

Tab 1 SB 478 by Hukill; (Identical to H 00413) Trusts

Tab 2 SB 676 by Passidomo; (Identical to H 00639) Equitable Distribution of Marital Assets and Liabilities

Tab 3 CS/SB 1052 by CM, Young (CO-INTRODUCERS) Hutson; (Identical to CS/H 00851) Lost or Abandoned Property

114920	A	S	RCS	BI, Young	Delete L.19 - 20:	01/30 11:21 AM
472418	A	S L	RCS	BI, Young	Delete L.48 - 55:	01/30 11:21 AM

Tab 4 SB 1282 by Taddeo; (Similar to CS/H 01011) Residential Property Insurance

252350	A	S L	RCS	BI, Taddeo	Delete L.16 - 42:	01/30 11:21 AM
936514	AA	S L	RCS	BI, Taddeo	Delete L.15 - 16:	01/30 11:21 AM

Tab 5 SB 1302 by Brandes; (Similar to H 00953) Consumer Report Security Freezes

Tab 6 SB 1316 by Simmons; (Similar to H 00979) Uniform Voidable Transactions Act

Tab 7 SB 1880 by Broxson; (Similar to CS/H 01127) Public Records/Security of Data and Information Technology in Citizens Property Insurance Corporation

323104	A	S	RCS	BI, Broxson	Delete L.93:	01/30 11:21 AM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BANKING AND INSURANCE
Senator Flores, Chair
Senator Steube, Vice Chair

MEETING DATE: Tuesday, January 30, 2018
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Flores, Chair; Senator Steube, Vice Chair; Senators Bracy, Bradley, Braynon, Broxson, Gainer, Garcia, Grimsley, Taddeo, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 478 Hukill (Identical H 413)	Trusts; Deleting a requirement that a trust and its terms be for the benefit of the trust's beneficiaries; revising provisions relating to notice or sending of trust documents to include posting on a secure electronic account or website; authorizing an authorized trustee to appoint all or part of the principal of a trust to a second trust under certain circumstances; clarifying that certain knowledge by a beneficiary does not cause a claim to accrue for breach of trust or commence the running of a period of limitations or laches, etc. JU 01/10/2018 Favorable BI 01/30/2018 Favorable RC	Favorable Yeas 10 Nays 0
2	SB 676 Passidomo (Identical H 639)	Equitable Distribution of Marital Assets and Liabilities; Redefining the term "marital assets and liabilities" for purposes of equitable distribution in dissolution of marriage actions; providing that the term includes the paydown of principal of notes and mortgages secured by nonmarital real property and certain passive appreciation in such property under certain circumstances, etc. JU 01/10/2018 Favorable BI 01/30/2018 Favorable RC	Favorable Yeas 8 Nays 0
3	CS/SB 1052 Commerce and Tourism / Young (Identical CS/H 851)	Lost or Abandoned Property; Providing that certain provisions of ch. 705, F.S., do not apply to lost or abandoned personal property on the premises of specified facilities if certain conditions are met; providing for the disposal of lost or abandoned personal property found on the premises of specified facilities; authorizing the rightful owner to claim lost or abandoned property at any time before its disposal, etc. CM 01/16/2018 Fav/CS BI 01/30/2018 Fav/CS RC	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, January 30, 2018, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1282 Taddeo (Similar CS/H 1011)	Residential Property Insurance; Revising a mandatory homeowner's insurance policy disclosure regarding the absence of flood insurance coverage; requiring the homeowner to place his or her initials on a specified acknowledgment, etc. BI 01/30/2018 Fav/CS CA RC	Fav/CS Yeas 10 Nays 0
5	SB 1302 Brandes (Similar H 953)	Consumer Report Security Freezes; Deleting the authorization for consumer reporting agencies to charge specified fees to consumers electing to place, remove, or temporarily lift a security freeze on their consumer reports; deleting the authorization for consumer reporting agencies to charge a specified fee to representatives of protected consumers electing to place a security freeze on such consumer's consumer reports, etc. BI 01/30/2018 Favorable CM RC	Favorable Yeas 10 Nays 0
6	SB 1316 Simmons (Similar H 979)	Uniform Voidable Transactions Act; Removing conditions under which a partnership is insolvent; providing conditions under which attachments or other provisional remedies are available to creditors; revising the parties subject to judgments for recovery of a creditor's claim; providing that claims for relief are governed by specified claims law, etc. BI 01/30/2018 Favorable JU RC	Favorable Yeas 10 Nays 0
7	SB 1880 Broxson (Similar CS/H 1127)	Public Records/Security of Data and Information Technology in Citizens Property Insurance Corporation; Providing an exemption from public records requirements for certain records held by the Citizens Property Insurance Corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; providing for future legislative review and repeal; providing a statement of public necessity, etc. BI 01/30/2018 Fav/CS GO RC	Fav/CS Yeas 9 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 478

INTRODUCER: Senator Hukill

SUBJECT: Trusts

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 478 amends the Florida Trust Code to ensure that the trust creator's or "settlor's" intent is paramount in trust interpretation, expand certain trustees' ability to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests, and further regulate the electronic provision of important trust documents.

The bill provides that the settlor's intent as paramount in trust interpretation. Historically, a trust was administered with the primary intent of accomplishing the intent of the settlor. Recent changes to trust law may be interpreted to require the administration of a trust for the benefit of the beneficiaries instead. This bill deletes language related to benefiting the beneficiaries and thus makes the intent of the settlor the primary intent of trust administration.

The bill provides that a beneficiary's actual knowledge that he or she has not received a trust accounting is not sufficient to begin the running of any limitations or laches period. Thus, the bill provides a longer period during which a beneficiary may hold a trustee responsible for a past-due accounting.

The bill also expands the state's decanting statute. Decanting is a trustee's power to cure or avoid issues with a trust by distributing trust property from one trust to a second trust, as opposed to distributing property directly to a beneficiary. The bill:

- Expands a trustee's ability to decant trust principal under the terms of the trust;
- Provides support for disabled beneficiaries; and
- Imposes greater notice requirements when a trustee exercises the ability to decant trust principal.

Finally, the bill includes several provisions to further regulate a trustee's providing documents to a beneficiary solely by posting them to a website or electronic account. These provisions include a requirement that the authorization signed by the recipient allowing documents to be

electronically delivered specifically indicate whether a trust accounting, trust disclosure statement, or limitation notice will be posted in this way. Also, the bill lengthens the timeframe during which a document provided solely through electronic posting must remain accessible to the recipient at the website or electronic account.

II. Present Situation:

Trusts in General

A trust is a legal instrument, into which a “settlor” places property in the care of a “trustee,” who administers the property according to the terms of the trust for the benefit of one or more “beneficiaries.” For example, a father might place \$100,000 in trust for the benefit of his children, the proceeds to be used only for their education, and appoint the father’s certified financial planner as the trustee.

Interpretive Principles for Trusts

A trust, like any other legal document, may be ambiguous at one or more points. Ambiguous trust language can lead to lawsuits where two persons with an interest in the trust interpret the language differently. In resolving the meaning of ambiguous trust language in these cases, it is a settled matter of this state’s case law that “the polestar of trust interpretation is the settlors’ intent.”¹

However, two statutes require trusts to be “for the benefit of the trust’s beneficiaries.”² Members of the Real Property, Probate, and Trust Law Section of the Florida Bar are concerned that courts, influenced by relevant law review articles, might appropriate these statutory provisions as an interpretive principle.³ Thus, the concern is that the settlor’s-intent principle of trust interpretation might be moderated or even replaced by a benefit-of-the-beneficiaries principle.

Trust “Decanting”

Under certain circumstances, a trustee may invade the corpus, or principal, of a trust to make distributions to a person. Similarly, under certain circumstances a trustee may instead place trust principal into another trust, which is often called “decanting.” A trustee who has been granted the “absolute power” to invade the principal of a trust in order to give it to one or more persons may instead place the trust principal into a second trust if:⁴

- The beneficiaries of the second trust are only those of the first trust; and
- The second trust does not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.

Additionally, if any contributions to the first trust qualified for a specified deduction for certain federal tax purposes, the trustee may decant only if the second trust does not contain any

¹ E.g., *L’Argent v. Barnett Bank, N.A.*, 730 So.2d 395, 397 (Fla.2d DCA 1999).

² Sections 736.0105(2)(c) and 736.0404, F.S.

³ Trust Law Committee, Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper: Proposed Revisions to ss. 736.0103, 736.0105 and 736.0404, Florida Statutes* (2017) (on file with the Senate Committee on Judiciary)

⁴ Section 736.04117(1)(a), F.S.

provision that, if contained in the first trust, would have prevented it from qualifying for the reduction, or would have decreased the size of the deduction.⁵

Statute of Limitations on Actions Against a Trustee

The law requires a trustee to give an accounting for the trust to its beneficiaries.⁶ Failure to give an accounting constitutes an actionable breach of trust.⁷ Current law, however, is not clear as to when the statute of limitations begins to run on a claim for a failure to account when the beneficiary is aware of the failure. Moreover, some believe that a 2015 appellate court opinion improperly truncated the period of limitations for bringing an action by a beneficiary for a trustee's failure to provide an accounting.⁸

Providing Documents and Notices Electronically

The Florida Trust Code requires trustees and others to provide each other several documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special requirements.⁹ These requirements appear to be intended to place recipients on clear notice of what specific documents will be provided electronically, how the recipient will be able to access the documents, and the time period in which the documents will be electronically accessible.

III. Effect of Proposed Changes:

Protecting Settlor's Intent (Sections 1, 2, and 4)

Section 1 amends s. 736.0103, F.S., to clarify that the "interests of the beneficiaries of a trust" means the beneficial interests *intended by the settlor* as provided in the terms of the trust. The bill deletes provisions of the Florida Trust Code which require that every trust and trust term be for the "benefit of the trust's beneficiaries." The Real Property, Probate, and Trust Law Section of The Florida Bar has recommended this change to ensure that courts will not look to this language as setting forth an interpretive principle for ambiguous trust terms. Sections 2 and 4 make analogous change to ss. 736.0105 and 736.0404, F.S.

Trust "Decanting" (Section 5)

The bill extensively amends s. 736.04117, F.S., pertaining to the decanting of trusts. Decanting a trust, in very general terms, involves a trustee taking the principal of a trust and putting it into one or more other trusts.

⁵ Section 736.04117(1)(a)3., F.S.

⁶ Section 736.0813, F.S.

⁷ See s. 735.1001(1)-(2), F.S.

⁸ The 2015 Opinion is that in *Corya v. Sanders*, 155 So.3d 1279 (Fla. 4th DCA 2015).

⁹ See s. 736.0109(3), F.S.

“Absolute Power” Not Necessary to Decant

Under current law, decanting may only be done by one who is expressly given “absolute power” to make principal distributions from the first trust. The bill creates a new type of trustee, called an “authorized trustee,”¹⁰ who may invade trust assets under the conditions set forth in the bill. The bill allows an authorized trustee with absolute power to invade the trust’s principal to appoint¹¹ all or part of the principal of the trust to a second trust if the beneficiaries of the second trust include only beneficiaries of the first trust and the second trust does not reduce any vested interest.¹² The second trust may:

- Retain a power of appointment granted in the first trust;
- Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;
- Create or modify a power of appointment if the power holder is a current beneficiary of the first trust;
- Create or modify a power of appointment if the power holder is a beneficiary of the first trust who is not a current beneficiary, but the exercise of the power of appointment may take effect only after the power holder becomes, or would have become if then living, a current beneficiary of the first trust; and
- Extend the term of the second trust beyond the term of the first trust.

