be posted on county appraiser websites also lists the following disclaimers concerning the bill of rights:

- It does not expand or limit rights or remedies.
- It is not intended to replace legal advice.

The websites must further advise that laws relating to property rights are found in the Florida Constitution, Florida statutes, local ordinances, and court decisions.

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<sup>23</sup> Sections 403.9321-403.9333, F.S.

Following the above disclaimers, the bill of rights provides that private property owners generally have the following rights and protections:

- The right to acquire, possess, and protect property.
- The right to use and enjoyment of property.
- The right to exclude others from property.
- The right to dispose of property.
- The right to due process.
- The right to just compensation for property taken for a public purpose.
- The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state unfairly affects real property.

**Section 4** provides the bill takes effect July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners may save costs associated with permit fees to trim or cut down certain trees. However, they must still expend funds for an arborist and may still have to pay for permit fees if the arborist determines the tree is an endangered species. Additionally, property owner will be able to remove specimen, heritage, or patriarch trees even if such action is recommended by an arborist to abate a dangerous condition, thereby exposing the property owner to either fines or expenses associated with the loss of property.

Allowing greater flexibility in removing dangerous trees may reduce the risk of property damage and insurance claims.

C. **Government Sector Impact:**

Local governments may temporarily see a decline in revenues from fines or fees associated with various tree ordinances in effect.

**VI. Technical Deficiencies:**

On line 104, the bill refers to the “replanting” of trees but it is unlikely that a tree that has been removed would be replanted. Thus, it appears “replanting” should be changed to “replacing.”

The bill does not define the terms heritage, specimen, and patriarch trees.

**VII. Related Issues:**

The bill’s total prohibition on a local government authorizing the removal of specimen, heritage, or patriarch trees without providing any exceptions for trees creating dangerous conditions seems to be at odds with the intent of the bill, to provide homeowners with a temporary reprieve from seeking permission to trim, prune, and remove trees before hurricane season.

Additionally, the bill does not address the authority of homeowner’s associations to restrict the trimming, pruning, and removal of trees during the months prior to hurricane season.

**VIII. Statutes Affected:**

This bill amends section 163.3209 of the Florida Statutes. The bill creates section 163.3214 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 April 8, 2019:**

The committee substitute adds the Property Owner Bill of Rights back into the bill.

**CS by Community Affairs on April 2, 2019:**

The committee substitute:

- Amends s. 163.3209, F.S., to allow an electric utility to maintain vegetation in the right of way at the request of the adjacent property owner without prior approval from the local government.
- Prohibits enforcement of local government ordinances requiring a permit for pruning, trimming and removal of certain trees during a specified time period.
- Prohibits a local government from authorizing the removal of certain trees during a specified time period.

- Authorizes a local government to enforce ordinances or regulations requiring the replanting of trees under certain circumstances.
- Exempts mangrove trees from the bill's application.
- Deletes provisions regarding the Private Property Bill of Rights.

**B. Amendments:**

None.

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

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888164

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

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The Committee on Judiciary (Albritton) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 108 and 109

insert:

Section 3. Section 715.015, Florida Statutes, is created to read:

715.015 Property owner bill of rights.—Each property appraiser office shall provide on its website a property owner bill of rights. The purpose of the bill of rights is to identify certain existing rights afforded to property owners. The bill of



888164

11 rights is not a comprehensive listing. The property owner bill  
12 of rights does not create a civil cause of action. The property  
13 owner bill of rights must state:

14  
15 PROPERTY OWNER

16 BILL OF RIGHTS

17 This Bill of Rights does not represent all of  
18 your rights under Florida law regarding your property  
19 and should not be viewed as a comprehensive guide to  
20 property rights. This document does not create a civil  
21 cause of action and neither expands nor limits any  
22 rights or remedies provided under any other law. This  
23 document is not intended to replace the need to seek  
24 legal advice in matters relating to property law. Laws  
25 relating to your rights are found in the Florida  
26 Constitution, the Florida Statutes, local ordinances,  
27 and court decisions.

28  
29 As a property owner, you have the following  
30 rights and protections:

- 31 1. The right to acquire, possess, and protect  
32 property.  
33 2. The right to use and enjoyment of property.  
34 3. The right to exclude others from property.  
35 4. The right to dispose of property.  
36 5. The right to due process.  
37 6. The right to just compensation for property  
38 taken for a public purpose.  
39 7. The right to relief, or payment of



888164

40       compensation, when a new law, rule, regulation, or  
41       ordinance of the state or a political entity in the  
42       state unfairly affects real property.

43

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

45 And the title is amended as follows:

46       Delete line 16

47 and insert:

48       applicability; creating s. 715.015, F.S.; establishing  
49       a property owner bill of rights; requiring each county  
50       property appraiser office to provide information  
51       regarding the property owner bill of rights on the  
52       appraiser's website; providing that such bill of  
53       rights does not provide a cause of action; providing  
54       an effective date.

By the Committee on Community Affairs; and Senator Albritton

578-03809-19

20191400c1

A bill to be entitled

An act relating to private property rights; amending s. 163.3209, F.S.; deleting a provision that authorizes electric utilities to perform certain right-of-way tree maintenance only if a property owner has received local government approval; creating s. 163.3214, F.S.; prohibiting certain local government ordinances or regulations from requiring a permit, application, notice, fee, or fine for certain activities regarding trees on residential property; prohibiting a local government from authorizing the removal of certain trees during a specified time period; authorizing a local government to enforce ordinances or regulations pertaining to the replanting of trees under certain circumstances; providing applicability; providing an effective date.

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

Section 1. Section 163.3209, Florida Statutes, is amended to read:

163.3209 Electric transmission and distribution line right-of-way maintenance.—After a right-of-way for any electric transmission or distribution line has been established and constructed, no local government shall require or apply any permits or other approvals or code provisions for or related to vegetation maintenance and tree pruning or trimming within the established right-of-way. The term “vegetation maintenance and tree pruning or trimming” means the mowing of vegetation within

Page 1 of 4

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

578-03809-19

20191400c1

the right-of-way, removal of trees or brush within the right-of-way, and selective removal of tree branches that extend within the right-of-way. The provisions of this section do not include the removal of trees outside the right-of-way, which may be allowed in compliance with applicable local ordinances. Prior to conducting scheduled routine vegetation maintenance and tree pruning or trimming activities within an established right-of-way, the utility shall provide the official designated by the local government with a minimum of 5 business days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service or to avoid an imminent vegetation-caused outage or when performed at the request of the property owner adjacent to the right-of-way, ~~provided that the owner has approval of the local government, if needed.~~ Upon the request of the local government, the electric utility shall meet with the local government to discuss and submit the utility's vegetation maintenance plan, including the utility's trimming specifications and maintenance practices. Vegetation maintenance and tree pruning or trimming conducted by utilities shall conform to ANSI A300 (Part I)—2001 pruning standards and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush—Safety Requirements. Vegetation maintenance and tree pruning or trimming conducted by utilities must be supervised by qualified electric utility personnel or licensed contractors trained to conduct vegetation maintenance and tree trimming or pruning consistent with this section or by Certified Arborists certified by the Certification Program of the International Society of Arboriculture. A local government shall

Page 2 of 4

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

578-03809-19 20191400c1

59 not adopt an ordinance or land development regulation that  
 60 requires the planting of a tree or other vegetation that will  
 61 achieve a height greater than 14 feet in an established electric  
 62 utility right-of-way or intrude from the side closer than the  
 63 clearance distance specified in Table 2 of ANSI Z133.1-2000 for  
 64 lines affected by the North American Electric Reliability  
 65 Council Standard, FAC 003.1 requirement R1.2. This section does  
 66 not supersede or nullify the terms of specific franchise  
 67 agreements between an electric utility and a local government  
 68 and shall not be construed to limit a local government's  
 69 franchising authority. This section does not supersede local  
 70 government ordinances or regulations governing planting,  
 71 pruning, trimming, or removal of specimen trees or historical  
 72 trees, as defined in a local government's ordinances or  
 73 regulations, or trees within designated canopied protection  
 74 areas. This section shall not apply if a local government  
 75 develops, with input from the utility, and the local government  
 76 adopts, a written plan specifically for vegetation maintenance,  
 77 tree pruning, tree removal, and tree trimming by the utility  
 78 within the local government's established rights-of-way and the  
 79 plan is not inconsistent with the minimum requirements of the  
 80 National Electrical Safety Code as adopted by the Public Service  
 81 Commission; provided, however, such a plan shall not require the  
 82 planting of a tree or other vegetation that will achieve a  
 83 height greater than 14 feet in an established electric right-of-  
 84 way. Vegetation maintenance costs shall be considered  
 85 recoverable costs.

86 Section 2. Section 163.3214, Florida Statutes, is created  
 87 to read:

Page 3 of 4

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578-03809-19 20191400c1

88 163.3214 Tree pruning, trimming, or removal on residential  
 89 property.-  
 90 (1) From March 1 through June 1 of the calendar year, a  
 91 local government may not do either of the following:  
 92 (a) If the property owner has obtained documentation from  
 93 an arborist certified by the International Society of  
 94 Arboriculture that the tree is a danger to persons or property  
 95 and the tree is not a listed endangered species, enforce an  
 96 ordinance or regulation governing the pruning or trimming of  
 97 specimen, heritage, or patriarch trees, as defined by local  
 98 ordinances or regulations, or the pruning, trimming, or removal  
 99 of other trees on residential property which requires a permit,  
 100 an application, the provision of notice, a fee, or a fine.  
 101 (b) Authorize the removal of specimen, heritage, or  
 102 patriarch trees, as defined by local ordinances or regulations.  
 103 (2) A local government may enforce ordinances or  
 104 regulations pertaining to the replanting of trees that have been  
 105 removed in accordance with this section.  
 106 (3) This section does not apply to the exercise of  
 107 specifically delegated authority for mangrove protection  
 108 pursuant to ss. 403.9321-403.9333.  
 109 Section 3. This act shall take effect July 1, 2019.

Page 4 of 4

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# APPEARANCE RECORD

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

4/8/19  
Meeting Date

1400  
Bill Number (if applicable)

Topic Private Property Rights

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St

Phone 850-224-1400

Tallahassee FL 32301  
City State Zip

Email andyg@floridarealtors.org

Speaking:  For  Against  Information

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

Representing Florida Realtors

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/8/19

*Meeting Date*

1400

*Bill Number (if applicable)*

Topic Private Property Rights

*Amendment Barcode (if applicable)*

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222-9684

*Street*

Tallahassee

FL

32302

Email rohara@flcities.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida League of Cities

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)

4-8-19 Meeting Date

SB 1400 Bill Number (if applicable)

Topic Tree REGULATIONS

Amendment Barcode (if applicable)

Name KURT SPITZER

Job Title

Address 693 FOREST LANE

Phone 850-228-6212

Street

City

32312

State

Zip

Email KURTSPITZER@KSTNET.NET

Speaking: For Against Information

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

Representing FLA. STORMWATER 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19 Meeting Date

SB 1400 Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr

Phone

Street

Largo FL 33773

Email

City

State

Zip

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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 7086

INTRODUCER: Judiciary Committee and Criminal Justice Committee

SUBJECT: Voting Rights Restoration

DATE: April 10, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Cox</u>	<u>Jones</u>		<b>CJ Submitted as Committee Bill</b>
1.	<u>Cox</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 7086 makes a number of conforming changes to ensure the Amendment 4 ballot initiative approved by the Florida voters in 2018 is uniformly implemented and relevant terms are defined.

Specifically, the bill creates s. 98.0751, F.S., codifying that a person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification removed and his or her voting rights restored pursuant to Article VI, section 4 of the Florida Constitution upon the completion of all terms of his or her sentence, including parole or probation. Additionally, the bill defines necessary terms, including “completion of all terms of sentence,” “felony sexual offense,” and “murder.”

The bill authorizes the Department of State (DOS) to verify whether a person who has been convicted of a felony and may be eligible for rights restoration pursuant to Article VI, section 4 of the Florida Constitution, has completed all terms of his or her sentence as required in the bill. The verification must be conducted when such person registers or applies to register to vote. The bill provides specific rulemaking authority to the DOS to implement the act.

The bill also creates an undesignated section of law which establishes the Restoration of Voting Rights Work Group within the DOS for the purpose of conducting a comprehensive review of the process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony but who may be eligible for restoration of voting rights. The bill establishes the Work Group membership and appointment procedures and also provides duties. The Work Group

is required to submit a report of its specified recommendations to the Legislature by November 1, 2019.

The bill amends s. 940.061, F.S., requiring the Department of Corrections (DOC) to inform inmates and offenders of voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution, in addition to executive clemency and restoration of civil rights.

The bill requires the DOC and county detention facilities to notify specified persons of all outstanding terms of the sentence to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

Sections 97.052, 97.053, 98.045, and 98.075, F.S., are amended to revise the term “civil” to “voting” clarifying that these provisions relate to the restoration of voting rights. Section 98.075, F.S., is also amended to require county supervisors of elections to notify a potential voter of instructions for seeking restoration of voting rights pursuant to Article VI, section 4 of the Florida Constitution, in addition to restoration of civil rights pursuant to Article IV, section 8 of the Florida Constitution. Lastly, s. 944.292, F.S., is amended to reference the voting rights restoration process.

The Amendment 4 ballot initiative, rather than the bill, will likely result in an increased workload to the DOS as a result of additional duties necessary to verify certain voters’ eligibility to vote pursuant Article VI, section 4 of the Florida Constitution. Additionally, certain entities will likely see increased workload and a positive fiscal impact (i.e. increase in costs) as a result of the requirement for such entities to notify inmates or offenders of outstanding terms of sentence. *See* Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

## **II. Present Situation:**

### **Voting Registration in Florida**

#### ***Eligibility to Register to Vote***

The Florida Constitution and Florida Statutes provide for a person’s eligibility to vote in an election<sup>1</sup> and specifically state that a person is eligible to vote in Florida only if that person is:

- At least 18 years old;
- A United States citizen;
- A legal resident of Florida;
- A legal resident of the county in which the person seeks to register; and
- Registered pursuant to the Florida Election Code.<sup>2</sup>

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<sup>1</sup> Section 97.021(12), F.S., defines “election” to mean any primary election, special primary election, special election, general election, or presidential preference primary election.

<sup>2</sup> FLA. CONST. art. VI, s. 2; s. 97.041(1), F.S. *See also* s. 97.011, F.S., providing that chs. 97-106, F.S., are known as the “Florida Election Code.”

In part, a person is not qualified to register to vote in Florida, without having his or her voting rights restored, if he or she has been convicted of a felony<sup>3</sup> by any court of record.<sup>4</sup> The Secretary of State, who is the head of the Florida Department of State (DOS), is designated as the chief election officer of Florida<sup>5</sup> and is required, in part, to:

- Obtain and maintain uniformity in the interpretation and implementation of the election laws;<sup>6</sup>
- Enact rules to provide uniform standards for the proper and equitable implementation of the registration laws;<sup>7</sup> and
- Create and administer a uniform statewide voter registration system as required by the Help America Vote Act of 2002.<sup>8</sup>

### ***Uniform Statewide Voter Registration***

The statewide voter registration system must contain the name and registration information of every legally registered voter in the state. The voter registration system is the official list of registered voters in the state and must provide secured access by authorized voter registration officials.<sup>9</sup> The DOS may not contract with any other entity for the operation of the statewide voter registration system.<sup>10</sup>

A supervisor of elections is an elected position whose primary duties include updating voter registration information, entering new voter registrations into the statewide voter registration system, and acting as the official custodian of documents received related to the registration of electors and changes in voter registration status of electors of the supervisor's county.<sup>11</sup> The supervisor of elections must also ensure that all voter registration and list maintenance procedures conducted and the voter registration system used are in compliance with any federal and state laws as well as the DOS rules through the statewide voter registration system.<sup>12</sup>

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<sup>3</sup> Article X, section 10 of the Florida Constitution defines "felony" to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or by imprisonment in the state penitentiary. Additionally, s. 775.08(1), F.S., defines "felony" to mean any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or imprisonment in a state penitentiary. "State penitentiary" is further defined to include state correctional facilities. A person must be imprisoned in the state penitentiary for each sentence which, except an extended term, exceeds 1 year.

<sup>4</sup> FLA. CONST., art. VI, s. 4(a); s. 97.041(2), F.S.

<sup>5</sup> Section 97.012, F.S.

<sup>6</sup> Section 97.012(1), F.S.

<sup>7</sup> Section 97.012(2), F.S.

<sup>8</sup> Section 97.012(11), F.S. The secretary may delegate voter registration duties and records maintenance activities to voter registration officials provided that any responsibilities delegated are performed in accordance with state and federal law. Section 97.021(17), F.S., defines "lists of registered electors" to mean names and associated information of registered electors maintained by the DOS in the statewide voter registration system or generated or derived from the statewide voter registration system and provides that lists may be produced in printed or electronic format.

<sup>9</sup> Section 97.021(43), F.S., defines "voter registration official" to mean any supervisor of elections or individual authorized by the DOS to accept voter registration applications and execute updates to the statewide voter registration system.

<sup>10</sup> Section 98.035(2) and (3), F.S.

<sup>11</sup> Section 98.015, F.S.

<sup>12</sup> Section 98.015(10), F.S. The specific federal laws that are cited relating to compliance are the Voting Rights Act of 1965, the National Voter Registration Act of 1993, or the Help America Vote Act of 2002.

As mentioned above, the DOS develops a uniform statewide voter registration application (application) for distribution to any person seeking to register to vote.<sup>13</sup> The application elicits specified information from the applicant, including, in part, the applicant's:

- Name;
- Date of birth;
- Address;
- County of residence;
- Race or ethnicity;
- State or county of birth;
- Sex; and
- Party affiliation.<sup>14</sup>

Additionally, the application must contain a question as to whether the applicant has been convicted of a felony, and, if convicted, has had his or her civil rights restored. The convicted felon who has gained his or her rights back must not be made to divulge the existence of such a conviction when filling out an application. The affirmative statement required to be included in the application is: "I affirm I am not a convicted felon, or, if I am, my rights relating to voting have been restored."<sup>15</sup>

In part, applications must be accepted in the office of any supervisor of elections,<sup>16</sup> the DOS, or a voter registration agency during the hours that office is open or when mailed.<sup>17</sup> An application is complete and becomes the official voter registration record of that applicant when all information necessary to establish the applicant's eligibility as discussed above is received by a voter registration official.<sup>18</sup> The supervisor of elections must notify an applicant by mail within five business days if the applicant fails to provide any of the required information on the application and the applicant must be given an opportunity to complete the application to vote in the next election up until the book closing for that next election.<sup>19</sup>

### ***Verification of Eligibility and Maintenance of the Voting Registration System***

A supervisor of elections is prohibited from removing a voter from the statewide voter registration system except in limited circumstances, including, in part, as a result of a felony conviction.<sup>20</sup> The DOS identifies ineligible registered voters who qualify for removal from the registration system by comparing information received from specified entities, including, in part:

- The Florida Commission on Offender Review (FCOR);<sup>21</sup>

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<sup>13</sup> Section 97.052(1)(b), F.S.

<sup>14</sup> Section 97.052(2), F.S.

<sup>15</sup> Section 97.052(2)(t), F.S. Section 97.053(5)(a)6., F.S., further provides that this requirement is satisfied in the application with a mark in the checkbox affirming that the applicant has not been convicted of a felony or that, if convicted, has had his or her civil rights restored.

<sup>16</sup> Section 97.021(43), F.S., includes supervisors of election in the definition of "voter registration official" and provides that such entities accept voter registration applications and execute updates to the statewide voter registration system.

<sup>17</sup> Section 97.053(1), F.S.

<sup>18</sup> See s. 97.053(5)(a) and (6), F.S.

<sup>19</sup> Section 97.052(6), F.S.

<sup>20</sup> Section 98.045(2)(a), F.S.

<sup>21</sup> Section 98.093(2)(e), F.S., requires the FCOR to provide information on a bimonthly frequency that identifies persons granted clemency in the preceding month or any updates to prior records which occurred in the preceding month.

- The Department of Corrections (DOC);<sup>22</sup>
- The Florida Department of Law Enforcement (FDLE);<sup>23</sup> or
- A United States Attorney's Office.<sup>24</sup>

The DOS reviews ineligibility information, including relevant information provided by such entities, and makes an initial credibility and reliability determination.<sup>25</sup> The DOS notifies the voter's supervisor of elections if it determines the information is credible and reliable and provides a copy of supporting documentation indicating the voter's potential ineligibility.<sup>26</sup> A supervisor of elections must notify the registered voter of his or her potential ineligibility by mail within seven days after receiving the notice or information from the DOS. The notice must include:

- A statement regarding the basis for potential ineligibility and a copy of any supporting documentation;
- A statement that failing to respond within 30 days after receiving the notice may result in an ineligibility determination and removal from the statewide voter registration system;
- A return form requiring the registered voter to admit or deny the accuracy of the information used to make the initial ineligibility determination;
- Instructions for contacting the supervisor of elections if the person requires assistance; and
- Instructions for seeking restoration of civil rights following a felony conviction, if applicable.<sup>27</sup>

If a registered voter fails to respond to the notice, or responds without requesting a hearing, the supervisor of elections makes a final ineligibility determination and may remove the voter from the statewide voter registration system and provide a notification of removal.<sup>28</sup>

If the voter denies the accuracy of the information and requests a hearing, the supervisor of elections must conduct a hearing at which the registered voter may present evidence, prior to making an eligibility determination. If the supervisor of elections determines the voter is ineligible following a hearing, the supervisor of elections may remove the voter from the statewide voter registration system and notify the voter of such action.<sup>29</sup> An eligibility determination must be supported by a preponderance of the evidence, and upon removal, a voter

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<sup>22</sup> Section 98.093(2)(f), F.S., requires the DOC to provide information identifying persons convicted of a felony and committed to the custody of or supervision with the DOC. This information must be provided in a time and in a manner that allows the DOC to identify registered voters who are convicted felons and to meet its obligations under state and federal law.

<sup>23</sup> Section 98.093(2)(d), F.S., requires the FDLE to provide information identifying persons convicted of a felony whose name appears in the voter registration records supplied by the statewide voter registration system, in a time and manner that enables the FDLE to meet its obligations under state and federal law.

<sup>24</sup> Section 98.093(2)(c), F.S., requires the United States Attorney to provide information to the DOS listing persons convicted of a felony in federal court.

<sup>25</sup> Section 98.075(5), F.S.

<sup>26</sup> *Id.* Further, ss. 98.075(6) and 98.093(3), F.S., also authorize the supervisor of elections to remove the name of an ineligible person from the statewide voter registration system based on information received from other sources.

<sup>27</sup> Section 98.075(7)(a), F.S. Further, if the mailed notice is returned as undeliverable, the supervisor of elections must publish a specified notice once in a newspaper of general circulation in the county.

<sup>28</sup> Section 98.075(7)(a)3., F.S.

<sup>29</sup> Section 98.075(7)(a)5., F.S.

has the right to appeal the determination of ineligibility in the circuit court of the county where the person registered.<sup>30</sup>

Any voter whose name was removed from the statewide voter registration system on the basis of a determination of ineligibility who subsequently becomes eligible to vote must reregister in order to have his or her name restored to the statewide voter registration system.<sup>31</sup> When the name of any elector has been erroneously or illegally removed from the statewide voter registration system, the name of the elector must be restored by a voter registration official upon satisfactory proof, even though the registration period for that election is closed.<sup>32</sup>

In addition to updating the voter registration system as described above, the supervisor of elections is required to conduct a general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records.<sup>33</sup>

### **Conditions Placed Upon Regaining the Right to Vote Subsequent to a Felony Conviction**

Poll taxes began in the 1890s and essentially operated as a voting fee. Eligible voters were required to pay a tax before they could cast a ballot.<sup>34</sup> In 1964, the 24th Amendment to the United States Constitution was ratified, which prohibited the use of poll taxes for federal elections.<sup>35</sup> Despite the federal ban on the use of poll taxes, states tried to keep them in operation. The United States Supreme Court held those attempts unconstitutional by finding that, “[A] state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard.”<sup>36</sup>

However, the issue of whether the imposition of fees or fines as a requisite to a completion of a sentence to *restore* voting rights has not been resolved. Florida’s suspension of a person’s voting rights subsequent to a felony conviction has been challenged on constitutional grounds a number of times. In *Beacham v. Brateman*, the court held that such suspension does not violate the Equal Protection nor the Due Process Clause of the United States Constitution, holding that a state may constitutionally exclude persons otherwise qualified to vote who have been convicted of a felony.<sup>37</sup>

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<sup>30</sup> Sections 98.075(7)(b) and 98.0755, F.S. Section 98.0755, F.S., further provides that notice of appeal must be filed within the time and in the manner provided by the Florida Rules of Appellate Procedure and the voter must bear the cost of the trial in the circuit court unless there is a finding that his or her name was erroneously or illegally removed from the statewide voter registration system, or that he or she is indigent.

<sup>31</sup> Section 98.075(7)(b)5., F.S.

<sup>32</sup> Section 98.081(2), F.S.

<sup>33</sup> Section 98.065(1), F.S. Further, s. 98.065(2), F.S., requires that a registration list maintenance program be conducted by each supervisor of elections, at a minimum, in each odd-numbered year and must be completed not later than 90 days prior to the date of any federal election.

<sup>34</sup> The National Museum of American History, *Poll Taxes*, available at <http://americanhistory.si.edu/democracy-exhibition/vote-voice/keeping-vote/state-rules-federal-rules/poll-taxes> (last visited March 20, 2019).

<sup>35</sup> *Id.*; U.S. CONST., amend. IV.

<sup>36</sup> See *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666 (U.S. 1966).

<sup>37</sup> *Beacham v. Brateman*, 300 F.Supp. 182, 184 (S.D. Fla. 1969).

In *Johnson v. Bush*, the plaintiffs' alleged that the imposition of financial conditions on regaining the right to vote, specifically the requirement to pay all victim restitution, constituted a practical equivalent of a poll tax.<sup>38</sup> The court rejected this argument, reasoning that Florida had permissibly suspended the plaintiffs' right to vote along with other civil rights based on their felony convictions and that the state's requirement for the plaintiffs seeking to have their civil rights fully restored to satisfy victim restitution is one made within the state's authority. Furthermore, the court held that payment of restitution to the victim was *part of the sentence* and thus, the sentence was not complete without such payment. The court further reasoned that the payment of restitution to the victim was not a condition precedent to the plaintiffs' right to vote, but rather a prerequisite to having their civil rights restored.<sup>39</sup>

### Restoration of Civil Rights

As discussed above, a person convicted of a felony forfeits specified rights as a result of the conviction under the Florida Constitution.<sup>40</sup> Additional civil rights are lost in accordance with statute, including the right to serve on a jury<sup>41</sup> and possess a firearm.<sup>42</sup> Prior to 2019, the civil rights of a convicted felon were suspended until restored by a pardon<sup>43</sup> or restoration of civil rights.<sup>44</sup>

The Florida Constitution, in part, grants the power of restoring civil rights to the Governor with the consent of at least two Cabinet members.<sup>45</sup> The Governor and Cabinet sit as the Executive Board of Clemency (Clemency Board).<sup>46</sup> The Rules of Executive Clemency (Clemency Rules) outline the eligibility criteria for the process of restoration of civil rights, are adopted by the Governor with the approval of two members of the Clemency Board.<sup>47</sup> The Clemency Rules provide, in part, that the unfettered discretion to:

- Deny the restoration of civil rights at any time, for any reason, rests with the Governor; and
- Grant the restoration of civil rights at any time, for any reason, rests with the Governor, provided at least two members of the Clemency Board also approve.<sup>48</sup>

<sup>38</sup> *Johnson v. Bush*, 353 F.3d 1287, 1308 (11th Cir. 2003); *See also Johnson v. Bush*, 405 F.3d 1214, 1228 (11th Cir. 2005).

<sup>39</sup> *Id.* at 1343. *See also Howard v. Gilmore*, 205 F.3d 1333 (4th Cir. 2000), where the court in that case held that requiring felons to pay a \$10 fee to the Circuit Court of Richmond in order to begin the process of having a person's civil rights restored did not constitute an unconstitutional poll tax. *See also Johnson v. Bredesen*, 624 F.3d 742, 750-751 (6th Cir. 2010); *Harvey v. Brewer*, 605 F.3d 1067, 1079 (9th Cir. 2010).

<sup>40</sup> Article VI, section 4 of the Florida Constitution provides that a person loses their right to hold office subsequent to a felony conviction.

<sup>41</sup> Section 40.013, F.S.

<sup>42</sup> Section 790.23, F.S. *See also* s. 790.06(2)(d) and (k), F.S.

<sup>43</sup> Florida provides for several types of pardons applicable to felony convictions. A full pardon unconditionally releases a person from punishment and forgives guilt for any Florida convictions. It restores to an applicant all of the rights of citizenship possessed by the person before his or her conviction, including the right to own, possess, or use firearms. A pardon without firearm authority releases a person from punishment and forgives guilt. It entitles an applicant to all of the rights of citizenship enjoyed by the person before his or her conviction, except the specific authority to own, possess, or use firearms. The FCOR, *Clemency Overview*, available at <https://www.fcor.state.fl.us/clemencyOverview.shtml> (last visited March 19, 2019).

<sup>44</sup> Section 944.292, F.S.

<sup>45</sup> FLA. CONST. art. VI, s. 2. This authority is also codified in s. 940.01, F.S.

<sup>46</sup> Rules of Executive Clemency (2017), Rule 1., available at [https://www.fcor.state.fl.us/docs/clemency/clemency\\_rules.pdf](https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf) (last visited March 20, 2019)(hereinafter cited as "Clemency Rule").

<sup>47</sup> Section 940.03, F.S. *See also* Clemency Rule 2.A.

<sup>48</sup> Clemency Rule 4.

The current Clemency Rules define the restoration of civil rights as a process that restores all of the applicant's rights of citizenship enjoyed before the felony conviction, except the specific authority to own, possess, or use firearms.<sup>49</sup> The Clemency Rules further provide the specific authority to own, possess, or use a firearm must be restored through a separate process for such rights.<sup>50</sup>

### ***Restoration of Civil Rights Under Governor Scott's Administration***

The current Clemency Rules, which have not been amended since Governor DeSantis and the new Cabinet members were sworn into office on January 8, 2019, became effective March 9, 2011 under then Governor Scott.<sup>51</sup> Eligibility for restoration of civil rights is separated out between applications that require a hearing in front of the Clemency Board for approval and those that do not. The investigations for the applications requiring a hearing are more intensive than applications that do not require a hearing.<sup>52</sup>

For a person to qualify for civil rights restoration without a hearing an applicant must have not committed or been arrested for any crime for five years from the date of completion of all sentences, conditions of supervision imposed, and meet the following requirements:

- Complete all sentences imposed and all conditions of supervision must have expired or been completed, including but not limited to, imprisonment, parole, probation, community control, control release, and conditional release;
- Have no outstanding detainers or pending criminal charges;
- Owe no restitution pursuant to a court order, civil judgment, or ch. 960, F.S.;<sup>53</sup>
- Not have a conviction for:
  - Murder, attempted murder, attempted felony murder, or manslaughter (ch. 782, F.S.);
  - Driving under the influence (DUI) manslaughter or DUI causing serious bodily injury (s. 316.193, F.S.);
  - Leaving the scene of an accident involving injury or death (s. 316.027, F.S.);
  - Sexual battery, attempted sexual battery, unlawful sexual activity with a minor, or female genital mutilation (ch. 794, F.S.);
  - Any violation of lewdness or indecent exposure (ch. 800, F.S.);
  - Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);<sup>54</sup>

<sup>49</sup> Clemency Rule 4.I.G. Restoration of civil rights in accordance with the Clemency Rules does not relieve an applicant from the registration and notification requirements or any other obligations and restrictions imposed by law upon sexual predators or sexual offenders.

<sup>50</sup> See Clemency Rule 4.I.F.

<sup>51</sup> Clemency Rule 2.B. See also The FCOR, *Executive Clemency Timeline: 1991-2015*, p. 2 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as "Clemency Timeline").

<sup>52</sup> See The FCOR, *Annual Report 2016-17*, p. 15, available at <https://www.fcor.state.fl.us/docs/reports/FCORannualreport201617.pdf> (last visited March 20, 2019).

<sup>53</sup> The FCOR reports that the current Clemency Rules require all restitution to be paid even if such restitution is converted to a civil lien. However, the FCOR reports that other financial obligations do not have to be paid to be eligible for clemency unless the other obligation was ordered by the court as restitution. Email from Alexander Yarger, Legislative Affairs Director, the FCOR, January 2, 2019 (on file with the Senate Criminal Justice Committee). Chapter 960, F.S., provides compensation for crime victim assistance services including, but not limited to, mental health counseling, forensic physical examinations, and relocation assistance for specified crimes.

<sup>54</sup> Clemency Rule 9.A.4. A conviction for attempt to commit the offense also disqualifies a person from eligibility.

- Sexual performance by a child (s. 827.071, F.S.);<sup>55</sup>
- Aggravated child abuse (s. 827.03, F.S.);
- Failure to register as a sexual predator or sexual offender (s. 775.21 or s. 943.0435, F.S.);
- Computer pornography, transmission of computer pornography, or any crime involving a minor (ch. 847, F.S.);
- Kidnapping, false imprisonment, or luring or enticing a child (ch. 787, F.S.);<sup>56</sup>
- Aggravated battery (s. 784.045, F.S.);<sup>57</sup>
- Felony battery or domestic battery by strangulation (s. 784.041, F.S.);
- Robbery, carjacking, home invasion (ch. 812, F.S.);<sup>58</sup>
- Poisoning food or water (s. 859.01, F.S.);
- Abuse of a dead human body (s. 872.06, F.S.);
- Burglary of a dwelling or first degree burglary (s. 810.02, F.S.);<sup>59</sup>
- Arson (s. 806.01, F.S.);<sup>60</sup>
- Aggravated assault (s. 784.021, F.S.);
- Aggravated stalking (s. 784.048, F.S.);
- Battery, aggravated battery, or aggravated assault on an officer (s. 784.07, F.S.);
- Trafficking or conspiracy to traffic in a controlled substance or any other first or second degree felony (ch. 893, F.S.);
- Aircraft piracy (s. 860.16, F.S.);
- Unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.161, F.S.);
- Facilitating or furthering terrorism (s. 775.31, F.S.);
- Treason (s. 876.32, F.S.);
- Possession of a firearm by a convicted felon or violent career criminal (s. 790.23 or s. 790.235, F.S.);
- Bribery, misuse of public office (ch. 838, F.S.), extortion by a state officer (s. 839.11, F.S.), misappropriation of money by a commission to make a sale (s. 839.17, F.S.), or any crime committed by an elected official while in office;
- Illegal use of explosives (ch. 552, F.S.);
- Racketeering (ch. 895, F.S.);
- Exploitation of an elderly person (s. 825.103, F.S.);
- Public corruption;
- Any felony violation of election law;
- A “dangerous crime” as defined by s. 907.041, F.S.; or
- A similar offense committed in another jurisdiction.

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<sup>55</sup> *Id.* A conviction for attempt to commit the offense also disqualifies a person from eligibility.

<sup>56</sup> *Id.* A conviction for attempt to commit any of the offenses also disqualifies a person from eligibility.

<sup>57</sup> *Id.* A conviction for attempt to commit arson also disqualifies a person from eligibility.

<sup>58</sup> Clemency Rule 9.A.4. A conviction for attempt to commit any of the offenses also disqualifies a person from eligibility.

<sup>59</sup> Clemency Rule 9.A.4. An attempt to commit an offense also disqualifies a person from eligibility.

<sup>60</sup> The attempt or conspiracy to commit an offense also disqualifies a person from eligibility.