The bill allows the class of permissible appointees in favor of which a created or modified power of appointment may be exercised may differ from the class identified in the first trust.

An authorized trustee who has non-absolute power under the first trust to distribute trust principal to a beneficiary may instead distribute that principal to one or more second trusts. However, if such authorized trustee exercises this power:

- The second trusts, in the aggregate, must grant each beneficiary of the first trust substantially similar interests as they had under the first trust;
- If the first trust grants a power of appointment to a beneficiary of the first trust, the second trust shall grant such power of appointment in the second trust to such beneficiary, and the class of permissible appointees shall be the same as in the first trust; and
- If the first trust does not grant a power of appointment to a beneficiary of the first trust, then the second trust may not grant a power of appointment in the second trust to such beneficiary.

The bill allows the second trust to extend beyond the term of the first trust. During the extended period, the second trust may give the trustee absolute power to invade the trust and may expand the class of permissible appointees.

¹⁰ The bill defines “authorized trustee” as a trustee, other than the settlor or a beneficiary, who has the power to invade the principal of a trust.”

¹¹ The power of appointment is the authority to designate recipients of beneficial interests in property.

¹² “Vested interest” is “a current unconditional right to receive a mandatory distribution of income, a specified dollar amount, or a percentage of value of a trust, or a current unconditional right to withdraw income, a specified dollar amount, or a percentage of value of a trust, which right is not subject to the occurrence of a specified event, the passage of a specified time, or the exercise of discretion.”

Authority of Authorized Trustee to Decant to Special Needs Trust

Even if an authorized trustee does not have absolute authority or does not have general authority to decant, the authorized trustee may be able to decant trust principal to a special needs trust. A special needs trust, very generally, is a one into which money can be placed for the benefit of a disabled person, permitting the person to maintain welfare eligibility, which might be lost if he or she were to hold the money outright.

Prohibited Distributions

The bill prohibits distributions from a trust that would prevent a contribution to a trust from qualifying for various federal tax deductions and exclusions.

Notice of Decanting

Under current law, a trustee who intends to decant must first give notice to the persons specified in statute. Under the bill, this notice must include a copy of the trust document for any second trust into which the principal from the first trust is to be placed.

The bill provides that a power to invade principal does not allow a trustee to increase the trustee's compensation or relieve the trustee from liability for breach of trust.

Statute of Limitations on Actions Against Trustee (Section 7)

Trustees are required to give an accounting for the trust to the beneficiaries.¹³ Failure to give an account constitutes an actionable breach of trust.¹⁴ In an action for a breach of trust based on the failure to provide an accounting, an issue that may arise is the applicable limitations period for bringing the action. The bill amends s. 736.1008(3), F.S., to state that a beneficiary's actual knowledge that he or she has not received a trust accounting is not sufficient to begin the running of the limitations period, which under current law would be 4 years from the date the beneficiary acquired the actual knowledge in question. Thus, the limitations periods set forth in existing s. 736.1008(6), F.S., which depending upon the circumstances may span several decades, would appear to govern how long a beneficiary has to bring such an action. The change is in response to the *Corya* decision that essentially held that a person's actual knowledge merely that he or she is a beneficiary and that he or she has not received an accounting is sufficient to begin the running of the 4-year limitations period.¹⁵

Providing Documents and Notices Electronically (Section 3)

The Florida Trust Code requires trustees and others to provide each other various documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special requirements

¹³ Section 736.0813, F.S.

¹⁴ See s. 736.1001(1)-(2), F.S.

¹⁵ Real Property, Probate and Trust Law Section of the Florida Bar, *White Paper: Proposed amendments of ss. 736.08135 and 736.1008, F.S., to clarify the period for which beneficiaries may compel trust accountings* (2017) (on file with the Senate Committee on Judiciary).

under the law.¹⁶ The bill amends the requirements as to documents that are provided to recipients *solely* through electronic posting and deemed sent for the purposes of the statute regulating methods of notice and waiver of notice.¹⁷

The bill provides that before documents can be posted on an electronic account, the recipient must sign an authorization solely for the purpose of allowing electronic posting. The authorization must specifically indicate whether a trust accounting, trust disclosure document, or limitation notice may be posted electronically and must generally indicate the other types of documents that will be posted. The bill provides that if a document is sent solely through electronic posting, the sender must comply with the law regarding electronic posting and has the burden of proving compliance if there is a dispute.

The bill modifies the timeframe during which a document provided solely through electronic posting must remain accessible to the recipient at the website or electronic account. Under current law, the period is 4 years from the date on which the document is deemed received. Under the bill, the recipient must be able to access and print or download these documents until the earlier of this date or 4 years after the date on which the recipient's access is terminated.¹⁸

Finally, if any recipient's access to the electronic account or website is terminated by the sender less than 4 years after the date the document was deemed received, the specified limitations periods in the trust limitations statute¹⁹ are tolled for any information "adequately disclosed in a document sent solely by electronic posting." Particularly, this tolling begins on the date the recipient's access was terminated by the sender and continues until 45 days after the sender provides notice of the termination by means other than electronic posting. The limitations periods are further tolled if after the electronic access is terminated, the person entitled to documents makes a request for documents to be provided by means other than electronic means. These provisions appear designed to mitigate the negative effect that the termination of access may have on the recipient's interests.

Other Provisions (Sections 6, 8)

Section 6 amends s. 736.08135, F.S., to provide that the provisions detailing the form and content of a trust accounting does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 8 provides that the changes to ss. 736.1008 and 736.08135, F.S., are remedial and intended to clarify existing law and apply retroactively.

Effective Date (Section 9)

The bill takes effect July 1, 2018.

¹⁶ See s. 736.0109(3), F.S.

¹⁷ Section 736.0109, F.S.

¹⁸ The termination of access does not invalidate the notice of sending of any document previously posted in accordance with s. 736.0109, F.S.

¹⁹ Section 736.1008(1),(2), F.S.

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. Other Constitutional Issues:

Section 8 of the bill states:

The changes to ss. 736.08135 and 736.1008, Florida Statutes, made by this act are intended to clarify existing law, are remedial in nature, and apply retroactively to all cases pending or commenced on or after July 1, 2018.

However, the Supreme Court has found that “[j]ust because the Legislature labels something as remedial . . . does not make it so.”²⁰ Accordingly, legislation that is labeled as remedial or procedural may instead be substantive. Regardless, legislation may not be applied retroactively if it “impairs vested rights, creates new obligations, or imposes new penalties.”²¹ Therefore, if a court found that section 6 or 7 of the bill did any of these prohibited things, the court would have to reject any retroactive application of these provisions.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under the bill, beneficiaries will have more time to file legal actions against trustees. Also, those entitled to receive trust documents electronically will have longer time periods to file legal actions related to those documents. Accordingly, the bill appears to increase the risk, and thus the associated potential costs, taken on by trustees.

²⁰ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla. 1955).

²¹ *See id.*

C. **Government Sector Impact:**

The Office of the State Courts Administrator has not provided its analysis of the impact of the bill on judicial workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 736.0103, 736.0105, 736.0109, 736.0404, 736.04117, 736.08135, and 736.1008.

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 Hukill

14-00174B-18

2018478__

1 A bill to be entitled
 2 An act relating to trusts; amending s. 736.0103, F.S.;
 3 redefining the term "interests of the beneficiaries";
 4 amending s. 736.0105, F.S.; deleting a requirement
 5 that a trust and its terms be for the benefit of the
 6 trust's beneficiaries; amending s. 736.0109, F.S.;
 7 revising provisions relating to notice or sending of
 8 trust documents to include posting on a secure
 9 electronic account or website; providing requirements
 10 for such documents to be deemed sent; requiring a
 11 certain authorization to specify documents subject to
 12 electronic posting; revising requirements for a
 13 recipient to electronically access such documents;
 14 prohibiting the termination of a recipient's
 15 electronic access to such documents from invalidating
 16 certain notice or sending of electronic trust
 17 documents; tolling specified limitations periods under
 18 certain circumstances; providing requirements for
 19 electronic access to such documents to be deemed
 20 terminated by a sender; providing construction;
 21 providing applicability; amending s. 736.0404, F.S.;
 22 deleting a restriction on the purpose for which a
 23 trust is created; amending s. 736.04117, F.S.;
 24 defining and redefining terms; authorizing an
 25 authorized trustee to appoint all or part of the
 26 principal of a trust to a second trust under certain
 27 circumstances; providing requirements for the second
 28 trust and its beneficiaries; authorizing the second
 29 trust to retain, omit, or create or modify specified

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30 powers; authorizing the term of the second trust to
 31 extend beyond the term of the first trust; authorizing
 32 the class of permissible appointees to the second
 33 trust to differ from the class identified in the first
 34 trust under certain circumstances; providing
 35 requirements for distributions to a second trust when
 36 the authorized trustee does not have absolute power;
 37 providing requirements for such second trust;
 38 providing requirements for grants of power of
 39 appointment by the second trust; authorizing a second
 40 trust created by an authorized trustee without
 41 absolute power to grant specified powers under certain
 42 circumstances; authorizing an authorized trustee to
 43 appoint the principal of a first trust to a
 44 supplemental needs trust under certain circumstances;
 45 providing requirements for such supplemental needs
 46 trust; prohibiting an authorized trustee from
 47 distributing the principal of a trust in a manner that
 48 would reduce specified tax benefits; prohibiting the
 49 distribution of S corporation stock from a first trust
 50 to a second trust under certain circumstances;
 51 prohibiting a settlor from being treated as the owner
 52 of a second trust if he or she was not treated as the
 53 owner of the first trust; prohibiting an authorized
 54 trustee from distributing a trust's interest in
 55 property to a second trust if the interest is subject
 56 to specified rules of the Internal Revenue Code;
 57 authorizing the exercise of power to invade a trust's
 58 principal to apply to a second trust created or

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59 administered under the law of any jurisdiction;
 60 prohibiting the exercise of power to invade a trust's
 61 principal to increase an authorized trustee's
 62 compensation or relieve him or her from certain
 63 liability; specifying who an authorized trustee must
 64 notify when he or she exercises his or her power to
 65 invade the trust's principal; specifying the documents
 66 that the authorized trustee must provide with such
 67 notice; amending s. 736.08135, F.S.; revising
 68 applicability; amending s. 736.1008, F.S.; clarifying
 69 that certain knowledge by a beneficiary does not cause
 70 a claim to accrue for breach of trust or commence the
 71 running of a period of limitations or laches;
 72 providing legislative intent; providing retroactive
 73 application; providing effective dates.

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

75 Section 1. Subsection (11) of section 736.0103, Florida
 76 Statutes, is amended to read:

77 736.0103 Definitions.—Unless the context otherwise
 78 requires, in this code:

79 (11) "Interests of the beneficiaries" means the beneficial
 80 interests intended by the settlor as provided in the terms of a
 81 the trust.

82 Section 2. Paragraph (c) of subsection (2) of section
 83 736.0105, Florida Statutes, is amended to read:

84 736.0105 Default and mandatory rules.—

85 (2) The terms of a trust prevail over any provision of this
 86
 87

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88 code except:

89 (c) ~~The requirement that a trust and its terms be for the~~
 90 ~~benefit of the trust's beneficiaries, and that the trust have a~~
 91 ~~purpose that is lawful, not contrary to public policy, and~~
 92 ~~possible to achieve.~~

93 Section 3. Subsections (1) and (3) of section 736.0109,
 94 Florida Statutes, are amended to read:

95 736.0109 Methods and waiver of notice.—

96 (1) Notice to a person under this code or the sending of a
 97 document to a person under this code must be accomplished in a
 98 manner reasonably suitable under the circumstances and likely to
 99 result in receipt of the notice or document. Permissible methods
 100 of notice or for sending a document include first-class mail,
 101 personal delivery, delivery to the person's last known place of
 102 residence or place of business, ~~or~~ a properly directed facsimile
 103 or other electronic message, or posting on a secure electronic
 104 account or website in accordance with subsection (3).

105 (3) A document that is sent solely by posting on an
 106 electronic account or website is not deemed sent for purposes of
 107 this section unless the sender complies with this subsection.
 108 The sender has the burden of proving compliance with this
 109 subsection ~~In addition to the methods listed in subsection (1)~~
 110 ~~for sending a document, a sender may post a document to a secure~~
 111 ~~electronic account or website where the document can be~~
 112 ~~accessed.~~

113 (a) ~~Before a document may be posted to an electronic~~
 114 ~~account or website,~~ The recipient must sign a separate written
 115 authorization solely for the purpose of authorizing the sender
 116 to post documents on an electronic account or website before

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117 such posting. The written authorization must:

118 1. Specifically indicate whether a trust accounting, trust
 119 disclosure document, or limitation notice, as those terms are
 120 defined in s. 736.1008(4), will be posted in this manner, and
 121 generally enumerate the other types of documents that may be
 122 posted in this manner.

123 2. Contain specific instructions for accessing the
 124 electronic account or website, including the security procedures
 125 required to access the electronic account or website, such as a
 126 username and password.

127 3. Advise the recipient that a separate notice will be sent
 128 when a document is posted on ~~to~~ the electronic account or
 129 website and the manner in which the separate notice will be
 130 sent.

131 4. Advise the recipient that the authorization to receive
 132 documents by electronic posting may be amended or revoked at any
 133 time and include specific instructions for revoking or amending
 134 the authorization, including the address designated for the
 135 purpose of receiving notice of the revocation or amendment.

136 5. Advise the recipient that posting a document on the
 137 electronic account or website may commence a limitations period
 138 as short as 6 months even if the recipient never actually
 139 accesses the electronic account, electronic website, or ~~the~~
 140 document.

141 (b) Once the recipient signs the written authorization, the
 142 sender must provide a separate notice to the recipient when a
 143 document is posted on ~~to~~ the electronic account or website. As
 144 used in this subsection, the term "separate notice" means a
 145 notice sent to the recipient by means other than electronic

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146 posting, which identifies each document posted to the electronic
 147 account or website and provides instructions for accessing the
 148 ~~posted~~ document. The separate notice requirement is deemed
 149 satisfied if the recipient accesses the document on the
 150 electronic account or website.

151 (c) A document sent by electronic posting is deemed
 152 received by the recipient on the earlier of the date on which
 153 ~~that~~ the separate notice is received or the date on which ~~that~~
 154 the recipient accesses the document on the electronic account or
 155 website.

156 (d) At least annually after a recipient signs a written
 157 authorization, a sender shall send a notice advising recipients
 158 who have authorized one or more documents to be posted on ~~to~~ an
 159 electronic account or website that such posting may commence a
 160 limitations period as short as 6 months even if the recipient
 161 never accesses the electronic account or website or the document
 162 and that authority to receive documents by electronic posting
 163 may be amended or revoked at any time. This notice must be given
 164 by means other than electronic posting and may not be
 165 accompanied by any other written communication. Failure to
 166 provide such notice within 380 days after the last notice is
 167 deemed to automatically revoke the authorization to receive
 168 documents in the manner permitted under this subsection 380 days
 169 after the last notice is sent.

170 (e) The notice required in paragraph (d) may be in
 171 substantially the following form: "You have authorized the
 172 receipt of documents through posting on ~~to~~ an electronic account
 173 or website on which ~~where~~ the documents can be accessed. This
 174 notice is being sent to advise you that a limitations period,

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175 which may be as short as 6 months, may be running as to matters
 176 disclosed in a trust accounting or other written report of a
 177 trustee posted to the electronic account or website even if you
 178 never actually access the electronic account or website or the
 179 documents. You may amend or revoke the authorization to receive
 180 documents by electronic posting at any time. If you have any
 181 questions, please consult your attorney."

182 (f) A sender may rely on the recipient's authorization
 183 until the recipient amends or revokes the authorization by
 184 sending a notice to the address designated for that purpose in
 185 the authorization or in the manner specified on the electronic
 186 account or website. The recipient, at any time, may amend or
 187 revoke an authorization to have documents posted on the
 188 electronic account or website.

189 (g) If a document is provided to a recipient solely through
 190 electronic posting pursuant to this subsection, the recipient
 191 must be able to access and print or download the document until
 192 the earlier of remain accessible to the recipient on the
 193 electronic account or website for at least 4 years after the
 194 date that the document is deemed received by the recipient or
 195 the date upon which the recipient's access to the electronic
 196 account or website is terminated for any reason.

197 1. If the recipient's access to the electronic account or
 198 website is terminated for any reason, such termination does not
 199 invalidate the notice or sending of any document previously
 200 posted on the electronic account or website in accordance with
 201 this subsection, but may toll the applicable limitations period
 202 as provided in subparagraph 2.

203 2. If the recipient's access to the electronic account or

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204 website is terminated by the sender sooner than 4 years after
 205 the date on which the document was received by the recipient,
 206 any applicable limitations period set forth in s. 736.1008(1) or
 207 (2) which is still running is tolled for any information
 208 adequately disclosed in a document sent solely by electronic
 209 posting, from the date on which the recipient's access to the
 210 electronic account or website was terminated by the sender until
 211 45 days after the date on which the sender provides one of the
 212 following to the recipient by means other than electronic
 213 posting:

214 a. Notice of such termination and notification to the
 215 recipient that he or she may request that any documents sent
 216 during the prior 4 years solely through electronic posting be
 217 provided to him or her by other means at no cost; or

218 b. Notice of such termination and notification to the
 219 recipient that his or her access to the electronic account or
 220 website has been restored.

221
 222 Any applicable limitations period is further tolled from the
 223 date on which any request is made pursuant to sub-subparagraph
 224 2.a. until 20 days after the date on which the requested
 225 documents are provided to the recipient by means other than
 226 electronic posting ~~The electronic account or website must allow~~
 227 ~~the recipient to download or print the document. This subsection~~
 228 ~~does not affect or alter the duties of a trustee to keep clear,~~
 229 ~~distinct, and accurate records pursuant to s. 736.0810 or affect~~
 230 ~~or alter the time periods for which the trustee must maintain~~
 231 ~~those records.~~

232 (h) For purposes of this subsection, access to an

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233 electronic account or website is terminated by the sender when
 234 the sender unilaterally terminates the recipient's ability to
 235 access the electronic website or account or to download or print
 236 any document posted on such website or account. Access is not
 237 terminated by the sender when access is terminated by an action
 238 of the recipient or by an action of the sender in response to
 239 the recipient's request to terminate access. The recipient's
 240 revocation of authorization pursuant to paragraph (f) is not
 241 considered a request to terminate access. To be effective, the
 242 posting of a document to an electronic account or website must
 243 be done in accordance with this subsection. The sender has the
 244 burden of establishing compliance with this subsection.

245 (i) This subsection does not affect or alter the duties of
 246 a trustee to keep clear, distinct, and accurate records pursuant
 247 to s. 736.0810 or affect or alter the time periods for which the
 248 trustee must maintain such records preclude the sending of a
 249 document by other means.

250 (j) This subsection governs the posting of a document
 251 solely for the purpose of giving notice under this code or the
 252 sending of a document to a person under this code and does not
 253 prohibit or otherwise apply to the posting of a document on an
 254 electronic account or website for any other purpose or preclude
 255 the sending of a document by any other means.

256 Section 4. Section 736.0404, Florida Statutes, is amended
 257 to read:

258 736.0404 Trust purposes.—A trust may be created only to the
 259 extent the purposes of the trust are lawful, not contrary to
 260 public policy, and possible to achieve. ~~A trust and its terms~~
 261 ~~must be for the benefit of its beneficiaries.~~

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262 Section 5. Effective upon becoming a law, section
 263 736.04117, Florida Statutes, is amended to read:

264 736.04117 Trustee's power to invade principal in trust.—

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

266 (a) "Absolute power" means ~~Unless the trust instrument~~
 267 ~~expressly provides otherwise, a trustee who has absolute power~~
 268 ~~under the terms of a trust to invade the principal of the trust,~~
 269 ~~referred to in this section as the "first trust," to make~~
 270 ~~distributions to or for the benefit of one or more persons may~~
 271 ~~instead exercise the power by appointing all or part of the~~
 272 ~~principal of the trust subject to the power in favor of a~~
 273 ~~trustee of another trust, referred to in this section as the~~
 274 ~~"second trust," for the current benefit of one or more of such~~
 275 ~~persons under the same trust instrument or under a different~~
 276 ~~trust instrument; provided:~~

277 1. ~~The beneficiaries of the second trust may include only~~
 278 ~~beneficiaries of the first trust;~~

279 2. ~~The second trust may not reduce any fixed income,~~
 280 ~~annuity, or unitrust interest in the assets of the first trust;~~
 281 ~~and~~

282 3. ~~If any contribution to the first trust qualified for a~~
 283 ~~marital or charitable deduction for federal income, gift, or~~
 284 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
 285 ~~amended, the second trust shall not contain any provision which,~~
 286 ~~if included in the first trust, would have prevented the first~~
 287 ~~trust from qualifying for such a deduction or would have reduced~~
 288 ~~the amount of such deduction.~~

289 (b) ~~For purposes of this subsection, an absolute power to~~
 290 ~~invade principal shall include a power to invade principal that~~

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291 is not limited to specific or ascertainable purposes, such as
 292 health, education, maintenance, and support, regardless of
 293 ~~whether or not~~ the term "absolute" is used. A power to invade
 294 principal for purposes such as best interests, welfare, comfort,
 295 or happiness constitutes ~~shall constitute~~ an absolute power not
 296 limited to specific or ascertainable purposes.

297 (b) "Authorized trustee" means a trustee, other than the
 298 settlor or a beneficiary, who has the power to invade the
 299 principal of a trust.

300 (c) "Beneficiary with a disability" means a beneficiary of
 301 the first trust who the authorized trustee believes may qualify
 302 for government benefits based on disability, regardless of
 303 whether the beneficiary currently receives those benefits or has
 304 been adjudicated incapacitated.

305 (d) "Current beneficiary" means a beneficiary who, on the
 306 date his or her qualification is determined, is a distributee or
 307 permissible distributee of trust income or principal. The term
 308 includes the holder of a presently exercisable general power of
 309 appointment but does not include a person who is a beneficiary
 310 only because he or she holds another power of appointment.

311 (e) "Government benefits" means financial aid or services
 312 from any state, federal, or other public agency.

313 (f) "Internal Revenue Code" means the Internal Revenue Code
 314 of 1986, as amended.

315 (g) "Power of appointment" has the same meaning as provided
 316 in s. 731.201.

317 (h) "Presently exercisable general power of appointment"
 318 means a power of appointment exercisable by the power holder at
 319 the relevant time. The term:

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320 1. Includes a power of appointment that is exercisable only
 321 after the occurrence of a specified event or that is subject to
 322 a specified restriction, but only after the event has occurred
 323 or the restriction has been satisfied.

324 2. Does not include a power of appointment that is
 325 exercisable only upon the death of the power holder.