Additionally, an applicant may not be previously declared a:

- Habitual felony offender;<sup>61</sup>
- Three-time violent felony offender;<sup>62</sup>
- Violent career criminal;<sup>63</sup>
- Prison Releasee Reoffender;<sup>64</sup> or
- Sexual predator.<sup>65</sup>

The FCOR reviews an applicant's eligibility for restoration of civil rights without a hearing, and if so qualified, the Clemency Board may restore civil rights. If approval is denied, FCOR notifies the applicant who may pursue a hearing to restore the applicant's civil rights.<sup>66</sup>

To qualify for restoration of civil rights with a hearing, an applicant must:

- Not be convicted of a felony for seven years or more after completing all sentences imposed for the applicant's most recent felony conviction, and all conditions of supervision are expired or completed, including but not limited to, imprisonment, parole, community control, control release, and conditional release; and
- Pay all restitution pursuant to a court order, civil judgment, or ch. 960, F.S.<sup>67</sup>

Clemency hearings occur four times a year and the Clemency Board allows an applicant to make a five-minute presentation. Following a hearing, the Clemency Board may issue an Executive Order restoring a person's civil rights. For each case, the applicant is entitled to a letter stating the official disposition of his or her case.<sup>68</sup> A person granted or denied any form of executive clemency may not apply for further relief for at least two years from the date of final action.<sup>69</sup>

### ***Role of Specified Entities in the Restoration of Civil Rights Process***

The FCOR's Office of Executive Clemency, in part, assists in the acceptance, review, and recommendation of applications for restoration of civil rights, as well as the agenda for Clemency Board meetings.<sup>70</sup> A coordinator must be appointed by the Clemency Board and serves as the official custodian of the records.<sup>71</sup> The FCOR's Office of Clemency Investigations, in part, conducts comprehensive, confidential investigations of persons that have applied for restoration of civil rights.<sup>72</sup> An individual seeking restoration of civil rights submits an application to the Office of Executive Clemency and the application is forwarded to the FCOR for investigation, report, and recommendation.<sup>73</sup>

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<sup>61</sup> Section 775.084(1)(b), F.S.

<sup>62</sup> Section 775.084(1)(c), F.S.

<sup>63</sup> Section 775.084(1)(d), F.S.

<sup>64</sup> Section 775.082(9)(a), F.S.

<sup>65</sup> Section 775.21, F.S.

<sup>66</sup> Clemency Rule 9.B.

<sup>67</sup> Clemency Rule 10.A.

<sup>68</sup> Clemency Rule 12.D.

<sup>69</sup> Clemency Rule 14.

<sup>70</sup> Clemency Rule 2.B. *See also* Clemency Timeline, p. 2.

<sup>71</sup> Clemency Timeline, p. 2.

<sup>72</sup> Section 947.13(1)(d), F.S., requires the FCOR to conduct investigations as may be necessary. *See also* Clemency Timeline, p. 2.

<sup>73</sup> Section 940.03, F.S. *See also* Clemency Rules 6 and 7.

The DOC is required to inform inmates and offenders on community supervision about the restoration of civil rights. Additionally, DOC is required to electronically send to the FCOR a list of the names of inmates who have been released from incarceration and offenders who have been terminated from supervision that may be eligible for restoration of civil rights.<sup>74</sup>

#### **Amendment 4 (2018) Ballot Measure**

As mentioned above, until the 2018 election, Article VI, section 4 of the Florida Constitution disqualified a person convicted of a felony from voting or holding office until restoration of his or her civil rights.<sup>75</sup> At that time, Florida was one of only four states, including Iowa, Kentucky, and Virginia, that did not restore voting rights to a convicted felon unless and until restored by a state officer or board.<sup>76</sup>

In the 2018 General Election, Florida voters approved Amendment 4 with 64 percent of the vote, amending the Florida Constitution to provide voting rights restoration to specified voters. Specifically, the ballot language provided that “any disqualification arising from a felony conviction shall terminate and voting rights shall be restored upon completion of all terms of sentence including parole or probation.”<sup>77</sup> The provision excludes a “person convicted of murder or a felony sexual offense” from restoration of voting rights unless and until his or her civil rights are restored.<sup>78</sup>

Following the passage of Amendment 4, advocates have asserted the amendment is self-executing and required no legislative implementation.<sup>79</sup> However, officials responsible for determining voter eligibility expressed considerable confusion and concerns about uniform implementation of the provisions across the state. As a result, the DOS has suspended the

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<sup>74</sup> Section 940.061, F.S.

<sup>75</sup> Article VI, s. 4, FLA. CONST.

<sup>76</sup> Florida Association of Counties, *Amendment 4: Voting Rights Restoration for Felons Initiative*, available at <http://www.fl-counties.com/amendment-4>. Additionally, the National Conference of State Legislatures (NCSL) provides a summary of state laws related to felon voting rights as of December 2018, including: that in two states, felons never lose their right to vote, even while they are incarcerated; in 14 states and the District of Columbia, felons lose their voting rights only while incarcerated, and receive automatic restoration upon release; in 22 states, felons lose their voting rights during incarceration, and for a period of time after, typically while on parole and/or probation, voting rights are automatically restored after this time period, and former felons may also have to pay any outstanding fines, fees or restitution before their rights are restored; and in 12 states felons lose their voting rights indefinitely for some crimes, or require a governor’s pardon in order for voting rights to be restored, or face an additional waiting period after completion of sentence (including parole and probation) before voting rights can be restored. See the NCSL, *Felon Voting Rights*, December 21, 2018, available at <http://www.ncsl.org/research/elections-and-campaigns/felon-voting-rights.aspx> (all sites last visited on March 20, 2019).

<sup>77</sup> *Id.* See also Time, ‘Our Voice Will Count.’ *Former Felon Praises Florida Passing Amendment 4, Which Will Restore Voting Rights to 1.4 Million People*, Alejandro De Le Garza, November 7, 2018, available at <http://time.com/5447051/florida-amendment-4-felon-voting/> (last visited on March 20, 2019).

<sup>78</sup> The DOS, Division of Elections, *Proposed Constitutional Amendments and Revisions for the 2018 General Election*, p. 11, available at <https://dos.myflorida.com/media/699824/constitutional-amendments-2018-general-election-english.pdf> (last visited on March 19, 2019).

<sup>79</sup> The Florida Rights Restoration Coalition (FRRC), *Amendment 4 Implementation, Frequently Asked Questions*, March 14, 2019 (on file with the Senate Criminal Justice Committee). This webpage has been subsequently taken down, however, the on file copy was printed from the website on such date.

process of reviewing criminal records it receives to verify a voter's eligibility for registration discussed above or sending such records to the supervisors of elections.<sup>80</sup>

The DOS, various supervisors of elections, and other entities involved in verifying an applicant's eligibility have reported, including during committee workshops in both the Florida Senate and the Florida House of Representatives, that much of the confusion with implementing Amendment 4 provisions centers around ambiguity related to which crimes qualify as "murder" or a "felony sexual offense" and what it means for an offender to have "completed all terms of sentence."<sup>81</sup>

During the Senate workshop, the political director for the Florida Rights Restoration Coalition (FRRRC), which is the grassroots organization that was instrumental in the passage of Amendment 4, stated that the FRRRC supports efforts to clarify what constitutes eligibility under the amendment, provided it does not infringe on the rights of people to vote. The political director of the FRRRC also acknowledged that there is confusion about eligibility and stated that they are advising people to wait to register to vote if a potential applicant is unsure about whether he or she qualifies for voting restoration under the ballot measure.<sup>82</sup>

In December 2018, then Governor-elect, Ron DeSantis, stated that Amendment 4 should take effect after lawmakers pass and he approves "implementing language" in a bill.<sup>83</sup> Additionally, the Secretary of State called for the Legislature to direct the DOS as to "implementation, definitions, [and other ambiguities raised by the supervisors of elections]."<sup>84</sup> On January 8, 2019, supervisors of elections began registering new voters eligible under Amendment 4 and continued to register new voters. However, supervisors of elections are registering such voters without an initial eligibility verification from the DOS. The DOS reports that there have been 132,532 new persons registered since January 8, 2019, which was the implementation date included in the Amendment 4 constitutional ballot language. However, this number is inclusive of all persons who have registered to vote in Florida since the implementation date, not just persons who have registered that may qualify under the new provisions of Article VI, section 4 of the Florida Constitution.<sup>85</sup>

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<sup>80</sup> Herald Tribune, *Florida elections officials confused on how to give felons the vote*, Zac Anderson, December 4, 2018, available at <https://www.heraldtribune.com/news/20181204/florida-elections-officials-confused-on-how-to-give-felons-vote> (last visited on March 20, 2019).

<sup>81</sup> Orlando Sentinel, *Florida election supervisors will register ex-felons Jan. 8, despite confusion over amendment*, Steven Lemongello, December 20, 2018, available at <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-former-felons-register-vote-20181220-story.html>; See also Senate Criminal Justice Committee, Workshop on Amendment 4, January 22, 2019, available at <https://thefloridachannel.org/videos/1-22-19-senate-criminal-justice-committee/> (hereinafter cited as "Senate Workshop Video") and House of Representatives Judiciary Committee and Criminal Justice Subcommittee Joint Workshop on Amendment 4, available at <https://thefloridachannel.org/videos/2-14-19-joint-house-meeting-of-the-criminal-justice-subcommittee-and-the-judiciary-committee/> (all sites last visited on March 20, 2019).

<sup>82</sup> Senate Workshop Video, at 1:06-1:07.

<sup>83</sup> Tampa Bay Times, *Ron DeSantis says Amendment 4 should be delayed until he signs bill from lawmakers*, Michael Van Sickler, December 13, 2018, available at <https://www.tampabay.com/florida-politics/buzz/2018/12/13/ron-desantis-says-amendment-4-should-be-delayed-until-he-signs-bill-from-lawmakers/> (last visited on March 20, 2019).

<sup>84</sup> Orlando Sentinel, *Florida elections officials express confusion over restoring felon voting rights*, Dara Kam, December 4, 2018, <http://www.orlandosentinel.com/news/politics/political-pulse/os-ne-election-felon-voting-rights-20181204-story.html> (last visited on March 20, 2019).

<sup>85</sup> Email from Brittany Dover, the DOS Legislative Affairs Director, March 25, 2019 (on file with the Senate Criminal Justice Committee). The DOS further states that this number is accurate as of March 25, 2019.

### *Completion of All Terms of Sentence*

As of March 14, 2019, the FRRC stated on its website that “completion of all terms of sentence” includes any period of incarceration, probation, parole, and financial obligations imposed as part of an individual’s sentence.<sup>86</sup> The FRRC further stated that the financial obligations contemplated may include restitution, fines, and fees imposed as part of a sentence or a condition of probation under existing Florida statutes. However, it stated that “fees not specifically identified as part of a sentence or a condition of probation are therefore not necessary for ‘completion of sentence’ and thus, do not need to be paid before an individual may register.”<sup>87</sup> The statement relates its position to the policies used by the FCOR to determine “completion of sentence.” However, the language in the statement by the FRRC does not align with the language used by the FCOR on its website or in the Rules adopted by Governor Scott’s Cabinet, which are still in effect today.<sup>88</sup>

Additionally, during oral arguments in front of the Florida Supreme Court concerning the single subject of the proposed Amendment 4 ballot language and whether the title and summary page provided a clear explanation of the initiative, the justices asked several questions about the intent of the ballot language to the FRRC counsel, Jon Mills. The questions specifically addressed the intent of the group for the terms in the amendment.<sup>89</sup> The FRRC counsel answered in the affirmative on multiple occasions when asked by the Court about whether certain terms, such as “the full payment of any fines,” “payment of fines and costs” and “payment of restitution when it was ordered to a victim as part of a sentence,” were contemplated by the “completion of all terms of sentence” provision.<sup>90</sup>

### Incarceration

A court may sentence a defendant convicted of a felony offense to any term of incarceration authorized under s. 775.082, F.S.<sup>91</sup> The Criminal Punishment Code (Code) is Florida’s primary sentencing policy. Generally, the permissible sentencing range under the Code is the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.<sup>92</sup>

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<sup>86</sup> *Supra* n. 79.

<sup>87</sup> *Id.*

<sup>88</sup> *See Id.*; *see also* Clemency Rules.

<sup>89</sup> The WFSU, Gavel to Gavel Video Portal, *Advisory Opinion to the Attorney General Re: Voting Rights Restoration Amendment and Advisory Opinion to the Attorney General Re: Voting Restoration Amendment (FIS)*, Case Number(s): SC16-1785, SC16-1981, March 6, 2017 available at <https://wfsu.org/gavel2gavel/viewcase.php?eid=2421> (last visited on March 19, 2019).

<sup>90</sup> *See* Transcript for *Advisory Opinion to the Attorney General Re: Voting Rights Restoration Amendment and Advisory Opinion to the Attorney General Re: Voting Restoration Amendment (FIS)*, Case Number(s): SC16-1785, SC16-1981, p. 4 and 10-11, available at [https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785\\_16-1981.pdf](https://wfsu.org/gavel2gavel/transcript/pdfs/16-1785_16-1981.pdf) (last visited on March 21, 2019).

<sup>91</sup> Section 775.082, F.S., provides that the statutory maximum sentence for a first-degree felony is 30 years, for a second-degree felony is 15 years, and for a third degree felony is 5 years.

<sup>92</sup> Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S., provides that if the total sentence points exceed 44 points, the lowest permissible sentence

Upon release, s. 944.705(6), F.S., requires the DOC to notify every inmate, in no less than 18-point type in the inmate's release documents, that the inmate may be sentenced pursuant to s. 775.082(9), F.S., if the inmate commits any enumerated felony offense within 3 years after the inmate's release. Additionally, the notice must be prefaced by the word "WARNING" in boldfaced type.<sup>93</sup>

### Parole

Prior to 1983, Florida law authorized defendants who were sentenced to certain felonies to be eligible for release onto parole supervision prior to the expiration of the inmate's court-ordered sentence. Parole is a period of supervision to be successfully completed by complying with the conditions and terms of the release agreement ordered by the FCOR. The decision of the FCOR to parole an inmate is considered an act of grace and is not a right. Currently, all inmates whose crimes were committed prior to October 1, 1983, may be considered for release on parole. There are a number of additional specified inmates that may be eligible for release on parole based on the type of offense committed and the date of such commission.<sup>94</sup>

### Community Supervision

At sentencing, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.<sup>95</sup> The DOC supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control.<sup>96</sup>

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in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.

<sup>93</sup> Section 944.705(6), F.S., further provides that evidence that the DOC failed to provide this notice to an inmate will not prohibit a person from being sentenced pursuant to s. 775.082(9), F.S. The state is not required to demonstrate that a person received any notice from the DOC in order for the court to impose a sentence pursuant to s. 775.082(9), F.S.

<sup>94</sup> The FCOR, *Release Types, Parole*, available at <https://www.fcor.state.fl.us/release-types.shtml> (last visited March 20, 2019). Sections 947.16-947.24, F.S., provide for the eligibility criteria, process for the hearing and granting of parole, terms of parole, etc.

<sup>95</sup> Section 948.01, F.S.

<sup>96</sup> The DOC, *Probation Services*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 21, 2019).

*Probation*

Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose.<sup>97</sup> There are also specialized forms of supervision such as drug offender probation<sup>98</sup> and mental health probation.<sup>99</sup> Section 948.03, F.S., requires a court to determine the terms and conditions of probation. A court may order additional specific terms and conditions of probation that it considers proper, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.<sup>100</sup> Standard conditions of probation that are enumerated in s. 948.03, F.S., are not required to be announced on the record. The standard terms and conditions of probation include, but are not limited to, a probationer to:

- Report to a probation officer as directed;
- Permit a probation officer to visit his or her workplace or home;
- Maintain employment, if possible;
- Live without violating the law;
- Make restitution to a victim, if applicable;
- Make payment of a debt due to a county or municipal detention facility for medical care;
- Support his or her legal dependents to the best of his or her ability;
- Pay the state any debt due for crime victim compensation;<sup>101</sup>
- Pay specified application<sup>102</sup> and attorney fees;<sup>103</sup>
- Not associate with persons engaging in criminal activity;
- Submit to random drug or alcohol testing; and
- Submit to drawing of blood or other biological specimens, for specified reasons.<sup>104</sup>

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<sup>97</sup> Section 948.001(8), F.S. Terms and conditions of probation are provided in s. 948.03, F.S.

<sup>98</sup> Section 948.001(4), F.S., defines “drug offender probation” as a form of intensive supervision that emphasizes treatment of drug offenders in accordance with individualized treatment plans administered by probation officers with reduced caseloads.

<sup>99</sup> Section 948.001(5), F.S., “mental health probation” means a form of specialized supervision that emphasizes mental health treatment and working with treatment providers to focus on underlying mental health disorders and compliance with a prescribed psychotropic medication regimen in accordance with individualized treatment plans.

<sup>100</sup> Section 948.03(1) and (2), F.S.

<sup>101</sup> Section 960.17, F.S.

<sup>102</sup> Section 27.52(1)(b), F.S.

<sup>103</sup> Section 938.29, F.S.

<sup>104</sup> Section 948.03, F.S.

### *Community Control*

Community control<sup>105</sup> is a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.<sup>106</sup> The community control program is rigidly structured and designed to accommodate offenders who, in the absence of such a program, will be committed to the custody of the DOC or a county jail.<sup>107</sup> A person on community control (controlee) has an individualized program and is restricted to his or her home or noninstitutional residential placement, unless working, attending school, performing public service hours, participating in treatment or another special activity that has been approved in advance by his or her parole and probation officer.<sup>108</sup>

Conditions of community control are determined by the court when the offender is placed on such supervision. There are standard conditions of community control with which all controlees must comply as well as additional terms of supervision as part of his or her community control sentence.<sup>109</sup>

### Financial Obligations of a Sentence

#### *Restitution*

Unless a clear and compelling reason is found for not ordering restitution, a court must order the defendant to make restitution to the victim, if applicable,<sup>110</sup> in addition to any punishment. The restitution may be ordered for:

- Damage or loss caused directly or indirectly by the defendant's offense; and
- Damage or loss related to the defendant's criminal episode.<sup>111</sup>

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<sup>105</sup> Section 948.001(3), F.S.

<sup>106</sup> Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>107</sup> Section 948.10(1), F.S.

<sup>108</sup> *Id.*

<sup>109</sup> *See* s. 948.101(1) and (2), F.S.

<sup>110</sup> Section 775.089(1)(c), F.S., defines the term "victim" to mean each person who suffers property damage or loss, monetary expense, or physical injury or death as a direct or indirect result of the defendant's offense or criminal episode, and also includes the victim's estate if the victim is deceased, and the victim's next of kin if the victim is deceased as a result of the offense. The term includes governmental entities and political subdivisions, as those terms are defined in s. 11.45, F.S., when such entities are a direct victim of the defendant's offense or criminal episode and not merely providing public services in response to the offense or criminal episode. The term also includes the victim's trade association if the offense is a violation of s. 540.11(3)(a)3., F.S., involving the sale, or possession for purposes of sale, of physical articles and the victim has granted the trade association written authorization to represent the victim's interests in criminal legal proceedings and to collect restitution on the victim's behalf. The restitution obligation relating to violations of s. 540.11(3)(a)3., F.S., applies only to physical articles and does not apply to electronic articles or digital files that are distributed or made available online. The term "trade association" means an organization founded and funded by businesses that operate in a specific industry to protect their collective interests.

<sup>111</sup> Section 775.089(1)(a), F.S. Section 960.001(1)(j), F.S., also speaks to a victim's right to request, receive, and enforce restitution pursuant to s. 775.089, F.S., or s. 985.437, F.S.

Restitution may be monetary or nonmonetary restitution. If a court places an offender on probation, it must make the payment of restitution a condition of probation.<sup>112</sup> A court may require an offender to make restitution payments within a specified period or in installments. An offender must pay restitution no later than:

- The end of the period of probation ordered;
- Five years after the end of the term of imprisonment, if the court does not order probation; or
- Five years after the sentencing date in any other case.<sup>113</sup>

A court may order the clerk of courts to collect and dispense restitution payments in any case or the DOC to collect and dispense restitution and other payments from a person remanded to its custody or supervision.<sup>114</sup> A court may also order an income deduction order related to restitution. The clerk of court receives a payment made pursuant to an income deduction order.<sup>115</sup>

### *Court Costs, Fines, and Fees*

A person convicted of a felony offense is assessed court costs and fines upon the disposition of a case. Chapter 938, F.S., provides a number of court costs that are associated with criminal cases in Florida. Some of these costs are mandatory in all cases.<sup>116</sup> There are a number of other costs that are mandatory costs for specific types of cases,<sup>117</sup> mandatory court costs authorized by local governmental entities,<sup>118</sup> or discretionary costs in specific types of cases.<sup>119</sup> Fines are generally proscribed by the degree of offense committed, but there can be additional fines added for specific offenses.<sup>120</sup> There are also fees that may be assessed at the conclusion of a case, such as an application fee for the services of a public defender or regional conflict counsel.<sup>121</sup>

In addition to standard court costs and fines, a person ordered to supervision must pay the DOC monthly supervision fees and may be subject to fees for additional conditions such as electronic monitoring or urinalysis. Failure to pay supervision fees may result in revocation of probation; however, the DOC can exempt a person from payment of supervision fees if it makes specified findings related to the offender's financial or employment status.<sup>122</sup>

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<sup>112</sup> *Id.* An order requiring the defendant to make restitution to a victim does not remove or diminish the requirement that the court order payment to the Crimes Compensation Trust Fund pursuant to ch. 960, F.S. Payment of an award by the Crimes Compensation Trust Fund creates an order of restitution to the Crimes Compensation Trust Fund, unless specifically waived.

<sup>113</sup> Section 775.089(3), F.S.

<sup>114</sup> Section 775.089(1)(a) and (b), F.S.

<sup>115</sup> Section 775.089(12), F.S.

<sup>116</sup> Some of the mandatory costs imposed in all cases include s. 938.01, F.S. (additional court costs clearing trust fund); s. 938.03, F.S. (Crimes Compensation Trust Fund), s. 938.04, F.S. (additional costs with respect to criminal fines); s. 938.05, F.S. (additional costs for felonies, misdemeanors, and criminal traffic offenses); s. 938.055, F.S. (Operating Trust Fund of the Department of Law Enforcement); and s. 938.06, F.S. (cost for crime stoppers programs).

<sup>117</sup> *See* ss. 938.07-938.13, F.S.

<sup>118</sup> *See* ss. 938.15 and 938.17, F.S.

<sup>119</sup> *See* ss. 938.21-938.301, F.S.

<sup>120</sup> Section 775.083, F.S. Additionally, specific fines can occur throughout Florida statute related to specific offenses. For example, s. 893.135, F.S., imposes mandatory fines related to drug trafficking, while s. 817.568, F.S., imposes additional surcharge fines for the offense of the criminal use of personal identification information.

<sup>121</sup> Section 938.29, F.S.

<sup>122</sup> *See* ss. 948.03 and 948.09, F.S.

*Civil Judgment Liens*

Any person liable for payment of any financial obligation, such as restitution, fines, or fees discussed above, in any criminal case is subject to s. 938.30, F.S., and courts have jurisdiction over such financial obligations to ensure compliance. A court has the authority, in part, to:

- Require a person liable for payment of an obligation to appear and be examined under oath concerning the person's financial ability to pay the obligation.
- Convert the statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining the person's inability to pay.<sup>123</sup>
- Order that any nonexempt property of the person which is in the hands of another be applied toward satisfying the obligation.<sup>124</sup>

The outstanding unpaid amount accrues interest, and when properly recorded, becomes a lien on any real estate owned by the defendant.<sup>125</sup>

If a civil judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment and issue any writ necessary to enforce the judgment in the manner allowed in civil cases.<sup>126</sup> However, if a criminal or civil judgment has previously been entered on a court-imposed financial obligation, the judgment constitutes a civil lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S.<sup>127</sup>

The judgment must secure all unpaid court-imposed financial obligations that are due and may accrue subsequent to the recording of the judgment, as well as interest and reasonable costs for issuing a satisfaction and recording the satisfaction in the official records.<sup>128</sup>

The clerk of the court must enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debts or liens imposed and collected through the civil lien process.<sup>129</sup> Additionally, the court may order the person to comply with a payment schedule to satisfy the obligation.<sup>130</sup>

A judgment, order, or decree becomes a lien on real property in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, provided that the judgment contains the address of the person who has a lien as a result of such judgment is recorded simultaneously stating the address of the person who has a lien as a result of such

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<sup>123</sup> Section 938.30, F.S. Community service may be ordered subject to the provisions of s. 318.18(8), F.S. Additionally, any person who fails to attend a hearing may be arrested on warrant or capias issued by the clerk upon order of the court.

<sup>124</sup> Section 938.30(5), F.S.

<sup>125</sup> *Id.*

<sup>126</sup> Section 938.30(6), F.S.

<sup>127</sup> Section 938.30, F.S. Additionally, authority to convert and enforce restitution as a civil lien is addressed in s. 775.089(3), F.S. However, s. 938.30(8), F.S., provides a judgment on a court-imposed financial obligation is not subject to the 10-year rerecording requirement of s. 55.10, F.S.

<sup>128</sup> *Id.*

<sup>129</sup> Section 938.30(9), F.S.

<sup>130</sup> Section 938.30(10), F.S.

judgment, order, or decree.<sup>131</sup> Such a lien must expire after 20 years from the date of the entry of the judgment.<sup>132</sup>

### ***Felony Sexual Offense***

Florida law does not define “felony sexual offense,” however, several places in statute define the term “sexual offense.”<sup>133</sup> Florida law requires a person convicted of specified offenses that are sexual in nature to register as a sexual offender or sexual predator.<sup>134</sup> Qualifying offenses for registration as a sexual offender, which subsumes all offenses required for registration as a sexual predator, include:

- Sexual misconduct with a person having a developmental disability (s. 393.135(2), F.S.);
- Sexual misconduct with a mental health patient by an employee (s. 394.4593(2), F.S.);
- Specified violations of kidnapping or falsely imprisoning a minor (s. 787.01 or s. 787.02, F.S.);<sup>135</sup>
- Luring or enticing a child, by a person with a prior sexual conviction (s. 787.025(2), F.S.);
- Human trafficking for commercial sexual activity (s. 787.06(3)(b), (d), (f), or (g), F.S.);
- Sexual battery (s. 794.011, excluding s. 794.011(10), F.S.);
- Unlawful sexual activity with a minor (s. 794.05, F.S.);
- Lewd or lascivious battery, molestation, conduct, or exhibition (s. 800.04, F.S.);
- Video voyeurism, involving a minor victim (s. 810.145(8), F.S.);
- Lewd or lascivious offense on an elderly or disabled person (s. 825.1025, F.S.);
- Sexual performance by a child (s. 827.071, F.S.);
- Providing obscene materials to a minor (s. 847.0133, F.S.);
- Computer pornography involving a minor (s. 847.0135(2), F.S.);
- Soliciting a minor over the internet (s. 847.0135(3), F.S.);
- Traveling to meet a minor (s. 847.0135(4), F.S.);
- Lewd or lascivious exhibition over the internet (s. 847.0135(5), F.S.);
- Transmitting child pornography by electronic device or equipment (s. 847.0137, F.S.);
- Transmitting material harmful to a minor by electronic device (s. 847.0138, F.S.);
- Selling or buying a minor to engage in sexually explicit conduct (s. 847.0145, F.S.);
- Racketeering involving a sexual offense (s. 895.03, F.S.);
- Sexual misconduct with a forensic client (s. 916.1075(2), F.S.); and
- Sexual misconduct by an employee with a juvenile offender (s. 985.701(1), F.S.).

<sup>131</sup> Section 55.10(1), F.S.

<sup>132</sup> Sections 55.10(2) and 55.081, F.S.

<sup>133</sup> For example, s. 92.55, F.S., relating to protections for specified witnesses, defines the term to include any offense for which a conviction requires an offender to register as a sexual predator or sexual offender pursuant to s. 775.21 or s. 943.0435, F.S., respectively. Additionally, s. 90.404, F.S., relating to admissibility of character evidence, defines the term to mean specified enumerated offenses that also require an offender to register on the sexual predator and sexual offender registries.

<sup>134</sup> See generally, ss. 775.21, 943.0435, and 944.607, F.S. In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements.

<sup>135</sup> However, the Florida Supreme Court has held there must be a sexual element to the kidnapping or false imprisonment when the victim is a minor.

In addition to the above listed offenses, there are a number of offenses that are classified as a felony that have an element that is sexual in nature, but that do not require registration as a sexual predator or sexual offender, including:

- Prostitution or soliciting a prostitute, subsequent conviction (ss. 796.07 and 796.08, F.S.);
- Video voyeurism (s. 810.145(6) and (7), F.S.);<sup>136</sup>
- Incest (s. 826.04, F.S.);
- Lewd or lascivious exhibition in the presence of a correctional facility employee (s. 800.09(2), F.S.);
- Sexual offenses against a student by an authority figure (s. 800.101(2), F.S.);
- Locating an adult entertainment store within 2,500 feet of a school (s. 847.0134(1), F.S.);
- Committing an enumerated offense by a person who is HIV positive (s. 775.0877, F.S.);
- Sexual cyberharassment, second or subsequent offense (s. 784.049(3)(b), F.S.);
- Sexual misconduct between a detention facility employee and an inmate (s. 951.221(1), F.S.);
- Sexual misconduct by a psychotherapist with a client, or former client when the professional relationship was terminated primarily for the purpose of engaging in sexual contact (s. 491.0112(1) and (2), F.S.);
- Sexually abusing a dead human body (s. 872.06(2), F.S.);
- Sexual misconduct by a correctional facility employee with an inmate (s. 944.35(3)(b)2., F.S.);
- Committing specified acts with obscene, lewd, etc. materials, second or subsequent offense (s. 847.011(1), F.S.);
- Requiring as a condition to sale or delivery for resale of a publication that a purchaser or consignee receive for resale any other obscene publication (s. 847.011(3), F.S.);
- Knowingly promoting, conducting, performing, or participating in an obscene show, second or subsequent offense (s. 847.011(4), F.S.);
- Sale or distribution to minors or using minors in production of harmful materials (s. 847.012, F.S.); and
- Wholesale promotion of obscene materials (s. 847.07(2) and (3), F.S.).

### ***Murder***

Chapter 782, F.S., establishes a number of offenses that impose penalties for the killing of another person.

Section 782.04, F.S., prohibits the unlawful killing of a human being in a number of circumstances and specifically provides that:

- Murder in the first degree, which is a capital felony,<sup>137</sup> is the unlawful killing of a human being when committed:
  - With premeditation to cause the death of the person killed or any human being; or
  - By a person engaged in perpetrating, or attempting to perpetrate, any:
    - Drug trafficking offense (s. 893.135, F.S.);

<sup>136</sup> This provides penalties for when the offense is committed by a person 19 or older, or when the offense is a second or subsequent offense. These specific provisions do not require registration as a sexual offender as required by a violation of s. 810.145(8), F.S.

<sup>137</sup> A capital felony is punishable by death or life imprisonment. Section 775.082(1)(a), F.S.

- Arson (s. 806.01, F.S.);
- Sexual battery (s. 794.011, F.S.);
- Robbery or home-invasion robbery (s. 812.13 or s. 812.135, F.S.);
- Burglary (s. 810.02, F.S.);
- Kidnapping (s. 787.01, F.S.);
- Escape (s. 944.40, F.S.);
- Aggravated child abuse (s. 827.03, F.S.);
- Aggravated abuse of an elderly person or disabled adult (s. 825.1025, F.S.);
- Aircraft piracy (s. 860.16, F.S.);
- Unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.1615, F.S.);
- Carjacking (s. 812.133, F.S.);
- Aggravated stalking (s. 784.048, F.S.);
- Murder of a human being (s. 782.04, F.S.);
- Resisting an officer with violence (s. 843.01, F.S.);
- Aggravated fleeing or eluding with serious bodily injury or death (s. 316.1935(4)(b), F.S.);
- A felony act of terrorism;<sup>138</sup>
- Human trafficking (s. 787.06, F.S.); or
- Unlawful distribution of a specified controlled substance,<sup>139</sup> which is the proximate cause of a user's death.<sup>140</sup>
- Murder in the second degree, which is a felony of the first degree punishable by imprisonment for a term of years not exceeding life,<sup>141</sup> is the unlawful killing of a human being when:
  - Perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, but without any premeditated design to effect the death of any particular individual;<sup>142</sup>
  - Committed by a person other than the person engaged in the commission of, or attempt to commit, an enumerated felony<sup>143</sup> during such felony.<sup>144</sup>

<sup>138</sup> Or an act in furtherance of terrorism, including a felony under s. 775.30, F.S., s. 775.32, F.S., s. 775.33, F.S., s. 775.34, F.S., or s. 775.35, F.S.

<sup>139</sup> A substance controlled under s. 893.03(1), F.S., includes substances such as cocaine, opium or any synthetic or natural salt, compound, derivative, or preparation of opium; methadone, alfentanil, carfentanil, fentanyl, sufentanil, or specified controlled substance analogs.

<sup>140</sup> Section 782.04(1)(a), F.S.

<sup>141</sup> A first degree felony is punishable by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment, and a fine of \$10,000. Sections 775.082(3)(b)1. and 775.083, F.S.

<sup>142</sup> Section 782.04(2), F.S.

<sup>143</sup> Enumerated felonies include drug trafficking under s. 893.135(1), F.S.; arson; sexual battery; robbery or home-invasion robbery; burglary; kidnapping; escape; aggravated child abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; aggravated stalking; murder of another human being; aggravated fleeing or eluding with serious bodily injury or death; resisting an officer with violence; and a felony act of terrorism or act in furtherance of terrorism. Section 782.04(3), F.S.

<sup>144</sup> Section 782.04(3), F.S.

- Murder in the third degree, which is a second degree felony,<sup>145</sup> is the unlawful killing of a human being, without design to effect death, by a person engaged in the commission of, or the attempt to commit, any felony not enumerated by statute.<sup>146</sup>

Other offenses included in ch. 782, F.S., which result in the killing of a human being, but are not specifically included in s. 782.04, include:

- Attempted felony murder (s. 782.051, F.S.);
- Manslaughter and aggravated manslaughter (s. 782.07, F.S.);
- Vehicular homicide and vessel homicide (ss. 782.071 and 782.072, F.S.);
- Assisting self-murder and commercial exploitation of self-murder (ss. 782.08 and 782.081, F.S.);
- Killing of an unborn child by injury to its mother (s. 782.09, F.S.);
- Unnecessary killing to prevent an unlawful act (s. 782.11, F.S.); and
- Partial-birth abortion (s. 782.34, F.S.).

### III. Effect of Proposed Changes:

#### **Codification of Article VI, Section 4 of the Florida Constitution and Relevant Definitions**

The bill creates s. 98.0751, F.S., codifying the language passed in Amendment 4 (2018) and defining specified relevant terms. The bill provides that a person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense must have such disqualification removed and his or her voting rights restored pursuant to Article VI, section 4, of the Florida Constitution upon the completion of all terms of his or her sentence, including parole or probation. The bill further provides that the voting disqualification that arises from a felony conviction of murder or a felony sexual offense as defined below does not terminate unless a person's civil rights are restored pursuant to Article IV, section 8 of the Florida Constitution.

#### *Completion of All Terms of Sentence*

The bill defines “completion of all terms of sentence” to mean:

- Release from any term of imprisonment ordered by the court as a condition of the sentence;
- Termination from any term of probation or community control ordered by the court as a condition of the sentence;
- Fulfillment of any term ordered by the court as a condition of the sentence;
- Termination from any term of parole supervision which is monitored by the FCOR;
- Payment of all restitution ordered by the court as a part of the sentence, regardless of whether such restitution is converted to a civil lien; and
- Payment of all fees and fines ordered by the court as part of the sentence or that are ordered as a condition of probation, community control, or parole.

<sup>145</sup> A second degree felony is punishable by a maximum of 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>146</sup> Section 782.04(4), F.S. *See also supra* n. 142.

The definition provides that a financial obligation, other than restitution, required to be paid in accordance with the bill is deemed to have been completed to the extent that the financial obligation has been converted to a civil lien. The definition does not include court costs.

### ***Felony Sexual Offense***

The bill defines the term “felony sexual offense” to include any offense that requires registration as a sexual offender on the sexual offender registry in accordance with s. 943.0435, F.S., or any similar offense committed in another jurisdiction which would be an offense listed in this paragraph if it had been committed in Florida.<sup>147</sup>

### ***Murder***

The bill defines “murder” to include:

- A violation of s. 782.04(1) or (2), F.S. (murder in the first degree and murder in the second degree mentioned above, excluding felony murder in the second degree), which results in the actual killing of a human being; or
- A violation of s. 782.09, F.S. (killing of an unborn child by injury to the mother), that results in the actual killing of the unborn child; or
- Any similar offense committed in another jurisdiction which would be an offense listed above if it had been committed in Florida.