326 (i) "Substantially similar" means that there is no material
 327 change in a beneficiary's beneficial interests or in the power
 328 to make distributions and that the power to make a distribution
 329 under a second trust for the benefit of a beneficiary who is an
 330 individual is substantially similar to the power under the first
 331 trust to make a distribution directly to the beneficiary. A
 332 distribution is deemed to be for the benefit of a beneficiary
 333 if:

334 1. The distribution is applied for the benefit of a
 335 beneficiary;

336 2. The beneficiary is under a legal disability or the
 337 trustee reasonably believes the beneficiary is incapacitated,
 338 and the distribution is made as permitted under this code; or

339 3. The distribution is made as permitted under the terms of
 340 the first trust instrument and the second trust instrument for
 341 the benefit of the beneficiary.

342 (j) "Supplemental needs trust" means a trust that the
 343 authorized trustee believes would not be considered a resource
 344 for purposes of determining whether the beneficiary who has a
 345 disability is eligible for government benefits.

346 (k) "Vested interest" means a current unconditional right
 347 to receive a mandatory distribution of income, a specified
 348 dollar amount, or a percentage of value of a trust, or a current

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349 unconditional right to withdraw income, a specified dollar
 350 amount, or a percentage of value of a trust, which right is not
 351 subject to the occurrence of a specified event, the passage of a
 352 specified time, or the exercise of discretion.

353 1. The term includes a presently exercisable general power
 354 of appointment.

355 2. The term does not include a beneficiary's interest in a
 356 trust if the trustee has discretion to make a distribution of
 357 trust property to a person other than such beneficiary.

358 (2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
 359 AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.-

360 (a) Unless a trust instrument expressly provides otherwise,
 361 an authorized trustee who has absolute power under the terms of
 362 the trust to invade its principal, referred to in this section
 363 as the "first trust," to make current distributions to or for
 364 the benefit of one or more beneficiaries may instead exercise
 365 such power by appointing all or part of the principal of the
 366 trust subject to such power in favor of a trustee of one or more
 367 other trusts, whether created under the same trust instrument as
 368 the first trust or a different trust instrument, including a
 369 trust instrument created for the purposes of exercising the
 370 power granted by this section, each referred to in this section
 371 as the "second trust," for the current benefit of one or more of
 372 such beneficiaries only if:

373 1. The beneficiaries of the second trust include only
 374 beneficiaries of the first trust; and

375 2. The second trust does not reduce any vested interest.

376 (b) In an exercise of absolute power, the second trust may:

377 1. Retain a power of appointment granted in the first

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378 trust;

379 2. Omit a power of appointment granted in the first trust,
 380 other than a presently exercisable general power of appointment;

381 3. Create or modify a power of appointment if the power
 382 holder is a current beneficiary of the first trust;

383 4. Create or modify a power of appointment if the power
 384 holder is a beneficiary of the first trust who is not a current
 385 beneficiary, but the exercise of the power of appointment may
 386 take effect only after the power holder becomes, or would have
 387 become if then living, a current beneficiary of the first trust;
 388 and

389 5. Extend the term of the second trust beyond the term of
 390 the first trust.

391 (c) The class of permissible appointees in favor of which a
 392 created or modified power of appointment may be exercised may
 393 differ from the class identified in the first trust.

394 (3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
 395 AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.-
 396 Unless the trust instrument expressly provides otherwise, an
 397 authorized trustee who has a power, other than an absolute
 398 power, under the terms of a first trust to invade principal to
 399 make current distributions to or for the benefit of one or more
 400 beneficiaries may instead exercise such power by appointing all
 401 or part of the principal of the first trust subject to such
 402 power in favor of a trustee of one or more second trusts. If the
 403 authorized trustee exercises such power:

404 (a) The second trusts, in the aggregate, shall grant each
 405 beneficiary of the first trust beneficial interests in the
 406 second trusts which are substantially similar to the beneficial

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407 interests of the beneficiary in the first trust.

408 (b) If the first trust grants a power of appointment to a
 409 beneficiary of the first trust, the second trust shall grant
 410 such power of appointment in the second trust to such
 411 beneficiary, and the class of permissible appointees shall be
 412 the same as in the first trust.

413 (c) If the first trust does not grant a power of
 414 appointment to a beneficiary of the first trust, the second
 415 trust may not grant a power of appointment in the second trust
 416 to such beneficiary.

417 (d) Notwithstanding paragraphs (a), (b), and (c), the term
 418 of the second trust may extend beyond the term of the first
 419 trust, and, for any period after the first trust would have
 420 otherwise terminated, in whole or in part, under the provisions
 421 of the first trust, the trust instrument of the second trust
 422 may, with respect to property subject to such extended term:

423 1. Include language providing the trustee with the absolute
 424 power to invade the principal of the second trust during such
 425 extended term; and

426 2. Create a power of appointment, if the power holder is a
 427 current beneficiary of the first trust, or expand the class of
 428 permissible appointees in favor of which a power of appointment
 429 may be exercised.

430 (4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS
 431 TRUST.-

432 (a) Notwithstanding subsections (2) and (3), unless the
 433 trust instrument expressly provides otherwise, an authorized
 434 trustee who has the power under the terms of a first trust to
 435 invade the principal of the first trust to make current

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436 distributions to or for the benefit of a beneficiary with a
 437 disability may instead exercise such power by appointing all or
 438 part of the principal of the first trust in favor of a trustee
 439 of a second trust that is a supplemental needs trust if:

440 1. The supplemental needs trust benefits the beneficiary
 441 with a disability;

442 2. The beneficiaries of the second trust include only
 443 beneficiaries of the first trust; and

444 3. The authorized trustee determines that the exercise of
 445 such power will further the purposes of the first trust.

446 (b) Except as affected by any change to the interests of
 447 the beneficiary with a disability, the second trusts, in the
 448 aggregate, shall grant each other beneficiary of the first trust
 449 beneficial interests in the second trusts which are
 450 substantially similar to such other beneficiary's beneficial
 451 interests in the first trust.

452 (5) PROHIBITED DISTRIBUTIONS.-

453 (a) An authorized trustee may not distribute the principal
 454 of a trust under this section in a manner that would prevent a
 455 contribution to that trust from qualifying for, or that would
 456 reduce a federal tax benefit, including a federal tax exclusion
 457 or deduction, which was originally claimed or could have been
 458 claimed for that contribution, including:

459 1. An exclusion under s. 2503(b) or s. 2503(c) of the
 460 Internal Revenue Code;

461 2. A marital deduction under s. 2056, s. 2056A, or s. 2523
 462 of the Internal Revenue Code;

463 3. A charitable deduction under s. 170(a), s. 642(c), s.
 464 2055(a), or s. 2522(a) of the Internal Revenue Code;

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465 4. Direct skip treatment under s. 2642(c) of the Internal
 466 Revenue Code; or
 467 5. Any other tax benefit for income, gift, estate, or
 468 generation-skipping transfer tax purposes under the Internal
 469 Revenue Code.
 470 (b) If S corporation stock is held in the first trust, an
 471 authorized trustee may not distribute all or part of that stock
 472 to a second trust that is not a permitted shareholder under s.
 473 1361(c) (2) of the Internal Revenue Code. If the first trust
 474 holds stock in an S corporation and is, or but for provisions of
 475 paragraphs (a), (c), and (d) would be, a qualified subchapter S
 476 trust within the meaning of s. 1361(d) of the Internal Revenue
 477 Code, the second trust instrument may not include or omit a term
 478 that prevents it from qualifying as a qualified subchapter S
 479 trust.
 480 (c) Except as provided in paragraphs (a), (b), and (d), an
 481 authorized trustee may distribute the principal of a first trust
 482 to a second trust regardless of whether the settlor is treated
 483 as the owner of either trust under ss. 671-679 of the Internal
 484 Revenue Code; however, if the settlor is not treated as the
 485 owner of the first trust, he or she may not be treated as the
 486 owner of the second trust unless he or she at all times has the
 487 power to cause the second trust to cease being treated as if it
 488 were owned by the settlor.
 489 (d) If an interest in property which is subject to the
 490 minimum distribution rules of s. 401(a) (9) of the Internal
 491 Revenue Code is held in trust, an authorized trustee may not
 492 distribute such an interest to a second trust under subsection
 493 (2), subsection (3), or subsection (4) if the distribution would

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494 shorten the otherwise applicable maximum distribution period.
 495 (6) EXERCISE BY WRITING.—The exercise of a power to invade
 496 principal under subsection (2), subsection (3), or subsection
 497 (4) must ~~The exercise of a power to invade principal under~~
 498 ~~subsection (1) shall~~ be by a written ~~an~~ instrument ~~in writing,~~
 499 signed and acknowledged by the authorized trustee, and filed
 500 with the records of the first trust.
 501 (7)(3) RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a
 502 power to invade principal under subsection (2), subsection (3),
 503 or subsection (4):
 504 (a) ~~(1) Is shall be~~ considered the exercise of a power of
 505 appointment, ~~excluding other than~~ a power to appoint to the
 506 authorized trustee, the authorized trustee's creditors, the
 507 authorized trustee's estate, or the creditors of the authorized
 508 trustee's estate.
 509 (b) ~~Is, and shall be~~ subject to the provisions of s.
 510 689.225 covering the time at which the permissible period of the
 511 rule against perpetuities begins and the law that determines the
 512 permissible period of the rule against perpetuities of the first
 513 trust.
 514 (c) May apply to a second trust created or administered
 515 under the law of any jurisdiction.
 516 (d) May not:
 517 1. Increase the authorized trustee's compensation beyond
 518 the compensation specified in the first trust instrument; or
 519 2. Relieve the authorized trustee from liability for breach
 520 of trust or provide for indemnification of the authorized
 521 trustee for any liability or claim to a greater extent than the
 522 first trust instrument; however, the exercise of the power may

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523 divide and reallocate fiduciary powers among fiduciaries and
 524 relieve a fiduciary from liability for an act or failure to act
 525 of another fiduciary as otherwise allowed under law or common
 526 law.

527 (8) NOTICE.—

528 (a)(4) The authorized trustee shall provide written
 529 notification of the manner in which he or she intends to
 530 exercise his or her power to invade principal to notify all
 531 qualified beneficiaries of the following parties first trust, in
 532 writing, at least 60 days before prior to the effective date of
 533 the authorized trustee's exercise of such power the trustee's
 534 power to invade principal pursuant to subsection (2), subsection
 535 (3), or subsection (4): (1), of the manner in which the trustee
 536 intends to exercise the power.

537 1. All qualified beneficiaries of the first trust.

538 2. If paragraph (5)(c) applies, the settlor of the first
 539 trust.

540 3. All trustees of the first trust.

541 4. Any person who has the power to remove or replace the
 542 authorized trustee of the first trust.

543 (b) The authorized A copy of the proposed instrument
 544 exercising the power shall satisfy the trustee's notice
 545 obligation to provide notice under this subsection is satisfied
 546 when he or she provides copies of the proposed instrument
 547 exercising the power, the trust instrument of the first trust,
 548 and the proposed trust instrument of the second trust.

549 (c) If all of those required to be notified qualified
 550 beneficiaries waive the notice period by signed written
 551 instrument delivered to the authorized trustee, the authorized

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552 trustee's power to invade principal shall be exercisable
 553 immediately.

554 (d) The authorized trustee's notice under this subsection
 555 does ~~shall~~ not limit the right of any beneficiary to object to
 556 the exercise of the authorized trustee's power to invade
 557 principal except as otherwise provided in other applicable
 558 provisions of this code.

559 (9)(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
 560 PROHIBITION.—The exercise of the power to invade principal under
 561 subsection (2), subsection (3), or subsection (4) (1) is not
 562 prohibited by a spendthrift clause or by a provision in the
 563 trust instrument that prohibits amendment or revocation of the
 564 trust.