### ***Verification of Eligibility and Rulemaking***

The bill authorizes the DOS to verify whether a person who has been convicted of a felony and may be eligible for rights restoration pursuant to Article VI, section 4 of the Florida Constitution, has completed all terms of his or her sentence as required in the bill. The verification must be conducted when such person registers or applies to register to vote.

The bill also provides specific rulemaking authority to the DOS to implement the act and prescribe forms to carry out the bill.

### ***Notification of All Outstanding Terms of Sentence***

The bill requires the DOC and county detention facilities to notify specified persons of all outstanding terms of the sentence to assist the inmate in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

The bill amends s. 944.705, F.S., and creates s. 948.041, F.S., requiring the DOC to notify an inmate or offender in writing of all outstanding terms of sentence at the time of release or termination of probation or community control. The bill references the newly created s. 98.0751, F.S., for a list of potential terms of sentence that must be included in the written notification.

The bill also amends s. 951.29, F.S., requiring all county detention facilities to provide a prisoner in writing of specified information at least two weeks prior to his or her discharge, if possible. The specified information required to be provided includes:

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<sup>147</sup> As mentioned above, this definition includes any offenses that require registration as a sexual predator.

- Information explaining voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution; and
- Written notification of all outstanding terms of the prisoner's sentence at the time of release to assist the prisoner in determining his or her status with regard to the completion of all terms of sentence, as defined in s. 98.0751, F.S.

For inmates being released from imprisonment with the DOC or county detention facilities, the bill provides that written notification does not have to be given if the inmate or prisoner is being released to a term of supervision with the DOC.

Additionally, the bill amends s. 940.061, F.S., requiring the DOC to inform inmates and offenders of voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution, in addition to executive clemency and restoration of civil rights.

### ***The Restoration of Voting Rights Work Group***

The bill creates an undesignated section of statute that establishes the Restoration of Voting Rights Work Group (Work Group) within the DOS for the purpose of conducting a comprehensive review of the DOS's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under Article VI, section 4 of the Florida Constitution.

The bill provides the Work Group is comprised of the following specific members:

- The Secretary of the DOS or his or her designee.
- The Secretary of the DOC or his or her designee.
- The Executive director of the FDLE or his or her designee.
- The Chairman of the FCOR or his or her designee.
- Two clerks of the circuit court who must be appointed by the Governor.
- Two supervisors of elections who must be appointed by the Governor.

The bill provides that the designee from the DOS will serve as chair for the Work Group. The bill requires the appointments of all members to be made within 30 days and to serve for the duration of the Work Group. If a vacancy occurs, the original appointing authority must appoint a new member to fill the vacancy.

The Work Group is authorized and directed to study, evaluate, analyze, and undertake a comprehensive review of the DOS's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony, but who may be eligible for restoration of voting rights under Article VI, section 4 of the Florida Constitution, to develop recommendations for the Legislature, related to:

- The consolidation of all relevant data necessary to verify the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights.
- Informing a registered voter, applicant, or potential applicant of the entity or entities which are custodians of the relevant data necessary for verifying his or her eligibility for restoration of voting rights under Article VI, section 4 of the Florida Constitution.

- Any other relevant policies or procedures for verifying the eligibility of a registered voter, applicant, or potential applicant for restoration of voting rights under Article VI, section 4 of the Florida Constitution.

The bill specifically provides that if any entity is recommended to manage the consolidated relevant data, the recommendations must provide the feasibility of such entity to manage the consolidated relevant data and a timeline for implementation of such consolidation.

The bill requires the Work Group to submit a report of its findings, conclusions, and recommendations to the President of the Senate and the Speaker of the House of Representatives by November 1, 2019. Further, the Work Group must dissolve upon the submission of the report and all members are discharged of further duties. The DOS is required to provide support for the Work Group in performing its duties and Work Group members are required to serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses as provided in s. 112.061, F.S.

### ***Conforming Changes***

The following conforming changes are made to conform the language to the Florida Constitution and implement the act, including:

- Sections 97.052, 97.053, and 98.045, F.S., are amended to revise the term “civil” to “voting” to clarify that these provisions relate to the restoration of voting rights.
- Section 98.075, F.S., is amended to revise the term “civil” to “voting” as it relates to voting rights restoration provisions and to require supervisors of elections to notify the voter of instructions for seeking restoration of voting rights pursuant to Article VI, section 4 of the Florida Constitution, in addition to restoration of civil rights pursuant to Article IV, section 8 of the Florida Constitution.
- Section 944.292, F.S., is amended to clarify that, notwithstanding the suspension of civil rights, a person’s voting rights may be obtained pursuant to Article VI, section 4 of the Florida Constitution.

The bill is effective upon becoming law.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

The bill requires all county detention facilities to notify a prisoner, in writing upon discharge, of all outstanding terms of the prisoner’s sentence at the time of release, unless the prisoner is being discharged to the custody or control of the DOC. It is possible that the requirements of the bill related to notification of outstanding terms of sentence will result in an increased workload or expenditures by the local governments. However, because any such local funding resulting from the requirements of the bill will directly relate to the detention and imprisonment of persons who have been arrested or convicted of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

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:

**Verification of Eligibility**

The bill provides clarification related to the terms included in the Amendment 4 ballot language so that the DOS can resume its verification process to determine an applicant's eligibility to register to vote subsequent to obtaining voting rights restoration pursuant to Article VI, section 4 of the Florida Constitution. Additionally, to assist with applicant verification determinations, the bill utilizes existing information sharing relationships to ensure that the DOS receives any relevant information. Therefore, the Amendment 4 ballot initiative, rather than the bill, will likely result in an increased workload to entities such as the DOS. *See* Section VII. Related Issues.

**Notification of Outstanding Terms of Sentence**

The provision to notify specified offenders or inmates of any outstanding terms of his or her sentence is similar to a provision included in SB 642. When analyzing these similar provisions, the DOC reported that it does not track various costs associated with an inmate's resolved case, with the exception of certain inmates in various forms of paid employment, such as work release, prison industries, etc. To comply with the requirements, the DOC stated it will have to research clerk of court records prior to release for updated information on what an inmate, who is not being released to supervision, presently owes in regard to each case for which a sentence was imposed. Additionally, the DOC states that this will be a significant workload increase as it could

generate a significant volume of contacts to the clerk of court to determine the current status of various assessed costs. The DOC estimated it will need additional FTE to achieve this requirement to provide notification.<sup>148</sup>

Additionally, there will likely be an increased workload on the county detention facilities who are also required to notify prisoners of the outstanding terms of sentence as these entities will need to research information in a similar manner as the DOC.

### **Voting Rights Restoration Work Group**

The bill establishes the Voting Rights Restoration Work Group within the DOS. The DOS reports it will incur additional duties and expenses to provide administrative support to the Voting Rights Work Group, as well as expenses to provide reimbursement for per diem and travel expenses until such time the group is dissolved no later than November 1, 2019. The DOS' analysis is silent on the need for additional staff or resources and therefore it appears that the DOS can comply with this requirement within its existing resources.<sup>149</sup>

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

#### **Fiscal Impact of the Amendment 4 Ballot Initiative**

The DOS reports that there will be an increased workload related to its staff having to conduct more involved research related to the credible and reliable determination of an applicant's eligibility to register to vote under the provisions of the Amendment 4 ballot initiative and the implementing language of the bill. The DOS reports that the time frame for making such determinations may be extended if certain records necessary to make such a determination are not readily available through various online databases. The DOS' analysis provides that it will need an additional 21 FTEs.<sup>150</sup> Any additional resources needed by the DOS involved in conducting a proper eligibility verification of a potential voter who may be eligible to register to vote pursuant to the Amendment 4 ballot initiative should be addressed through the standard budgeting process.

The DOS also reports a positive indeterminate fiscal impact (i.e. unquantifiable increase in costs) as a result of necessary IT modifications that will update the current matching processes and internal applications to the new process created. Such modifications will need to be developed, implemented, and maintained after working with the FDLE, DOC, FCOR, and the supervisors of elections to facilitate the exchange and transfer of files. Additionally, the DOS reports it will

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<sup>148</sup> The DOC, *Agency Analysis for SB 642*, p. 5, February 27, 2019 (on file with the Senate Judiciary Committee).

<sup>149</sup> The DOS, *Agency Analysis for SB 7086*, p. 5 (hereinafter cited as "SB 7086 Agency Analysis")(on file with the Senate Judiciary Committee).

<sup>150</sup> The DOS SB 7086 Agency Analysis, p. 4-5.

need additional memory storage for the image files that are created and electronically transferred.<sup>151</sup>

### **Legislative Implementation of Constitutional Amendments**

One of the issues to consider with implementing language of a constitutional amendment is whether the amendment itself is self-executing and thus, doesn't require further legislation. In *Gray v. Bryant*, the Supreme Court of Florida established that, "[T]he basic guide in determining whether a constitutional provision should be construed to be self-executing or not is whether the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."<sup>152</sup>

In *Florida Hospital Waterman, Inc. v. Buster*, the court held that the amendment at issue in that case was self-executing. The court considered the fact that the amendment provided definitions and there was an expressed intent made in its provisions that, "[E]xisting law was sufficient to implement the provisions of the amendment and that no further legislation was necessary." Furthermore, the amendment in that case stated it was to be effective upon passage, which effectively left no time for the enactment of implementing language.<sup>153</sup>

There is a presumption that constitutional amendments are intended to be self-executing. However, the courts have held that, even with provisions that expressly indicate such a self-executing operation, the Legislature may provide additional laws addressing a self-executing constitutional scheme assuming that such laws supplement, protect, or further the availability of the constitutionally conferred right.<sup>154</sup>

Amendment 4 is silent on all of these factors. The amendment does not define "completion of all terms of sentence," "felony sexual offense," or "murder." As discussed above, the lack of definitions could result in inconsistent implementation of the amendment throughout the state. Additionally, the amendment does not have any language indicating that it is self-executing or that it is effective upon becoming law.<sup>155</sup>

### **Constitutionality of Re-enfranchisement of Felons' Voting Rights**

The courts have consistently held that states may strip convicted felons of their voting rights. It is well-settled that Florida can remove certain rights from a person convicted of a felony under Section Two of the Fourteenth Amendment.<sup>156</sup>

In determining whether a statute violates the United States Constitution, the courts will use one of three levels of scrutiny: rational basis, intermediate, or strict. The courts have used rational

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<sup>151</sup> The DOS SB 7086 Agency Analysis, p. 6.

<sup>152</sup> *Gray v. Bryant*, 125 So.2d 846, 951 (Fla. 1960).

<sup>153</sup> *Florida Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478, 485 (Fla. 2008).

<sup>154</sup> *Browning v. Florida Hometown Democracy, Inc. v. PAC*, 29 So.3d 1053, 1064 (Fla. 2010).

<sup>155</sup> *Supra* n. 81 and 83.

<sup>156</sup> *Hand v. Scott*, 285 F. Supp. 3d 1289, 1294 (N.D. Fla. 2018), citing *Richardson v. Ramirez*, 418 U.S. 24, 56 (1974) and *Johnson v. Bush*, 405 F.3d 1214, 1228 (11th Cir. 2005) (en banc).

basis scrutiny to determine whether statutes that re-enfranchise a felon are constitutional. This level of scrutiny is used because laws that aim to restore the voting rights of a felon do not implicate a fundamental right nor target a suspect class. The right to vote is a fundamental right. However, the courts have drawn an important distinction in noting that the right of felons to vote is not fundamental. Therefore, the statutes must only survive rational basis scrutiny, where by the statute only needs to be “rationally related to legitimate government interests.”<sup>157</sup>

### **Rulemaking Authority**

Section 97.012(1), F.S., provides broad rulemaking authority to the DOS to implement all provisions of the Florida Election Code (chs. 97-102, F.S.). Additionally, s. 98.075(1), F.S., provides the DOS with specific rulemaking authority to implement the protection of the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records, including ineligibility determinations related to felony convictions.

### **VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 97.052, 97.053, 98.045, 98.075, 940.061, 944.292, 944.705, and 951.29.

This bill creates the following sections of the Florida Statutes: 98.0751 and 948.041

### **IX. Additional Information:**

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

None.

#### **B. Amendments:**

##### **CS by Judiciary on April 8, 2019:**

The Committee Substitute:

- Removes attempted murder in violation of s. 782.04, F.S., from the definition of “murder.”
- Authorizes the DOS to verify potential voters for eligibility to register based upon the provisions of the bill that implement the Amendment 4 ballot initiative.
- Provides specific rulemaking authority to the DOS to implement the bill.

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

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<sup>157</sup> *Johnson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010).



529536

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Before line 58

insert:

Section 1. Subsection (1) of section 40.013, Florida Statutes, is amended to read:

40.013 Persons disqualified or excused from jury service.-

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury,



529536

11 larceny, or any other offense that is a felony in this state or  
12 which if it had been committed in this state would be a felony,  
13 unless restored to civil rights, shall be qualified to serve as  
14 a juror. However, the disqualification provided under this  
15 subsection no longer applies upon the restoration of voting  
16 rights pursuant to s. 4., Art. VI of the State Constitution and  
17 s. 98.0751 for a person who has completed all terms of sentence  
18 for a felony conviction for an offense other than murder or a  
19 felony sexual offense.

20  
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23       Between lines 2 and 3

24 insert:

25       s. 40.013, F.S.; providing that disqualification from  
26       jury service does not apply to persons convicted of  
27       certain felonies who have had their voting rights  
28       restored pursuant to s. 4, Art. VI of the State  
29       Constitution; amending



171906

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 316 - 345

and insert:

a. Restitution ordered by the court as a part of the sentence, regardless of whether such restitution is converted to a civil lien; and

b. Fees or fines ordered by the court as part of the sentence or that are ordered as a condition of probation, community control, or parole.



171906

12 Except as provided in subparagraph 5., a financial obligation of  
13 a person who has been convicted of a felony offense is deemed to  
14 have been completed to the extent that the financial obligation  
15 has been converted to a civil lien.

16 (b) "Felony sexual offense" means either of the following:

17 1. Any felony offense that serves as a predicate to  
18 registration as a sexual offender in accordance with s.  
19 943.0435; or

20 2. Any similar offense committed in another jurisdiction  
21 which would be an offense listed in this paragraph if it had  
22 been committed in this state.

23 (c) "Murder" means any of the following:

24 1. A violation of any of the following sections which  
25 results in the actual killing of a human being:

26 a. Section 782.04(1) or (2).

27 b. Section 782.09.

28 2. Any similar offense committed in another jurisdiction  
29 which would be an offense listed in this paragraph if it had  
30 been committed in this state.

31 (3) The Department of State may verify whether a person who  
32 has been convicted of a felony offense and subsequently  
33 registers or applies register to vote has completed all the  
34 terms of his or her sentence as required by this section.

35 (4) The Department of State is authorized to adopt rules  
36 and prescribe forms to carry out the purposes of this section.

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

39 And the title is amended as follows:

40 Delete line 22



41 and insert:  
42        definitions; authorizing the Department of State to  
43        verify whether a person who has been convicted of a  
44        felony offense has completed all the terms of his or  
45        her sentence; authorizing the Department of State to  
46        adopt rules and prescribe forms; amending s. 940.061,  
47        F.S.; requiring the



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 425 and 426

insert:

Section 11. Subsection (8) is added to section 476.144, Florida Statutes, to read:

476.144 Licensure.—

(8) A person who has had his or her voting rights restored pursuant to s. 4, Art. VI of the State Constitution upon completion of all terms of sentence for a felony conviction for



861964

11 an offense other than murder or a felony sexual offense is  
12 eligible for licensure so long as he or she meets all other  
13 requirements established under this section.

14 Section 12. Subsection (2) of section 477.019, Florida  
15 Statutes, is amended to read:

16 477.019 Cosmetologists; qualifications; licensure;  
17 supervised practice; license renewal; endorsement; continuing  
18 education.—

19 (2) An applicant is ~~shall be~~ eligible for licensure by  
20 examination to practice cosmetology if the applicant:

21 (a) Is at least 16 years of age or has received a high  
22 school diploma;

23 (b) Pays the required application fee, which is not  
24 refundable, and the required examination fee, which is  
25 refundable if the applicant is determined to not be eligible for  
26 licensure for any reason other than failure to successfully  
27 complete the licensure examination; and

28 (c)1. Is authorized to practice cosmetology in another  
29 state or country, has been so authorized for at least 1 year,  
30 and does not qualify for licensure by endorsement as provided  
31 for in subsection (5); or

32 2. Has received a minimum of 1,200 hours of training as  
33 established by the board, which shall include, but shall not be  
34 limited to, the equivalent of completion of services directly  
35 related to the practice of cosmetology at one of the following:

36 a. A school of cosmetology licensed pursuant to chapter  
37 1005.

38 b. A cosmetology program within the public school system.

39 c. The Cosmetology Division of the Florida School for the



861964

40 Deaf and the Blind, provided the division meets the standards of  
41 this chapter.

42 d. A government-operated cosmetology program in this state.

43

44 The board shall establish by rule procedures whereby the school  
45 or program may certify that a person is qualified to take the  
46 required examination after the completion of a minimum of 1,000  
47 actual school hours. If the person then passes the examination,  
48 he or she shall have satisfied this requirement; but if the  
49 person fails the examination, he or she shall not be qualified  
50 to take the examination again until the completion of the full  
51 requirements provided by this section. A person who has had his  
52 or her voting rights restored pursuant to s. 4, Art. VI of the  
53 State Constitution upon completion of all terms of sentence for  
54 a felony conviction for an offense other than murder or a felony  
55 sexual offense is eligible for licensure so long as he or she  
56 meets all other requirements established under this section.

57 Section 13. Subsection (6) of section 489.115, Florida  
58 Statutes, is amended to read:

59 489.115 Certification and registration; endorsement;  
60 reciprocity; renewals; continuing education.—

61 (6) An applicant for initial issuance of a certificate or  
62 registration shall submit to a statewide criminal history  
63 records check through the Department of Law Enforcement. The  
64 Department of Business and Professional Regulation shall submit  
65 the requests for the criminal history records check to the  
66 Department of Law Enforcement for state processing, and the  
67 Department of Law Enforcement shall return the results to the  
68 department to determine if the applicant meets certification or



861964

69 registration requirements. If the applicant has been convicted  
70 of a felony, the board may deny licensure to the applicant based  
71 upon the severity of the crime, the relationship of the crime to  
72 contracting, or the potential for public harm. The board shall  
73 also, in denying or approving licensure, consider the length of  
74 time since the commission of the crime and the rehabilitation of  
75 the applicant. The board may not deny licensure to an applicant  
76 based solely upon a felony conviction or the applicant's failure  
77 to provide proof of restoration of civil rights or voting  
78 rights. A person who has had his or her voting rights restored  
79 pursuant to s. 4, Art. VI of the State Constitution upon  
80 completion of all terms of sentence for a felony conviction for  
81 an offense other than murder or a felony sexual offense is  
82 eligible for licensure so long as he or she meets all other  
83 requirements established under this section.

84 Section 14. Subsection (1) of section 489.513, Florida  
85 Statutes, is amended to read:

86 489.513 Registration; application; requirements.—

87 (1) Any person engaged in the business of contracting in  
88 the state shall be registered in the proper classification  
89 unless he or she is certified. Any person desiring to be a  
90 registered contractor shall apply to the department for  
91 registration and must:

92 (a) Be at least 18 years old;

93 (b) Be of good moral character; and

94 (c) Meet eligibility requirements according to the  
95 following criteria:

96 1. As used in this subsection, the term "good moral  
97 character" means a personal history of honesty, fairness, and



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98 respect for the rights of others and for state and federal law.

99 2. The board may determine that an individual applying for  
100 registration is ineligible due to failure to satisfy the  
101 requirement of good moral character only if:

102 a. There is a substantial connection between the lack of  
103 good moral character of the individual and the professional  
104 responsibilities of a registered contractor; and

105 b. The finding by the board of lack of good moral character  
106 is supported by clear and convincing evidence.

107 3. When an individual is found to be unqualified because of  
108 lack of good moral character, the board must furnish such  
109 individual a statement containing the findings of the board, a  
110 complete record of evidence upon which the determination was  
111 based, and a notice of the rights of the individual to a  
112 rehearing and an appeal.

113 4. A person who has had his or her voting rights restored  
114 pursuant to s. 4, Art. VI of the State Constitution upon  
115 completion of all terms of sentence for a felony conviction for  
116 an offense other than murder or a felony sexual offense is  
117 eligible for licensure as an electrical contractor so long as he  
118 or she meets all other requirements established under this  
119 section.

120 Section 15. Paragraph (a) of subsection (4) of section  
121 489.553, Florida Statutes, is amended to read:

122 489.553 Administration of part; registration  
123 qualifications; examination.—

124 (4) To be eligible for registration by the department as a  
125 septic tank contractor, the applicant must:

126 (a) Be of good moral character. In considering good moral



861964

127 character, the department may consider any matter that has a  
128 substantial connection between the good moral character of the  
129 applicant and the professional responsibilities of a registered  
130 contractor, including, but not limited to: the applicant being  
131 convicted or found guilty of, or entering a plea of nolo  
132 contendere to, regardless of adjudication, a crime in any  
133 jurisdiction which directly relates to the practice of  
134 contracting or the ability to practice contracting; and previous  
135 disciplinary action involving septic tank contracting, where all  
136 judicial reviews have been completed. A person who has had his  
137 or her voting rights restored pursuant to s. 4, Art. VI of the  
138 State Constitution upon completion of all terms of sentence for  
139 a felony conviction for an offense other than murder or a felony  
140 sexual offense is eligible for licensure so long as he or she  
141 meets all other requirements established under this section.

142 Section 16. Section 1009.02, Florida Statutes, is created  
143 to read:

144 1009.02 Eligibility for educational scholarships upon  
145 restoration of voting rights.—Notwithstanding any other  
146 provision of this chapter, a person who has had his or her  
147 voting rights restored pursuant to s. 4, Art. VI of the State  
148 Constitution upon the completion of all terms of his or her  
149 sentence for a felony conviction for an offense other than  
150 murder or a felony sexual offense is eligible to be awarded any  
151 scholarship, grant, or other aid for higher education or  
152 vocational training under this chapter so long as he or she  
153 meets all other requirements to be awarded the scholarship,  
154 grant, or other aid.

155



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

157 And the title is amended as follows:

158       Delete line 45

159 and insert:

160       outstanding terms of sentence upon release; amending  
161       ss. 476.144, 477.019, 489.115, 489.513, and 489.553,  
162       F.S.; specifying eligibility for licensure for  
163       barbering, cosmetology, and contracting for persons  
164       who have had voting rights restored pursuant to s. 4,  
165       Art. VI of the State Constitution; creating s.  
166       1009.02, F.S.; specifying eligibility for educational  
167       scholarships, grants, or other aid for persons who  
168       have had voting rights restored pursuant to s. 4, Art.  
169       VI of the State Constitution; creating



530944

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/10/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 425 and 426

insert:

Section 11. Subsection (1) of section 40.013, Florida Statutes, is amended to read:

40.013 Persons disqualified or excused from jury service.-

(1) No person who is under prosecution for any crime, or who has been convicted in this state, any federal court, or any other state, territory, or country of bribery, forgery, perjury,



530944

11 larceny, or any other offense that is a felony in this state or  
12 which if it had been committed in this state would be a felony,  
13 unless restored to civil rights, shall be qualified to serve as  
14 a juror. However, the disqualification provided under this  
15 subsection no longer applies upon the restoration of voting  
16 rights pursuant to s. 4., Art. IV of the State Constitution and  
17 s. 98.0751 for a person who has completed all terms of sentence  
18 for a felony conviction for an offense other than murder or a  
19 felony sexual offense.

20 Section 12. Section 111.076, Florida Statutes, is created  
21 to read:

22 111.076 Right to elective office.—A person who has  
23 completed all terms of sentence for a felony conviction for an  
24 offense other than murder or a felony sexual offense who has his  
25 or her voting rights restored pursuant to s. 4, Art. IV of the  
26 State Constitution and s. 98.0751 is entitled to qualify for and  
27 hold elective office in this state.

28  
29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete line 45

32 and insert:

33 outstanding terms of sentence upon release; amending  
34 s. 40.013, F.S.; providing that disqualification from  
35 jury service does not apply to persons convicted of  
36 certain felonies who have had their voting rights  
37 restored pursuant to s. 4, Art. VI of the State  
38 Constitution; creating s. 111.076, F.S.; specifying  
39 that a person who has had voting rights restored



530944

40       pursuant to s. 4, Art. VI of the State Constitution is  
41       entitled to qualify for and hold elective office;  
42       creating

By the Committee on Criminal Justice

591-03458-19

20197086\_\_

1 A bill to be entitled  
 2 An act relating to voting rights restoration; amending  
 3 ss. 97.052, 97.053, and 98.045, F.S.; revising  
 4 terminology regarding voting rights restoration to  
 5 conform to the State Constitution; amending s. 98.075,  
 6 F.S.; revising terminology regarding voting rights  
 7 restoration to conform to the State Constitution;  
 8 requiring the supervisor of elections of the county in  
 9 which an ineligible voter is registered to notify the  
 10 voter of instructions for seeking restoration of  
 11 voting rights pursuant to s. 4, Art. VI of the State  
 12 Constitution, in addition to restoration of civil  
 13 rights pursuant to s. 8, Art. IV of the State  
 14 Constitution; creating s. 98.0751, F.S.; requiring the  
 15 voting disqualification of certain felons to be  
 16 removed and voting rights restored pursuant to s. 4,  
 17 Art. VI of the State Constitution; providing that the  
 18 voting disqualification arising from specified felony  
 19 offenses is not removed unless a person's civil rights  
 20 are restored through the clemency process pursuant to  
 21 s. 8, Art. IV of the State Constitution; providing  
 22 definitions; amending s. 940.061, F.S.; requiring the  
 23 Department of Corrections to inform inmates and  
 24 offenders of voting rights restoration pursuant to s.  
 25 4, Art. VI of the State Constitution, in addition to  
 26 executive clemency and civil rights restoration;  
 27 amending s. 944.292, F.S.; conforming a provision  
 28 regarding the suspension of civil rights; amending s.  
 29 944.705, F.S.; requiring the Department of Corrections

Page 1 of 17

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

591-03458-19

20197086\_\_

30 to include notification of all outstanding terms of  
 31 sentence in an inmate's release documents; providing  
 32 an exception to the notification requirement for  
 33 inmates who are released to any type of supervision  
 34 monitored by the department; creating s. 948.041,  
 35 F.S.; requiring the department, upon the termination  
 36 of an offender's term of probation or community  
 37 control, to provide written notification to the  
 38 offender of all outstanding terms of sentence;  
 39 amending s. 951.29, F.S.; requiring each county  
 40 detention facility to provide information on the  
 41 restoration of voting rights pursuant to s. 4, Art. VI  
 42 of the State Constitution to certain prisoners;  
 43 requiring each county detention facility to provide  
 44 written notification to certain prisoners of all  
 45 outstanding terms of sentence upon release; creating  
 46 the Restoration of Voting Rights Work Group within the  
 47 Department of State; specifying membership of the work  
 48 group; establishing the manner of appointments and the  
 49 terms of membership; prescribing the duties of the  
 50 work group; requiring the work group to submit a  
 51 report to the Legislature by a specified date;  
 52 providing for staffing; authorizing reimbursement for  
 53 per diem and travel expenses; providing for expiration  
 54 of the work group; providing an effective date.  
 55

56 Be It Enacted by the Legislature of the State of Florida:  
 57

58 Section 1. Subsection (2) of section 97.052, Florida

Page 2 of 17

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

591-03458-19 20197086\_\_

59 Statutes, is amended to read:

60 97.052 Uniform statewide voter registration application.—

61 (2) The uniform statewide voter registration application

62 must be designed to elicit the following information from the

63 applicant:

64 (a) Last, first, and middle name, including any suffix.

65 (b) Date of birth.

66 (c) Address of legal residence.

67 (d) Mailing address, if different.

68 (e) E-mail address and whether the applicant wishes to

69 receive sample ballots by e-mail.

70 (f) County of legal residence.

71 (g) Race or ethnicity that best describes the applicant:

72 1. American Indian or Alaskan Native.

73 2. Asian or Pacific Islander.

74 3. Black, not Hispanic.

75 4. White, not Hispanic.

76 5. Hispanic.

77 (h) State or country of birth.

78 (i) Sex.

79 (j) Party affiliation.

80 (k) Whether the applicant needs assistance in voting.

81 (l) Name and address where last registered.

82 (m) Last four digits of the applicant's social security

83 number.

84 (n) Florida driver license number or the identification

85 number from a Florida identification card issued under s.

86 322.051.

87 (o) An indication, if applicable, that the applicant has

591-03458-19 20197086\_\_

88 not been issued a Florida driver license, a Florida

89 identification card, or a social security number.

90 (p) Telephone number (optional).

91 (q) Signature of applicant under penalty for false swearing

92 pursuant to s. 104.011, by which the person subscribes to the

93 oath required by s. 3, Art. VI of the State Constitution and s.

94 97.051, and swears or affirms that the information contained in

95 the registration application is true.

96 (r) Whether the application is being used for initial

97 registration, to update a voter registration record, or to

98 request a replacement voter information card.

99 (s) Whether the applicant is a citizen of the United States

100 by asking the question "Are you a citizen of the United States

101 of America?" and providing boxes for the applicant to check to

102 indicate whether the applicant is or is not a citizen of the

103 United States.

104 (t) Whether the applicant has been convicted of a felony,

105 and, if convicted, has had his or her voting ~~civil~~ rights

106 restored by including the statement "I affirm I am not a

107 convicted felon, or, if I am, my rights relating to voting have

108 been restored." and providing a box for the applicant to check

109 to affirm the statement.

110 (u) Whether the applicant has been adjudicated mentally

111 incapacitated with respect to voting or, if so adjudicated, has

112 had his or her right to vote restored by including the statement

113 "I affirm I have not been adjudicated mentally incapacitated

114 with respect to voting, or, if I have, my competency has been

115 restored." and providing a box for the applicant to check to

116 affirm the statement.

591-03458-19

20197086\_\_

117  
118 The registration application must be in plain language and  
119 designed so that convicted felons whose voting ~~civil~~ rights have  
120 been restored and persons who have been adjudicated mentally  
121 incapacitated and have had their voting rights restored are not  
122 required to reveal their prior conviction or adjudication.

123 Section 2. Paragraph (a) of subsection (5) of section  
124 97.053, Florida Statutes, is amended to read:

125 97.053 Acceptance of voter registration applications.—

126 (5) (a) A voter registration application is complete if it  
127 contains the following information necessary to establish the  
128 applicant's eligibility pursuant to s. 97.041, including:

129 1. The applicant's name.

130 2. The applicant's address of legal residence, including a  
131 distinguishing apartment, suite, lot, room, or dormitory room  
132 number or other identifier, if appropriate. Failure to include a  
133 distinguishing apartment, suite, lot, room, or dormitory room or  
134 other identifier on a voter registration application does not  
135 impact a voter's eligibility to register to vote or cast a  
136 ballot, and such an omission may not serve as the basis for a  
137 challenge to a voter's eligibility or reason to not count a  
138 ballot.

139 3. The applicant's date of birth.

140 4. A mark in the checkbox affirming that the applicant is a  
141 citizen of the United States.

142 5.a. The applicant's current and valid Florida driver  
143 license number or the identification number from a Florida  
144 identification card issued under s. 322.051, or

145 b. If the applicant has not been issued a current and valid

591-03458-19

20197086\_\_

146 Florida driver license or a Florida identification card, the  
147 last four digits of the applicant's social security number.

148  
149 In case an applicant has not been issued a current and valid  
150 Florida driver license, Florida identification card, or social  
151 security number, the applicant shall affirm this fact in the  
152 manner prescribed in the uniform statewide voter registration  
153 application.

154 6. A mark in the checkbox affirming that the applicant has  
155 not been convicted of a felony or that, if convicted, has had  
156 his or her voting ~~civil~~ rights restored.

157 7. A mark in the checkbox affirming that the applicant has  
158 not been adjudicated mentally incapacitated with respect to  
159 voting or that, if so adjudicated, has had his or her right to  
160 vote restored.

161 8. The original signature or a digital signature  
162 transmitted by the Department of Highway Safety and Motor  
163 Vehicles of the applicant swearing or affirming under the  
164 penalty for false swearing pursuant to s. 104.011 that the  
165 information contained in the registration application is true  
166 and subscribing to the oath required by s. 3, Art. VI of the  
167 State Constitution and s. 97.051.

168 Section 3. Paragraph (c) of subsection (1) of section  
169 98.045, Florida Statutes, is amended to read:

170 98.045 Administration of voter registration.—

171 (1) ELIGIBILITY OF APPLICANT.—The supervisor must ensure  
172 that any eligible applicant for voter registration is registered  
173 to vote and that each application for voter registration is  
174 processed in accordance with law. The supervisor shall determine

591-03458-19 20197086\_\_

175 whether a voter registration applicant is ineligible based on  
176 any of the following:

177 (c) The applicant has been convicted of a felony for which  
178 his or her voting civil rights have not been restored.

179 Section 4. Subsections (5) and (6) and paragraph (a) of  
180 subsection (7) of section 98.075, Florida Statutes, are amended  
181 to read:

182 98.075 Registration records maintenance activities;  
183 ineligibility determinations.—

184 (5) FELONY CONVICTION.—The department shall identify those  
185 registered voters who have been convicted of a felony and whose  
186 voting rights have not been restored by comparing information  
187 received from, but not limited to, a clerk of the circuit court,  
188 the Board of Executive Clemency, the Department of Corrections,  
189 the Department of Law Enforcement, or a United States Attorney's  
190 Office, as provided in s. 98.093. The department shall review  
191 such information and make an initial determination as to whether  
192 the information is credible and reliable. If the department  
193 determines that the information is credible and reliable, the  
194 department shall notify the supervisor and provide a copy of the  
195 supporting documentation indicating the potential ineligibility  
196 of the voter to be registered. Upon receipt of the notice that  
197 the department has made a determination of initial credibility  
198 and reliability, the supervisor shall adhere to the procedures  
199 set forth in subsection (7) prior to the removal of a registered  
200 voter's name from the statewide voter registration system.

201 (6) OTHER BASES FOR INELIGIBILITY.—If the department or  
202 supervisor receives information from sources other than those  
203 identified in subsections (2)-(5) that a registered voter is

Page 7 of 17

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591-03458-19 20197086\_\_

204 ineligible because he or she is deceased, adjudicated a  
205 convicted felon without having had his or her voting civil  
206 rights restored, adjudicated mentally incapacitated without  
207 having had his or her voting rights restored, does not meet the  
208 age requirement pursuant to s. 97.041, is not a United States  
209 citizen, is a fictitious person, or has listed a residence that  
210 is not his or her legal residence, the supervisor must adhere to  
211 the procedures set forth in subsection (7) prior to the removal  
212 of a registered voter's name from the statewide voter  
213 registration system.

214 (7) PROCEDURES FOR REMOVAL.—

215 (a) If the supervisor receives notice or information  
216 pursuant to subsections (4)-(6), the supervisor of the county in  
217 which the voter is registered shall:

218 1. Notify the registered voter of his or her potential  
219 ineligibility by mail within 7 days after receipt of notice or  
220 information. The notice shall include:

221 a. A statement of the basis for the registered voter's  
222 potential ineligibility and a copy of any documentation upon  
223 which the potential ineligibility is based.

224 b. A statement that failure to respond within 30 days after  
225 receipt of the notice may result in a determination of  
226 ineligibility and in removal of the registered voter's name from  
227 the statewide voter registration system.

228 c. A return form that requires the registered voter to  
229 admit or deny the accuracy of the information underlying the  
230 potential ineligibility for purposes of a final determination by  
231 the supervisor.

232 d. A statement that, if the voter is denying the accuracy

Page 8 of 17

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591-03458-19 20197086\_\_

233 of the information underlying the potential ineligibility, the  
 234 voter has a right to request a hearing for the purpose of  
 235 determining eligibility.

236 e. Instructions for the registered voter to contact the  
 237 supervisor of elections of the county in which the voter is  
 238 registered if assistance is needed in resolving the matter.

239 f. Instructions for seeking restoration of civil rights  
 240 pursuant to s. 8, Art. IV of the State Constitution and  
 241 information explaining voting rights restoration pursuant to s.  
 242 4., Art. VI of the State Constitution following a felony  
 243 conviction, if applicable.

244 2. If the mailed notice is returned as undeliverable, the  
 245 supervisor shall publish notice once in a newspaper of general  
 246 circulation in the county in which the voter was last  
 247 registered. The notice shall contain the following:

248 a. The voter's name and address.

249 b. A statement that the voter is potentially ineligible to  
 250 be registered to vote.

251 c. A statement that failure to respond within 30 days after  
 252 the notice is published may result in a determination of  
 253 ineligibility by the supervisor and removal of the registered  
 254 voter's name from the statewide voter registration system.

255 d. An instruction for the voter to contact the supervisor  
 256 no later than 30 days after the date of the published notice to  
 257 receive information regarding the basis for the potential  
 258 ineligibility and the procedure to resolve the matter.

259 e. An instruction to the voter that, if further assistance  
 260 is needed, the voter should contact the supervisor of elections  
 261 of the county in which the voter is registered.

591-03458-19 20197086\_\_

262 3. If a registered voter fails to respond to a notice  
 263 pursuant to subparagraph 1. or subparagraph 2., the supervisor  
 264 shall make a final determination of the voter's eligibility. If  
 265 the supervisor determines that the voter is ineligible, the  
 266 supervisor shall remove the name of the registered voter from  
 267 the statewide voter registration system. The supervisor shall  
 268 notify the registered voter of the supervisor's determination  
 269 and action.

270 4. If a registered voter responds to the notice pursuant to  
 271 subparagraph 1. or subparagraph 2. and admits the accuracy of  
 272 the information underlying the potential ineligibility, the  
 273 supervisor shall make a final determination of ineligibility and  
 274 shall remove the voter's name from the statewide voter  
 275 registration system. The supervisor shall notify the registered  
 276 voter of the supervisor's determination and action.

277 5. If a registered voter responds to the notice issued  
 278 pursuant to subparagraph 1. or subparagraph 2. and denies the  
 279 accuracy of the information underlying the potential  
 280 ineligibility but does not request a hearing, the supervisor  
 281 shall review the evidence and make a final determination of  
 282 eligibility. If such registered voter requests a hearing, the  
 283 supervisor shall send notice to the registered voter to attend a  
 284 hearing at a time and place specified in the notice. Upon  
 285 hearing all evidence presented at the hearing, the supervisor  
 286 shall make a determination of eligibility. If the supervisor  
 287 determines that the registered voter is ineligible, the  
 288 supervisor shall remove the voter's name from the statewide  
 289 voter registration system and notify the registered voter of the  
 290 supervisor's determination and action.

591-03458-19

20197086\_\_

291 Section 5. Section 98.0751, Florida Statutes, is created to  
292 read:

293 98.0751 Restoration of voting rights; removal of  
294 ineligibility subsequent to a felony conviction.-

295 (1) A person who has been disqualified from voting based on  
296 a felony conviction for an offense other than murder or a felony  
297 sexual offense must have such disqualification removed and his  
298 or her voting rights restored pursuant to s. 4, Art. VI of the  
299 State Constitution upon the completion of all terms of his or  
300 her sentence, including parole or probation. The voting  
301 disqualification that arises from a felony conviction of murder  
302 or a felony sexual offense as specified under subsection (2)  
303 does not terminate unless a person's civil rights are restored  
304 pursuant to s. 8, Art. IV of the State Constitution.

305 (2) For purposes of this section, the term:

306 (a) "Completion of all terms of sentence" means:

307 1. Release from any term of imprisonment ordered by the  
308 court as a condition of the sentence;

309 2. Termination from any term of probation or community  
310 control ordered by the court as a condition of the sentence;

311 3. Fulfillment of any term ordered by the court as a  
312 condition of the sentence;

313 4. Termination from any term of parole supervision which is  
314 monitored by the Florida Commission on Offender Review;

315 5. Payment of all:

316 a. Restitution ordered by the court as a condition of the  
317 sentence, regardless of whether such restitution is converted to  
318 a civil lien;

319 b. Fees ordered by the court as part of the sentence or

591-03458-19

20197086\_\_

320 that are ordered as a condition of probation, community control,  
321 or parole; and

322 c. Fines ordered by the court as part of the sentence or  
323 that are ordered as a part of probation, community control, or  
324 parole.

325  
326 Unless expressly stated to the contrary, a financial obligation  
327 required to be paid in accordance with subparagraph 5. is deemed  
328 completed if such obligation has been converted to a civil lien.

329 (b) "Felony sexual offense" means either of the following:

330 1. Any felony offense that serves as a predicate to  
331 registration as a sexual offender in accordance with s.  
332 943.0435; or

333 2. Any similar offense committed in another jurisdiction  
334 which would be an offense listed in this paragraph if it had  
335 been committed in this state.

336 (c) "Murder" means any of the following:

337 1. A violation of any of the following sections which  
338 results in the actual killing of a human being:

339 a. Section 782.04(1) or (2).

340 b. Section 782.09.

341 2. An attempt to kill a human being in violation of s.  
342 782.04(1) or (2).

343 3. Any similar offense committed in another jurisdiction  
344 which would be an offense listed in this paragraph if it had  
345 been committed in this state.

346 Section 6. Section 940.061, Florida Statutes, is amended to  
347 read:

348 940.061 Informing persons about executive clemency, and

591-03458-19 20197086\_\_  
 349 restoration of civil rights, and restoration of voting rights.—  
 350 The Department of Corrections shall inform and educate inmates  
 351 and offenders on community supervision about the restoration of  
 352 civil rights and the restoration of voting rights resulting from  
 353 the removal of the disqualification to vote pursuant to s. 4,  
 354 Art. VI of the State Constitution. Each month, the Department of  
 355 Corrections shall send to the Florida Commission on Offender  
 356 Review by electronic means a list of the names of inmates who  
 357 have been released from incarceration and offenders who have  
 358 been terminated from supervision who may be eligible for  
 359 restoration of civil rights.

Section 7. Subsection (1) of section 944.292, Florida  
 Statutes, is amended to read:

944.292 Suspension of civil rights.—

(1) Upon conviction of a felony as defined in s. 10, Art. X  
 of the State Constitution, the civil rights of the person  
 convicted shall be suspended in Florida until such rights are  
 restored by a full pardon, conditional pardon, or restoration of  
 civil rights granted pursuant to s. 8, Art. IV of the State  
 Constitution. Notwithstanding the suspension of civil rights,  
such a convicted person may obtain restoration of his or her  
voting rights pursuant to s. 4, Art. VI of the State  
Constitution and s. 98.0751.

Section 8. Subsection (6) of section 944.705, Florida  
 Statutes, is amended to read:

944.705 Release orientation program.—

(6) (a) The department shall notify every inmate, ~~in no less~~  
~~than 18-point type~~ in the inmate's release documents:—

1. Of all outstanding terms of the inmate's sentence at the

591-03458-19 20197086\_\_  
 378 time of release to assist the inmate in determining his or her  
 379 status with regard to the completion of all terms of sentence,  
 380 as that term is defined in s. 98.0751. This subparagraph does  
 381 not apply to inmates who are being released from the custody of  
 382 the department to any type of supervision monitored by the  
 383 department; and

2. In not less than 18-point type, that the inmate may be  
 sentenced pursuant to s. 775.082(9) if the inmate commits any  
 felony offense described in s. 775.082(9) within 3 years after  
 the inmate's release. This notice must be prefaced by the word  
 "WARNING" in boldfaced type.

(b) ~~Nothing in~~ This section does not preclude ~~precludes~~ the  
 sentencing of a person pursuant to s. 775.082(9), ~~and nor shall~~  
 evidence that the department failed to provide this notice does  
not prohibit a person from being sentenced pursuant to s.  
 775.082(9). The state ~~is shall~~ not ~~be~~ required to demonstrate  
 that a person received any notice from the department in order  
 for the court to impose a sentence pursuant to s. 775.082(9).

Section 9. Section 948.041, Florida Statutes, is created to  
 read:

948.041 Notification of outstanding terms of sentence upon  
termination of probation or community control.—Upon the  
termination of an offender's term of probation or community  
control, the department must notify the offender in writing of  
all outstanding terms at the time of termination to assist the  
offender in determining his or her status with regard to the  
completion of all terms of sentence, as that term is defined in  
s. 98.0751.

Section 10. Subsection (1) of section 951.29, Florida

591-03458-19

20197086\_\_

407 Statutes, is amended to read:

408 951.29 Procedure for requesting restoration of civil rights  
409 of county prisoners convicted of felonies.—

410 (1) With respect to a person who has been convicted of a  
411 felony and is serving a sentence in a county detention facility,  
412 the administrator of the county detention facility shall provide  
413 the following to the prisoner, at least 2 weeks before  
414 discharge, if possible:—

415 (a) An application form obtained from the Florida  
416 Commission on Offender Review which the prisoner must complete  
417 in order to begin the process of having his or her civil rights  
418 restored;—

419 (b) Information explaining voting rights restoration  
420 pursuant to s. 4, Art. VI of the State Constitution; and

421 (c) Written notification of all outstanding terms of the  
422 prisoner's sentence at the time of release to assist the  
423 prisoner in determining his or her status with regard to the  
424 completion of all terms of sentence, as that term is defined in  
425 s. 98.0751.

426 Section 11. Restoration of Voting Rights Work Group.—The  
427 Restoration of Voting Rights Work Group is created within the  
428 Department of State for the purpose of conducting a  
429 comprehensive review of the department's process of verifying  
430 registered voters, applicants, or potential applicants who have  
431 been convicted of a felony, but who may be eligible for  
432 restoration of voting rights under s. 4, Article VI of the State  
433 Constitution.

434 (1) MEMBERSHIP.—The work group is comprised of the  
435 following members:

Page 15 of 17

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591-03458-19

20197086\_\_

436 (a) The Secretary of State or his or her designee, who  
437 shall serve as chair for the work group.

438 (b) The Secretary of Corrections or his or her designee.

439 (c) The executive director of the Department of Law  
440 Enforcement or his or her designee.

441 (d) The Chairman of the Florida Commission on Offender  
442 Review or his or her designee.

443 (e) Two clerks of the circuit court appointed by the  
444 Governor.

445 (f) Two supervisors of elections appointed by the Governor.

446 (2) TERMS OF MEMBERSHIP.—Appointments to the work group  
447 shall be made within 30 days of the effective date of this act.  
448 All members shall serve for the duration of the work group. Any  
449 vacancy shall be filled by the original appointing authority for  
450 the remainder of the work group's existence.

451 (3) DUTIES.—The work group is authorized and directed to  
452 study, evaluate, analyze, and undertake a comprehensive review  
453 of the Department of State's process of verifying registered  
454 voters, applicants, or potential applicants who have been  
455 convicted of a felony, but who may be eligible for restoration  
456 of voting rights under s. 4, Article VI of the State  
457 Constitution, to develop recommendations for the Legislature,  
458 related to:

459 (a) The consolidation of all relevant data necessary to  
460 verify the eligibility of a registered voter, applicant, or  
461 potential applicant for restoration of voting rights under s. 4,  
462 Article VI of the State Constitution. If any entity is  
463 recommended to manage the consolidated relevant data, the  
464 recommendations must provide the feasibility of such entity to

Page 16 of 17

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591-03458-19

20197086\_\_

465 manage the consolidated relevant data and a timeline for  
466 implementation of such consolidation.

467 (b) The process of informing a registered voter, applicant,  
468 or potential applicant of the entity or entities that are  
469 custodians of the relevant data necessary for verifying his or  
470 her eligibility for restoration of voting rights under s. 4,  
471 Article VI of the State Constitution.

472 (c) Any other relevant policies or procedures for verifying  
473 the eligibility of a registered voter, applicant, or potential  
474 applicant for restoration of voting rights under s. 4, Article  
475 VI of the State Constitution.

476 (4) REPORT.—The work group shall submit a report of its  
477 findings, conclusions, and recommendations for the Legislature  
478 to the President of the Senate and the Speaker of the House of  
479 Representatives by November 1, 2019. Upon submission of the  
480 report, the work group is dissolved and discharged of further  
481 duties.

482 (5) STAFFING.—The Department of State shall provide support  
483 for the work group in performing its duties.

484 (6) PER DIEM AND TRAVEL EXPENSES.—Work group members shall  
485 serve without compensation but are entitled to receive  
486 reimbursement for per diem and travel expenses as provided in s.  
487 112.061, Florida Statutes.

488 (7) EXPIRATION.—This section expires January 31, 2020.  
489 Section 12. This act shall take effect upon becoming a law.



# 2019 AGENCY LEGISLATIVE BILL ANALYSIS

**AGENCY: Department of State**

<u>BILL INFORMATION</u>	
<b>BILL NUMBER:</b>	SB 7086
<b>BILL TITLE:</b>	Voting Rights Restoration
<b>BILL SPONSOR:</b>	Criminal Justice
<b>EFFECTIVE DATE:</b>	Upon becoming a law

<u>COMMITTEES OF REFERENCE</u>
1) Judiciary
2) Rules
3) N/A
4) N/A
5) N/A

<u>CURRENT COMMITTEE</u>
Judiciary

<u>SIMILAR BILLS</u>	
<b>BILL NUMBER:</b>	HB 7089
<b>SPONSOR:</b>	State Affairs Committee

<u>PREVIOUS LEGISLATION</u>	
<b>BILL NUMBER:</b>	N/A
<b>SPONSOR:</b>	N/A
<b>YEAR:</b>	N/A
<b>LAST ACTION:</b>	N/A

<u>IDENTICAL BILLS</u>	
<b>BILL NUMBER:</b>	N/A
<b>SPONSOR:</b>	N/A

<b>Is this bill part of an agency package?</b>
N/A

<u>BILL ANALYSIS INFORMATION</u>	
<b>DATE OF ANALYSIS:</b>	3/29/19
<b>LEAD AGENCY ANALYST:</b>	Brittany Dover
<b>ADDITIONAL ANALYST(S):</b>	Alex Mosca
<b>LEGAL ANALYST:</b>	Ashley Davis
<b>FISCAL ANALYST:</b>	Click or tap here to enter text.

## **POLICY ANALYSIS**

## 1. EXECUTIVE SUMMARY

Voting Rights Restoration; Revising terminology regarding voting rights restoration to conform to the State Constitution; requiring the voting disqualification of certain felons to be removed and voting rights restored pursuant to s. 4, Art. VI of the State Constitution; requiring the Department of Corrections to inform inmates and offenders of voting rights restoration pursuant to s. 4, Art. VI of the State Constitution, in addition to executive clemency and civil rights restoration, etc.

## 2. SUBSTANTIVE BILL ANALYSIS

### 1. PRESENT SITUATION:

The Department of State works with county Supervisor of Elections Offices to identify and remove from the voter rolls those persons who are ineligible to register to vote. Prior to January 8, 2019, article VI, section 4 of the Florida Constitution disqualified a convicted felon from voting unless granted restoration of civil rights through the executive clemency process. Florida voters approved Amendment 4 in 2018, amending the Constitution to remove the voting disqualification for a felony conviction, excluding persons convicted of murder or a felony sexual offense, upon completion of all sentence terms, including parole or probation. Amendment 4 did not define the terms "murder" or "felony sexual offense".

### 2. EFFECT OF THE BILL:

The proposed bill would have the following effects:

- 1) Revise terminology to clarify that a person's voting rights, rather than all civil rights, must be restored prior to registering to vote.
- 2) Revise terminology used in notices from supervisors of elections to voters whose voter registrations may be removed.
- 3) Creates Section 98.0751 – Restoration of voting rights; removal of ineligibility subsequent to felony conviction. This section would Implement Amendment 4 by:
  - a. Specifying that voting rights of a person who has been disqualified from voting based on a felony conviction for an offense other than murder or a felony sexual offense shall have voting rights restored upon completion of all terms of sentence, including parole or probation. A voting disqualification that arises from conviction of murder or a felony sexual offense does not terminate unless a person's civil rights are restored by executive clemency.
  - b. Providing definitions for the following terms used by Amendment 4:
    - Murder
    - Felony sexual offense
    - Completion of all terms of sentence
- 4) Requires the Department of Corrections and county detention facilities to provide inmates being released from incarceration with information on voting rights restoration and outstanding terms of sentence.
- 5) Creates Restoration of Voting Rights Work group within the Department of State.
  - a. The work group would be composed of the following members:
    - i. The Secretary of State or designee, who shall serve as chair
    - ii. The Secretary of Correction, or designee
    - iii. The executive director of the Department of Law Enforcement or designee
    - iv. The chair of the Florida Commission on Offender Review or designee
    - v. Two clerks of the circuit court appointed by the governor
    - vi. Two supervisors of elections appointed by the governor
  - b. The workgroup would conduct a comprehensive review of the Department's process of verifying registered voters, applicants, or potential applicants who have been convicted of a felony but who may be eligible for restoration of voting rights, with the purpose of developing recommendations for the legislature related to data consolidation, voter/ voter registration applicant education, and voter eligibility policies and procedures.
  - c. The work group would submit a report of its findings, conclusions, and recommendations to the legislature by November 1, 2019. Upon submission, the group would be dissolved.
  - d. The Department of State would provide administrative support for the working group.
  - e. Members would serve without compensation, but would be entitled to reimbursement for per diem and travel expenses.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y  N

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	1S-2.039 – FVRS Voter Registration Procedures 1S-2.041 – FVRS List Maintenance Procedures

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

If yes, provide a description:	See item 5 under "Effect of the Bill"
Date Due:	November 1, 2019
Bill Section Number(s):	Section 11

**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y  N**

Board:	See item 5 under "Effect of the Bill"
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Section 11

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y  N**

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.

<p>If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?</p>	<p>Click or tap here to enter text.</p>
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**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?**

Y  N

<p>Revenues:</p>	<p>Click or tap here to enter text.</p>
<p>Expenditures:</p>	<p>Currently, one of the Division of Elections' Bureau of Voter Registration Services' primary duties is to identify potentially ineligible registered voters who are convicted felons and forward to Supervisors of Elections case files with relevant information about the voter. The Bureau currently employs 21 full-time staff.</p> <p>With Constitutional Amendment 4, the process will require more involved research and detailed case files. Depending on legislation enacted, staff would now have to examine the nature of the underlying offense of each felony case associated with the voter in order to determine whether clemency has been obtained. The Bureau would need to determine if a murder or felony sexual offense conviction postdates all prior felonies or whether all sentences have been completed for each and every felony conviction associated with that voter. Staff would need to know all the sources that may be available to determine if all the terms of a sentence have been completed. At this time, it is reported that no single conclusive source exists (like the Clemency database) about what a person's sentence is and whether completed and when. At a minimum, staff would have to piece together information from court records and from the Department of Corrections' records.</p> <p>The bill will increase the amount of staff needed to conduct such research, require office space and computers including software licenses to support such staff in order to handle the expanded workflow and expanded workload. The Bureau needs a 21 additional staff members at a cost of \$1,294,716. This amount includes salary, benefits, and the standard employee expense package.</p> <p>The Department will incur additional duties necessitating staff and expenses to provide administrative support to the Voting Rights Work Group, as well as provide reimbursement for per diem and travel expenses until such time the group is dissolved on November 1, 2019 after the submission of a report to the Legislature.</p>
<p>Does the legislation contain a State Government appropriation?</p>	<p>No</p>
<p>If yes, was this appropriated last year?</p>	<p>N/A</p>

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?**

Y  N

<p>Revenues:</p>	<p>Click or tap here to enter text.</p>
<p>Expenditures:</p>	<p>Click or tap here to enter text.</p>
<p>Other:</p>	<p>Click or tap here to enter text.</p>

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4. **DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?**

Y  N

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

**TECHNOLOGY IMPACT**

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y  N

If yes, describe the anticipated impact to the agency including any fiscal impact.	This bill will require IT to modify current systems to conform to the requirements set forth in Amendment 4. Without knowing what the bill's working group findings or recommendations will be, it is indeterminate how many number of hours and the number of additional staff it will take for IT to develop, implement and maintain a new process after working with Florida Department of Law Enforcement, the Florida Department of Corrections, the Florida Commission on Offender Review, and the Supervisors of Elections to facilitate the exchange and transfer of files.  Additionally, with more case files having to be created within a match, the Department will need more memory storage for the image files that are created and/or electronically transferred.
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**FEDERAL IMPACT**

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y  N

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.
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**ADDITIONAL COMMENTS**

- 1) Although the proposed bill would modify the language in 97.052 - Uniform Statewide Voter Registration Application, the changes would not impact the actual wording on the current version of the voter registration application form.
- 2) The proposed bill is effective upon becoming law. The rulemaking process under chapter 120, Florida Statutes, requires an advanced public notice of proposed rule development of which there may be several workshops as rule language is drafted and revised based on input from participants. Once a file draft is completed, an advanced notice of public hearing is required which starts a 90-day clock to file a rule for adoption. Once filed for adoption, it takes another 21 days for the rule to take effect. The Department has emergency rulemaking authority but the process would still require a deliberative consideration and development of a process and the IT changes needed to effectuate it. It is unclear from the bill whether the Legislature intends for the Working Group's findings and recommendations to lead the process development and/or to wait for further legislative action after the November 2019 report is filed.

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**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

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Issues/concerns/comments:	
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# 2019 AGENCY LEGISLATIVE BILL ANALYSIS

**AGENCY: Department of Corrections**

<u>BILL INFORMATION</u>	
<b>BILL NUMBER:</b>	SB 642
<b>BILL TITLE:</b>	Criminal Justice
<b>BILL SPONSOR:</b>	Senator Brandes
<b>EFFECTIVE DATE:</b>	July 1, 2019

<u>COMMITTEES OF REFERENCE</u>
1) Criminal Justice
2) Appropriations Subcommittee on Criminal and Civil Justice
3) Appropriations
4)
5)

<u>CURRENT COMMITTEE</u>

<u>SIMILAR BILLS</u>	
<b>BILL NUMBER:</b>	HB 705
<b>SPONSOR:</b>	Representative Donalds

<u>PREVIOUS LEGISLATION</u>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	
<b>YEAR:</b>	
<b>LAST ACTION:</b>	

<u>IDENTICAL BILLS</u>	
<b>BILL NUMBER:</b>	
<b>SPONSOR:</b>	

<b>Is this bill part of an agency package?</b>
No.

<u>BILL ANALYSIS INFORMATION</u>	
<b>DATE OF ANALYSIS:</b>	February 27, 2019
<b>LEAD AGENCY ANALYST:</b>	Lee Adams
<b>ADDITIONAL ANALYST(S):</b>	Sibyle Walker, Jennifer Rechichi, Joe Winkler, Jami Dunsford
<b>LEGAL ANALYST:</b>	Daniel Burke, Kyle Magee, Maria Dinkins, Philip Fowler
<b>FISCAL ANALYST:</b>	Sharon McNeal

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## POLICY ANALYSIS

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### 1. EXECUTIVE SUMMARY

The bill requires courts to impose drug trafficking sentences irrespective of mandatory minimums under certain circumstances, adds to the program list that qualifies for 60 days incentive gain time, authorizes some inmates to satisfy more than 15% of their sentence by gain time upon completion of educational programs, requires the Florida Department of Corrections (FDC or Department) to house inmates within 150 miles of their home to the extent possible, modifies release orientation programming, authorizes the Department to develop an entrepreneurship program, requires the Department to provide to the Florida Crime Information Center (FCIC) all conditions of probation, and expands and clarifies the administrative sanction process for technical violations of supervision.

### 2. SUBSTANTIVE BILL ANALYSIS

#### 1. PRESENT SITUATION:

The Criminal Punishment Code (CPC) applies to all felony offenses, except capital felonies, committed on or after October 1, 1998 (s.921.002, F.S.). The code assigns a score based on a variety of sentencing factors including the offense before the court for sentencing and prior record. Pursuant to s. 921.0024(2) F.S., "The lowest permissible sentence is any non-state prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceed 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent." If the criminal statute includes a minimum mandatory penalty that is greater than the lowest permissible sentence, the mandatory term takes precedence (Fla. R. Crim. P. 3.701(d)(9)). The court may sentence a defendant up to the statutory maximum. Section 921.002(3) F.S. provides for downward departures as follows: "A court may impose a departure below the lowest permissible sentence based upon circumstances or factors that reasonably justify the mitigation of the sentence in accordance with s. 921.0026, F.S."

S. 893.135, F.S. prohibits trafficking in specified quantities of various substances and upon conviction requires imposition of minimum terms of imprisonment, based on the type of drug and the quantity trafficked. All of the trafficking crimes in the section are at least level 7 offenses, which score 56 points on the CPC, and at least first degree felonies, which are punishable by up to 30 years in prison.

S. 893.135(3), F.S., provides, "Notwithstanding the provisions of s. 948.01, F.S., with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section."

S. 893.135(4), F.S., provides that, "The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances." Under current law the trial court may not impose less than the mandatory without the state's recommendation.

S. 944.275(4)(d), F.S., authorizes the Department to award 60 days of incentive gain time to an inmate who completes requirements for and is awarded a high school equivalency diploma or vocational certificate. This gain time award does not allow an inmate sentenced for a crime committed on or after October 1, 1995 to serve less than 85% of the sentence as set forth in s. 944.275(4)(f), F.S.

S. 944.611, F.S., provides, "It is desirable that each inmate be confined in and released from an institution or facility as close to the inmate's permanent residence or county of commitment as possible, in order to lessen the transportation expense to the public."

65% of the Department's beds are located in Region 1 (Northwest Florida and surrounding counties) or Region 2 (Northeast Florida and surrounding counties). A map of the Department's regions may be found here: <http://www.dc.state.fl.us/ci/index.html>. In Fiscal Year 2017/2018, the Department received approximately 27,916 new admissions. Of the admissions received, 18,055 (64%) were from the Region 3 or 4 area. Considering all of these inmates have a sentence of at least 1 year and 1 day or more since they are sentenced to a state prison sanction and Department custody, it is not logistically possible to place all of these offenders within 150 miles of home since 64% of new admissions in FY 2017-2018 are from Central and South Florida and the majority of Florida's prisons are located in Northwest and Northeast Florida. However, the Department does have a procedure, 601.219, which provides well-adjusted inmates to achieve a transfer closer to home.

S. 944.701-708, F.S., is entitled the Transition Assistance Program Act. These statutes require the Department to provide a transition assistance specialist at each major facility to coordinate, develop and help deliver post-release planning and assistance, including assistance with obtaining job placement information, however, the Transition Specialist position has not been funded since 2003. As part of the release planning process, inmates are interviewed by release officers between 140 and 180 days prior to release. Through this interview, along with a review of the inmate's record, the post-release needs of the inmate in areas including education, vocational training, substance abuse, and housing, are identified. The release officer accesses a resource directory to locate appropriate service providers in the community where the inmate will be released and at the time of release provides the inmate information about community resources responsive to the identified needs.

S. 944.705(6), F.S., requires the Department to notify every inmate being released, in at least 18-point type, that commission of any felony described in s. 775.082(9), F.S., within three years of release may result in sentencing as a "prison release reoffender". In addition, prior to release the Department notifies inmates of their obligations regarding post-release supervision, criminal registration, career offender and sexual offender/predator registration, on forms for that purpose.

Under s.944.801, F.S., the Department is authorized to operate the Correctional Education Program. Development of an entrepreneurship program is not among the specific enumerated duties under this statute. However, the Department holds active agreements and contracts with community providers, universities, and colleges to provide entrepreneurship frameworks within training courses to replicate integral components of the Prison Entrepreneurship Program (PEP). Lessons include writing a business plan, industry and competitor analysis, developing an effective business model, and preparing the proper ethical and legal foundation. It is important to note that funding limitations may impact progress toward enhanced development, expansion, and replication.

S. 948.001(1), F.S., defines "administrative probation" as, "a form of no contact, nonreporting supervision in which an offender who presents a low risk of harm to the community may, upon satisfactory completion of half the term of probation, be transferred by the Department of Corrections to this type of reduced level of supervision, as provided in s. 948.013, F.S."

In 2005 at the request of the Florida Department of Law Enforcement (FDLE), the Department began electronically transmitting certain sex offender special conditions to FDLE. The Department and FDLE use a real time direct data pipe line to each other's agency to send and receive probationer's data. The Department's Offender Based Information System (OBIS) houses many on-line screens to capture the probationer's data with real time entry by FDC probation officers. This data is sent to FDLE who then in-turn sends the data to NCIC within seconds. There are many times when Probation Officers give case specific permission to offenders to deviate for certain situations, but the officer may not have access to OBIS to be able to make an immediate update.

Currently a judge or other sentencing/releasing authority may authorize the Department to report certain technical violations through an administrative process developed by the Department called the Alternative Sanctioning Program (ASP). Unless otherwise specified by the court or releasing authority, the Alternative Sanctioning Program is intended to be limited to technical violations for non-violent offenders. The Alternative Sanctioning Program offers the court an administrative method of resolving specified technical violations in an efficient manner which allows for the noncompliance or deviant behavior to be swiftly addressed. The difference between the Alternative Sanctioning Program and the Technical Violation Notification letter is that Alternative Sanctioning Program allows the offender's sentence to be modified with an additional sanction imposed. An offender's participation in the alternative sanctions program is voluntary.

## **2. EFFECT OF THE BILL:**

**Section 1** states, the act may be cited as the Florida First Step Act.

**Section 2** requires that sentences imposed for violation of s.893.135, F.S., drug trafficking, are "pursuant to the Criminal Punishment Code (CPC)" without regard to the mandatory minimums, if the court finds that: the defendant has not been previously convicted of a dangerous crime as defined by s. 907.041, F.S., or a crime that would require registration under s. 775.21, F.S., or s. 943.0435, F.S., as a sexual predator or offender; the defendant did not use violence, threats or possess a firearm or dangerous weapon during the crime; the offense did not result in death or injury; the defendant was not engaged in a continuing criminal enterprise; the defendant truthfully provided all known information and evidence concerning the offense. The bill's language is mandatory, "Notwithstanding any other provision of law, for an offense under this section the court shall impose a sentence pursuant to the Criminal Punishment Code under chapter 921."

The impact of this section is indeterminate. To begin with, keep in mind that all of the trafficking crimes in s.893.135, F.S. are at least level 7 offenses, which score 56 points on the CPC. This means a prison term must be imposed. Also these trafficking offenses at least first degree felonies, which are punishable by up to 30 years in prison. Of about 1,270 sentences for drug trafficking imposed in FY17/18, only 18 were more than 30 years.

The bill requires sentences in accordance with the CPC. The CPC sets a sentencing floor, but the maximum statutory penalty for the crime establishes the sentencing ceiling and this is at least 30 years for drug trafficking crimes. Thus, requiring a sentence under the CPC does not mean courts must impose shorter sentences under the bill than they have in the past. With the statutory maximum of trafficking crimes, courts could fully comply with the requirement that the CPC is followed and still impose far greater sentences than in prior years. This is not to say that every court will impose a statutory maximum sentence, but there is nothing in the law or the bill that would prevent it and there is no way to know how future courts would impose sentences under the bill's provisions.

Second, there were about 249 probation sentences imposed for drug trafficking offenses in FY17/18. Every one of these sentences was imposed below the drug trafficking minimum as well as below the CPC minimum. This is because all of the trafficking offenses are at least level 7 offenses, which score a presumptive mandatory prison term under the CPC. So, if sentencing must be in accordance with the CPC, these 249 supervision admissions will become prison admissions under the bill, unless the court finds a way around that outcome.

Third, about 222 of the prison sentences for drug trafficking offenses in FY17/18 were less than what the CPC score would have required. So again, so some prison sentences could increase under the bill required adherence to the CPC. (Also, the CPC minimum for about 320 of the prison sentences would be greater than the drug trafficking minimum mandatory). So simply mandating sentencing in accordance with the CPC could produce results not consistent with the bill's intent.

In sum, when the bill is compared to current sentencing practices and the way the CPC operates, it is unknown how its provisions would alter sentencing. Simply requiring imposition in accordance with the CPC may not produce the expected results.

**Section 3** authorizes a one-time award of 60 days of incentive gain time for completion of a "Prison Entrepreneurship Program". It also authorizes the release date of an inmate who earns the gain time for educational achievement under s. 944.275(4)(d), F.S., to be 60 days less than the 85% minimum service date required by s. 944.275(4)(f), F.S.

To provide an immediate impact on the prison system while preventing the arbitrary and unfair outcome that would result under a prospective application of this provision (benefit based solely on the happenstance of when a qualifying program was completed in relation to the effective date of the bill), the Department would apply the benefit to the status population. The Department estimates that this would result in an average daily population reduction of 66 inmates during the first year of implementation, and a 40 inmate reduction in the average daily population for years 2, 3, 4 and beyond.

**Section 4** requires the Department to place inmates as close as practicable to within 150 miles of their primary residence, subject to bed availability, security concerns, program needs and health care needs.

The Department already tries to allow inmates to serve their sentences close to home but the disparity between where the majority of prison beds are versus where the majority of inmates reside places a premium on Central and South Florida locations. This has forced the Department to incentivize transfers by requiring good behavior over time to obtain transfers to these areas. Since bill recognizes the limitations placed on the housing of inmates by various factors including bed space and security designation, the bill is not expected to alter current practices a great deal. The Department does however anticipate litigation revolving around this new statutory language, and it is unknown how courts may reconcile the bill's language and agency limitations in light of Amendment VI to the State constitution which prohibits judicial deference to agency interpretations of statute.

**Section 5** reorganizes s. 944.705 F.S., adding new subsections. Under s. 944.705(3), F.S., the Department will be required to provide each releasing inmate a comprehensive resource directory which must also include the name, address, and telephone number of existing starting points for using such resources. It is important to note that the Department currently operates a user friendly, statewide resource directory to assist staff in the inmate/offender re-entry planning process. The resource directory is a searchable website that contains over 6,000 community, state, and local organizations that provide services to those returning home. These resources are verified on a routine basis to ensure the most up-to-date information is being provided. The resource directory can be accessed at <http://www.dc.state.fl.us/resourcedirectory/Search.aspx>.

The bill does not define an "existing starting point". When inmates are released they receive information about community resources in proximity to their residence. The bill would increase release costs by requiring the Department to provide a state-wide resource directory to every inmate. This would entail giving out information that may not be of value because of the distance from the inmate's home to the resources. A recommended alternative would be to provide the inmate with a local provider list, which includes the name, address and telephone number of providers and a description of the services offered by each provider, as is the current practice, and provide information on accessing the web site for additional information in the event the inmate relocated after initial release.

The bill creates subsections s. 944.705(7), and (8), F.S., adding language to s. 944.705, F.S., allowing a nonprofit faith-based business or a professional, civic, or community organization to apply for registration with the Department

to provide inmate re-entry services. It requires that the Department adopt policies and procedures for screening, approving and registering an organization to provide these services. It also allows the Department to deny approval and registration to organizations that do not meet the Department's policies or procedures. Currently, the Department does not have existing capability of an automated web portal for such entities to apply electronically. Development or purchase of an automated web portal would be required. The cost and/or resource estimate for the creation of a new system/web portal is indeterminate at this time and would likely require a procurement to identify possible solutions. Additionally, to ensure proper implementation and management of this provision of the bill, the addition of two (2) Government Operations Consultant I positions would likely be required.

The bill creates new subsection s. 944.705(9), F.S., adding language allowing the Department to contract with a public or private educational institution Veterans Advocacy Clinic or Veterans Legal Clinic to assist qualified veteran inmates in applying for veteran's benefits upon release. This language allows the Department to utilize, via a contractual relationship, specific type organizations to assist releasing or released veteran inmates with applying for veteran's benefits. This would be in addition to the existing Memorandum of Agreement (Agreement A4471) with United States Department of Veterans Affairs' Veterans Integrated Service Networks.