565 (10)(6) NO DUTY TO EXERCISE.—Nothing in this section is
 566 intended to create or imply a duty to exercise a power to invade
 567 principal, and no inference of impropriety may ~~shall~~ be made as
 568 a result of an authorized trustee's failure to exercise a
 569 trustee not exercising the power to invade principal conferred
 570 under subsections (2), (3), and (4) subsection (1).

571 (11)(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS.—The provisions
 572 of This section may ~~shall~~ not be construed to abridge the right
 573 of any trustee who has a power of invasion to appoint property
 574 in further trust that arises under the terms of the first trust
 575 or under any other section of this code or under another
 576 provision of law or under common law.

577 Section 6. Subsection (3) of section 736.08135, Florida
 578 Statutes, is amended to read:

579 736.08135 Trust accountings.—

580 (3) Subsections (1) and (2) govern the form and content of

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581 ~~This section applies to~~ all trust accountings rendered for any
 582 accounting periods beginning on or after January 1, 2003, and
 583 all trust accountings rendered on or after July 1, 2018. This
 584 subsection does not affect the beginning period from which a
 585 trustee is required to render a trust accounting.

586 Section 7. Subsection (3) of section 736.1008, Florida
 587 Statutes, is amended to read:

588 736.1008 Limitations on proceedings against trustees.—

589 (3) When a trustee has not issued a final trust accounting
 590 or has not given written notice to the beneficiary of the
 591 availability of the trust records for examination and that
 592 claims with respect to matters not adequately disclosed may be
 593 barred, a claim against the trustee for breach of trust based on
 594 a matter not adequately disclosed in a trust disclosure document
 595 is barred as provided in chapter 95 and accrues when the
 596 beneficiary has actual knowledge of:

597 (a) The facts upon which the claim is based, if such actual
 598 knowledge is established by clear and convincing evidence; or

599 (b) The trustee's repudiation of the trust or adverse
 600 possession of trust assets.

601

602 Paragraph (a) applies to claims based upon acts or omissions
 603 occurring on or after July 1, 2008. A beneficiary's actual
 604 knowledge that he or she has not received a trust accounting
 605 does not cause a claim to accrue against the trustee for breach
 606 of trust based upon the failure to provide a trust accounting
 607 required by s. 736.0813 or former s. 737.303 and does not
 608 commence the running of any period of limitations or laches for
 609 such a claim, and paragraph (a) and chapter 95 do not bar any

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610 such claim.

611 Section 8. The changes to ss. 736.08135 and 736.1008,
 612 Florida Statutes, made by this act are intended to clarify
 613 existing law, are remedial in nature, and apply retroactively to
 614 all cases pending or commenced on or after July 1, 2018.

615 Section 9. Except as otherwise provided in this act and
 616 except for this section, which shall take effect upon becoming a
 617 law, this act shall take effect July 1, 2018.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Chair*
Appropriations Subcommittee on the
Environment and Natural Resources, *Vice Chair*
Regulated Industries, *Vice Chair*
Agriculture
Environmental Preservation and Conservation
Health Policy
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
14th District

January 10, 2018

The Honorable Anitere Flores
404 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 478; Trusts

Dear Chairman Flores:

Senate Bill 478, relating to Trusts, has been referred to the Senate Committee on Banking and Insurance. I respectfully request that SB 478 be placed on the committee agenda at your earliest possible convenience.

Should you need any additional information, please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

Dorothy L. Hukill
State Senator, District 14

Cc: James Knudson, Staff Director, Senate Committee on Banking and Insurance
Sheri Green, Committee Administrative Assistant, Senate Committee on Banking and Insurance

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- 434 Delannoy Avenue, Suite 204, Cocoa, Florida 32922 (321) 634-3549
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/30/18

Meeting Date

SB 478

Bill Number (if applicable)

Topic TRUSTS

Name KENNETH PRATT

Job Title SENIOR VP OF GOVERNMENTAL AFFAIRS

Address 1001 THOMASVILLE RD, STE 201

Street

Phone 850-509-8020

TALLAHASSEE

FL

32301

City

State

Zip

Email kpratt@floridabankers.com

Speaking: [] For [] Against [] Information

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

Representing FLORIDA BANKERS ASSOCIATION

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/30/18
Meeting Date

478
Bill Number (if applicable)

Topic Trusts

Amendment Barcode (if applicable)

Name Brittany Finkbeiner

Job Title Attorney

Address 215 S. Monroe St. Ste. 815
Street

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Tallahassee FL 32301
City State Zip

Email b.finkbeiner@deanmad.com

Speaking: For Against Information

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

Representing Real Property, Probate + Trust Law Section of FL Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Banking and Insurance

BILL: SB 676

INTRODUCER: Senator Passidomo

SUBJECT: Equitable Distribution of Marital Assets and Liabilities

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 676 amends the categories of “marital assets and liabilities” that may be equitably distributed during divorce proceedings in response to the Florida Supreme Court’s 2010 decision in *Kaaa v. Kaaa*. The bill partially codifies the *Kaaa* decision by expressly including the passive appreciation of real property owned by only one spouse as an asset that may be distributed between the spouses if marital funds are used to pay down the property’s mortgage principal.

However, the bill partially overrules the *Kaaa* decision in two ways. First, the bill provides that a nonowner spouse does not also have to actively contribute to the appreciation of the home in order to be entitled to passive appreciation. Rather, it is sufficient that marital funds are used to pay down the mortgage. Second, the bill replaces the calculation method set out in *Kaaa* with a three-step calculation method incorporating a “coverture fraction” designed to measure the parties’ actual marital contributions in paying down the mortgage.

Finally, with respect to any marital property that is equitably distributed, the bill authorizes the courts to recognize the time value of money in determining the amount of installment payments to be paid by one party to another. This may include requiring the party responsible for payments to provide security and a reasonable rate of interest or something similar.

II. Present Situation:

Statutory Framework for the Equitable Distribution of Marital Assets and Liabilities

When a couple divorces in Florida, assets (i.e., property) and liabilities (i.e., debts) acquired by the couple during the marriage are subject to “equitable distribution.”¹ Equitable distribution is

¹ Section 61.075, F.S.

based on the premise that “marriage is a partnership”² and the assets and liabilities acquired *during* the marriage belong to both spouses equally. Thus, Florida courts “must begin with the premise that the distribution” of marital assets and liabilities to divorcing spouses “should be equal.”³

Under Florida law, “marital assets and liabilities” generally include:

- Assets and liabilities acquired or incurred by either spouse during the marriage.⁴
- The appreciation in value of a nonmarital asset as a result of “either” the efforts or marital labor “of either party during the marriage” or from the contribution of marital funds, “or both.”⁵
- Gifts from one spouse to the other during the marriage.⁶
- Vested and non-vested retirement and insurance benefits that accrued during the marriage.⁷
- Real property held as tenants by the entirety during the marriage.⁸
- Jointly titled personal property held as tenants by the entirety during the marriage.⁹

However, Florida has a dual-property system, meaning “[t]he property of the parties is categorized either as ‘marital property,’ which can be equitably divided by the court at divorce, or ‘separate property,’ which is not subject to division.”¹⁰ Florida law refers to separate property as “nonmarital assets and liabilities.”¹¹

Nonmarital assets and liabilities generally include:

- Assets (property) or liabilities (debts) acquired *prior* to the marriage.¹²
- Gifts or an inheritance received separately by one spouse from a third party.¹³
- All income from nonmarital assets during the marriage (for example, income derived from renting a nonmarital home when deposited into a separate bank account) unless the income was treated as or relied on as a marital asset by the parties (for example, the income derived from renting a nonmarital home is deposited into a joint bank account and relied upon by both spouses as income).¹⁴

² Emily Osborn, *The Treatment of Unearned Separate Property at Divorce in Common Law Property Jurisdictions*, 1990 Wis. L. Rev. 903, 909 (1990) (noting Florida enacted uniform model legislation).

³ Section 61.075(1), F.S.; *see also* Osborn, *supra* note 1, at 909-10 & n. 32.

⁴ Section 61.075(6)(a)1.a., F.S. *See also Rosenfeld v. Rosenfeld*, 597 So.2d 835, 837 (Fla.3d DCA 1992) (stating that once the spouses married, “each spouse’s income during the marriage was marital income.”).

⁵ Section 61.075(6)(a)1.b., F.S.

⁶ Section 61.075(6)(a)1.c., F.S.

⁷ Section 61.075(6)(a)1.d., F.S.

⁸ Section 61.075(6)(a)2., F.S.

⁹ Section 61.075(6)(a)3., F.S. The presumption that gifts and jointly held real and personal property are marital assets may be rebutted by the spouse claiming they are not marital property. s. 61.075(6)(a)2.-4., F.S.

¹⁰ Osborn, *supra* note 1, at 910.

¹¹ Section 61.075(6)(b), F.S.

¹² Section 61.075(6)(b)1., F.S. If the asset or liability is exchanged to acquire a new asset or incur a new liability, the new asset or liability will also be deemed nonmarital. *Id.*

¹³ Section 61.075(6)(b)2., F.S. If the gift or bequest is exchanged to acquire a new asset, the asset will be deemed nonmarital property. *Id.*

¹⁴ Section 61.075(b)(b)3., F.S.

- Assets and liabilities excluded from marital property by agreement (for example, a prenuptial agreement).¹⁵
- Any liability incurred where one spouse forges the signature of the other spouse without authorization.¹⁶

Equitable Distribution of Passive Home Value Appreciation to the Nonowner Spouse under *Kaaa*¹⁷

In the case of *Kaaa v. Kaaa*, the Florida Supreme Court addressed how to calculate one specific type of marital asset: the appreciation of a nonmarital real property through either marital funds or marital effort or both.¹⁸ The *Kaaa* Court held that, when marital funds are used to pay the mortgage on a home, a nonowner spouse may be entitled to half of not only the active appreciation in value of the home, but also the *passive* appreciation in the value of the home during the marriage.¹⁹ Passive appreciation of a home is the increase in the value of the home caused by market forces (such as inflation),²⁰ whereas the active appreciation of a home is caused by the actions of the owner or nonowner spouse (such as reducing the mortgage principal, renovating a kitchen, or adding a carport).²¹

The Facts of Kaaa

Mr. and Mrs. Kaaa were married for 27 years. They lived in a home purchased only six months prior to the marriage by the former husband, Mr. Kaaa.²² During those 27 years, the home had passively increased in value from its original purchase price of \$36,500 in 1980, to \$225,000 in 2007. When he purchased the home, Mr. Kaaa made a \$2,000 down payment and secured a mortgage to finance the rest of the purchase price. The mortgage was refinanced multiple times during the marriage. The mortgage was paid by marital funds throughout the marriage, and at the time of divorce, the mortgage principal had been reduced by \$22,279, leaving a \$12,871 balance. Additionally, marital funds were used to add a carport, which increased the value of the home by \$14,400. However, Mrs. Kaaa, the former wife, was never granted any legal interest in the home even though the home was refinanced several times during the marriage. Thus, because the home was titled only to Mr. Kaaa, the home was determined to be his separate, nonmarital property.²³

¹⁵ Section 61.075(b)(b)4., F.S. If the excluded asset or liability is exchanged to acquire a new asset or incur a new liability, the new asset or liability is likewise excluded as marital property.

¹⁶ Section 61.075(b)(b)5., F.S.

¹⁷ 58 So.3d 867 (Fla. 2010).

¹⁸ *Kaaa*, 58 So.3d at 872 (addressing how to determine an award of passive appreciation). The applicable provision was renumbered after *Kaaa* from s. 61.075(5)(a)(2), F.S. to s. 61.075(6)(a)1.b., F.S.