The bill creates new subsection s. 944.705(10), F.S., which requires the Department to notify each inmate being released, in 18-point type or larger, "Of all terms of the inmate's sentence which are outstanding at the time of release, including, but not limited to, a term of supervision and any conditions required upon release from imprisonment or unpaid restitution, court costs, fees, or fines."

To implement this, current forms utilized to inform inmates about post-release requirements will have to be re-formatted into 18-point type. In addition, probation orders which are found in the Rules of Criminal procedure will have to be set in the 18-point type. Also, because monetary obligations play no role in setting inmate release dates, the Department does not track these costs for inmates in custody, with the exception of approximately 5,000 inmates in various forms of paid employment (work release, prison industries). The bill will require the Department to research clerk of court records prior to release for updated information on what the inmate presently owes in regard to each case for which sentence was imposed. This will apply even to the thousands of inmates released to supervision each year, for whom costs are part of the supervision terms that are monitored by the probation officer and which will be discussed with the officer upon reporting for supervision. This will be a significant workload increase on Department release officers and possibly to the clerks of court, as it could generate a significant volume of contacts to the clerks to determine the current status of various assessed costs. The Department estimates it will need a minimum of six (6) Data Entry Operator positions to implement this provision.

To facilitate the necessary exchange of information, it may be helpful to amend s. 944.17(5)(i), F.S., regarding providing information to the Department after the defendant is delivered to state custody, as follows: "After a prisoner is admitted into the state correctional system, the department may request such additional records relating to the prisoner as it considers necessary from the clerk of the court, the Department of Children and Families, or any other state or county agency for the purpose of determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs, or status of monetary obligations."

This section requires the agency to adopt rules to implement its provisions.

**Section 6** Although the bill grants the authority for the Department to provide an entrepreneurship program, it also provides that it must be *managed with existing resources*. The Department would likely not be able to develop the program without adequate funding resources. However, (for informational purposes only), if the Department were to develop the program, to ensure proper implementation and management, it would likely require the addition of one (1) Correctional Services Consultant position. This coverage permits a Central Office coordinator to ensure critical development steps are satisfied and conduct proper contract monitoring.

Because entrepreneurship programs rely heavily on community business owners and volunteers to facilitate events related to the development and delivery of business plans, the Department's Central Office and regional levels would need to develop agreements with eligible entities, including community business owners to act as facilitators and professional mentors. For informational purposes, the Department would likely require contractual funding to procure these services, to include development, implementation, and provision of services. The estimated fiscal impact, to include contracted staff, materials, and supplies, is estimated at \$200,000 per location.

**Sections 7 and 8** amends s. 948.001, F.S., regarding Administrative Probation, however there is no anticipated impact as language deleted from s. 948.001, F.S., is added to s. 948.013, F.S.

**Section 9** adds to s.948.03, F.S., by requiring the Department to submit all conditions of probation to the FCIC database. As part of implementation, the Department would likely establish a policy document to address the methodology to be used for providing the data elements to FDLE. This policy document would also provide for timeframes under which the Department would strive to send the data to FDLE in a timely manner once the conditions of probation have been finalized by the court. The Department estimates an extended implementation timeframe for this section of the bill which would likely be outside of the current listed effective date. Please also note that there are

challenges when entering all conditions of supervision into the Offender Based Information System (OBIS) for upload into FCIC and/or the National Crime Information Center (NCIC). In 2005 at the request of FDLE, the Department began electronically transmitting certain sex offender special conditions to FDLE. The Department and FDLE use a real time direct data pipe line to each other's agency to send and receive probationer's data. The Offender Based Information System houses many on-line screens to capture the probationer's data with real time entry by FDC probation officers. This data is sent to FDLE who then in-turn sends the data to NCIC. There are many times when Probation Officers give case specific permission to offenders to deviate for certain situations, but the officer may not have access to OBIS to be able to make an immediate update. Many offenders have a curfew imposed at the time of sentencing; however, the probation officer may be given discretion to modify the curfew hours under certain circumstances. In these situations, OBIS may not be updated by the officer due to the permission given after working hours or due to other extenuating circumstances. If the offender has contact with a law enforcement officer during the normal curfew hours, a warrantless arrest may occur causing an undue hardship of the offender.

**Section 10** expands the Alternative Sanctions Program (ASP) for handling technical supervision violations to all judicial circuits. It also modifies the framework of the ASP, creating a two-tier violation system for low and moderate risk violations, with authorized sanctions for each violation level.

The Department does not anticipate significant operational impact from expanding this program to the remaining 4 judicial circuits (it already operates in 16 circuits) and working with the local courts to implement the changes in the program authorized in the bill. Impact from the expansion and the changes on the Violation of Probation (VOP) case load and the number of revocations is indeterminate at this time.

It should be noted, however, that the sanctions authorized by the bill could result in an increase in referrals for counseling and drug testing. Also, one authorized sanction is residential treatment for up to 90 days, however, the Department's residential treatment model is at least 6 months.

There would also be a likely technology impact associated with the requirements in s. 948.03, F.S. Technology programming updates to the Department's Offender Based Information System (OBIS) would be required as well as the need to modify the existing data feed to FDLE for the creation of special conditions codes. Please note that FDLE would also likely need to modify their process, including the ability for a larger file, in order to accept the new file format from the Department.

**Section 11** updates a citation in s. 893.03, F.S., based on the bill's amendment of s. 893.135, F.S.

**Section 12** provides a July 1, 2019 effective date.

**3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y  N**

If yes, explain:	Section 5 of the bill requires the Department to adopt rules.
Is the change consistent with the agency's core mission?	Y <input type="checkbox"/> N <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	33-601.504, Transition Assistance Program

**4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	
Opponents and summary of position:	

**5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y  N**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

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**6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?** Y  N

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

**FISCAL ANALYSIS**

**1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?** Y  N

Revenues:	Unknown.
Expenditures:	Unknown.
Does the legislation increase local taxes or fees? If yes, explain.	No.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

**2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?** Y  N

Revenues:	Unknown.															
Expenditures:	<p>The below fiscal is provided for various aspects of the bill:</p> <p><b>Section 3</b> – The Department estimates that this would result in an average daily population reduction of 66 inmates during the first year of implementation, and a 40 inmate reduction in the average daily population for years 2, 3, 4 and beyond. When inmate population is impacted in small increments statewide, the inmate variable per diem of \$20.04 is the most appropriate to use. This per diem includes costs more directly aligned with individual inmate care such as medical, food, inmate clothing, personal care items, etc.</p> <table style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="border-bottom: 1px solid black;"></th> <th style="border-bottom: 1px solid black; text-align: center;">Per Diem /Ratio</th> <th style="border-bottom: 1px solid black; text-align: center;">Year 1</th> <th style="border-bottom: 1px solid black; text-align: center;">Year 2</th> <th style="border-bottom: 1px solid black; text-align: center;">Year 3</th> </tr> </thead> <tbody> <tr> <td style="padding-left: 20px;">ADP (rounded)</td> <td></td> <td style="text-align: center;">66</td> <td style="text-align: center;">40</td> <td style="text-align: center;">40</td> </tr> <tr> <td style="padding-left: 20px;">Prison Impact - Variable Per Diem</td> <td style="text-align: center;">20.04</td> <td style="text-align: center;">(482,764)</td> <td style="text-align: center;">(292,584)</td> <td style="text-align: center;">(292,584)</td> </tr> </tbody> </table>		Per Diem /Ratio	Year 1	Year 2	Year 3	ADP (rounded)		66	40	40	Prison Impact - Variable Per Diem	20.04	(482,764)	(292,584)	(292,584)
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<p><b>Sections 5 and 6 – Workload associated with Implementation and Management of Automated Web Portal and Notification to Inmates released in 18 points or larger is projected to require additional staff costs as follows:</b></p>																																																								
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<b>Total</b>	<b>\$ 391,364</b>																																																							
	<p>In addition, it is anticipated there will need to be changes to the gain time screens and the calculator for both Institution and Community Corrections, estimated non-recurring cost is \$26,100.</p>																																																							
	<table border="1"> <thead> <tr> <th>Total Fiscal Summary</th> <th>Year 1</th> <th>Year 2</th> <th>Year 3</th> </tr> </thead> <tbody> <tr> <td>Recurring</td> <td>(122,092)</td> <td>68,088</td> <td>68,088</td> </tr> <tr> <td>Non-recurring</td> <td>56,792</td> <td></td> <td></td> </tr> <tr> <td><b>Total</b></td> <td><b>(65,300)</b></td> <td><b>68,088</b></td> <td><b>68,088</b></td> </tr> </tbody> </table>	Total Fiscal Summary	Year 1	Year 2	Year 3	Recurring	(122,092)	68,088	68,088	Non-recurring	56,792			<b>Total</b>	<b>(65,300)</b>	<b>68,088</b>	<b>68,088</b>																																							
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<b>Total</b>	<b>(65,300)</b>	<b>68,088</b>	<b>68,088</b>																																																					
Does the legislation contain a State Government appropriation?	Not at this time.																																																							
If yes, was this appropriated last year?																																																								

**3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?**

Y  N

Revenues:	Unknown.
Expenditures:	

Other:	
--------	--

**4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y  N**

If yes, explain impact.	
Bill Section Number:	

**TECHNOLOGY IMPACT**

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y  N

If yes, describe the anticipated impact to the agency including any fiscal impact.	There would likely be technology impact associated with the requirements in s. 948.03, F.S. Technology programming updates to the Department's Offender Based Information System (OBIS) would be required as well as the need to modify the existing data feed to FDLE for the creation of special conditions codes. There will likely be technology impact. There will need to be changes to gain time screens and the calculator for both Institution and Community Corrections.  Cost Estimate Estimated Hours: 300 Estimated Cost Per Hour: \$ 87.00 Total Estimated Cost: \$26, 100
--	---

**FEDERAL IMPACT**

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y  N

If yes, describe the anticipated impact including any fiscal impact.	   
--	--------------

**ADDITIONAL COMMENTS**

N/A

**LEGAL - GENERAL COUNSEL'S OFFICE REVIEW**

Issues/concerns/comments:	Implementation of SB 642 may result in increased inmate litigation against the Florida Department of Corrections relating to two main effects of the bill: the assignment of inmates within 150 miles of their primary residence and the potential changes to inmate educational-incentive gain time awards. With respect to facility assignments, the bill does not provide a definition for the term "primary residence" and lines 188-193 might be misinterpreted to provide inmates with a right of denial of transfer when circumstances otherwise would require a transfer. With respect to educational-incentive gain time awards, there appears to be a potential for educational-incentive gain time awards under the bill to authorize some sentence reductions below the current 85% minimum sentence standard. Further, with respect to crimes addressed in s. 907.041, F.S., the gain time language appears to apply retroactively.
---------------------------	--

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/ Meeting Date

SB 7086 Bill Number (if applicable)

Topic A4 Implementation

Amendment Barcode (if applicable)

Name Desmond Meade

Job Title Executive Director / Chair

Address 4081 L.B. McLeod Street

Phone 407 305-901-3749

Orlando FL 3 City State Zip

Email desmond@floridarrc.org

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

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

Representing Florida Rights Restoration Coalition / Floridian for a Fair Democracy

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19 Meeting Date

SB 7086 Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Evin Cusick

Job Title Consultant

Address 1931 Dellwood Drive Street

Phone (850) 224-2400

Tallahassee FL 32303 City State Zip

Email evin@evincusick.com

Speaking: For Against Information

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

Representing National Association of Social Workers FL Chapter

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4-8-19

7086

*Meeting Date*

*Bill Number (if applicable)*

Topic Voting Rights Restoration

*Amendment Barcode (if applicable)*

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

*Street*

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Sheriffs 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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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

APRIL 08, 2019

*Meeting Date*

SB 7086

*Bill Number (if applicable)*

Topic Voting Rights Restoration

*Amendment Barcode (if applicable)*

Name Mark Schlakman

Job Title senior program director

Address FSU/CAHR, 426 W. Jefferson St.

Phone (850) 644-4614

*Street*

Tallahassee

FL

32301-1602

Email mschlakman@fsu.edu

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Florida State University Center for the Advancement of Human Rights

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

8 Apr 2019

Meeting Date

7086

Bill Number (if applicable)

Topic Voting Rights

Amendment Barcode (if applicable)

Name Cecile Scoon

Job Title 1 VP League of Women Voters

Address 25 East 8th St

Phone 850-319-1975

Street

Panama City

FL

32401

Email cmscoon1@knology.net

City

State

Zip

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

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

Representing League of Women Voters of Florida

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4.8.19

7086

Meeting Date

Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

SB 7086

Bill Number (if applicable)

Topic Voter Rights

Amendment Barcode (if applicable)

Name Teresa Wells

Job Title Big Bend Voting Rights Project

Address 1227 N M L King Jr Blvd

Phone (850) 502-6989

Tallahassee State Zip

Email FL

Speaking:  For  Against  Information

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

Representing Big Bend Voting Rights Project

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-8-19  
Meeting Date

7086  
Bill Number (if applicable)

Topic Restoration of Voting Rights

Amendment Barcode (if applicable)

Name Barbara Deane

Job Title Ms

Address 625 E Berard St

Phone 251-4280

Street

Tallahassee FL 32308

City

State

Zip

Email barbundernet1@yahoo.com

Speaking:  For  Against  Information

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

Representing FL NOW

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

4/8/19

Meeting Date

7086

Bill Number (if applicable)

Topic Voters Rights Restoration

Amendment Barcode (if applicable)

Name LINDA LEWIS

Job Title

Address 2846 SW 4 Ct

Phone

Street

H. Land, FL 33312

Email

City

State

Zip

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Myself

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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# APPEARANCE RECORD

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

4/9/19  
Meeting Date

SB 7006  
Bill Number (if applicable)

Topic Voting Rights Bill

Amendment Barcode (if applicable)

Name Robert Yoane

Job Title Retired

Address 1724 Branchwater Tr.

Phone 407 739-1108

Street

Orlando

FL

32825

City

State

Zip

Email bbdozane@yahoo.com

Speaking:  For  Against  Information

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

Representing self

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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# APPEARANCE RECORD

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

4-8-19

Meeting Date

7086

Bill Number (if applicable)

Topic Voter Rights Restoration

Amendment Barcode (if applicable)

Name MATTHEW KELLY

Job Title \_\_\_\_\_

Address 2105 NE 55<sup>th</sup> St

Phone \_\_\_\_\_

Street

Ocala

FL

34479

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4.8.19

Meeting Date

7086

Bill Number (if applicable)

Topic Voter's Rights Restoration

Amendment Barcode (if applicable)

Name Cassyn Cummings-Tucker

Job Title \_\_\_\_\_

Address 1613 NW 14th Street

Phone 954.534.6033

Street

Ft. Lauderdale FL 33311

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/8/19

Meeting Date

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

7086

Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Deborah Foute

Job Title Gov't Affairs Director

Address 3254 Newberry Blvd

Phone 901 533 1798

Street

Tallahassee FL 32311

Email deborah.foute@sierracub.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Sierra Club FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-8-19

Meeting Date

7086

7804

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Sharon Madison

Job Title REENTRY Coord

Address 2704 Grassmoor Loop

Phone 904-535-4340

Street

Apopka FL

City

State

Zip

Email

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19  
Meeting Date

7086  
Bill Number (if applicable)

Topic Amendment 9 implementation

Amendment Barcode (if applicable)

Name Sheena Meade

Job Title Director of Strategic Partnerships

Address 4797 Maple Park St

Phone 727-24-6430

City Orlando State FL Zip 32811

Email [Redacted]

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/2019

Meeting Date

SB 7086

Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Scott D. McCoy

Job Title Senior Policy Counsel

Address P.O. Box 10788

Phone 850-521-3042

Street

Tallahassee

FL

32302

Email scott.mccoy@splcenter.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Southern Poverty Law Center Action Fund

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-8-19

Meeting Date

7086

Bill Number (if applicable)

Topic Voters Rights Restoration

Amendment Barcode (if applicable)

Name Adam Campbell

Job Title

Address 3738 Kenyon Road

Phone 561-452-7748

Street

Lake Worth

FL

33461

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19  
Meeting Date

SB 7086  
Bill Number (if applicable)

Topic A4 / Implemation

Amendment Barcode (if applicable)

Name ERICA BACZ

Job Title FRRC

Address

Phone

Street

Fort Myers FL

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing FRRC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/18/19  
Meeting Date

7086  
Bill Number (if applicable)

Topic SB 7086

Amendment Barcode (if applicable)

Name Mariana Mackinnon

Job Title Policy Fellow

Address 2046 Bruckner Dr.  
Street

Phone 941-822-2933

Sarasota FL 34231  
City State Zip

Email Mariana.Mackinnon@gmail.com

Speaking:  For  Against  Information

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

Representing Florida Rights Restoration Coalition

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19 Meeting Date

7086 Bill Number (if applicable)

Topic Amendment 4 Implementation

Amendment Barcode (if applicable)

Name LeighAnn Gustavus

Job Title Digital Organizer/Data Manager

Address 5708 Lulla St Street

Phone 904-517-0649

Jacksonville FL 32207 City State Zip

Email leighann@floridarrc.org

Speaking: For Against Information

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

Representing Florida Rights Restoration Coalition (FPRC)

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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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/8/19

Meeting Date

7086

Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850-425-1344

Tallahassee FL 32301

City State Zip

Email TcgLobby@aol.com

Speaking:  For  Against  Information

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

Representing Florida State Conference of NAACP

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

4/8/2019 Meeting Date

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

SB 7086 Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Aramis D. Ayala

Job Title 9th Circuit State Attorney

Address Street

Phone

City State Zip

Email

Speaking: For Against Information

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

Representing

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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# APPEARANCE RECORD

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

4-8-19

Meeting Date

SB 7086

Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Jerome Bess

Job Title \_\_\_\_\_

Address 926 E Johnson Ave

Phone (850) 501-2903

Street

Pensacola FL

State

92514

Zip

Email \_\_\_\_\_

City

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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THE FLORIDA SENATE

APPEARANCE RECORD

4-9-19

Meeting Date

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

SB 7086

Bill Number (if applicable)

Topic Voting Rights Bill

Amendment Barcode (if applicable)

Name Jeremy Hayden

Job Title Medical Equipment operator

Address 13248 NE 1st Street Road

Phone 352-355-9330

Street

Silver Springs FL 34488

City

State

Zip

Email Jeremy.scotthayden@GMAIL.com

Speaking:  For  Against  Information

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

Representing Myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

April 8 2019  
Meeting Date

7086  
Bill Number (if applicable)

Topic Restoration of Voting rights

Amendment Barcode (if applicable)

Name Barbara Alber

Job Title Educator

Address 123 Puffin Court  
Street

Phone 561 798-3308

Royal Palm Beach  
City State Zip

Email b\_alber@bellsouth.net

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

7086

Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name Ellen Baker

Job Title Teacher

Address 5673 Whirlaway Rd

Phone

Street Palm Beach Gardens, FL 33418

Email

City State Zip

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

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

Representing self

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

SB 7086

Bill Number (if applicable)

Topic REGISTRATION OF VOTING RIGHTS

Amendment Barcode (if applicable)

Name PAUL ARONS

Job Title

Address 1706 BEECHWOOD CIRCLE N

Phone 850-545-8997

Street

TALLAHASSEE

FL

32301

Email p.aronson@flsen.gov

City

State

Zip

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

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

Representing

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

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

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

SB 7086

Bill Number (if applicable)

Topic Voters Rights Restoration

Amendment Barcode (if applicable)

Name Ben Friedman

Job Title Director of Community Relations

Address

Phone 904 501 2800

Street

Orlando

FL

City

State

Zip

Email

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

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

Representing Jewish Federation of Greater Orlando

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19 Meeting Date

SB 7086 Bill Number (if applicable)

Topic Amendment 4

Amendment Barcode (if applicable)

Name LANCE WISSINGER

Job Title Business Development

Address 11290 Royal Tee Cir Street

Phone

Cap Coral City FL 33991

Email wissingerlnc@gmail.com

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

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

Representing FRRC

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

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

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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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/18/19  
Meeting Date

SB 7086  
Bill Number (if applicable)

Topic Amendment 4 Implementation

Amendment Barcode (if applicable)

Name Coral Nichols

Job Title Vice President

Address 7190 Seminole Blvd  
Street

Phone 727-479-8416

Seminole, FL 33773  
City State Zip

Email cnichols@empoweredchange.org

Speaking:  For  Against  Information

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

Representing FRAC / Empowered to Change, Inc.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4-8-19  
Meeting Date

7086  
Bill Number (if applicable)

Topic 7086

Amendment Barcode (if applicable)

Name Michael Anderson

Job Title Community engagement

Address 2433 South Del Rio

Phone 404 994 7232

City Jax State FL Zip 32253

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing ALLendale VMC and FRAC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

April 8, 2019

Meeting Date

SB 7086

Bill Number (if applicable)

Topic Restoration of Voting Rights

Amendment Barcode (if applicable)

Name Bob Rackliff

Job Title Member

Address 502-D Hillcrest St.

Phone 850-212-5663

Street

Tallahassee FL 32308

City

State

Zip

Email bob.rackliff@gmail.com

Speaking:  For  Against  Information

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

Representing Big Bend Voting Rights Project

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)

4/8/19  
Meeting Date

SB 7086  
Bill Number (if applicable)

Topic VOTING - AMENDMENT 4 - SB 7086

Amendment Barcode (if applicable)

Name KERIC BAILEY

Job Title POLITICAL DIRECTOR

Address 4343 W. FLAGLER

Phone 202-468-9596

Street

MIAMI  
City

FL  
State

33137  
Zip

Email KBAILEY@ACLUFL.ORG

Speaking:  For  Against  Information

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

Representing ACLU FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4-8-19

Meeting Date

SB-7086

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name John Crawford

Job Title FRC

Address 1816 N.W. 62nd Terr

Phone \_\_\_\_\_

Street

Miami

Fl.

33147

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/8/2019

Meeting Date

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

SB 7086

Bill Number (if applicable)

Topic Voting Rights Restoration

Amendment Barcode (if applicable)

Name David Ayala

Job Title Organizer

Address 523 W. Colonial Dr.

Phone 321.800.3916

Street

Orlando FL 32804

City

State

Zip

Email dayala@latinojustice.org

Speaking:  For  Against  Information

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

Representing Latino Justice PRLDEF/MYSELF

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

7086

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

Bill Number (if applicable)

171908

Amendment Barcode (if applicable)

Topic Amendment 4 implementation

Name Neil Volz

Job Title Political Director

Address 4081 LB McLeod

Street

Orlando

FL

City

State

Zip

Phone 407-901-3749

Email neil@floridabar.org

Speaking:  For  Against  Information

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

Representing Florida Rights Restoration Coalition

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)

APRIL 08, 2019

*Meeting Date*

SB 7086

*Bill Number (if applicable)*

861964

*Amendment Barcode (if applicable)*

Topic Voting Rights Restoration

Name Mark Schlakman

Job Title senior program director

Address FSU/CAHR, 426 W. Jefferson St.

Phone (850) 644-4614

*Street*

Tallahassee

FL

32301-1602

Email mschlakman@fsu.edu

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Florida State University Center for the Advancement of Human Rights

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**

**APPEARANCE RECORD**

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

APRIL 08, 2019

Meeting Date

SB 7086

Bill Number (if applicable)

530944

Amendment Barcode (if applicable)

Topic Voting Rights Restoration

Name Mark Schlakman

Job Title senior program director

Address FSU/CAHR, 426 W. Jefferson St.

Phone (850) 644-4614

Street

Tallahassee

FL

32301-1602

Email mschlakman@fsu.edu

City

State

Zip

Speaking:  For  Against  Information

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

Representing The Florida State University Center for the Advancement of Human Rights

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: SB 1208

INTRODUCER: Senator Baxley

SUBJECT: Aircraft Liens

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 1208 provides that a lien claimed for labor, services, fuel, or material supplied to an aircraft is not a possessory lien. Therefore, a person claiming a lien for those items does not need to keep the aircraft in his or her possession to enforce the lien.

The effective date of the bill is July 1, 2019.

**II. Present Situation:**

A lien is a legal interest that a creditor has in someone else's property to ensure payment of an obligation. Many classifications and forms of liens exist today, including: a statutory lien which exists by force of statute and not by an agreement between the parties; a judicial lien which is obtained by judgment or other legal or equitable process; and a common-law lien, which was granted by the common law and allows a person to keep possession of property that belongs to someone else until certain demands made by the party in possession of the property, are met.<sup>1</sup> Unlike an equitable lien in which the lienor did not have to keep possession of the property, a party claiming a common law lien must have "independent and exclusive possession of the property."<sup>2</sup>

**Possessory Liens**

A possessory lien is only enforceable as long as the lienor retains possession of the property at issue.<sup>3</sup> When a lienor releases property on which he or she claims a possessory lien, he or she loses the right to claim the lien. The Third District Court of Appeal addressed this issue in

---

<sup>1</sup> BLACK'S LAW DICTIONARY (10th ed. 2014). A mechanic's lien secures payment for materials or labor that were supplied in improving or repairing real or personal property.

<sup>2</sup> 34 FLA. JUR 2D LIENS ss. 3 and 4 (2009).

<sup>3</sup> *Commercial Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887 (3d DCA 2010).

*Commercial Jet, Inc., v. U.S. Bank, N.A.* Commercial Jet provided maintenance and repair work on a Boeing 767 aircraft, then returned the airplane to its operator who put the airplane back into service. After relinquishing possession of the aircraft, Commercial Jet recorded a claim of lien for the unpaid balance pursuant to ss. 713.58 and 329.51, F.S. The trial court and the appellate court held that the type of lien authorized by the statutes was a possessory lien. As a result, Commercial Jet could not foreclose its purported lien because it did not have possession of the aircraft.<sup>4</sup>

## Aircraft Liens

### *Recording, Generally*

The U.S. Congress passed the Federal Aviation Act (Act) in 1958.<sup>5</sup> The Act requires a civil aircraft<sup>6</sup> lien to be recorded with the Federal Aviation Administration<sup>7</sup> (FAA).<sup>8</sup> Until an aircraft lien is recorded with the FAA, it is valid only against those with actual notice of the lien.<sup>9</sup> The purpose of the recording provision was to create a central clearinghouse for the recording of liens affecting civil aircraft in the United States so that a person would know where to find the information.<sup>10</sup> However, the Act preempted state law only as to the priority of liens, meaning a state could impose requirements affecting the enforceability and validity of liens within that state.<sup>11</sup> Further, in 1981, the FAA took the position that aircraft liens could only be recorded with the FAA if the state law creating the lien allows for the creation or perfection of a lien in this way.<sup>12</sup> Currently, the FAA records liens claimed in thirty-six states, including Florida.<sup>13</sup> Florida specifically provides that no lien affecting title to a civil aircraft is valid until such lien is recorded with the FAA.<sup>14</sup>

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<sup>4</sup> In criticizing the majority opinion in *Commercial Jet*, the dissent stated:

Section 329.51, Florida Statutes, clearly provides that a lien for repairs on an aircraft such as the one in this case is perfected simply by recording a claim of lien within ninety days of the services rendered, as the appellant did in this case. The majority holding that following that provision did not have the effect specifically provided by the legislature is in conflict with just about every canon of legislative interpretation there is . . . .

*Id.* at 889 (Schwartz J., dissenting).

<sup>5</sup> *Creston Aviation, Inc. v. Textron Financial Corp.*, 900 So. 2d 727 (Fla. 4th DCA 2005).

<sup>6</sup> “Aircraft” means any contrivance invented, used, or designed to navigate, or fly in, the air. 49 USC § 40102(a)(g).

<sup>7</sup> The Federal Aviation Administration of the Department of Transportation regulates civil aviation and U.S. commercial space transportation, maintains and operates air traffic control and navigation systems for civil and military aircrafts, and develops and administers programs relating to aviation safety and the National Airspace System. See The Federal Register, *Federal Aviation Administration*, <https://www.federalregister.gov/agencies/federal-aviation-administration>.

<sup>8</sup> See 49 U.S.C. § 44107; see also *Creston*, 900 So. 2d at 729.

<sup>9</sup> See 49 U.S.C. § 44108; see also *id.*

<sup>10</sup> See *id.* (citing *Aircraft Trading & Servs., Inc. v. Braniff, Inc.*, 819 F. 2d 1227 (2d Cir. 1987).

<sup>11</sup> See *id.* at 730 (citing *Philko Aviation, Inc. v. Shackel*, 103 S. Ct. 2476 (1983)).

<sup>12</sup> Federal Aviation Administration, *Artisan Liens on Aircraft; Recordability*, 70 FR 59800 (Oct. 13, 2005) <https://www.federalregister.gov/documents/2005/10/13/05-20467/artisan-liens-on-aircraft-recordability> (last visited Mar. 23, 2019).

<sup>13</sup> *Id.*

<sup>14</sup> Section 329.01, F.S.

### ***Lien for Landing***

The governing body of a publicly owned and operated airport may claim a lien upon an aircraft landing at the airport for all unpaid fees and charges for the use of the airport's facilities after demanding payment for the fees and charges from the aircraft's owner or operator.<sup>15</sup> A lien for landing is a possessory lien that attaches to any aircraft, at the airport, owned or operated by the person owing the charges and fees.<sup>16</sup>

A lien for landing is enforced in the same manner as a warehouseman's<sup>17</sup> lien that is by public or private sale of the aircraft after notification to all persons known to claim an interest in the aircraft.<sup>18</sup> The notification must be delivered by certified mail or in person and include:

- An itemized statement of the amount due;
- A description of the aircraft;
- A demand for payment within a specified time; and
- A conspicuous statement that unless the claim is paid within the specified time, the goods will be sold at a specified time and place.<sup>19</sup>

Following the expiration of the timeframe given for payment in the notice, the lienor must publish an advertisement for two consecutive weeks in a newspaper of general circulation where the sale is to occur.<sup>20</sup> The advertisement must state:

- A description of the aircraft;
- The name of the person on whose account the aircraft is held; and
- The time and place of the sale.<sup>21</sup>

### ***Lien for Fuel, Labor, Services, or Material***

A person who provides fuel for an aircraft may claim a lien on the aircraft for any unpaid fuel charges.<sup>22</sup> A person who performs labor or services on or for an aircraft may claim a lien on the aircraft for any unpaid costs for the labor or services performed and for the materials used.<sup>23</sup>

A lien for fuel, labor, services, or material under ss. 329.41 or 713.58, F.S., is a possessory lien.<sup>24</sup> To enforce the lien, a lienor must record a verified lien notice with the clerk of the circuit court in the county where the aircraft was located at the time the fuel, labor, services, or material was last provided.<sup>25</sup> The notice must be recorded within 90 days after the date the fuel, labor, services, or material was last furnished and must state:

- The name of the lienor;
- The name of the aircraft's owner;

---

<sup>15</sup> Section 329.40(1), F.S.

<sup>16</sup> Section 329.40(2), F.S.

<sup>17</sup> "Warehouse" means a person engaged in the business of storing the goods of others for hire. S. 677.102(1)(m), F.S.

<sup>18</sup> Sections. 329.40(1) and 677.210(1) and (2), F.S.

<sup>19</sup> Section 677.210(2), F.S.

<sup>20</sup> Section 677.210(2)(f), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 329.41, F.S.

<sup>23</sup> Section 713.58(1), F.S.

<sup>24</sup> Section 713.58(3), F.S.; *see also Commercial Jet, Inc. v. U.S. Bank, N.A.*, 45 So. 3d 887 (3d DCA 2010)..

<sup>25</sup> Section 329.51, F.S.

- A description of the aircraft;
- The amount for which the lien is claimed; and
- The date the expenditure was completed.<sup>26</sup>

### III. Effect of Proposed Changes:

The bill expressly states that possession of an aircraft is not required to perfect a lien claimed under ss. 329.41 and 713.58, F.S., for labor, services, fuel, or material furnished to an aircraft. This change essentially supersedes the opinion of the Second District Court of Appeal in *Commercial Jet, Inc. v. U.S. Bank, N.A.*

The bill does not affect the possessory nature of liens for labor or services to other property claimed under s. 713.58, F.S.,<sup>27</sup> or liens for landing claimed under s. 329.40, F.S. These liens remain possessory liens unless categorized otherwise in statute.

The bill takes effect July 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None identified.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

---

<sup>26</sup> *Id.*

<sup>27</sup> E.g., a lien claimed under s. 718.58, F.S., for labor or services performed on a motor vehicle.

**B. Private Sector Impact:**

A person enforcing a lien for fuel, labor, services, or material furnished to an aircraft would be allowed to release the aircraft to the owner or operator. This may make it easier for a lienor to recover money owed to him or her without keeping a commercial aircraft out of service and potentially disrupting commercial air travel. This may also allow the owner or operator of an aircraft on which a lien is claimed to keep using the aircraft while he or she works to satisfy the lien.

**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: 329.41 and 329.51.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Baxley

12-01238-19

20191208\_\_

1 A bill to be entitled  
2 An act relating to aircraft liens; amending ss. 329.41  
3 and 329.51, F.S.; specifying that a lienor is not  
4 required to possess an aircraft to perfect certain  
5 liens; providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9 Section 1. Section 329.41, Florida Statutes, is amended to  
10 read:

11 329.41 Lien for fuel furnished to aircraft.—A person who  
12 has furnished fuel to an aircraft has a lien upon the aircraft  
13 for any unpaid fuel charges and possession of the aircraft is  
14 not required in order to perfect such lien. The lien is  
15 enforceable in the same manner as provided in s. 329.51.

16 Section 2. Section 329.51, Florida Statutes, is amended to  
17 read:

18 329.51 Liens for labor, services, fuel, or material  
19 expended upon aircraft; notice.—Any lien claimed on an aircraft  
20 under s. 329.41 or s. 713.58 is enforceable when the lienor  
21 records a verified lien notice with the clerk of the circuit  
22 court in the county where the aircraft was located at the time  
23 the labor, services, fuel, or material was last furnished. The  
24 lienor is not required to possess the aircraft to perfect such  
25 lien. The lienor must record such lien notice within 90 days  
26 after the time the labor, services, fuel, or material was last  
27 furnished. The notice must state the name of the lienor; the  
28 name of the owner; a description of the aircraft upon which the  
29 lienor has expended labor, services, fuel, or material; the

Page 1 of 2

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

12-01238-19

20191208\_\_

30 amount for which the lien is claimed; and the date the  
31 expenditure was completed. This section does not affect the  
32 priority of competing interests in any aircraft or the lienor's  
33 obligation to record the lien under s. 329.01.

34 Section 3. This act shall take effect July 1, 2019.

Page 2 of 2

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

# THE FLORIDA SENATE

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**  
12th District

April 2, 2019

The Honorable Chairman David Simmons  
404 Senate Office Building  
Tallahassee, FL 32399

Dear Chairman Simmons,

I would like to request SB 1208 Aircraft Liens be heard in your next Banking and Insurance committee meeting.

This bill allows a person who has furnished fuel to an aircraft to have a lien upon the aircraft for any unpaid fuel charges and the possession of the aircraft is not required in order to perfect such lien.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley  
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

Bill Galvano  
President of the Senate

David Simmons  
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 Judiciary

---

BILL: CS/CS/SB 1034

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Gruters

SUBJECT: Assignment of Consumer Debts

DATE: April 10, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1034 clarifies what the term “action” means because of the confusing way it is used in a statute governing the assignment and collection of consumer debts. After an assignee provides a written notice to a debtor that he or she has been assigned a debt, and the debt is in default, the assignee is prohibited from taking any “action” to collect on the debt for at least 30 days. The bill clarifies that, during the 30-day period, the assignee may:

- Provide the disclosure required under federal law by stating that he or she is a debt collector who is attempting to collect a debt and that any information obtained from the debtor will be used for that purpose.
- Provide written notice required by federal law by informing the consumer of the amount of the debt, the name of the creditor, and other statements including the consumer’s right to dispute the validity of the debt or request additional information.
- Communicate with the debtor if the debtor initiates the communication.
- Accept payment from the debtor if the debtor initiates the payment.

The assignee, as a real party in interest, may bring an action in a court of competent jurisdiction to collect a debt in default. However, that action may not be brought sooner than 30 days after the assignee has given written notice of the assignment to the debtor.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Consumer Debt Collection

Chapter 559, part VI (“Part VI”), F.S., regulates the collection of consumer debts and requires consumer collection agencies to be registered with the Office of Financial Regulation. Part VI enumerates the powers and duties of the Office; sets forth licensure requirements; specifies prohibited practices; prescribes grounds for disciplinary action and administrative remedies; and authorizes civil and judicial enforcement actions. The provisions of part VI do not limit or restrict the applicability of the federal Fair Debt Collection Practices Act<sup>1</sup>. The provisions of part VI are in addition to the requirements and regulations of the Federal Act. In the event of any inconsistency between any provision of part VI and any provision of the Federal Act, the provision which is most protective of the consumer or debtor will prevail.<sup>2</sup>

### Assignment of Consumer Debts

#### *Florida Law*

The portion of the Florida Consumer Collections Practices Act contained in s. 559.715, F.S., allows a creditor to assign a consumer debt to another for collection; however, the assignee must give the debtor written notice of the assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. Pursuant to s. 559.715, F.S., the assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default. Actions triggering the 30-day notification requirement would include both informal and formal actions. Hence, actions ranging from filing a civil action in court to collect the debt to simply communicating with the debtor to collect the debt would trigger this requirement.

#### *Federal Law*

The Federal Fair Debt Collections Practices Act requires a debt collector, within 5 days after the initial communication with a consumer in connection with the collection of any debt, to notify the debtor of the details of the debt including, the amount of the debt, name of creditor, and rights to dispute the debt.<sup>3</sup> Furthermore, in each communication to a debtor, a debt collector is required to include a statement that the “debt collector is attempting to collect a debt . . . .”<sup>4</sup> Under federal law, the consumer has the right to dispute the validity of the debt within 30 days after receipt of the notice. The failure of a consumer to dispute the validity of a debt may not be construed by a court as an admission of liability.<sup>5</sup>

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<sup>1</sup> The Federal Fair Debt Collection Practices Act is set forth at 15 U.S.C. ss. 1692 et seq. Many of the provisions of the Fair Debt Collection Practices Act are similar to the Florida Consumer Collection Agency Act. There are some key consumer and regulatory provisions not included under Florida’s act: such provisions pertain to communications in connection with debt collection; acquisition of location information; false or misleading representations; unfair practices; validation of debts; and the furnishing of deceptive forms.

<sup>2</sup> Section 559.552, F.S.

<sup>3</sup> 15 U.S.C. s. 1692g.

<sup>4</sup> 15 U.S.C. s. 1692e(11).

<sup>5</sup> 15 U.S.C. s. 1692g(a).

### ***Conflict Between Florida and Federal Law***

The Florida Consumer Collections Practices Act appears to create a conflict for the debt collector because it requires the debt collector to provide notice of an assignment of debt at least 30 days before taking any action to collect the debt. However, the Federal Fair Debt Collections Practices Act requires a debt collector, within 5 days of the initial communication with the consumer, to give a debtor notice which includes information about the debt and their rights to dispute the debt. The Office of Financial Regulation believes that giving the notice required in the Federal Fair Debt Collections Practices Act is a violation of the Florida Consumer Collections Practices Act because it constitutes an “action to collect the debt” and is sent within the 30-day window of prohibited action.<sup>6</sup>

### **III. Effect of Proposed Changes:**

Currently, when a creditor assigns the right to collect a debt to an assignee, the assignee must give 30 days’ notice to the debtor before taking any action to collect on the debt. The word “action” has created confusion as to what the debt collector may rightfully do without running afoul of restrictions imposed by law. The bill clarifies that, during the 30-day period after the assignee has provided written notice to the debtor, the assignee may:

- Provide the disclosure required by 15 U.S.C. s. 1692e(11)<sup>7</sup> which states that he or she is a debt collector who is attempting to collect a debt and that any information obtained from the debtor will be used for that purpose.
- Provide written notice required by 15 U.S.C. s. 1692g<sup>8</sup> which states that the assignee must inform the consumer of the amount of the debt, the name of the creditor, and the consumer’s right to dispute the validity of the debt and request additional information.
- Communicate with the debtor if the debtor initiates the communication.

<sup>6</sup> Office of Financial Regulation, *2019 Agency Legislative Bill Analysis of SB 1034* (March 14, 2019)

<http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28333>.

<sup>7</sup> 15 U.S.C. s. 1692e(11) states:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

<sup>8</sup> 15 U.S.C. s. 1692g states:

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

- Accept payment from the debtor if the debtor initiates the payment.

The assignee, as a real party in interest, may bring an action in a court of competent jurisdiction to collect a debt in default. However, that action may not be brought sooner than 30 days after the assignee has given written notice of the debt to the debtor.

The effective date of the bill is July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 559.715 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 April 8, 2019:**

The committee substitute differs from the underlying bill by specifying four things the assignee may legally do during the 30-day period after notifying the debtor of the assignee's intent to collect on the debt and before he or she may file an action in court against the debtor. In general terms, the assignee is permitted to provide disclosure provisions and notice provisions to the debtor in compliance with federal law, communicate with the debtor if the debtor initiates the communication, and accept payment from the debtor if the debtor initiates the payment. Please see "III. Effect of Proposed Changes" above for more specific information.

**CS by Banking and Insurance on March 25, 2019:**

The CS removes the term "legal" action and clarifies that "action" does not include a communication or disclosure required by law or communication or payment insinuated by the debtor.

- B. **Amendments:**

None.



664092

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
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The Committee on Judiciary (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 12 - 23  
and insert:

(1) If a creditor assigns ~~This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However,~~ the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made. If the debt is in default, the written notice of such assignment must be made, ~~but~~ at least 30 days before the assignee takes any action to collect the debt.



664092

12 Notwithstanding such 30-day period, for a debt that is in  
13 default, the assignee may:

14 (a) Provide the disclosure required by 15 U.S.C. s.  
15 1692e(11).

16 (b) Provide the notice required by 15 U.S.C. s. 1692g.

17 (c) Communicate with the debtor so long as the debtor  
18 initiates the communication.

19 (d) Accept payment from the debtor so long as the debtor  
20 initiates the payment.

21 (2) The assignee is a real party in interest and may bring  
22 an action in a court of competent jurisdiction to collect a debt  
23 that ~~has been assigned to the assignee and~~ is in default. Such  
24 action is subject to the 30-day period specified in subsection  
25 (1).

26  
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete lines 3 - 5

30 and insert:

31 amending s. 559.715, F.S.; authorizing an assignee to  
32 take certain actions for debts that are in default;  
33 revising when an assignee may bring an action to  
34 collect a debt; specifying that such action is subject  
35 to certain requirements; providing an effective date.

By the Committee on Banking and Insurance; and Senator Gruters

597-03481-19

20191034c1

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A bill to be entitled

An act relating to assignment of consumer debts;  
amending s. 559.715, F.S.; specifying that certain  
communications, disclosures, and payments do not  
constitute an action; providing an effective date.

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

Section 1. Section 559.715, Florida Statutes, is amended to  
read:

559.715 Assignment of consumer debts.—

(1) This part does not prohibit the assignment, by a  
creditor, of the right to bill and collect a consumer debt.  
However, the assignee must give the debtor written notice of  
such assignment as soon as practical after the assignment is  
made, but at least 30 days before any action to collect the  
debt. For the purpose of this subsection, the term "action" does  
not include a communication or disclosure required by law and  
does not include any communication or payment initiated by the  
debtor.

(2) The assignee is a real party in interest and may bring  
an action to collect a debt that has been assigned to the  
assignee and is in default.

Section 2. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Commerce and Tourism, *Chair*  
Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Banking and Insurance

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR JOE GRUTERS**  
23rd District

April 1, 2019

The Honorable David Simmons, Chair  
Judiciary Committee  
515 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that Senate Bill 1034, Assignment of Consumer Debt be placed on the agenda of the next Judiciary meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

cc: Tom Cibula, Staff Director  
Joyce Butler, Committee Administrative Assistant

**REPLY TO:**

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19  
Meeting Date

1034  
Bill Number (if applicable)

Topic Assignment of Debt

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3121

Tallahassee FL 32303  
City State Zip

Email alicevickers@flacp.org

Speaking:  For  Against  Information

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

Representing FL Alliance for Consumer Protection

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

1034

Bill Number (if applicable)

Topic Debt Collectors

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of Govt. Affairs

Address 1001 Thomasville Rd

Phone 247-2265

Street

1001 Thomasville Rd

Email admarco@floridabankers.com

City

Jacksonville

State

FL

Zip

32303

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)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

1034

Bill Number (if applicable)

Topic Assignment of Consumer Debt

Amendment Barcode (if applicable)

Name Jennifer Wilson

Job Title Lobbyist / Attorney

Address 101 E. Kennedy Blvd, Ste 800

Phone 813-407-0703

Street

City

Tampa FL 33602

State

Zip

Email jwilson@shumaker.com

Speaking:  For  Against  Information

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

Representing Florida Collectors 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

1034

Bill Number (if applicable)

Topic Assignment of Consumer Debts

Amendment Barcode (if applicable)

Name Jared Ross

Job Title SRP, Governmental Affairs

Address 3692 Coolidge Ct.

Phone (850) 322-6957

Street

Tallahassee FL 32311

City

State

Zip

Email jared.ross@lscw.coop

Speaking:  For  Against  Information

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

Representing Florida Credit Union 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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 920

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: DNA Database

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Fav/CS</b>
2.	Cibula	Cibula	JU	<b>Favorable</b>
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 920 revises the legislative intent found in s. 943.325(1)(b), F.S., the statute establishing a statewide DNA database. In establishing the database, the Legislature expressed the intent that

a match between casework evidence DNA samples from a criminal investigation and DNA samples from a state or federal DNA database of certain offenders may be used to find probable cause for the issuance of a warrant to obtain the DNA sample from an offender.

As revised by the bill, the legislative intent states that the Legislature intends for matches between casework evidence DNA samples and DNA databases of offenders to be used for an additional purpose—finding probable cause to obtain a warrant for an offender’s arrest.

The bill may reduce costs to establish probable cause to arrest a person based on DNA evidence by eliminating a perceived requirement that multiple DNA tests are necessary to establish probable cause.

The bill is effective July 1, 2019.

## II. Present Situation:

### Using DNA to Solve Crimes

A person's unique Deoxyribonucleic acid (DNA) profile is present in bodily fluids, a strand of hair, and even skin cells.<sup>1</sup> Because a perpetrator often leaves DNA at the scene of a crime, that DNA evidence can be used to aid in solving crimes in two ways:

- In cases where there is a suspect, by comparing the suspect's DNA (known sample) to DNA evidence collected at the crime scene (unknown sample); and
- If there is no known suspect, by comparing DNA evidence gathered at the crime scene to DNA database profiles to help identify the perpetrator if he or she has a sample in a database.<sup>2</sup>

Forensic crime laboratories extract and analyze DNA found at a crime scene. To identify the DNA contributor, the crime scene DNA profile must be matched either to a known suspect or to a DNA profile stored in a database.<sup>3</sup> Accurate identification depends upon factors such as:

- The quality of the DNA sample;
- The number of genetic markers analyzed;
- Whether the sample was prepared properly; and
- The ability of those doing the analysis to interpret the results.<sup>4</sup>

All 50 states and the federal government have laws requiring the collection of DNA samples from some category of offenders. There currently exists a network of local, state, and federal DNA databases available to law enforcement agencies for the purpose of comparing crime scene evidence to DNA profiles. State DNA profiles are sent to the National DNA Index System. This national database can be searched using a technology platform, developed by the Federal Bureau of Investigation, known as the Combined DNA Index System (CODIS).<sup>5</sup>

CODIS searches the national database system weekly and, if there is a match between a crime scene DNA sample and a DNA database profile, the agency that submitted the profile is notified, making it possible to link suspects to unsolved crimes.<sup>6</sup> CODIS is also capable of linking DNA evidence from crime scenes in different locations, potentially aiding multi-jurisdictional cooperation in solving crimes attributable to serial offenders.<sup>7</sup>

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<sup>1</sup> William Harris, HowStuffWorks, *How DNA Evidence Works*, Jan. 18, 2001, available at <https://science.howstuffworks.com/life/genetic/dna-evidence2.htm> (last visited Apr. 5, 2019).

<sup>2</sup> United States Department of Justice, *Advancing Justice through DNA Technology: Using DNA to Solve Crimes*, updated March 7, 2017, available at <https://www.justice.gov/archives/ag/advancing-justice-through-dna-technology-using-dna-solve-crimes>.

<sup>3</sup> See note 1, *supra*.

<sup>4</sup> Stephen Leahy, *Alleged Golden State Killer Busted by DNA. But are Tests 100% Accurate?*, NATIONAL GEOGRAPHIC, Apr. 25, 2018, available at <https://news.nationalgeographic.com/2018/04/dna-testing-accuracy-golden-state-killer-science-spd/> (last visited Apr. 5, 2019). \*Note, this link contains a graphic video of an autopsy.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Federal Bureau of Investigation, *Combined DNA Index System (CODIS)*, available at <https://www.fbi.gov/services/laboratory/biometric-analysis/codis> (last visited Apr. 5, 2019)

## Current Law

Section 943.325, F.S., created the DNA database within the Florida Department of Law Enforcement (FDLE) in 1989, and required persons convicted of certain sex crimes to provide blood samples to be tested for genetic markers for the purpose of personal identification of the person submitting the sample.<sup>8</sup> The results from the blood samples were then entered into a DNA database maintained by the FDLE to be available in a statewide automated personal identification system for classifying, matching, and storing DNA analyses.<sup>9</sup>

Since its creation, the statewide DNA database has evolved to the point where the FDLE now accepts oral swab samples (known samples) from qualifying offenders, which means any person meeting two criteria:

(1) a person who is:

- Committed to a county jail;
- Committed to or under the supervision of the Department of Corrections, including persons incarcerated in a private correctional institution;
- Committed to or under the supervision of the Department of Juvenile Justice;
- Transferred to this state under the Interstate Compact on Juveniles, part XIII of ch. 985, F.S.; or
- Accepted under Article IV of the Interstate Corrections Compact, part III of ch. 941, F.S.;<sup>10</sup> and

(2) a person who is:

- Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another jurisdiction;
- Convicted of a violation of ss. 784.048, 810.14, 847.011, 847.013, 847.0135, or 877.26, F.S., or an offense that was found, pursuant to s. 874.04, F.S., to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, F.S.;<sup>11</sup> or
- Arrested for any felony offense or attempted felony offense in this state.<sup>12</sup>

The collection of samples from a person booked into a jail, correctional facility, or juvenile facility for a felony has been a phased-in process. The process started in January 2011 with the last phase slated to begin January 1, 2019, subject to sufficient funding appropriations passed by the Legislature and approved by the Governor.<sup>13</sup>

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<sup>8</sup> Ch. 89-335, Laws of Fla.

<sup>9</sup> *Id.*

<sup>10</sup> Section 943.325(2)(g)1.a.-e., F.S.

<sup>11</sup> These offenses are: stalking; voyeurism; certain acts in connection with obscene, or lewd, materials; renting, selling, or loaning harmful motion pictures, exhibitions, shows, presentations, or representations to minors; computer pornography, prohibited computer usage, or traveling to meet a minor; direct observation, videotaping, or visual surveillance of customers in a merchant's dressing room; and criminal gang related offenses.

<sup>12</sup> Section 943.325(2)(g)2.a.-c., F.S.

<sup>13</sup> Section 943.325(3)(b), F.S.

### **Legislative Intent in Section 943.325, F.S.**

Section 943.325(1)(b), F.S., contains legislative findings approving the use of a DNA match between crime scene evidence and a DNA database sample match to establish probable cause for a judge to issue a search warrant to obtain a suspect's DNA (known) sample. Section 943.325(1)(b), F.S., states:

The Legislature also finds that upon establishment of the Florida DNA database a match between casework evidence DNA samples from a criminal investigation and DNA samples from a state or federal DNA database of certain offenders may be used to find probable cause for the issuance of a warrant to obtain the DNA sample from an offender.

Once the law enforcement officer serves the search warrant on the person, the officer can then obtain a DNA sample from the suspect that will be compared to the sample from the crime scene and the match sample from a DNA database. The timetable for the laboratory comparison of the three DNA samples cannot be stated with certainty. If the known sample confirms that the match is accurate, the officer may then arrest the suspect. This is at best a two-step process for the law enforcement officer who must first obtain the suspect's sample, wait for results from a lab confirming the three DNA profiles match one another (crime scene, database, and officer-obtained suspect sample), and then arrest the suspect.<sup>14</sup>

### **Case Law**

In a factual scenario similar to the one that may result under the bill, a Florida court has found that a DNA sample in the FDLE database and a match to DNA crime scene evidence is "sufficient to create probable cause to arrest the defendant."<sup>15</sup> In the case, a voluntary DNA swab was obtained from the defendant during the investigation of an unrelated crime. The DNA – a known sample – was then analyzed and stored in the FDLE DNA database. Crime scene DNA evidence from an unsolved sexual battery, also in the database, and the defendant's known DNA sample matched.<sup>16</sup>

The defendant was arrested for the unsolved sexual battery based on the DNA match. At the police station, subsequent to his arrest, the defendant provided another known DNA sample, for identification confirmation. Later, the defendant argued that the second known sample should not be admissible at trial because the first match did not constitute probable cause to arrest the defendant.<sup>17</sup>

The court disagreed with the defendant's argument, noting that the taking of DNA samples has been widely accepted by courts as analogous to the taking of fingerprints. The court further explained that because the comparison of latent fingerprints and known fingerprints on file

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<sup>14</sup> Information based upon Senate Criminal Justice Committee staff conversations with law enforcement officer representatives on March 7, 8, and 12, 2019, and a conference call with law enforcement representatives and FDLE representatives on March 8, 2019.

<sup>15</sup> *Myles v. State*, 54 So. 3d 509, 512 (Fla. 3rd DCA 2010), *rev. den.* 72 So. 3d 746 (Fla. 2011).

<sup>16</sup> *Id.* at 510-11.

<sup>17</sup> *Id.*

provide probable cause for an arrest, a DNA match to a DNA database is also probable cause for an arrest.<sup>18</sup>

### **III. Effect of Proposed Changes:**

The bill revises the legislative intent in s. 943.325(1)(b), F.S., which describes how the Legislature intends for the statewide DNA database to be used. As revised, the Legislature intends that matches between casework evidence DNA samples and DNA databases of offenders be used to find probable cause to obtain a warrant for an offender's arrest. This is in addition to the current stated intent that matches between casework evidence and DNA databases be used to find probable cause for the issuance of a warrant to obtain a DNA sample from an offender. The revised language creates the potential for or clarifies that a law enforcement officer may avoid taking an identification confirmation DNA sample from a suspect pursuant to a search warrant, prior to arrest.

The bill is effective July 1, 2019.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None Identified.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>18</sup> *Id.* at 512.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill will reduce costs to establish probable cause to arrest a criminal suspect to the extent that the existing intent language is understood by law enforcement agencies to require an additional DNA test after a DNA sample from a criminal investigation is found to match a sample in a DNA database.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

If no identification confirmation DNA sample is taken prior to a defendant's arrest, it may be problematic in the criminal proceedings because once a suspect is arrested the right to a speedy trial attaches, both procedurally and constitutionally.<sup>19</sup> Essentially this means that if a defendant asserts his or her right to a speedy trial under the Florida Rules of Criminal Procedure and, barring any procedural issues or delays by the defendant, the trial must commence within 60 days.<sup>20</sup> If the identification confirmation DNA analysis and comparison has not been completed in a timely manner, the prosecutor may not be able to prove beyond a reasonable doubt that the defendant committed the crime.

**VIII. Statutes Affected:**

This bill substantially amends section 943.325 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 18, 2019:**

The Committee Substitute restores current language in s. 943.325(1)(b), F.S., providing for a DNA match to be used for a judge to find probable cause to issue a search warrant to obtain a DNA sample from an offender.

**B. Amendments:**

None.

---

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

---

<sup>19</sup> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. CONST. amend. VI; *see also* Fla. R. Crim. P. 3.191.

<sup>20</sup> Fla. R. Crim. P. 3.191.

By the Committee on Criminal Justice; and Senator Pizzo

591-03155-19

2019920c1

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A bill to be entitled

An act relating to the DNA database; amending s.  
943.325, F.S.; revising legislative findings relating  
to the use of the DNA database; providing an effective  
date.

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

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

943.325 DNA database.—

(1) LEGISLATIVE INTENT.—

(b) The Legislature also finds that upon establishment of  
the Florida DNA database, a match between casework evidence DNA  
samples from a criminal investigation and DNA samples from a  
state or federal DNA database of certain offenders may be used  
to find probable cause for the issuance of a warrant for arrest,  
or to obtain the DNA sample from an offender.

Section 2. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

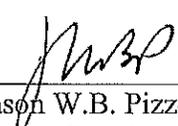
**Subject:** Committee Agenda Request

**Date:** March 18, 2019

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I respectfully request that **Senate Bill #CS/SB 920**, relating to DNA Database, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

  
\_\_\_\_\_  
Senator Jason W.B. Pizzo  
Florida Senate, District 38

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4.8.19

*Meeting Date*

920

*Bill Number (if applicable)*

Topic DNA Database

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

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)

4-8-19

920

Meeting DateBill Number (if applicable)Topic DNA DatabaseAmendment Barcode (if applicable)Name Matt DunaganJob Title Deputy DirectorAddress 2617 Mahan DrivePhone 850-877-2165*Street*TallahasseeFL32308*City**State**Zip*Email mdunagan@flsheriffs.orgSpeaking:  For  Against  InformationWaive Speaking:  In Support  Against  
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair:  Yes  NoLobbyist 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)

4.8.19  
Meeting Date

920  
Bill Number (if applicable)

Topic DNA

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Exec Director

Address 300 East Brevard St  
Street

Phone 222-3329

Talla 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 PLA PBA

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)

4/8/19  
Meeting Date

SB 920  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Greg Fourn

Job Title \_\_\_\_\_

Address 9166 Sunrise Ave

Phone \_\_\_\_\_

Street

Largo FL 33773

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1186

INTRODUCER: Criminal Justice Committee and Senators Baxley and Perry

SUBJECT: Criminal Judgments

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1186 gives judges the option of entering judgements in certain criminal cases in an electronic record and signing the judgments with an electronic signature. This option applies to a judgment of guilty or not guilty to petit theft or to a felony or to a judgment of guilty to certain offenses relating to prostitution. Current law requires that these judgments be in writing.

The bill requires that an electronic record of a judgment of guilty include electronically captured fingerprints of the defendant and certification by the judge that the fingerprints belong to the defendant. The bill further provides that the certification, in a written or electronic record, of a guilty judgment is admissible as prima facie evidence that the fingerprints on the judgment are those of the defendant.

The bill retains the requirement in existing law that the social security number of a defendant who is guilty of a felony be recorded in the written or *electronic* judgment.

The bill permits, but does not require, the courts to implement the use of electronic judgments and electronic fingerprinting. However, judicial circuits that wish to capture electronic fingerprints may incur costs to implement the new technology. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

## II. Present Situation:

### Petit Theft and Felony Judgments

Current law requires that every criminal judgment adjudicating a person guilty or not guilty of petit theft<sup>1</sup> or a felony be in *writing*, signed by the judge, and recorded by the clerk of the circuit court.<sup>2</sup>

At the time the judgment of guilty is rendered, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to the judgment. Beneath the fingerprints, the judge must certify and attest that the fingerprints belong to the defendant. The judgment, with the certification, is admissible as prima facie evidence that the fingerprints are those of the defendant.<sup>3</sup>

For a felony judgment of guilty, in addition to the defendant's fingerprints, the judge must also record the defendant's social security number and affix it to the written judgment. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence must be indicated on the written judgment.<sup>4</sup>

### Criminal Judgments Under Ch. 796, F.S.

Chapter 796, F.S., governs prostitution and similar crimes. Every criminal judgment adjudicating a person guilty of a misdemeanor or felony offense governed by ch. 796, F.S., must be in *writing*, signed by the judge, and recorded by the clerk of the circuit court. Additionally, the fingerprints of the defendant must be taken and affixed beneath the judge's signature to the judgment. Beneath the fingerprints, the judge must certify and attest that the fingerprints belong to the defendant.<sup>5</sup> The judgment, with the certification, is admissible as prima facie evidence that the fingerprints are those of the defendant.<sup>6</sup>

### Electronic Fingerprinting

Capturing legible fingerprint images is paramount to the administrative process. Failure to capture legible fingerprint images can lead to an increase in administrative burdens and lengthy waiting periods. Increasing use of electronically captured fingerprints is one method that has been used in efforts to improve fingerprint image quality and reduce rejection rates. Electronic live scan fingerprinting technology allows for the capture of sharper, clearer images, which helps to ensure that the images captured are legible prior to submission to law enforcement databases.<sup>7</sup>

---

<sup>1</sup> A person commits petit theft if he or she steals property that is valued at \$100 but less than \$300. Petit theft is punishable as a first degree misdemeanor. Section 812.014(2)(e), F.S.

<sup>2</sup> Sections 812.014(3)(d)1. and 921.241(2), F.S.

<sup>3</sup> Sections 812.014(3)(d)2. and 921.241(2) and (3), F.S.

<sup>4</sup> Section 921.241(4), F.S.

<sup>5</sup> Section 921.242(1), F.S.

<sup>6</sup> Section 921.242(2), F.S.

<sup>7</sup> Federal Bureau of Investigation, *The National Crime Prevention and Privacy Compact Council's Civil Fingerprint Image Quality Strategy Guide*, 2-3 (Nov. 2018), available at <https://www.fbi.gov/file-repository/civil-fingerprint-image-quality-strategy-guide.pdf>.

### III. Effect of Proposed Changes:

Current law requires that a judgment of guilty or not guilty of petit theft or a felony or a judgment of guilty for a misdemeanor under ch. 796, F.S., be in *writing*. The bill expands this, allowing the judgments to be made in a written *or electronic* record.

The bill retains the requirement for the judgments to be signed by the judge and recorded by the clerk of the court. If an electronic record is made, the bill requires the record to contain the judge's electronic signature, which is defined in s. 933.40, F.S., as any letters, characters, symbols, or process manifested by electronic or similar means and attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.<sup>8</sup>

Current law requires that the fingerprints of the defendant be taken and affixed to a guilty judgment of petit theft, any felony, or a misdemeanor under ch. 796, F.S. For a written record, the bill retains the requirements of existing law that the fingerprints be manually taken and affixed beneath the judge's signature. For an electronic record, the bill requires the fingerprints of the defendant be electronically captured and included in the judgment.

The bill provides that digital fingerprint records will be associated with a transaction control number, which is defined as the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record which is generated by the device used to electronically capture the fingerprints. For an electronic record, the bill requires the judge to provide certification with the following language: "I hereby certify that the digital fingerprints record associated with the Transaction Control Number \_\_\_\_\_ contains the fingerprints of the defendant, \_\_\_\_\_, which were electronically captured from the defendant in my presence, in open court, this the \_\_\_ day of \_\_\_, (year)."

Current law provides that the judge's certification of a written record of a judgment of guilty for petit theft, any felony, or a misdemeanor under ch. 796, F.S., is admissible as prima facie evidence that the fingerprints included in the judgment are those of the defendant. The bill provides that the judge's certification that the digital fingerprint record associated with the transaction control number that is included in an electronic record of the judgments will be regarded in the same manner.

The bill retains the requirement for the social security number of a defendant who is found guilty of a felony to be taken and included in the written or *electronic* record. If the defendant is unable or unwilling to provide his or her social security number, the bill requires that the reason for its absence be specified in the written or electronic record.

The bill reenacts s. 775.084, F.S., to make conforming changes for the purposes of incorporating amendments made by the bill.

The bill is effective July 1, 2019.

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<sup>8</sup> Section 933.40(1)(d), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Currently, certain judgments are required to be in a written record. The bill provides that the judgments may alternatively be created in an electronic record. With that, the bill provides discretion to the clerk in determining the form in which the record will be created. Additionally, because any such costs incurred by the circuit courts resulting from the bill directly relate to persons who have been arrested or convicted of criminal offenses, under Article VII, subsection 18(d) of the Florida Constitution, it appears there is no unfunded mandate.

**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 permits, but does not require, the courts to implement an electronic fingerprinting and judgment process. Therefore, the bill does not require the expenditure of funds. Those circuits that wish to implement electronic recordkeeping will need to purchase electronic Live Scan fingerprinting technology, which will result in initial costs to implement the electronic system. However, the new technology may save money and reduce court workloads in the long run.<sup>9</sup>

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<sup>9</sup> Office of the State Courts Administrator, *2019 Judicial Impact Statement for SB 1186*, (Mar. 21, 2019) (on file with the Senate Criminal Justice Committee).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 812.014, 921.241, and 921.242.

This bill reenacts section 775.084 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on March 25, 2019:**

The Committee Substitute clarifies that the judge's certification of a defendant's fingerprints included in a guilty judgment for petit theft and misdemeanor offenses under ch. 796, F.S., is admissible as prima facie evidence that the fingerprints belong to the defendant.

- B. **Amendments:**

None.



483852

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/08/2019	.	
	.	
	.	
	.	

---

The Committee on Judiciary (Baxley) recommended the following:

**Senate Amendment**

Delete line 186

and insert:

(3)(2) A Any such written or an electronic record of a

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

591-03438-19

20191186c1

1 A bill to be entitled  
 2 An act relating to criminal judgments; amending s.  
 3 812.014, F.S.; requiring that judgments of guilty or  
 4 not guilty of petit theft be in a written record,  
 5 rather than in writing, or in an electronic record  
 6 with the judge's electronic signature, recorded by the  
 7 clerk of the circuit court; providing requirements for  
 8 such records; conforming provisions to changes made by  
 9 the act; amending s. 921.241, F.S.; defining terms;  
 10 requiring that judgments of guilty or not guilty of a  
 11 felony be in a written record, rather than in writing,  
 12 or an electronic record with the judge's electronic  
 13 signature, recorded by the clerk of the circuit court;  
 14 requiring that for an electronic record of a judgment  
 15 of guilty, the fingerprints of a defendant be  
 16 electronically captured and a certain certification be  
 17 included; requiring the judge to place his or her  
 18 electronic signature on the certificate; conforming  
 19 provisions to changes made by the act; amending s.  
 20 921.242, F.S.; requiring that specified judgments of  
 21 guilty be in a written record, rather than in writing,  
 22 or an electronic record with the judge's electronic  
 23 signature, recorded by the clerk of the circuit court;  
 24 conforming provisions to changes made by the act;  
 25 reenacting s. 775.084(3)(a), (b), and (c), F.S.,  
 26 relating to fingerprinting a defendant for the purpose  
 27 of identification, to incorporate the amendment made  
 28 to s. 921.241, F.S., in references thereto; providing  
 29 an effective date.

Page 1 of 11

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

591-03438-19

20191186c1

30  
 31 Be It Enacted by the Legislature of the State of Florida:  
 32  
 33 Section 1. Paragraph (d) of subsection (3) of section  
 34 812.014, Florida Statutes, is amended to read:  
 35 812.014 Theft.—  
 36 (3)  
 37 (d)1. A ~~Every~~ judgment of guilty or not guilty of a petit  
 38 theft must ~~shall~~ be in:  
 39 a. A written record that is writing, signed by the judge,  
 40 and recorded by the clerk of the circuit court; or  
 41 b. An electronic record that contains the judge's  
 42 electronic signature, as defined in s. 933.40, and is recorded  
 43 by the clerk of the circuit court.  
 44 2. At the time a defendant is found guilty of petit theft,  
 45 the judge shall cause the following to occur ~~to be affixed to~~  
 46 ~~every such written judgment of guilty of petit theft,~~ in open  
 47 court and in the presence of such judge:—  
 48 a. For a written record of a judgment of guilty, the  
 49 fingerprints of the defendant against whom such judgment is  
 50 rendered ~~must be manually taken and. Such fingerprints shall be~~  
 51 affixed beneath the judge's signature on the ~~to such judgment.~~  
 52 ~~Beneath such fingerprints shall be appended~~ A certificate,  
 53 containing substantially ~~to the following language must be~~  
 54 appended beneath the fingerprints ~~effect:~~  
 55  
 56 "I hereby certify that the affixed above ~~and foregoing~~  
 57 fingerprints on this judgment are the fingerprints of the  
 58 defendant, . . . , and that they were placed there ~~thereon~~ by said

Page 2 of 11

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

591-03438-19 20191186c1

59 defendant in my presence, in open court, this the .... day of  
60 ....., ...(year)...."

61  
62 Such certificate ~~must shall~~ be signed by the judge, whose  
63 signature ~~must thereto shall~~ be followed by the word "Judge."

64 b. For an electronic record of a judgment of guilty, the  
65 fingerprints of the defendant must be electronically captured,  
66 and a certificate must be issued as provided in s.  
67 921.241(3) (b).

68 3.2. A Any such written or an electronic record of a  
69 judgment of guilty of a petit theft, or a certified copy  
70 thereof, is admissible in evidence in the courts of this state  
71 as provided in s. 921.241(4) prima facie evidence that the  
72 fingerprints appearing thereon and certified by the judge are  
73 the fingerprints of the defendant against whom such judgment of  
74 guilty of a petit theft was rendered.

75 Section 2. Section 921.241, Florida Statutes, is amended to  
76 read:

77 921.241 Felony judgments; fingerprints and social security  
78 number required in record.—

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

80 (a) "Electronic signature" has the same meaning as in s.  
81 933.40.

82 (b) "Transaction control number" means the unique  
83 identifier comprised of numbers, letters, or other symbols for a  
84 digital fingerprint record which is generated by the device used  
85 to electronically capture the fingerprints At the time a  
86 defendant is found guilty of a felony, the judge shall cause the  
87 defendant's fingerprints to be taken.

591-03438-19 20191186c1

88 (2) A Every judgment of guilty or not guilty of a felony  
89 ~~must shall~~ be in:

90 (a) A written record that is writing, signed by the judge,  
91 and recorded by the clerk of the court; or

92 (b) An electronic record that contains the judge's  
93 electronic signature and is recorded by the clerk of the court.

94 (3) At the time a defendant is found guilty of a felony,  
95 the judge shall cause the following to occur ~~to be affixed to~~  
96 every written judgment of guilty of a felony, in open court and,  
97 in the presence of such judge:

98 (a) For a written record of a judgment of guilty, and at  
99 the time the judgment is rendered, the fingerprints of the  
100 defendant ~~must be manually taken and against whom such judgment~~  
101 is rendered. Such fingerprints shall be affixed beneath the  
102 judge's signature ~~on the to such judgment. Beneath such~~  
103 fingerprints shall be appended A certificate containing  
104 substantially ~~to~~ the following language must be appended beneath  
105 the fingerprints effect:

106  
107 "I hereby certify that the affixed above and foregoing  
108 fingerprints on this judgment are the fingerprints of the  
109 defendant, ....., and that they were placed ~~there thereon~~ by said  
110 defendant in my presence, in open court, this the .... day of  
111 ....., ...(year)...."

112  
113 Such certificate ~~must shall~~ be signed by the judge, whose  
114 signature ~~must thereto shall~~ be followed by the word "Judge."

115 (b) For an electronic record of a judgment of guilty, the  
116 fingerprints of the defendant must be electronically captured,

591-03438-19 20191186c1

117 and the following certificate must be included in the electronic  
 118 record of judgment:

119  
 120 "I hereby certify that the digital fingerprints record  
 121 associated with Transaction Control Number .... contains the  
 122 fingerprints of the defendant, ..., which were electronically  
 123 captured from the defendant in my presence, in open court, this  
 124 the .... day of ..., ..(year)...."

125  
 126 The judge shall place his or her electronic signature, which  
 127 must be followed by the word "Judge," on the certificate.

128 (4)(3) A written or an electronic record of a ~~Any such~~  
 129 written judgment of guilty of a felony, or a certified copy  
 130 thereof, is ~~shall be~~ admissible in evidence in the ~~several~~  
 131 courts of this state as prima facie evidence that:

132 (a) The manual fingerprints appearing thereon and certified  
 133 by the judge ~~as aforesaid~~ are the fingerprints of the defendant  
 134 against whom ~~the such~~ judgment of guilty of a felony was  
 135 rendered.

136 (b) The digital fingerprint record associated with the  
 137 transaction control number specified in the judge's certificate  
 138 contains the fingerprints of the defendant against whom the  
 139 judgment of guilty was rendered.