¹⁹ *Id.* at 870-71 (“we conclude that the passive appreciation of a nonmarital asset, such as the Kaaa’s marital home, is properly considered a marital asset where marital funds or the efforts of either party contributed to the appreciation . . . We agree with the reasoning in *Stevens* to the extent that it concludes that the payment of the *mortgage* with marital funds subjected the passive appreciation to equitable distribution. However, we emphasize here that it is the passive appreciation in the value of the home that is the marital asset, not the home itself.”)

²⁰ *Id.* at 869-70.

²¹ See generally *Mitchell v. Mitchell*, 841 So.2d 564, 567 (Fla.2d DCA 2003) (“the enhancement in value of a nonmarital asset resulting from either party’s nonpassive efforts or the expenditure of marital funds is a marital asset”) (*overruled sub silentio* by *Kaaa*, 58 So.3d at 870).

²² *Kaaa*, 58 So.3d at 869.

²³ *Id.*

During the divorce proceedings, the nonowner spouse, Mrs. Kaaa, argued that she was entitled not only to half of the active appreciation in the value of the home (pay down of the mortgage principal and addition of the carport), but also the passive appreciation of the home during the 27-year marriage (increase from \$36,500 to \$225,000). However, the trial court held that she was only entitled to half of the active appreciation. The active appreciation was only \$36,679 (\$22,279 mortgage amount paid + \$14,400 for carport), so Mrs. Kaaa's half share was only \$18,339.50.²⁴

Mrs. Kaaa appealed. On appeal, the Second District Court of Appeal affirmed the trial court's order awarding Mrs. Kaaa only active appreciation.²⁵ But the Second District certified conflict with a decision of the First District Court of Appeal, *Stevens v. Stevens*,²⁶ which held that passive appreciation may be treated as a marital asset subject to distribution.²⁷ The *Stevens* case also set out a fraction to calculate each former spouses' portion of the home's passive appreciation.²⁸

Calculating Passive Appreciation under Kaaa

On review by the Florida Supreme Court, first, the Court reversed the Second District's *Kaaa* decision²⁹ and approved the holding in *Stevens*, that a nonowner spouse may be entitled to a portion of the value of passive appreciation of a home when marital funds paid the mortgage.³⁰ Second, the Court explained how to calculate the amount of passive appreciation to be equitably distributed and set out the following steps the trial court must take, which incorporates a fraction set out in *Stevens*:

- 1.) Determine the overall fair market value of the home.
- 2.) Determine whether there is passive appreciation in the home's value.
- 3.) Determine whether the passive appreciation is a marital asset. The *Kaaa* Court further announced that the trial court must make the following factual findings under this step:
 - (a) whether marital funds were used to pay the mortgage;
 - (b) whether the nonowner spouse made contributions to the property; and
 - (c) the extent to which the contributions of the nonowner spouse affected the appreciation of the property.³¹
- 4.) Determine the value of the passive appreciation subject to equitable distribution. Under this step, the *Kaaa* Court announced that courts should utilize the fraction set out in *Stevens* to allocate the value of passive appreciation when the mortgage on nonmarital real property is repaid entirely by marital funds.³²

²⁴ *Id.*

²⁵ *Kaaa v. Kaaa*, 9 So.3d 756, 757 (Fla.2d DCA 2009).

²⁶ *Id.*; *Stevens v. Stevens*, 651 So.2d 1306 (Fla. 1st DCA 1995).

²⁷ *Id.* at 1307.

²⁸ *Id.*

²⁹ *Kaaa v. Kaaa*, 9 So.3d 756, 757 (Fla.2d DCA 2009).

³⁰ *Kaaa*, 58 So.3d at 871.

³¹ *Id.* at 872.

³² *Id.*

$$\begin{aligned} \text{\% of Passive Appreciation Subject to Distribution} &= \left(\frac{\text{Amount of mortgage on real property at time of marriage}}{\text{Value of real property at time of marriage}} \right) \\ \text{Total Amount of Passive Appreciation to be Divided Equally} &= \left(\text{\% of Passive Appreciation Subject to Distribution} \times \text{Amount of real property's Passive Appreciation at time of divorce} \right) - \text{Unpaid mortgage balance at time of divorce} \end{aligned}$$

The Florida Supreme Court remanded the case to the trial court to do the math, so the ultimate result is unknown. But applying the fraction above to the known numbers in the *Kaaa* case, the result appears to be that Mrs. Kaaa would have been entitled to \$83,102 for passive appreciation:

$$\begin{aligned} \text{95\% of Kaaa Passive Appreciation Subject to Distribution} &= \left(\frac{\$34,500 \text{ (amount of Kaaa mortgage on home at time of marriage in 1980)}}{\$36,500 \text{ (value of Kaaa home at time of marriage)}} \right) \\ \text{\$166,204 Total Amount of Kaaa Passive Appreciation to be divided equally} &= \left(95\% \times \begin{matrix} \$188,500 \\ (\$225,000 \text{ ('07)} \\ - \$36,500 \text{ ('80))} \end{matrix} \right) - \$12,871 \text{ (mortgage balance at time of divorce)} \\ \text{Mrs. Kaaa's } \frac{1}{2} \text{ portion of passive appreciation:} &= \$83,102 \end{aligned}$$

Adding together Mrs. Kaaa’s share of the passive appreciation (\$83,102) to her share of the active appreciation based on the pay down of the mortgage and the carport renovation (\$18,339.50), Mrs. Kaaa’s share of the home value appreciation may have been around \$101,441.50. This combined total amount of appreciation is approximately 45 percent of the home’s fair market value.

The Florida Bar Family Law Section’s Concern with the *Kaaa*³³ Formulation

While The Florida Bar Family Law Section (Section) agrees with *Kaaa*’s holding that a nonowner spouse should be entitled to some portion of the passive appreciation value when the mortgage on a real property is paid down with marital funds, the Section is concerned about the

³³ 58 So.3d 867 (Fla. 2010).

formula set out in *Kaaa*. The Section views the *Kaaa* formula as arbitrary because it fails to take into account the actual contributions of each party in paying down the mortgage during the marriage. The Section proposes, instead, that a “coverture fraction” be utilized in place of the *Stevens* fraction adopted by *Kaaa*, which replaces the numerator (top number) with the amount of mortgage principal paid down *during* the marriage.³⁴

$$\begin{array}{l} \text{\% of Passive} \\ \text{Appreciation} \\ \text{Subject to} \\ \text{Distribution} \end{array} = \left(\frac{\text{Total payment of mortgage} \\ \text{principal from marital funds} \\ \text{during marriage}}{\text{Value of real property at time} \\ \text{of marriage or of mortgage}} \right)$$

In Florida, coverture³⁵ fractions are often used in determining a spouse’s marital share of military and pension or retirement benefits, which are viewed as moving targets since these benefits may increase or decrease based on the markets.³⁶ In the retirement context, “[t]he coverture fraction is the proportion of years worked during the marriage to total number of years worked.”³⁷ “The numerator [top number] represents that portion of the benefit, enhanced or not, that was legally and beneficially acquired during the marriage.”³⁸ “The denominator [bottom number] is the total number of years worked up to retirement.”³⁹ “The longer the employee spouse works, the larger the denominator [of the coverture fraction], thus reducing the non-employee spouse’s percentage share and assuring the employee spouse the benefits of his or her post-divorce labors.”⁴⁰

A coverture fraction generally works the same outside the retirement context. It is a specifically tailored fraction based on the divorcing couple’s particular circumstances that aims to insure “that the equitable distribution pot includes only that portion of the working spouse’s labor which constitutes a ‘shared enterprise.’”⁴¹ Generally, large denominators [bottom numbers] favor the owner spouse, whereas large numerators [top numbers] favor nonowner spouses.⁴²

³⁴ Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of The Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).

³⁵ “Coverture is by law applied to the state and condition of a married woman, who is *sub potestati viri*, (under the power of her husband) and therefore unable to contract with any to the damage of herself or husband, without his consent and privity, or his allowance and confirmation thereof.” BLACK’S LAW DICTIONARY (10th ed. 2014) (citing *The Pocket Lawyer and Family Conveyancer* 96 (3d ed. 1833)).

³⁶ See *Parry v. Parry*, 933 So.2d 9, 14 (Fla. 2d DCA 2006); *In re Marriage of Hug*, 201 Cal. Rptr. 676, 681 (Ct. App. 1984). See also JERRY REISS & KDOUGLAS H. REYNOLDS, *The Not-So-Simple Coverture Fraction: Do Attorneys Risk More Than Embittered Clients?*, Fla. B.J., MAY 1996, at 62, 63

³⁷ *Eisenhardt v. Eisenhardt*, 740 A.2d 164, 166 (App. Div. 1999).

³⁸ *Id.* (citations and internal quotation marks omitted).

³⁹ *Id.*

⁴⁰ *Barr v. Barr*, 11 A.3d 875, 884 (App. Div. 2011). (quoting *Reinbold v Reinbold*, 710 A.2d 556 (App. Div.1998)).

⁴¹ (quoting *Eisenhardt* at 581).

⁴² David Clayton Conrad, *The Complete QDRO Handbook, Dividing ERISA, Military, and Civil Service Pensions and Collecting Child Support from Employee Benefit Plans*, p. 53, American Bar Association, Section of Family Law, (3d ed. 2009), available at

https://books.google.com/books?id=huTtOPnR318C&pg=PA57&lpg=PA57&dq=simple+definition+coverture+fraction&source=bl&ots=cj8On51Qu7&sig=9oaLHheB_HQ7Fa7-O4gtZf616aA&hl=en&sa=X&ved=0ahUKEwiH9euM5qrYAhXLS98KHZVJAeY4ChDoAQhEMAU#v=onepage&q=simple%20definition%20coverture%20fraction&f=false (last visited Dec. 27, 2017).

According to the Section, the proposed coverture fraction is designed to measure the actual marital contributions of each party in paying down the mortgage during the marriage when measuring passive appreciation. The Section believes the formula is more fair and equitable to the owner spouse. While the nonowner spouse may receive much less under the coverture formula than the *Kaaa* formula, the Section notes that the coverture formula *only* applies to passive appreciation (market forces and inflation), and that the nonowner spouse is still entitled to a 50 percent share of active appreciation.⁴³

Additionally, the Section notes that the removal of the word “either” in the current statutory definition of “marital assets and liabilities” further ensures that a nonowner spouse does not *actively* have to contribute anything financially to be entitled to passive appreciation, as suggested by *Kaaa*.⁴⁴ Rather, all income earned *during* the marriage, even if earned by only one spouse, is marital income, and all contributions towards the home during the marriage, even if contributed by only one spouse, are deemed marital labor.⁴⁵

III. Effect of Proposed Changes:

The bill amends the categories of “marital assets and liabilities” that may be divided between divorcing spouses to partially codify the Florida Supreme Court’s 2010 *Kaaa* decision, by specifically including the situation addressed in *Kaaa*—where “marital funds” were used to help pay down the mortgage principal on a separate, nonmarital home.

The bill also partially overrules the *Kaaa* decision in two ways. First, the bill removes the word “either” in defining appreciation as a marital asset to clarify that a nonowner spouse does not have to actively contribute to the appreciation of the home in order to be entitled to passive appreciation. Second, to determine the amount of passive appreciation subject to distribution, the bill replaces the calculation method and *Stevens* fraction set out in *Kaaa* with a three-step calculation method incorporating a “coverture fraction.”

⁴³ Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of the Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).