140 (5)(4) At the time the defendant's fingerprints are  
 141 manually taken or electronically captured, the judge shall also  
 142 cause the defendant's social security number to be taken. The  
 143 defendant's social security number ~~must shall~~ be specified in  
 144 each ~~affixed to every~~ written or electronic record of a judgment  
 145 of guilty of a felony, in open court ~~and,~~ in the presence of

591-03438-19 20191186c1

146 such judge, ~~and~~ at the time the judgment is rendered. If the  
 147 defendant is unable or unwilling to provide his or her social  
 148 security number, the reason for its absence ~~must shall~~ be  
 149 specified in ~~indicated on~~ the written or electronic record of  
 150 judgment.

151 Section 3. Section 921.242, Florida Statutes, is amended to  
 152 read:

153 921.242 Subsequent offenses under chapter 796; method of  
 154 proof applicable.—

155 (1) A ~~Every~~ judgment of guilty with respect to any offense  
 156 governed by the provisions of chapter 796 ~~must shall~~ be in:

157 (a) A written record of a judgment that is writing, signed  
 158 by the judge, and recorded by the clerk of the circuit court; ~~or~~

159 (b) An electronic record of a judgment that contains the  
 160 judge's electronic signature, as defined in s. 933.40, and is  
 161 recorded by the clerk of the circuit court.

162 (2) At the time a defendant is found guilty, the judge  
 163 shall cause the following to occur ~~to be affixed to every such~~  
 164 ~~written judgment of guilty,~~ in open court and in the presence of  
 165 such judge:

166 (a) For a written record of a judgment of guilty, the  
 167 fingerprints of the defendant must be manually taken and ~~against~~  
 168 ~~whom such judgment is rendered. Such fingerprints shall be~~  
 169 affixed beneath the judge's signature ~~on the to any such~~  
 170 judgment. ~~Beneath such fingerprints shall be appended~~ A  
 171 certificate containing substantially ~~to~~ the following language  
 172 must be appended beneath the fingerprints effect:

173  
 174 "I hereby certify that the affixed ~~above and foregoing~~

591-03438-19 20191186c1

175 fingerprints on this judgment are the fingerprints of the  
 176 defendant, ...(name)..., and that they were placed ~~there~~ thereon  
 177 by said defendant in my presence, in open court, this the ....  
 178 day of ....., ...(year)...."

180 Such certificate ~~must~~ shall be signed by the judge, whose  
 181 signature ~~must~~ thereof ~~shall~~ be followed by the word "Judge."

182 (b) For an electronic record of a judgment of guilty, the  
 183 fingerprints of the defendant must be electronically captured,  
 184 and a certificate must be issued as provided in s.  
 185 921.241(3)(b).

186 (2) A ~~Any~~ such ~~written~~ or an electronic record of a  
 187 judgment of guilty, or a certified copy thereof, is ~~shall be~~  
 188 admissible in evidence in the several courts of this state as  
 189 provided in s. 921.241(4) prima facie evidence that the  
 190 fingerprints appearing thereon and certified by the judge as  
 191 aforsaid are the fingerprints of the defendant against whom  
 192 such judgment of guilty was rendered.

193 Section 4. For the purpose of incorporating the amendment  
 194 made by this act to section 921.241, Florida Statutes, in a  
 195 reference thereto, paragraphs (a), (b), and (c) of subsection  
 196 (3) of section 775.084, Florida Statutes, are reenacted to read:  
 197 775.084 Violent career criminals; habitual felony offenders  
 198 and habitual violent felony offenders; three-time violent felony  
 199 offenders; definitions; procedure; enhanced penalties or  
 200 mandatory minimum prison terms.—

201 (3) (a) In a separate proceeding, the court shall determine  
 202 if the defendant is a habitual felony offender or a habitual  
 203 violent felony offender. The procedure shall be as follows:

591-03438-19 20191186c1

204 1. The court shall obtain and consider a presentence  
 205 investigation prior to the imposition of a sentence as a  
 206 habitual felony offender or a habitual violent felony offender.

207 2. Written notice shall be served on the defendant and the  
 208 defendant's attorney a sufficient time prior to the entry of a  
 209 plea or prior to the imposition of sentence in order to allow  
 210 the preparation of a submission on behalf of the defendant.

211 3. Except as provided in subparagraph 1., all evidence  
 212 presented shall be presented in open court with full rights of  
 213 confrontation, cross-examination, and representation by counsel.

214 4. Each of the findings required as the basis for such  
 215 sentence shall be found to exist by a preponderance of the  
 216 evidence and shall be appealable to the extent normally  
 217 applicable to similar findings.

218 5. For the purpose of identification of a habitual felony  
 219 offender or a habitual violent felony offender, the court shall  
 220 fingerprint the defendant pursuant to s. 921.241.

221 6. For an offense committed on or after October 1, 1995, if  
 222 the state attorney pursues a habitual felony offender sanction  
 223 or a habitual violent felony offender sanction against the  
 224 defendant and the court, in a separate proceeding pursuant to  
 225 this paragraph, determines that the defendant meets the criteria  
 226 under subsection (1) for imposing such sanction, the court must  
 227 sentence the defendant as a habitual felony offender or a  
 228 habitual violent felony offender, subject to imprisonment  
 229 pursuant to this section unless the court finds that such  
 230 sentence is not necessary for the protection of the public. If  
 231 the court finds that it is not necessary for the protection of  
 232 the public to sentence the defendant as a habitual felony

591-03438-19 20191186c1

233 offender or a habitual violent felony offender, the court shall  
 234 provide written reasons; a written transcript of orally stated  
 235 reasons is permissible, if filed by the court within 7 days  
 236 after the date of sentencing. Each month, the court shall submit  
 237 to the Office of Economic and Demographic Research of the  
 238 Legislature the written reasons or transcripts in each case in  
 239 which the court determines not to sentence a defendant as a  
 240 habitual felony offender or a habitual violent felony offender  
 241 as provided in this subparagraph.

242 (b) In a separate proceeding, the court shall determine if  
 243 the defendant is a three-time violent felony offender. The  
 244 procedure shall be as follows:

245 1. The court shall obtain and consider a presentence  
 246 investigation prior to the imposition of a sentence as a three-  
 247 time violent felony offender.

248 2. Written notice shall be served on the defendant and the  
 249 defendant's attorney a sufficient time prior to the entry of a  
 250 plea or prior to the imposition of sentence in order to allow  
 251 the preparation of a submission on behalf of the defendant.

252 3. Except as provided in subparagraph 1., all evidence  
 253 presented shall be presented in open court with full rights of  
 254 confrontation, cross-examination, and representation by counsel.

255 4. Each of the findings required as the basis for such  
 256 sentence shall be found to exist by a preponderance of the  
 257 evidence and shall be appealable to the extent normally  
 258 applicable to similar findings.

259 5. For the purpose of identification of a three-time  
 260 violent felony offender, the court shall fingerprint the  
 261 defendant pursuant to s. 921.241.

591-03438-19 20191186c1

262 6. For an offense committed on or after the effective date  
 263 of this act, if the state attorney pursues a three-time violent  
 264 felony offender sanction against the defendant and the court, in  
 265 a separate proceeding pursuant to this paragraph, determines  
 266 that the defendant meets the criteria under subsection (1) for  
 267 imposing such sanction, the court must sentence the defendant as  
 268 a three-time violent felony offender, subject to imprisonment  
 269 pursuant to this section as provided in paragraph (4)(c).

270 (c) In a separate proceeding, the court shall determine  
 271 whether the defendant is a violent career criminal with respect  
 272 to a primary offense committed on or after October 1, 1995. The  
 273 procedure shall be as follows:

274 1. Written notice shall be served on the defendant and the  
 275 defendant's attorney a sufficient time prior to the entry of a  
 276 plea or prior to the imposition of sentence in order to allow  
 277 the preparation of a submission on behalf of the defendant.

278 2. All evidence presented shall be presented in open court  
 279 with full rights of confrontation, cross-examination, and  
 280 representation by counsel.

281 3. Each of the findings required as the basis for such  
 282 sentence shall be found to exist by a preponderance of the  
 283 evidence and shall be appealable only as provided in paragraph  
 284 (d).

285 4. For the purpose of identification, the court shall  
 286 fingerprint the defendant pursuant to s. 921.241.

287 5. For an offense committed on or after October 1, 1995, if  
 288 the state attorney pursues a violent career criminal sanction  
 289 against the defendant and the court, in a separate proceeding  
 290 pursuant to this paragraph, determines that the defendant meets

591-03438-19

20191186c1

291 the criteria under subsection (1) for imposing such sanction,  
292 the court must sentence the defendant as a violent career  
293 criminal, subject to imprisonment pursuant to this section  
294 unless the court finds that such sentence is not necessary for  
295 the protection of the public. If the court finds that it is not  
296 necessary for the protection of the public to sentence the  
297 defendant as a violent career criminal, the court shall provide  
298 written reasons; a written transcript of orally stated reasons  
299 is permissible, if filed by the court within 7 days after the  
300 date of sentencing. Each month, the court shall submit to the  
301 Office of Economic and Demographic Research of the Legislature  
302 the written reasons or transcripts in each case in which the  
303 court determines not to sentence a defendant as a violent career  
304 criminal as provided in this subparagraph.

305 Section 5. This act shall take effect July 1, 2019.

# THE FLORIDA SENATE



**SENATOR DENNIS BAXLEY**  
12th District

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Appropriations Subcommittee on Education  
Education  
Finance and Tax  
Health Policy  
Judiciary

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

March 25, 2019

The Honorable David Simmons  
405 Senate Office Building  
Tallahassee, FL 32399

Dear Chairman Simmons,

I would like to request SB 1186 Criminal Judgments be heard in your next Judiciary Committee meeting.

This bill requires that a judgment of guilty or not guilty of petit theft or a felony or guilty judgment of any offense under ch. 796, be in a written or an electronic record, signed by the judge, and recorded by the clerk of the court.

The bill requires that an electronic record of a guilty judgment include electronically captured fingerprints of the defendant and certification by the judge that such fingerprints belong to the defendant. It also permits, but does not require, the courts to implement an electronic fingerprinting and judgment process. However, circuits that wish to capture electronic fingerprints may incur costs associated with the implementation of new technology necessary for such a process.

I appreciate your favorable consideration.

Onward & Upward,

  
Senator Dennis Baxley  
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

**Bill Galvano**  
President of the Senate

**David Simmons**  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4.8.19

1186

*Meeting Date*

*Bill Number (if applicable)*

Topic Criminal Judgments

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/8/19  
Meeting Date

1186  
Bill Number (if applicable)

Topic Criminal Judgments

Amendment Barcode (if applicable)

Name Sarah Naf Biehl

Job Title Chief of Legislative Affairs

Address 500 S. Duval St.  
Street

Phone 850-922-5692

Tallahassee FL 32399  
City State Zip

Email nafs@flcourts.org

Speaking:  For  Against  Information

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

Representing State Courts System

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1720

INTRODUCER: Senator Lee

SUBJECT: Property Rights

DATE: March 29, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Pre-meeting</b>
2.			CA	
3.			RC	

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**I. Summary:**

SB 1720 amends chapter 70, F.S., the Bert J. Harris, Jr., Private Property Rights Protection Act. The Harris Act permits a property owner to seek relief and financial damages when his or her property is inordinately burdened by government regulation.

The bill amends provisions of that chapter and:

- Requires a government to treat “similarly situated” residential properties alike when one property owner is given a settlement offer that includes a modification or variance to a regulation;
- Allows a property owner to request a judge, instead of a jury, to determine damages;
- Revises the criteria for awarding attorney fees and costs to a prevailing property owner and increases the time over which fees and costs may be recovered;
- Allows a property owner to file suit without following the usual formal application process when the government does not provide a mailed notice that a regulation will affect the property and the application process would be futile; and
- Allows a property owner to sue for injunctive relief and have a court declare that a prohibited extraction, which is an unconstitutional condition for a development permit, is invalid without first exhausting the usual administrative remedies.

**II. Present Situation:**

**Private Property Guarantees in the Federal and State Constitution**

Both the Federal Constitution and State Constitution guarantee that a person’s private property may not be taken for public use without reimbursement. The Fifth Amendment to the United States Constitution states that no private property shall “be taken for public use without just

compensation.” Similarly, the Florida Constitution provides that no private property shall be taken except for a public purpose and that each owner must be fully compensated.<sup>1</sup>

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

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Protection Act” in 1995. The act provides relief to a property owner whose property is inordinately burdened by government regulation. The act is limited in scope and applies only to:

- Real, and not personal, property;
- A property owner and not a leaseholder;
- “As-applied” challenges for specific government actions, not to broad, facial challenges of government regulations; and
- Challenges that are not temporary impacts.<sup>2</sup>

The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking<sup>3</sup> under either the State Constitution or the United States Constitution. The Legislature declared that there is “an important state interest in protecting the interests of private property owners from those inordinate burdens.” Accordingly, the Legislature created a separate and distinct cause of action for governmental actions that might not rise to the level of taking under the State Constitution or United States Constitution. The Legislature provided a process for private landowners to seek relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity, as applied, unfairly affects real property.<sup>4</sup>

The phrases “inordinate burden” and “inordinately burdened” mean that an action by one or more governmental entities has directly restricted or limited the use of real property to the extent that:

- The property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole; or
- The property owner is left with existing or vested uses that are unreasonable such that the property owner bears a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.<sup>5</sup>

### ***Presuit Notice***

A property owner who seeks compensation under the Harris Act must present a written claim to the head of the government entity at least 150 days before filing an action. If the property in

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<sup>1</sup> FLA. CONST. art. X, s. 6.

<sup>2</sup> Thomas Hawkins, *Land Use Law with a Florida Focus*, 233, (Aug. 2018)

<https://www.dropbox.com/s/3ykseigou178vra/2018%207%2022%20Land%20Use%20with%20a%20Florida%20Focus.pdf?dl=0>.

<sup>3</sup> A “taking” is generally understood to mean a government action that deprives an owner of the use or enjoyment of his or her property. A regulatory taking occurs when a government regulation seriously restricts a property owner’s rights. BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>4</sup> Section 70.001(1), F.S.

<sup>5</sup> Section 70.001(3)(e)1. The definition further explains in s. 70.001(3)(e)2, what the terms do not include with regard to other impacts.

question is agricultural, the notice period is 90 days. In addition to the claim, the property owner must submit a valid appraisal that supports the claim and demonstrates the loss in fair market value to the property.<sup>6,7</sup> If other parties are involved, the governmental entity must notify them, including all owners of real property that is contiguous to the owner's property.<sup>8</sup>

### ***The Government Must Make a Written Settlement Offer***

During the 150 or 90 day notice period, which may be extended by an agreement of the parties, the government is required to make a written settlement offer to the claimant. The settlement may contain an offer to:

- Adjust land development, permit standards, or similar provisions controlling the development or use of the land.
- Increase or modify density, intensity, or use of areas of development.
- Transfer development rights.
- Entertain land swaps or exchanges.
- Mitigate, including payments in lieu of onsite mitigation.
- Locate on the least sensitive portion of the property.
- Condition the amount of development or use permitted.
- Require that issues be addressed on a more comprehensive basis.
- Issue a development order, variance, special exception, or other extraordinary relief.
- Purchase the property or an interest in it.
- Make no changes to the proposed action.<sup>9</sup>

### ***If the Government Offer is Rejected; Timeframe for Filing a Lawsuit***

If the property owner rejects the settlement offer with the allowable uses, the property owner may file a claim in circuit court and the county where the real property is located.<sup>10</sup> A cause of action may not be filed more than 1 year after a law or regulation is "first applied" by the government to the property at issue. The 1-year time frame begins when the law or regulation is clear and unequivocal in its terms and notice is provided by mail to the affected property owner or registered agent. Otherwise, the law or regulation is considered first applied to the property when there is a formal denial of a written request for development or variance.<sup>11</sup>

The court then conducts a bench trial to determine whether an existing use of the real property or a vested right to a specific use of the property existed and whether the government inordinately burdened the owner's property. If the court determines that an inordinate burden was imposed,

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<sup>6</sup> Section 70.001(4)(a), F.S.

<sup>7</sup> The appraisal should contain valuations of the property both before and after the government's restriction was imposed. This will enable the government to adequately evaluate the property owner's potential claim for the purpose of developing a settlement offer during the pre-suit period. Margaret L. Cooper, Ronald L. Weaver, and Joanne M. Connor, *Statutory Private Property Rights Protection*, 6, The Florida Bar, 2018 Florida Real Property Litigation (2018) <https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=0368929390&pubNum=0116933&originatingDoc=N090388C02AB211E5823BE24E38CB0B04&refType=SA&originationContext=contextAnalysis&contextData=%28sc.UserEnteredCitation%29&transitionType=ContextAnalysisItem>.

<sup>8</sup> Section 70.001(4)(b), F.S.

<sup>9</sup> Section 70.001(4)(c), F.S.

<sup>10</sup> Section 70.001(5)(b), F.S.

<sup>11</sup> Section 70.001(11), F.S.

the court must also determine the percentage of responsibility each governmental entity must bear.<sup>12</sup> The circuit court must impanel a jury to determine the amount of compensation.<sup>13</sup>

### ***Recovery of Reasonable Costs and Attorney Fees***

The court, and not the jury, will determine what constitutes reasonable costs and attorney fees.<sup>14</sup>

The property owner is entitled to recover reasonable costs and attorney fees from the government from the date the action was filed in circuit court if:

- The property owner prevails; and
- The court determines that the government's settlement offer did not constitute a bona fide offer which reasonably would have resolved the claim during the 90 or 150 day notice-period.<sup>15</sup>

Similarly, the government is entitled to recover reasonable costs and attorney fees incurred from the date the action was filed in circuit court if:

- The government prevails; and
- The court determines that the property owner did not accept a bona fide settlement offer which reasonably would have fairly resolved the claim if the offer had been accepted by the property owner during the 90 or 150 day notice-period.<sup>16</sup>

## **Governmental Exactions**

### ***Background of Prohibited Exactions***

The United States Supreme Court issued a land-use decision in 2013, *Koontz v. St. Johns River Water Management District*,<sup>17</sup> a case that arose in Florida. Mr. Koontz, the land owner, sought to develop a portion of his property that consisted mainly of wetlands. He offered to mitigate the adverse environmental effects of his development proposal by deeding a conservation easement to the St. Johns River Water Management District on nearly three-quarters of his remaining property. The district rejected his proposal and told him that his construction permit would be approved *only if* he agreed to reduce the size of his development and, among other things, deed to the district a conservation easement on the resulting larger remainder of his property *or* he agreed to hire contractors to make improvements on district-owned wetlands located several miles away. Mr. Koontz sued the district under s. 373.617, F.S., which allows a property owner to recover money damages if a government action related to land-use permitting constitutes a taking without just compensation, which is an unreasonable exercise of the state's police power.

The Court held that a government cannot deny a land-use permit based upon a landowner's refusal to agree to the government's demands to either turn over property or pay money to the government *unless* there is an essential nexus and rough proportionality between the government's demand on the landowner and the effect of the proposed land use. The Court's

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<sup>12</sup> Section 70.001(6)(a), F.S.

<sup>13</sup> Section 70.001(6)(b), F.S.

<sup>14</sup> Section 70.001(6)(c)3., F.S.

<sup>15</sup> Section 70.001(6)(c)1., F.S.

<sup>16</sup> Section 70.001(6)(c)2., F.S.

<sup>17</sup> *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595 (2013).

decision was based upon a violation of the “unconstitutional condition” doctrine which precludes the government from burdening the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them. In this particular case, the constitutional right burdened was the right to compensation when private property is taken for public use. The Court explained that “Extortionate demands for property in the land-use permitting context” violate the Fifth Amendment Takings Clause “not because they take property but because they impermissibly burden the right not to have property taken without just compensation.”<sup>18</sup>

The Court held that, even though the district’s conditions unconstitutionally burdened the landowner’s Fifth Amendment rights, a constitutional taking did not occur. Instead, the Court left it up to the states to determine what remedies would be available to a landowner who was subject to an unconstitutional demand where no actual taking has occurred. The Court wrote:

Where the permit is denied and the condition is never imposed, nothing has been taken. While the unconstitutional conditions doctrine recognizes that this *burdens* a constitutional right, the Fifth Amendment mandates a particular *remedy* – just compensation – only for takings. In cases where there is an excessive demand but no taking, whether money damages are available is not a question of federal constitutional law but of the cause of action – whether state or federal – on which the landowner relies.<sup>19</sup>

### ***2015 Legislative Response***

The Legislature enacted s. 70.45, F.S., in 2015, and created a cause of action for a property owner to recover damages caused by a “prohibited exaction.”<sup>20</sup> Essential phrases from the *Koontz* decision are embedded in the statute. A prohibited exaction is defined as any condition imposed by a governmental entity on a property owner’s proposed use of real property that does not have “an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity” is seeking to avoid, minimize, or mitigate.<sup>21</sup>

### ***Presuit Notice and Prohibition against Waivers***

The action may not be brought until a prohibited exaction is actually imposed or required in writing as a final condition of approval for the requested use of real property. The right to bring the action may not be waived.<sup>22</sup>

The property owner must provide a written notice to the relevant governmental entity of his or her proposed action at least 90 days before filing an action but no later than 180 days after imposition of the prohibited exaction. The notice must identify the exaction that the property owner believes is prohibited and briefly explain why he or she believes the action is prohibited along with an estimate of the damages. The relevant governmental entity must review the notice of the claim, respond in writing and identify the basis for the exaction, and explain why it

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<sup>18</sup> *Id.* at 607.

<sup>19</sup> *Id.* at 608-609.

<sup>20</sup> Ch. 2015-142, s. 2, Laws of Fla.

<sup>21</sup> Section 70.45(1)(c), F.S.

<sup>22</sup> Section 70.45(2), F.S.

maintains that the exaction is proportionate to the harm created by the proposed use of real property, or propose to remove all or a proportion of the exaction.<sup>23</sup>

### ***Burden of Proof***

The government has the burden of proving that the exaction has an essential nexus to a legitimate public purpose and that it is roughly proportionate to the impact the government seeks to avoid. The burden of proving damages that result from the prohibited exaction rests upon the property owner.<sup>24</sup>

### ***Attorney Fees and Costs***

The court may award attorney fees and costs to the prevailing party. However, if the court finds that the exaction lacks an essential nexus to a legitimate public purpose, the court must award attorney fees and costs to the property owner.<sup>25</sup>

## **III. Effect of Proposed Changes:**

The bill amends Chapter 70, F.S., the Harris Act, by adding provisions that are beneficial to property owners when a governmental entity enacts an ordinance or regulation that affects their property.

### **“Similarly Situated” Properties**

The bill amends the legislative findings and intent provisions contained in s. 70.001(1), F.S., by adding a provision which states that the Legislature recognizes that it is in the public interest to ensure that “*similarly situated properties*” are subject to the same rules and regulations.

The bill also provides that when a claim involving one or more residential properties is brought due to the enactment of a governmental regulation or ordinance that applies to residential property, any settlement offer that includes a modification or variance to the regulation or ordinance applies to all “*similarly situated residential properties*” subject to regulation by the governmental entity. This provision will require a governmental entity to treat all similarly situated residential properties alike if it offers one property owner a modification or variance.

The term “similarly situated” is not defined in the bill. Determining whether properties are sufficiently similarly situated to merit a waiver or a variance that was offered to another property could create a substantial amount of litigation. This may result in judicially-created guidelines rather than legislatively-created guidelines. To minimize litigation and to provide clarity as to which properties are similarly situated, the Legislature may wish to add some guidelines to the bill.

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<sup>23</sup> Section 70.45(3), F.S.

<sup>24</sup> Section 70.45(4), F.S.

<sup>25</sup> Section 70.45(5), F.S.

### **Permitting a Judge, Rather than a Jury, to Determine a Property Owner's Damages**

Current law provides that a jury must be impaneled to calculate the amount of compensation due to a property owner whose property is inordinately burdened. This provision is amended and permits a property owner to waive the jury requirement and request a court to determine damages.

### **Awarding a Property Owner Reasonable Costs and Attorney Fees**

Currently, a prevailing property owner is entitled to recover reasonable costs and attorney fees beginning on the date an action is filed in court, if the court determines that the government's settlement offer with allowable uses did not constitute a bona fide offer. The condition requiring that the offer must have been a bona fide offer is deleted. The bill allows a property owner to recover attorney fees and costs during the presuit resolution period when a notice is filed with the government, instead of the date of filing suit. The net effect of this change will be to permit a prevailing plaintiff to recover more in attorney fees from the government because the attorney will be billing for a longer period of time and for additional work with more costs preparing the cause of action for court.

### **Notice and When a Property Owner's Claim is Ripe**

The bill states, "If a property owner is not provided notice . . ." that a law or regulation affects his or her property, the property owner may file suit after the law or regulation is enacted. If the law or regulation's effect is clear and unequivocal on its terms, a property owner is not required to follow the usual channels and submit a formal application or proceed through any formal application process if the action would be futile and a waste of resources.

Current law does not require that the notice be sent by certified mail to the property owner. However, this change may require that notice of future changes by the governmental entity be sent by certified mail to clarify whether the notice was sent and received.

### **Governmental Exactions**

This provision permits a property owner to sue for injunctive relief, and a court to declare, that a prohibited exaction is invalid. The property owner does not have to exhaust all administrative remedies before filing suit to declare a prohibited exaction invalid and recover damages.

### **Effective Date**

The bill takes effect July 1, 2018.

## **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:**

By simplifying the process for property owners to sue for burdensome regulations, more property owners may be encouraged to bring lawsuits and recover attorney fees and costs or have burdensome regulations removed. However, the removal of a regulation that burdens one property may have a negative effect on the values of other nearby properties.

**C. Government Sector Impact:**

The bill may negatively impact state and local government entities by making it easier for property owners to challenge government regulations and recover attorney fees. However, these changes may encourage government entities to be more responsive to concerns that a regulation that may benefit many properties may, nonetheless, inordinately burden others.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 70.001 and 70.45.

**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.

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

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917246

LEGISLATIVE ACTION

Senate

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House

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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 20 - 102

and insert:

Section 1. Subsection (6) and paragraph (a) of subsection (11) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.-

(6) (a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable



917246

12 uses, the governmental entity or entities have inordinately  
13 burdened the real property. If the actions of more than one  
14 governmental entity, considering any settlement offers and  
15 statement of allowable uses, are responsible for the action that  
16 imposed the inordinate burden on the real property of the  
17 property owner, the court shall determine the percentage of  
18 responsibility each such governmental entity bears with respect  
19 to the inordinate burden. A governmental entity may take an  
20 interlocutory appeal of the court's determination that the  
21 action of the governmental entity has resulted in an inordinate  
22 burden. An interlocutory appeal does not automatically stay the  
23 proceedings; however, the court may stay the proceedings during  
24 the pendency of the interlocutory appeal. If the governmental  
25 entity does not prevail in the interlocutory appeal, the court  
26 shall award to the prevailing property owner the costs and a  
27 reasonable attorney fee incurred by the property owner in the  
28 interlocutory appeal.

29 (b) Following its determination of the percentage of  
30 responsibility of each governmental entity, and following the  
31 resolution of any interlocutory appeal, the court shall impanel  
32 a jury to determine the total amount of compensation to the  
33 property owner for the loss in value due to the inordinate  
34 burden to the real property. The property owner may waive the  
35 right to a jury and request that the court make such  
36 determination. The award of compensation shall be determined by  
37 calculating the difference in the fair market value of the real  
38 property, as it existed at the time of the governmental action  
39 at issue, as though the owner had the ability to attain the  
40 reasonable investment-backed expectation or was not left with



917246

41 uses that are unreasonable, whichever the case may be, and the  
42 fair market value of the real property, as it existed at the  
43 time of the governmental action at issue, as inordinately  
44 burdened, considering the settlement offer together with the  
45 statement of allowable uses, of the governmental entity or  
46 entities. In determining the award of compensation,  
47 consideration may not be given to business damages relative to  
48 any development, activity, or use that the action of the  
49 governmental entity or entities, considering the settlement  
50 offer together with the statement of allowable uses has  
51 restricted, limited, or prohibited. The award of compensation  
52 shall include a reasonable award of prejudgment interest from  
53 the date the claim was presented to the governmental entity or  
54 entities as provided in subsection (4).

55 (c)1. In any action filed pursuant to this section, the  
56 property owner is entitled to recover reasonable costs and  
57 attorney fees incurred by the property owner, from the  
58 governmental entity or entities, according to their  
59 proportionate share as determined by the court, from the date of  
60 the governmental entity's denial of the claim made pursuant to

61  
62 ===== T I T L E A M E N D M E N T =====

63 And the title is amended as follows:

64 Delete lines 3 - 7

65 and insert:

66 70.001, F.S.; authorizing a property owner to waive  
67 the right to a jury and



477310

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

The Committee on Judiciary (Lee) recommended the following:

**Senate Amendment**

Delete lines 163 - 169

and insert:

sub-subparagraph a., the property owner may bring a claim  
against the governmental entity as provided in paragraph (4) (a)  
after the enactment of the law or regulation if the law's or  
regulation's effect on the real property is clear and  
unequivocal in its terms. In such cases, a property owner is not  
required to submit a formal application for development or to  
proceed through any formal application process if such action



477310

12 would be futile.



305214

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

The Committee on Judiciary (Lee) recommended the following:

**Senate Amendment**

Delete line 169

and insert:

process if such action would be futile.

By Senator Lee

20-01708-19

20191720\_\_

A bill to be entitled

An act relating to property rights; amending s. 70.001, F.S.; revising legislative findings; providing applicability relating to claims that involve one or more residential properties which are brought as a result of certain regulations or ordinances; authorizing a property owner to waive a jury and request that the court make a determination of compensation; revising the calculation for costs a property owner is entitled to recover; authorizing a property owner to bring a claim under certain circumstances when he or she is not provided certain notice; amending s. 70.45, F.S.; authorizing a property owner to bring an action to declare a prohibited exaction invalid; making clarifying changes; providing an effective date.

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

Section 1. Present paragraph (d) of subsection (4) of section 70.001, Florida Statutes, is redesignated as paragraph (e), a new paragraph (d) is added to that subsection, and subsections (1) and (6) and paragraph (a) of subsection (11) of that section are amended, to read:

70.001 Private property rights protection.—

(1) This act may be cited as the "Bert J. Harris, Jr., Private Property Rights Protection Act." The Legislature recognizes that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may

Page 1 of 7

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

20-01708-19

20191720\_\_

inordinately burden, restrict, or limit private property rights without amounting to a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens. The Legislature further recognizes that it is in the public interest to ensure that similarly situated properties are subject to the same rules and regulations. Therefore, it is the intent of the Legislature that, as a separate and distinct cause of action from the law of takings, the Legislature herein provides for relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, unfairly affects real property.

(4)

(d) When the claim involves one or more residential properties and is brought as a result of the enactment of a governmental entity's regulation or ordinance that applies to residential property, any settlement offer that includes a modification or variance to such regulation or ordinance applies to all similarly situated residential properties subject to regulation by the governmental entity.

(6) (a) The circuit court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property. If the actions of more than one governmental entity, considering any settlement offers and statement of allowable uses, are responsible for the action that

Page 2 of 7

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20-01708-19

20191720\_\_

59 imposed the inordinate burden on the real property of the  
 60 property owner, the court shall determine the percentage of  
 61 responsibility each such governmental entity bears with respect  
 62 to the inordinate burden. A governmental entity may take an  
 63 interlocutory appeal of the court's determination that the  
 64 action of the governmental entity has resulted in an inordinate  
 65 burden. An interlocutory appeal does not automatically stay the  
 66 proceedings; however, the court may stay the proceedings during  
 67 the pendency of the interlocutory appeal. If the governmental  
 68 entity does not prevail in the interlocutory appeal, the court  
 69 shall award to the prevailing property owner the costs and a  
 70 reasonable attorney fee incurred by the property owner in the  
 71 interlocutory appeal.

72 (b) Following its determination of the percentage of  
 73 responsibility of each governmental entity, and following the  
 74 resolution of any interlocutory appeal, the court shall impanel  
 75 a jury to determine the total amount of compensation to the  
 76 property owner for the loss in value due to the inordinate  
 77 burden to the real property. The property owner may waive a jury  
 78 and request that the court make such determination. The award of  
 79 compensation shall be determined by calculating the difference  
 80 in the fair market value of the real property, as it existed at  
 81 the time of the governmental action at issue, as though the  
 82 owner had the ability to attain the reasonable investment-backed  
 83 expectation or was not left with uses that are unreasonable,  
 84 whichever the case may be, and the fair market value of the real  
 85 property, as it existed at the time of the governmental action  
 86 at issue, as inordinately burdened, considering the settlement  
 87 offer together with the statement of allowable uses, of the

20-01708-19

20191720\_\_

88 governmental entity or entities. In determining the award of  
 89 compensation, consideration may not be given to business damages  
 90 relative to any development, activity, or use that the action of  
 91 the governmental entity or entities, considering the settlement  
 92 offer together with the statement of allowable uses has  
 93 restricted, limited, or prohibited. The award of compensation  
 94 shall include a reasonable award of prejudgment interest from  
 95 the date the claim was presented to the governmental entity or  
 96 entities as provided in subsection (4).

97 (c)1. In any action filed pursuant to this section, the  
 98 property owner is entitled to recover reasonable costs and  
 99 attorney fees incurred by the property owner, from the  
 100 governmental entity or entities, according to their  
 101 proportionate share as determined by the court, from the date of  
 102 presenting the claim to the governmental entity pursuant to  
 103 paragraph (4) (a) the filing of the circuit court action, if the  
 104 property owner prevails in the action ~~and the court determines~~  
 105 ~~that the settlement offer, including the statement of allowable~~  
 106 ~~uses, of the governmental entity or entities did not constitute~~  
 107 ~~a bona fide offer to the property owner which reasonably would~~  
 108 ~~have resolved the claim, based upon the knowledge available to~~  
 109 ~~the governmental entity or entities and the property owner~~  
 110 ~~during the 90-day notice period or the 150-day notice period.~~

111 2. In any action filed pursuant to this section, the  
 112 governmental entity or entities are entitled to recover  
 113 reasonable costs and attorney fees incurred by the governmental  
 114 entity or entities from the date of the filing of the circuit  
 115 court action, if the governmental entity or entities prevail in  
 116 the action and the court determines that the property owner did

20-01708-19

20191720\_\_

117 not accept a bona fide settlement offer, including the statement  
 118 of allowable uses, which reasonably would have resolved the  
 119 claim fairly to the property owner if the settlement offer had  
 120 been accepted by the property owner, based upon the knowledge  
 121 available to the governmental entity or entities and the  
 122 property owner during the 90-day-notice period or the 150-day-  
 123 notice period.

124 3. The determination of total reasonable costs and attorney  
 125 fees pursuant to this paragraph shall be made by the court and  
 126 not by the jury. Any proposed settlement offer or any proposed  
 127 decision, except for the final written settlement offer or the  
 128 final written statement of allowable uses, and any negotiations  
 129 or rejections in regard to the formulation either of the  
 130 settlement offer or the statement of allowable uses, are  
 131 inadmissible in the subsequent proceeding established by this  
 132 section except for the purposes of the determination pursuant to  
 133 this paragraph.

134 (d) Within 15 days after the execution of any settlement  
 135 pursuant to this section, or the issuance of any judgment  
 136 pursuant to this section, the governmental entity shall provide  
 137 a copy of the settlement or judgment to the Department of Legal  
 138 Affairs.

139 (11) A cause of action may not be commenced under this  
 140 section if the claim is presented more than 1 year after a law  
 141 or regulation is first applied by the governmental entity to the  
 142 property at issue.

143 (a) For purposes of determining when this 1-year claim  
 144 period accrues:

145 1.a. A law or regulation is first applied upon enactment

Page 5 of 7

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20-01708-19

20191720\_\_

146 and notice as provided for in this ~~sub-subparagraph~~ subparagraph  
 147 if the impact of the law or regulation on the real property is  
 148 clear and unequivocal in its terms and notice is provided by  
 149 mail to the affected property owner or registered agent at the  
 150 address referenced in the jurisdiction's most current ad valorem  
 151 tax records. The fact that the law or regulation could be  
 152 modified, varied, or altered under any other process or  
 153 procedure does not preclude the impact of the law or regulation  
 154 on a property from being clear or unequivocal pursuant to this  
 155 ~~sub-subparagraph~~ subparagraph. Any notice under this ~~sub-~~  
 156 ~~subparagraph~~ subparagraph shall be provided after the enactment  
 157 of the law or regulation and shall inform the property owner or  
 158 registered agent that the law or regulation may impact the  
 159 property owner's existing property rights and that the property  
 160 owner may have only 1 year from receipt of the notice to pursue  
 161 any rights established under this section.

162 b. If a property owner is not provided notice pursuant to  
 163 sub-subparagraph a., the property owner may bring a claim  
 164 against the governmental entity after the enactment of the law  
 165 or regulation if the law or regulation's effect on the real  
 166 property is clear and unequivocal in its terms. In such cases, a  
 167 property owner is not required to submit a formal application  
 168 for development or to proceed through any formal application  
 169 process if such action would be futile and a waste of resources.

170 2. Otherwise, the law or regulation is first applied to the  
 171 property when there is a formal denial of a written request for  
 172 development or variance.

173 Section 2. Subsections (2), (4), and (5) of section 70.45,  
 174 Florida Statutes, are amended to read:

Page 6 of 7

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20-01708-19

20191720\_\_

175 70.45 Governmental exactions.-

176 (2) In addition to other remedies available in law or  
177 equity, a property owner may bring an action in a court of  
178 competent jurisdiction under this section to declare a  
179 prohibited exaction invalid and to recover damages caused by a  
180 prohibited exaction. Such action may not be brought until a  
181 prohibited exaction is actually imposed or required in writing  
182 as a final condition of approval for the requested use of real  
183 property. The right to bring an action under this section may  
184 not be waived. This section does not apply to impact fees  
185 adopted under s. 163.31801 or non-ad valorem assessments as  
186 defined in s. 197.3632.

187 (4) For each claim filed under this section, the  
188 governmental entity has the burden of proving that the  
189 challenged exaction has an essential nexus to a legitimate  
190 public purpose and is roughly proportionate to the impacts of  
191 the proposed use that the governmental entity is seeking to  
192 avoid, minimize, or mitigate. The property owner has the burden  
193 of proving damages that result from a prohibited exaction.

194 (5) The court may award attorney fees and costs to the  
195 prevailing party; however, if the court determines that the  
196 challenged exaction which is the subject of the claim lacks an  
197 essential nexus to a legitimate public purpose, the court shall  
198 award attorney fees and costs to the property owner.

199 Section 3. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** March 14, 2019

---

I respectfully request that **Senate Bill #1720**, relating to Property Rights, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink that reads "Tom Lee".

---

Senator Tom Lee  
Florida Senate, District 20

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

1720

Bill Number (if applicable)

Topic Property Rights

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St

Phone 850-224-1400

1allahassee FL 32301

Email andyg@floridarealtors.org

Speaking: For Against Information

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

Representing Florida Realtors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 8  
Meeting Date

1720  
Bill Number (if applicable)

Topic Harris Act

Amendment Barcode (if applicable)

Name Thomas Hawkins

Job Title Policy & Planning Director

Address 308 N Monroe St  
Street

Phone (352) 377-3141

allahassee, FL 32301  
City State Zip

Email thawkins@1000FR.org

Speaking:  For  Against  Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

April 8

Meeting Date

1720

Bill Number (if applicable)

917246

Amendment Barcode (if applicable)

Topic Harris Act

Name Thomas Hawkins

Job Title Policy & Planning Director

Address 308 N Monroe St

Street

Phone (352) 377-3141

Tallahassee, FL 32301

City

State

Zip

Email thawkins@1000.org

Speaking:  For  Against  Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/8/19  
Meeting Date

1720  
Bill Number (if applicable)

Topic Private Property

Amendment Barcode (if applicable)

Name David Cruz

Job Title Legislative Counsel

Address P.O. Box 1757

Phone 701-3676

Street

Tallahassee FL 32302

Email DCRUZ@FLCITIES.WA

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida League of Cities

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)

4/8/19

Meeting Date

1720

Bill Number (if applicable)

Topic Private Property Rights

917246

Amendment Barcode (if applicable)

Name David Cruz

Job Title Legislative Counsel

Address P.O. Box 1757

Phone 701-3676

Street

Tallahassee

FL

32302

Email DCRUZ@FLCITIES.COM

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida League of Cities

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)

4/8/19 Meeting Date

1720 Bill Number (if applicable)

Topic S.B. 1720/Harris Act

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St Suite 300

Phone 850 222 7500

Tallahassee FL 32301

Email garyh@hgs law.com

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

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

Representing Association of Florida Community Developers

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19

Meeting Date

1720

Bill Number (if applicable)

917246

Amendment Barcode (if applicable)

Topic Property Rights

Name Mark Jeffries

Job Title

Address 201 S. Rosalind Ave

Street

Orlando FL

City

State

32801

Zip

Phone 407-836-5909

Email mark.jeffries@dofl.net

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Orange County

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-8-19

Meeting Date

1720

Bill Number (if applicable)

Topic PRIVATE PROPERTY RIGHTS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE COUNSEL

Address 100 N. MONROE Street

Phone 254-1838

TA City

FL State

32301 Zip

Email

Speaking: [ ] For [X] 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 [X] No

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-8-19

Meeting Date

1720

Bill Number (if applicable)

917246

Amendment Barcode (if applicable)

Topic PRIVATE PROPERTY RIGHTS

Name LAURA YOUMANS

Job Title LEGISLATIVE COUNSEL

Address 100 N. MONROE  
Street

Phone 294-1838

TAL

City

FL

State

32301

Zip

Email \_\_\_\_\_

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)

# APPEARANCE RECORD

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

4-8-19

Meeting Date

1720

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title \_\_\_\_\_

Address 1674 UNIV. PKWY #296

Phone 941-323-2404

Street

SARASOTA

FL

34243

City

State

Zip

Email cullenasea@aol.com

Speaking:  For  Against  Information

Waive Speaking:  In Support  Against

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

1109 @ 4

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/8/19

*Meeting Date*

1720

*Bill Number (if applicable)*

Topic Property Rights

*Amendment Barcode (if applicable)*

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St.

Phone 224-7173

*Street*

TLH

FL

32301

Email bbevis@aif.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: SB 990

INTRODUCER: Senator Gibson and others

SUBJECT: Unemployment Compensation

DATE: April 5, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 990 provides that an individual may not be disqualified from receiving reemployment assistance benefits if he or she voluntarily leaves work as a direct result of circumstances related to domestic violence.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**Reemployment Assistance Program**

According to the United States Department of Labor, the purpose of the Federal-State Unemployment Insurance Program is to provide unemployment benefits to eligible workers who, through no fault of their own, are unemployed. Each state may determine eligibility requirements using its own criteria and laws.<sup>1</sup> The program is administered as a partnership between the federal government and state governments.

Florida's unemployment insurance program was created by the Legislature in 1937 during the Great Depression.<sup>2</sup> The Legislature noted that, after examining the widespread unemployment in the state and nation, the problem of unemployment could better be met by the "Compulsory Unemployment Insurance Plan" which was then handled by "poor relief, assistance and voluntary contributions." The Legislature enacted a measure that required "the compulsory

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<sup>1</sup> United States Department of Labor, Employment and Training Administration, State Unemployment Insurance Benefits, available at <http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp> (last visited March 22, 2019).

<sup>2</sup> Ch. 18402, s. 1, Laws of Fla. (1937).

setting aside of financial reserves for the benefit of persons unemployed through no fault of their own.”<sup>3</sup> The program was rebranded as the “Reemployment Assistance Program” in 2012.<sup>4</sup>

The Reemployment Assistance Program is described on its website as “What it is” and “What it is not.” The program is:

- Temporary, partial wage replacement benefits:
  - For qualified workers;
  - Who are unemployed, but due to no fault of their own;
- A support for economic stability for employers who depend on the spending of consumers;
- Funded entirely by employers who pay state and federal payroll taxes; and
- Provided without cost to the workers who actually receive the benefits.

The Reemployment Assistance Program is not:

- Social Security.
- An automatic entitlement or loan to the unemployed worker.
- Based upon the worker’s need.
- Intended as a full replacement for the worker’s previous income.
- Funded through deductions from the worker’s previous wages.<sup>5</sup>

The Department of Economic Opportunity (DEO) is responsible for administering Florida’s reemployment assistance laws, primarily through its Division of Workforce Services.<sup>6</sup>

An unemployed individual must apply to the DEO for benefits using Florida’s Online Reemployment Assistance System.<sup>7</sup> To receive reemployment assistance (RA) benefits, a claimant must meet certain monetary and nonmonetary eligibility requirements and provide proof of identification.<sup>8</sup> Key eligibility requirements involve a claimant’s earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant’s efforts to find new employment. A notice of claim is sent to a claimant’s most recent employer and all employers whose employment records are liable for benefits.<sup>9</sup>

### ***Benefits***

A qualified claimant may receive RA benefits equal to 25 percent of wages, not to exceed \$6,325 in a benefit year.<sup>10</sup> Benefits range from a minimum of \$32 per week to a maximum weekly benefit amount of \$275 for up to 23 weeks, depending on the claimant’s length of prior employment, wages earned, and the unemployment rate.<sup>11</sup>

---

<sup>3</sup> *Id.*

<sup>4</sup> Ch. 2012-30, s. 1, Laws of Fla.

<sup>5</sup> Florida Department of Economic Opportunity, *Reemployment Assistance Handbook*, 6, [http://www.floridajobs.org/unemployment/bri/bri\\_english.pdf](http://www.floridajobs.org/unemployment/bri/bri_english.pdf).

<sup>6</sup> Section 20.60(5)(c)3., F.S., and s. 443.171, F.S.

<sup>7</sup> Fla. Admin Code R. 73B-11.013 (2019).

<sup>8</sup> *See* s. 443.091, F.S., and Fla. Admin. Code R. 73B-11.013.

<sup>9</sup> Section 443.151(3)(a), F.S.

<sup>10</sup> Section 443.111(5)(b), F.S. The maximum amount of benefits available is calculated by multiplying an individual’s weekly benefit amount by the number of available benefit weeks.

<sup>11</sup> Section 443.111(3), F.S. Pursuant to s. 443.111(5), F.S., if the average unemployment rate for the 3 months in the most recent third calendar year quarter is at or below 5 percent, then the maximum weeks of benefits available is 12; for each 0.5

A claimant must meet certain requirements in order to be eligible for benefits for each week of unemployment. For example, each week an individual is required to contact at least five prospective employers (three prospective employers if the individual resides in a small county) or report to the one-stop career center<sup>12</sup> for reemployment services.<sup>13</sup>

### ***Disqualification for Benefits***

Section 443.101(1)(a), F.S., specifies the circumstances under which an individual is disqualified from receiving RA benefits. An individual must be disqualified for benefits for the week in which he or she has voluntarily left work without good cause attributable to his or her employing unit or has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the DEO. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than 17 times his or her weekly benefit amount.

An individual is not disqualified for voluntarily leaving temporary work to immediately return when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months, or for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.

An individual will lose eligibility for benefits if DEO determines that he or she failed to apply for or accept suitable work when offered.<sup>14</sup>

### ***Financing Reemployment Assistance***

In Florida, RA benefits are financed solely through contributions by employers. Generally, a private employer is considered a contributory employer who pays a quarterly tax on the business into the Unemployment Compensation Trust Fund. In contrast, a reimbursable employer is generally a government employer such as the military, counties, and state and federal agencies. The reimbursable employer pays back the amount of benefits received by claimants. A public employer may choose to become a contributory employer, as provided by statute.<sup>15</sup>

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percent that the unemployment rate is above 5 percent, an additional week of benefits becomes available for up to 23 weeks at an unemployment rate of 10.5 percent.

<sup>12</sup> The one-stop delivery system is Florida's primary customer service strategy for offering access to job search, referral, and placement assistance; career counseling and educational planning; and other services. Section 445.009, F.S.

<sup>13</sup> Section 443.091(1), F.S.

<sup>14</sup> Section 443.101(2), F.S.

<sup>15</sup> Section 443.1313, F.S. Pursuant to s. 443.131, F.S., employers are required to submit quarterly tax and wage reports. The calculation for determining each employer's tax rate is set in statute and takes into consideration several factors. However, only the first \$7,000 of an employee's wages paid in a calendar year is taxable for reemployment tax purposes. See also Florida Department of Revenue, *Florida Reemployment Tax*,

<http://floridarevenue.com/taxes/taxesfees/Pages/reemployment.aspx>.

### Domestic Violence

Section 741.28, F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

The Florida Department of Law Enforcement (FDLE) data indicates that there were a total of 106,979 acts of domestic violence reported in 2017, and 64,781 arrests based on those acts.<sup>16</sup> Currently, Florida has 42 certified domestic violence shelters.<sup>17</sup> In Fiscal Year 2016-2017, the Florida Department of Children and Families reported that a total of 14,412 people were admitted to domestic violence shelters for the first time, while over 37,000 people received new non-residential services from a certified shelter.<sup>18</sup>

### III. Effect of Proposed Changes:

The bill amends s. 443.101, F.S., to provide that an individual may not be disqualified from receiving reemployment assistance if he or she voluntarily leaves work and is able to prove that the discontinuation of employment is a direct result of circumstances related to domestic violence.

An individual who leaves voluntarily work as a result of domestic violence must:

- Make reasonable efforts to preserve employment or to decrease the risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment.
- Provide evidence such as an injunction, a protective order or other documentation authorized by state law which reasonably proves that domestic violence has occurred.
- Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to, or departing from his or her place of employment.

An individual who is otherwise eligible for reemployment assistance under these criteria is ineligible for each week that he or she no longer meets these criteria or refuses a reasonable accommodation offered in good faith by his or her employing unit.

For contributory employers, the employment record of an employing unit may not be charged for the payment of benefits to an individual who has voluntarily left work pursuant to the bill's provisions.

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<sup>16</sup> Florida Department of Law Enforcement, *Domestic Violence, Domestic Violence Offenses in Florida 1997-2017*, <http://www.fdle.state.fl.us/FSAC/Crime-Trends/Domestic-Violence> The FDLE includes murder, manslaughter, rape, fondling, aggravated assault, aggravated stalking, simple assault, threat/intimidation, and stalking in this data.

<sup>17</sup> Florida Coalition Against Domestic Violence, *2016-2017 Annual Report to the Florida Legislature: 40<sup>th</sup> Anniversary Edition*,

<http://www.dcf.state.fl.us/programs/domesticviolence/publications/docs/2017AnnualReport%2021%20DEC%2017.pdf> .

<sup>18</sup> Department of Children and Families, *Domestic Violence Annual Report, 7/1/2016 - 6/30/2017*,

<http://www.dcf.state.fl.us/programs/domesticviolence/publications/docs/2016-2017%20Annual%20Statistics.pdf> (last visited March 22, 2019).

The bill has an effective date of July 1, 2019.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill prohibits charging the employment record of contributory employers for benefits paid pursuant to the bill's provisions.

C. Government Sector Impact:

According to the Department of Economic Opportunity's Fiscal Analysis, the changes required by this bill may increase Unemployment Benefit expenditures for direct bill governments. The Department did not have any relevant statistics for Florida at the time the analysis was published. The analysis, however, looked to Texas, a state that enacted a similar provision, and found that approximately 200 people were affected annually. If Florida experienced a similar number of claims for the full 12 weeks, the fiscal impact of the bill could be a \$660,000 increase in benefits paid annually. The bill would also require an estimated 640 hours of staff and contract time to implement. That cost would be \$47,000 to implement, an amount that DEO stated it could absorb in its budget.<sup>19</sup>

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<sup>19</sup> Department of Economic Opportunity, House Bill 563 Fiscal Analysis (Feb. 14, 2019)  
<http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28647>.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends section 443.101 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

By Senator Gibson

6-01404A-19

2019990\_\_

A bill to be entitled

An act relating to unemployment compensation; amending s. 443.101, F.S.; making editorial changes; prohibiting certain victims of domestic violence from being disqualified for benefits for voluntarily leaving work; prohibiting the employment record of an employing unit from being charged in certain circumstances; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1) (a) For the week in which he or she has voluntarily left work without good cause attributable to his or her employing unit or for the week in which he or she has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Department of Economic Opportunity. As used in this paragraph, the term "work" means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or greater than 17 times his or her weekly benefit amount. As used in this subsection, the term "good cause" includes only that cause attributable to

Page 1 of 4

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

6-01404A-19

2019990\_\_

the employing unit which would compel a reasonable employee to cease working or attributable to the individual's illness or disability requiring separation from his or her work. Additional disqualifications ~~Any other disqualification~~ may not be imposed.

2. An individual is not disqualified under this subsection for:

a. Voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months;

b. ~~or for~~ Voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders; or

c. Voluntarily leaving work if he or she proves that his or her discontinued employment is a direct result of circumstances related to domestic violence as defined in s. 741.28. An individual who voluntarily leaves work under this subparagraph must:

(I) Make reasonable efforts to preserve employment or to decrease the risk of future incidents of domestic violence. Such efforts may include seeking a protective injunction, relocating to a secure place, or seeking reasonable accommodation from the employing unit, such as a transfer or change of assignment;

(II) Provide evidence such as an injunction, a protective order, or other documentation authorized by state law which reasonably proves that domestic violence has occurred; and

(III) Reasonably believe that he or she is likely to be the victim of a future act of domestic violence at, in transit to,

Page 2 of 4

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6-01404A-19 2019990\_\_

59 or departing from his or her place of employment. An individual  
 60 who is otherwise eligible for benefits under this sub-  
 61 subparagraph is ineligible for each week that he or she no  
 62 longer meets such criteria or refuses a reasonable accommodation  
 63 offered in good faith by his or her employing unit.

64 3. The employment record of an employing unit may not be  
 65 charged for the payment of benefits to an individual who has  
 66 voluntarily left work under this paragraph.

67 ~~4.2-~~ Disqualification for being discharged for misconduct  
 68 connected with his or her work continues for the full period of  
 69 unemployment next ensuing after having been discharged and until  
 70 the individual is reemployed and has earned income of at least  
 71 17 times his or her weekly benefit amount and for not more than  
 72 52 weeks immediately following that week, as determined by the  
 73 department in each case according to the circumstances or the  
 74 seriousness of the misconduct, under the department's rules  
 75 ~~adopted for determining determinations of~~ disqualification for  
 76 benefits for misconduct.

77 ~~5.3-~~ If an individual has provided notification to the  
 78 employing unit of his or her intent to voluntarily leave work  
 79 and the employing unit discharges the individual for reasons  
 80 other than misconduct before the date the voluntary quit was to  
 81 take effect, the individual, if otherwise entitled, shall  
 82 receive benefits from the date of the employer's discharge until  
 83 the effective date of his or her voluntary quit.

84 ~~6.4-~~ If an individual is notified by the employing unit of  
 85 the employer's intent to discharge the individual for reasons  
 86 other than misconduct and the individual quits without good  
 87 cause before the date the discharge was to take effect, the

Page 3 of 4

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6-01404A-19 2019990\_\_

88 claimant is ineligible for benefits pursuant to s. 443.091(1)(d)  
 89 for failing to be available for work for the week or weeks of  
 90 unemployment occurring before the effective date of the  
 91 discharge.

92 Section 2. This act shall take effect July 1, 2019.

Page 4 of 4

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Rules, *Vice Chair*  
Appropriations  
Innovation, Industry, and Technology  
Judiciary

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission

**SENATOR AUDREY GIBSON**  
*Minority Leader*  
6th District

March 25, 2019

Senator David Simmons, Chair  
Committee on Judiciary  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

Chair Simmons:

I respectfully request that SB 990, relating to unemployment compensation for victims of domestic violence, be placed on the next committee agenda.

SB 990, prohibits certain victims of domestic violence from being disqualified for benefits if he or she proves that his or her discontinued employment is a direct result of circumstances related to domestic violence. The bill passed unanimously in the first committee.

Thank you for your kind consideration.

Sincerely,

A handwritten signature in cursive script that reads "Audrey Gibson".

Audrey Gibson  
State Senator  
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553  
200 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-8-19  
Meeting Date

998  
Bill Number (if applicable)

Topic Unemployment Compensation

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E Broadway St  
Street

Phone 251-4280

City

State

Zip

Email barbudevane1@yahoo.com

Speaking:  For  Against  Information

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

Representing FL NOW

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/8/19 Meeting Date

SB 990 Bill Number (if applicable)

Topic UNEMPLOYMENT COMPENSATION

Amendment Barcode (if applicable)

Name CHARO VALENCIA

Job Title FL Policy Director

Address 1951 NW 7 AVE Street

Phone 786 442 8199

Miami FL 33136 City State Zip

Email CHARO@LATINA INSTITUTE.ORG

Speaking: [ ] For [ ] Against [ ] Information

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

Representing FL LATINA ADVOCACY NETWORK

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

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

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

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

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/8/19  
Meeting Date

SB990  
Bill Number (if applicable)

Topic Unemployment compensation

Amendment Barcode (if applicable)

Name Jasmen ROGERS-Shaw

Job Title Staff \* Policy Director

Address 745 NW 54th St.

Phone (954) 261-1380

Street

MIAMI

FL

33127

City

State

Zip

Email Jasmen@thenewworkerscenter.org

Speaking:  For  Against  Information

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

Representing MIAMI WORKERS CENTER

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

# CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 4/8/2019 4:01:48 PM

Ends: 4/8/2019 6:00:39 PM Length: 01:58:52

4:01:47 PM Comments from Chair Simmons  
4:01:57 PM Meeting called to order by Chair Simmons  
4:01:59 PM Roll call by Administrative Assistant Joyce Butler  
4:02:10 PM Quorum present  
4:02:13 PM Comments from Chair Simmons  
4:03:28 PM Introduction of Tab 8, SB 7086 by Chair Simmons  
4:03:29 PM Chair Simmons give a statement regarding, least controversial bills first.  
4:04:23 PM Chair Simmons stated we are going to try and get threw as many bills as we can  
4:04:23 PM Chair Simmons asked members to turn to Tab 7, by Senator Albritton  
4:04:23 PM Chair Simmons asked Senator Albritton for an explanation of Tab 7, CS/SB 1400  
4:04:23 PM Senator Albritton explains CS/SB 1440  
4:04:34 PM Chair Simmons ask was there any questions to Senator Albritton  
4:07:36 PM Chair Simmons stated there is an Amendment Barcode No. 888164 by Senator Albritton  
4:07:45 PM Explanation of Amendment by Senator Albritton  
4:09:06 PM Question from Senator Gibson  
4:09:12 PM Response from Senator Albritton  
4:09:59 PM Follow-up question from Senator Gibson  
4:10:38 PM Response from Senator Albritton  
4:11:57 PM Comments from Chair Simmons  
4:12:23 PM Closure waived  
4:12:26 PM Amendment Barcode No. 888164 adopted  
4:13:02 PM Question from Senator Gibson  
4:13:08 PM Response from Senator Albritton  
4:15:49 PM Follow-up question from Senator Gibson  
4:15:56 PM Response from Senator Albritton  
4:16:25 PM Additional question from Senator Gibson  
4:16:31 PM Response from Senator Albritton  
4:17:07 PM Andy Gonzalez, Public Policy Representative, Florida Realtors waives in support  
4:17:16 PM Rebecca O'Hara, Deputy General Counsel, Florida League of Cities waives in support  
4:17:32 PM Kurt Spitzer, Florida Stormwater Association waives in opposition  
4:17:57 PM Speaker Greg Pound  
4:18:53 PM Senator Rodriguez in debate  
4:19:24 PM Senator Gibson in debate  
4:20:46 PM Senator Albritton in closure  
4:20:53 PM Roll call by Administrative Assistant Joyce Butler  
4:21:29 PM CS/CS/SB 1400 reported favorably  
4:22:06 PM Introduction of Tab 3, SB 1272  
4:22:21 PM Explanation of SB 1272, Anti-Semitism by Senator Gruters  
4:23:02 PM Question from Senator Gibson  
4:23:14 PM Response from Senator Gruters  
4:23:48 PM Follow-up question from Senator Gibson  
4:24:00 PM Response from Senator Gruters

4:24:23 PM Additional question from Senator Gibson  
4:24:31 PM Response from Senator Gruters  
4:24:43 PM Additional question from Senator Gibson  
4:24:49 PM Response from Senator Gruters  
4:25:14 PM Follow-up question from Senator Gibson  
4:25:20 PM Response from Senator Gruters  
4:25:33 PM Additional question from Senator Gibson  
4:25:40 PM Response from Senator Gruters  
4:26:03 PM Question from Senator Rodriguez  
4:26:17 PM Response from Senator Gruters  
4:27:55 PM Chair Simmons stated we have an Amendment Barcode No. 287692  
4:28:23 PM Explanation of Amendment by Senator Gruters  
4:28:58 PM Question from Senator Gibson  
4:29:02 PM Response from Senator Gruters  
4:29:25 PM Closure waived  
4:29:27 PM Amendment Barcode No. 287692 adopted  
4:29:46 PM Question from Senator Gibson  
4:29:52 PM Response from Senator Gruters  
4:30:20 PM Speaker Susan Aertker  
4:31:48 PM Speaker Reem Zaitoon in opposition  
4:33:39 PM Speaker Amy Datz in support  
4:34:29 PM Speaker Greg Pound  
4:35:30 PM Senator Gibson in debate  
4:36:25 PM Senator Rodriguez in debate  
4:37:27 PM Senator Baxley in debate  
4:38:54 PM Senator Gruters with closure  
4:39:03 PM Roll call by Administrative Assistant Joyce Butler  
4:39:34 PM CS/SB 1272 reported favorably  
4:39:49 PM Introduction of Tab 11, CS/SB 920 by Senator Pizzo  
4:40:02 PM Explanation of CS/SB 920, DNA Database by Senator Pizzo  
4:40:48 PM Comments from Chair Simmons  
4:40:57 PM Question from Senator Gibson  
4:41:01 PM Response from Senator Pizzo  
4:41:55 PM Follow-up question from Senator Gibson  
4:42:02 PM Response from Senator Pizzo  
4:42:52 PM Barney Bishop III, President & CEO, Florida Smart Justice Alliance waives in support  
4:43:01 PM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in support  
4:43:16 PM Matt Puckett, Executive Director, Florida PBA waives in support  
4:43:30 PM Speaker Greg Pound  
4:43:59 PM Comments from Chair Simmons  
4:44:03 PM Senator Gibson in debate  
4:44:28 PM Closure by Senator Pizzo  
4:44:38 PM Roll call by Administrative Assistant Joyce Butler  
4:45:01 PM CS/SB 920 reported favorably  
4:45:18 PM Chair Simmons state turn to Tab 10, CS/SB 1034  
4:45:33 PM Explanation of CS/SB 1034, Assignment of Consumer Debts by Senator Gruters  
4:46:26 PM Chair Simmons states we have an Amendment Barcode No. 664092  
4:46:54 PM Explanation of Amendment by Senator Gruters  
4:47:56 PM Amendment Barcode No. 664092 adopted  
4:48:36 PM Question from Senator Gibson  
4:48:52 PM Response from Senator Gruters  
4:51:06 PM Follow-up question from Senator Gibson

**4:51:19 PM** Response from Senator Gruters  
**4:53:29 PM** Speaker Alice Vickers, Attorney, Florida Alliance for Consumer Protection in opposition  
**4:54:31 PM** Speaker Anthony Dimarco, Vice President of Governmental Affairs, Florida Bankers Association in opposition  
**4:55:45 PM** Speaker Jennifer Wilson, Lobbyist/Attorney, Florida Collectors Association in support  
**4:56:44 PM** Jared Ross, Senior Vice President Governmental Affairs, Florida Credit Union Association waives in opposition  
**4:57:16 PM** Chair Simmons ask for debate  
**4:57:28 PM** Roll call by Administrative Assistant Joyce Butler  
**4:57:39 PM** CS/CS/SB 1034 reported favorably  
**4:58:06 PM** Chair Simmons states turn to Tab 4, SB 958  
**4:58:29 PM** Explanation of SB 958, Housing Discrimination by Senator Rodriguez  
**4:59:25 PM** Pamela Burch Fort, Florida State Conference of NAACP waives in support  
**4:59:40 PM** Alice Vickers, Attorney, Florida Alliance for Consumer Protection waives in support  
**4:59:52 PM** Christopher Turner. Deputy Legislative Affairs Director, Florida Commission on Human Relations waives in support  
**5:00:16 PM** Closure waived  
**5:00:18 PM** Roll call by Administrative Assistant Joyce Butler  
**5:00:31 PM** SB 958 reported favorably  
**5:00:42 PM** Chair Simmons states turn to Tab 9, CS/SB 1208  
**5:00:59 PM** Explanation of CS/SB 1208, Aircraft Liens by Senator Baxley  
**5:02:37 PM** Closure waived  
**5:02:46 PM** Roll call by Administrative Assistant Joyce Butler  
**5:02:55 PM** SB 1208 reported favorably  
**5:03:06 PM** Chair ask to turn to Tab 1, CS/SB 630  
**5:03:24 PM** Explanation of CS/SB 630, Nonopioid Alternatives by Senator Perry  
**5:04:03 PM** Barney Bishop III, President & CEO, Florida Smart Justice Alliance waives in support  
**5:04:16 PM** Jack Hebert, Governmental Affairs Director, Florida Chiropractic Association waives in support  
**5:04:30 PM** Angela Drzewiecki, Florida Acupuncture Association waives in support  
**5:04:43 PM** Chris Lyon, Florida Association of Nuric Association waives in support  
**5:05:00 PM** Anita Berry, Florida Occupational Therapy Association & Florida State Massage Therapy Association waives in support  
**5:05:16 PM** Corrine Mixon, Florida Oriental Medical Association waives in support  
**5:05:26 PM** Greg Pound  
**5:05:56 PM** Closure by Senator Perry  
**5:06:06 PM** Roll call by Administrative Assistant Joyce Butler  
**5:06:21 PM** CS/SB 630 reported favorably  
**5:06:35 PM** Chair Simmons ask to turn to Tab 5, CS/SB 772  
**5:06:55 PM** Explanation of CS/SB 772, Liens Against Motor Vehicles and Vessels by Senator Stargel  
**5:07:25 PM** Introduction of Amendment Barcode No. 688728 by Chair Simmons  
**5:07:46 PM** Explanation of Delete-all Amendment No. 688728 by Senator Stargel  
**5:08:50 PM** David Custin, Beach Towing, Inc. and Teemont Towing, Inc. waives in support  
**5:09:22 PM** Closure waived  
**5:09:25 PM** Amendment Barcode No. 688728 adopted  
**5:09:38 PM** Comments from Chair Simmons  
**5:10:04 PM** Sandra Mortham waives in support  
**5:10:24 PM** Brewster Bevis, Senior Vice President, Associated Industries of Florida waives in support  
**5:10:38 PM** Carolyn Johnson, Policy Director, Florida Chamber of Commerce waives in support  
**5:10:49 PM** Paul Sanford, J.M. Family Enterprises waives in support

**5:11:12 PM** Closure waived  
**5:11:14 PM** Roll call by Administrative Assistant Joyce Butler  
**5:11:22 PM** CS/CS/SB 772 reported favorably  
**5:11:38 PM** Chair Simmons ask to turn to Tab 2, CS/SB 1700  
**5:12:22 PM** Explanation of CS/SB 1700, Prescribed Controlled Substances by Senator Lee  
**5:15:40 PM** Introduction of Late-filed Amendment Barcode No. 594726 by Chair Simmons  
**5:16:18 PM** Explanation of Amendment by Senator Hutson  
**5:16:52 PM** Senator Hutson withdraws Amendment Barcode No. 594726  
**5:17:16 PM** Barney Bishop III, President & CEO, Florida Smart Justice Alliance waives in support  
**5:17:25 PM** Speaker William Large, President, Florida Justice Reform Institute in opposition  
**5:19:56 PM** Speaker John Guard, Chief Deputy Attorney General, Office of the Attorney General in support  
  
**5:21:53 PM** Senator Baxley in debate  
**5:23:21 PM** Senator Lee in closure  
**5:24:42 PM** Roll call by Administrative Assistant Joyce Butler  
**5:25:43 PM** CS/SB 1700 reported favorably  
**5:26:24 PM** Chair Simmons ask to turn to Tab 6, CS/SB 862  
**5:26:42 PM** Explanation of CS/SB 862, Lessor Liability Under Special Mobile Equipment Leases by Senator Stargel  
  
**5:27:50 PM** Chair Simmons states we have Amendment Barcode No. 672360  
**5:28:00 PM** Explanation of Amendment by Senator Stargel  
**5:28:49 PM** George Meros, Attorney, U.S. Chamber waives in support  
**5:29:16 PM** Amendment adopted  
**5:29:36 PM** George Meros waives in support  
**5:29:53 PM** Speaker Paul Jess, Florida Justice Association in opposition  
**5:30:51 PM** Comments from Chair Simmons  
**5:30:58 PM** William Large, President, Florida Justice Reform Institute waives in support  
**5:31:05 PM** Brewster Bevis, Senior Vice President, Associated Industries of Florida waives in support  
  
**5:31:14 PM** Carolyn Johnson, Policy Director, Florida Chamber of Commerce waives in support  
**5:31:28 PM** Closure waived  
**5:31:31 PM** Roll call by Administrative Assistant Joyce Butler  
**5:31:37 PM** CS/CS/SB 862 reported favorably  
**5:31:50 PM** Chair Simmons ask to turn to Tab 8, SB 7086  
**5:32:18 PM** Explanation of SB 7086, Voting Rights Restoration by Senator Brandes  
**5:38:10 PM** Chair Simmons ask was there any questions from Senator Brandes  
**5:38:29 PM** Vice-Chair Rodriguez ask questions to Senator Brandes. Senator Brandes answer question  
  
**5:39:30 PM** Question from Senator Hutson  
**5:39:46 PM** Response from Chair Simmons  
**5:40:48 PM** Senator Stargel moves for time certain vote at 5:58 pm  
**5:41:06 PM** Objection by Senator Gibson  
**5:41:25 PM** Vote will be time-certain at 5:58 pm  
**5:41:49 PM** Introduction of Amendment Barcode No. 861964  
**5:42:03 PM** Explanation of Amendment by Vice-Chair Rodriguez  
**5:43:03 PM** Amendment Barcode No. 861964 withdrawn  
**5:43:12 PM** Introduction of Amendment Barcode No. 530944  
**5:43:23 PM** Explanation of Amendment by Vice-Chair Rodriguez  
**5:43:26 PM** Amendment Barcode No. 530944 withdrawn by Vice-Chair Rodriguez  
**5:44:18 PM** Chair passed the chair to Vice-Chair Rodriguez  
**5:44:33 PM** Explanation of Amendment Barcode No. 171906 by Senator Simmons  
**5:46:04 PM** Question on Amendment by Senator Gibson

**5:47:03 PM** Response by Senator Simmons  
**5:49:24 PM** Speaker Neil Volz, Political Director, Florida Rights Restoration Coalition in support  
**5:50:11 PM** Closure waived  
**5:50:13 PM** Amendment adopted  
**5:50:23 PM** Chair passed back to Chair Simmons  
**5:50:37 PM** Question from Senator Hutson  
**5:50:46 PM** Response from Senator Brandes  
**5:51:49 PM** Speaker Desmond Meade, Executive Director/Chair, Florida Rights Restoration Coalition  
**5:57:44 PM** Senator Rodriguez in debate  
**5:58:20 PM** Closure waived  
**5:58:25 PM** Roll call Administrative Assistant Joyce Butler  
**5:58:33 PM** CS/SB 7086 reported favorably  
**5:58:57 PM** Comments from Senator Brandes  
**5:59:13 PM** Comments from Chair Simmons  
**5:59:28 PM** Chair Simmon ask the members to turn to Tab 14, SB 990  
**5:59:32 PM** Explanation of SB 900, Unemployment Compensation by Senator Gibson  
**5:59:45 PM** Roll call by Administrative Assistant Joyce Butler  
**5:59:59 PM** SB 990 reported favorably  
**6:00:10 PM** Senator Gibson moves to adjourn, without objection meeting adjourned