⁴⁴ *Kaaa v. Kaaa*, 58 So.3d at 872 (“Third, the court must determine whether the passive appreciation is a marital asset under section 61.075(5)(a)(2). This step must include findings of fact by the trial court that marital funds were used to pay the mortgage *and* that the nonowner spouse made contributions to the property.”) (emphasis added).

⁴⁵ Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of the Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).

The calculation set out in the bill consists of three steps:

Proposed Bill: Step 1 – Determine Amount of Passive Appreciation

$$\begin{array}{r}
 \text{Property Value on} \\
 \text{divorce date} \\
 \quad (- \text{ Active appreciation}) \\
 \quad (- \text{ Additional encumbrances}) \\
 \\
 - \text{ Gross Value on Date} \\
 \text{of Marriage} \\
 \hline
 = \text{ *Amount of Passive} \\
 \text{Appreciation}
 \end{array}$$

Proposed Bill: Step 2 –Use Coverture Formula to Find % of Real Property’s Passive Appreciation Value Accrued During Marriage, Subject to Equitable Distribution

$$\begin{array}{l}
 \% \text{ of Passive} \\
 \text{Appreciation} \\
 \text{Subject to} \\
 \text{Distribution}
 \end{array}
 = \left(\frac{\text{Total payment of mortgage} \\
 \text{principal from marital funds} \\
 \text{during marriage}}{\text{Value of real property at time} \\
 \text{of marriage or of mortgage}} \right)$$

Proposed Bill: Step 3 – Multiply Step 1 Answer and Step 2 Answer to Determine Amount of Passive Appreciation to be Divided Equally Among Spouses

$$\begin{array}{l}
 \text{Value of Passive} \\
 \text{Appreciation} \\
 \text{Divided 50/50} \\
 \text{between} \\
 \text{Spouses}
 \end{array}
 = \left(\begin{array}{l} \% \text{ of Value of} \\ \text{Passive} \\ \text{Appreciation} \end{array} \times \begin{array}{l} \text{*Amount of} \\ \text{Real Property's} \\ \text{Passive} \\ \text{Appreciation} \end{array} \right)$$

For example, applying the three-step calculation above to the *Kaaa* numbers, Mrs. Kaaa would have been entitled to 50 percent less passive appreciation:

Step 1:

$$\begin{array}{r}
 \$225,000 \text{ Property Value on divorce date} \\
 \quad (- \$36,679 \text{ Active appreciation}) \\
 \quad (- \$12,871 \text{ Additional encumbrances (mortgage balance)}) \\
 \\
 - \$36,500 \text{ Gross Value on Date of Marriage} \\
 \hline
 = \$138,950 \text{ *Amount of Passive Appreciation}
 \end{array}$$

Step 2:

$$\begin{array}{l}
 .61 \text{ or } 61\% \text{ of} \\
 \text{Passive} \\
 \text{Appreciation} \\
 \text{Subject to} \\
 \text{Distribution}
 \end{array}
 = \left(\frac{\$22,279 \text{ Total payment of} \\
 \text{mortgage principal from} \\
 \text{marital funds during marriage}}{\$36,500 \text{ Value of home at time} \\
 \text{of marriage or of mortgage}} \right)$$

Step 3:

$$\begin{array}{l}
 \$84,759.50 \\
 \text{Passive} \\
 \text{Appreciation} \\
 \text{Divided } 50/50 \\
 \text{between Spouses}
 \end{array}
 = \left(\begin{array}{l}
 .61 \text{ Value of} \\
 \text{Passive} \\
 \text{Appreciation}
 \end{array} \times \begin{array}{l}
 *\$138,950 \\
 \text{Amount of} \\
 \text{Home's Passive} \\
 \text{Appreciation}
 \end{array} \right)$$

Thus, Mrs. Kaaa was entitled to \$83,102 under *Kaaa* but only \$42,379.75 under the new calculation method and coverture formula.

The bill also provides that the courts must apply the new calculation method and coverture formula *unless* a party makes a showing that it would be inequitable to apply the calculation under the circumstances. Thus, returning to the *Kaaa* case by way of example, Mrs. Kaaa could argue that the result of applying the new calculation method and coverture formula would be inequitable in light of her 27-year marriage and loss of her marital home, and the court could agree and equitably distribute the home’s appreciation value in a different way.

Additionally, the bill authorizes the court to require a person who is ordered to make installment payments as part of the equitable distribution of any marital assets and liabilities to provide security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. The bill does not preclude the intended recipient of the installment payments from taking action under the procedures to enforce a judgment, in chapter 55, F.S., to collect any funds from a person who fails to make the court-ordered payments.

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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill is likely to have limited impact since it only applies in cases where one spouse owns a separate piece of property that has both appreciated in value and has a mortgage paid down by marital funds. In those limited cases, it appears that the nonowner spouse will receive a much smaller percentage of the passive appreciation under the new calculation method and coverture fraction. However, the bill entitles more nonowner spouses to a portion of the passive appreciation by no longer requiring the nonowner spouse to make active contributions to the property as a prerequisite. Additionally, if a party shows that application of the coverture formula would be inequitable under the circumstances, a court may decide to allocate the passive appreciation differently.

C. Government Sector Impact:

The state court system has not provided information on the fiscal impact of the bill to committee staff. However, the bill appears unlikely to add significantly to the workload of the courts because the courts already calculate and allocate any passive appreciation in divorce cases under the *Kaaa* formulation.

VI. Technical Deficiencies:

Line 40 of the bill refers to the “*gross value* of the property on the date of the marriage or date the property is acquired...” Line 42 refers to the “*value* of the property on the valuation date in the dissolution action...” If the two different words are intended to refer to the same method of determining value, then the same term should be used in both instances.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 61.075 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Passidomo

28-00819-18

2018676__

1 A bill to be entitled
 2 An act relating to equitable distribution of marital
 3 assets and liabilities; amending s. 61.075, F.S.;
 4 redefining the term "marital assets and liabilities"
 5 for purposes of equitable distribution in dissolution
 6 of marriage actions; providing that the term includes
 7 the paydown of principal of notes and mortgages
 8 secured by nonmarital real property and certain
 9 passive appreciation in such property under certain
 10 circumstances; providing formulas and guidelines for
 11 determining the amount of such passive appreciation;
 12 authorizing the court to require security and interest
 13 when installment payments are ordered in the division
 14 of assets; providing applicability; providing an
 15 effective date.
 16
 17 Be It Enacted by the Legislature of the State of Florida:
 18
 19 Section 1. Paragraph (a) of subsection (6) and subsection
 20 (10) of section 61.075, Florida Statutes, are amended to read:
 21 61.075 Equitable distribution of marital assets and
 22 liabilities.—
 23 (6) As used in this section:
 24 (a)1. "Marital assets and liabilities" include:
 25 a. Assets acquired and liabilities incurred during the
 26 marriage, individually by either spouse or jointly by them.
 27 b. The enhancement in value and appreciation of nonmarital
 28 assets resulting ~~either~~ from the efforts of either party during
 29 the marriage or from the contribution to or expenditure thereon

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

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30 of marital funds or other forms of marital assets, or both.
 31 c. The paydown of principal of a note and mortgage secured
 32 by nonmarital real property and a portion of any passive
 33 appreciation in the property, if the note and mortgage secured
 34 by the property are paid down from marital funds during the
 35 marriage. The portion of passive appreciation in the property
 36 characterized as marital and subject to equitable distribution
 37 is determined by multiplying a coverture fraction by the passive
 38 appreciation in the property during the marriage.
 39 (I) The passive appreciation is determined by subtracting
 40 the gross value of the property on the date of the marriage or
 41 the date of acquisition of the property, whichever is later,
 42 from the value of the property on the valuation date in the
 43 dissolution action, less any active appreciation of the property
 44 during the marriage as described in sub-subparagraph b., and
 45 less any additional encumbrances secured by the property during
 46 the marriage in excess of the first note and mortgage on which
 47 principal is paid from marital funds.
 48 (II) The coverture fraction must consist of a numerator,
 49 defined as the total payment of principal from marital funds of
 50 all notes and mortgages secured by the property during the
 51 marriage, and a denominator, defined as the value of the subject
 52 real property on the date of the marriage, the date of
 53 acquisition of the property, or the date the property was
 54 encumbered by the first note and mortgage on which principal was
 55 paid from marital funds, whichever is later.
 56 (III) The passive appreciation must be multiplied by the
 57 coverture fraction to determine the marital portion of the
 58 passive appreciation of the property.

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59 (IV) The total marital portion of the property consists of
 60 the marital portion of the passive appreciation, the mortgage
 61 principal paid during the marriage from marital funds, and any
 62 active appreciation of the property as described in sub-
 63 paragraph b., not to exceed the total net equity in the
 64 property at the date of valuation.

65 (V) The court shall apply the formula specified in this
 66 subparagraph unless a party shows circumstances sufficient to
 67 establish that application of the formula would be inequitable
 68 under the facts presented.

69 d.e- Interspousal gifts during the marriage.

70 e.d- All vested and nonvested benefits, rights, and funds
 71 accrued during the marriage in retirement, pension, profit-
 72 sharing, annuity, deferred compensation, and insurance plans and
 73 programs.

74 2. All real property held by the parties as tenants by the
 75 entireties, whether acquired prior to or during the marriage,
 76 shall be presumed to be a marital asset. If, in any case, a
 77 party makes a claim to the contrary, the burden of proof shall
 78 be on the party asserting the claim that the subject property,
 79 or some portion thereof, is nonmarital.

80 3. All personal property titled jointly by the parties as
 81 tenants by the entireties, whether acquired prior to or during
 82 the marriage, shall be presumed to be a marital asset. In the
 83 event a party makes a claim to the contrary, the burden of proof
 84 shall be on the party asserting the claim that the subject
 85 property, or some portion thereof, is nonmarital.

86 4. The burden of proof to overcome the gift presumption
 87 shall be by clear and convincing evidence.

Page 3 of 4

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

28-00819-18

2018676__

88 (10) (a) To do equity between the parties, the court may, in
 89 lieu of or to supplement, facilitate, or effectuate the
 90 equitable division of marital assets and liabilities, order a
 91 monetary payment in a lump sum or in installments paid over a
 92 fixed period of time.

93 (b) If installment payments are ordered, the court may
 94 require security and a reasonable rate of interest or may
 95 otherwise recognize the time value of the money to be paid in
 96 the judgment or order.

97 (c) This subsection does not preclude the application of
 98 chapter 55 to any subsequent default.

99 Section 2. This act shall take effect July 1, 2018.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 10, 2018

I respectfully request that **Senate Bill #676**, relating to Equitable Distribution, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/30/18

Meeting Date

676

Bill Number (if applicable)

Topic Equitable Distribution

Amendment Barcode (if applicable)

Name ~~DRY~~ Bonnie Sokkel - Spicestone

Job Title Attorney

305 577 0090

Address 150 West Florida St

Phone

Street

Miami

FL

33130

Email

Bonnie Fostermonckh.com

City

State

Zip

Speaking: For Against Information

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

Representing Family Law Section - Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Banking and Insurance

BILL: CS/CS/SB 1052

INTRODUCER: Banking and Insurance Committee; Commerce and Tourism Committee and Senator Young and others

SUBJECT: Lost or Abandoned Property

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1052 allows theme parks and entertainment complexes, public food service establishments, and public lodging establishments to dispose of or donate personal property recovered on its premises.

Current law requires these facilities to report lost or abandoned property to a law enforcement officer. Under the bill, these facilities may opt to require any lost or abandoned property found on its premises to be delivered to the owner or operator of the facility, who must take charge of the property and maintain a record of the date the property is received. The property must be held by the owner or operator of the facility for at least 30 days. If the owner of the property has not claimed it, the owner or operator of the facility that has taken charge of the property must dispose of the property or donate the property to a charitable institution, but may not sell the property. The rightful owner of the property is entitled to reclaim the property at any time before its disposition or donation.

The bill takes effect on July 1, 2018.

II. Present Situation:

Procedures for Handling Lost or Abandoned Property

Chapter 705, F.S., requires individuals who find lost¹ or abandoned² personal property to report the description and location of the property to a law enforcement officer.³ The officer must allow the finder of the property an opportunity to make a claim to recover the property if the rightful owner is not identified or located.⁴ If a claim is made⁵, current law directs the title of the unclaimed property to vest in the finder of the property after a 90-day custodial time period. If a claim is not made, the title of the unclaimed property may vest in the law enforcement officer or agency, so long as specified notice requirements are met.⁶

Exceptions

Personal property that is lost or abandoned on certain school campuses and airports within the state are exempt from having to report the property to law enforcement officers.⁷ Instead, the handling of lost or abandoned property occurs internally, with a designated individual taking charge of the property, making a record of the date the property is found, and waiting 30 days before retaining, trading, donating, selling, or disposing of the property.⁸

III. Effect of Proposed Changes:

The bill allows the following facilities to opt out of the provisions under ss. 705.1015-106, F.S., requiring lost or abandoned property to be reported to a law enforcement officer:

- A theme park or entertainment complex as defined in s. 503.013(9), F.S.,⁹ or operated as a zoo, a museum, or an aquarium; and
- A public food service establishment¹⁰ or a public lodging establishment¹¹ licensed under part I of ch. 509, F.S.

¹ Lost property is defined by s. 705.101(2), F.S., to mean all tangible personal property without an identifiable owner which has been mislaid on public property, upon a public conveyance, on premises used at the time for a business purpose, or in parks, places of amusement, public recreation areas, or other places open to the public. The property must be in a substantially operable, functioning condition or have an apparent intrinsic value to the rightful owner.

² Abandoned property is defined by s. 705.101(3), F.S., to mean all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition. Alternatively, it is property without apparent, intrinsic value to the rightful owner. The term includes derelict vessels as defined in s. 823.11, F.S.

³ Section 705.102, F.S.

⁴ *Id.*

⁵ To make a claim, the finder of the property must deposit with the law enforcement agency a reasonable sum sufficient to cover the agency's cost for transportation, storage, and publication of notice. If the rightful owner reclaims the property, he or she must refund the deposit to the person who found the property.

⁶ See s. 705.103, F.S., providing specific procedural requirements for abandoned property and lost property before its disposition, donation, or sale.

⁷ See ss. 705.17-705.184, F.S.

⁸ Sections 705.18 and 705.182, F.S.

⁹ Section 509.013(9), F.S., defines a "theme park or entertainment complex" as "a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually."

¹⁰ See s. 509.013(5), F.S.

¹¹ See ss. 509.013(4) and 509.242, F.S.

Under the bill, facilities that opt out of reporting lost or abandoned property to a law enforcement officer must instead:

- Ensure that lost or abandoned personal property found on any premises within the facility is delivered to the owner or operator of the premises;
- Require the owner or operator to take charge of the lost or abandoned property and maintain a record of the date the property was found;
- Prohibit the owner or operator from selling the property; and
- Require the owner or operator to dispose of or donate the property if the property remains unclaimed for a period of 30 days or longer.

The bill specifies the owner or operator of the premises may donate the property to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for its sale or disposal.

The bill also provides that the rightful owner of the property is entitled to reclaim the property at any time before its disposition or donation. The finder of the property, however, may not make a claim on the lost or abandoned property, as allowed under current law when reporting property to a law enforcement officer.

The bill takes effect on July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons that lose property on the premises of a theme park, entertainment complex, zoo, museum, aquarium, public food service establishment, or public lodging establishment will have 30 days, rather than 90 days, to recover the property before it is disposed of. Such persons, however, may more easily locate such property because its custodian is the owner or operator of the location where it was lost, rather than a law enforcement agency.

The bill does not allow the finder of the property to make a claim to it if the rightful owner cannot be identified or located, as allowed under current law when reporting lost or abandoned personal property to law enforcement.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 705.17 of the Florida Statutes.

The bill creates section 705.185 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Banking and Insurance on January 30, 2018:

The CS applies the definitions section of the chapter in s. 705.101, F.S., to the section of law specifying exceptions, and clarifies the owner or operator may not sell the property.

CS by Commerce and Tourism on January 16, 2018:

The bill is amended to allow public food service establishments and public lodging establishments to opt out of the provisions under ss. 705.101-106, F.S.

B. **Amendments:**

None.



114920

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2018	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Young) recommended the following:

Senate Amendment

Delete lines 19 - 20

and insert:

705.17 Exceptions. Sections 705.1015-705.106 do not apply
~~The provisions of ss. 705.101-705.106 of this chapter shall not~~
~~be applied to any~~



472418

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2018	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Young) recommended the following:

Senate Amendment

Delete lines 48 - 55
and insert:
premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or disposal as that charitable institution deems appropriate. The rightful owner of the property may reclaim the property at any time before the disposition or donation of the



472418

11 property in accordance with this section and the established
12 policies and procedures of the owner or operator of the
13 premises.

By the Committee on Commerce and Tourism; and Senators Young and Hutson

577-02134-18

20181052c1

1 A bill to be entitled
 2 An act relating to lost or abandoned property;
 3 amending s. 705.17, F.S.; providing that certain
 4 provisions of ch. 705, F.S., do not apply to lost or
 5 abandoned personal property on the premises of
 6 specified facilities if certain conditions are met;
 7 creating s. 705.185, F.S.; providing for the disposal
 8 of lost or abandoned personal property found on the
 9 premises of specified facilities; specifying
 10 procedures for the disposal of such property;
 11 authorizing the rightful owner to claim lost or
 12 abandoned property at any time before its disposal;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16 Section 1. Section 705.17, Florida Statutes, is amended to
 17 read:
 18

19 705.17 Exceptions.—~~Sections The provisions of ss. 705.101-~~
 20 ~~705.106 do not apply of this chapter shall not be applied~~ to any
 21 personal property lost or abandoned on the campus of any
 22 institution in the State University System; ~~or~~ on premises owned
 23 or controlled by the operator of a public-use airport having
 24 regularly scheduled international passenger service; or, if the
 25 owner or operator of the premises elects to comply with s.
 26 705.185, on any premises located within a theme park or
 27 entertainment complex, as the term is defined in s. 509.013(9),
 28 or operated as a zoo, a museum, or an aquarium or on any
 29 premises of a public food service establishment or public

Page 1 of 2

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

577-02134-18

20181052c1

30 lodging establishment licensed under part I of chapter 509.
 31 Section 2. Section 705.185, Florida Statutes, is created to
 32 read:
 33 705.185 Disposal of personal property lost or abandoned on
 34 the premises of certain facilities.—Whenever any lost or
 35 abandoned personal property is found on any premises located
 36 within a theme park or entertainment complex, as the term is
 37 defined in s. 509.013(9), or operated as a zoo, a museum, or an
 38 aquarium; or on any premises of a public food service
 39 establishment or public lodging establishment licensed under
 40 part I of chapter 509, if the owner or operator of the premises
 41 elects to comply with this section, any lost or abandoned
 42 property must be delivered to the owner or operator of the
 43 premises, who shall take charge of the property and make a
 44 record of the date such property was found. If the property is
 45 not claimed by the owner within 30 days after it is found, or a
 46 longer period of time as may be deemed appropriate by the owner
 47 or operator of the premises, the owner or operator of the
 48 premises must dispose of the property or donate it to a
 49 charitable institution that is exempt from federal income tax
 50 under s. 501(c)(3) of the Internal Revenue Code for sale or
 51 disposal as that charitable institution deems appropriate. The
 52 rightful owner of the property may reclaim the property at any
 53 time before the disposition, sale, or donation of the property
 54 in accordance with this section and the established policies and
 55 procedures of the owner or operator of the premises.

56 Section 3. This act shall take effect July 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

January 16, 2018

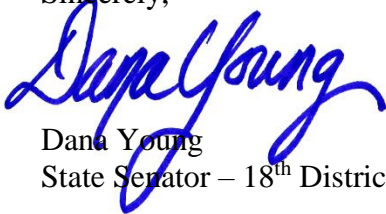
Senator Anitere Flores, Chair
Senate Banking and Insurance Committee
320 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Flores,

My Senate Bill 1052 regarding Lost or Abandoned Property has been referred to your committee. I respectfully request that this bill be placed on your next available agenda.

If you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young
State Senator – 18th District

cc: James Knudson, Staff Director – Senate Banking and Insurance Committee

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

01/30/18

Meeting Date

1052

Bill Number (if applicable)

Topic Lost or Abandoned Property

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.

Phone 850-224-2250

Street

Tallahassee

FL

32301

City

State

Zip

Email spadgett@fria.org

Speaking: For Against Information

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

Representing Florida Restaurant & Lodging ASSO.

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/30/18
Meeting Date

1052

Bill Number (if applicable)

Topic Lost or Abandoned Property

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams Street

Phone 352-359-6835

Tallahassee FL 32301
City State Zip

Email Jake@arf.org

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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 Banking and Insurance

BILL: CS/SB 1282

INTRODUCER: Banking and Insurance Committee and Senator Taddeo

SUBJECT: Residential Property Insurance

DATE: January 30, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1282 expands the required notice in homeowner’s property insurance policies that encourages policyholders to consider purchasing law-and-ordinance coverage and flood insurance coverage, to include a notice that the purchase of hurricane insurance does not include flood insurance. The notice would no longer be part of the insurance policy, but instead must be included with the policy documents upon initial issuance and each renewal of the policy. The new requirements will apply to policies issued or renewed on or after July 1, 2019.

II. Present Situation:

Insurance Policy Notice Requirements

The Florida Insurance Code¹ requires that various insurance policies include specific notices to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. The content of the notice depends on the type of coverage provided. Statutory provisions requiring notices often establish requirements regarding their content, print type or size, and appearance (e.g., bold type or all capitalized text).

Section 627.7011(4), F.S., requires that homeowner’s property insurance policies must include the following statement in bold, 18-point type:

¹ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” s. 624.01, F.S.

“LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.”²

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968 to offer federally subsidized flood insurance to property owners and to promote land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The federal government will make flood insurance available within a community, if that community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains.³

Nationally, the NFIP insured almost \$1.29 trillion in assets in 2014 and \$1.27 trillion in assets in 2015. Total earned premium for NFIP coverage for 2014 was \$3.56 billion and for 2015 was \$3.45 billion.⁴

Private Market Flood Insurance in Florida

In response to changes to the NFIP, the 2014 Legislature created s. 627.715, F.S., governing the sale of personal lines residential flood insurance.⁵ “Flood” is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.⁶

The Legislature amended the law in 2015⁷ and 2017.⁸ Flood insurance is a separate line of insurance from homeowner’s property insurance and is not included in such a policy.⁹ In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner’s property insurance policy does not cover the flood damage.¹⁰ If the homeowner

² s. 627.7011(4), F.S.

³ FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), <https://www.fema.gov/media-library/assets/documents/1150?id=1480> (last visited Jan. 30, 2018).

⁴ FEMA, *Total Coverage by Calendar Year*, <http://www.fema.gov/statistics-calendar-year> (last visited Jan. 30, 2018).

⁵ Ch. 2014-80, Laws of Fla.

⁶ s. 627.715(1)(b), F.S.

⁷ Ch. 2015-69, Laws of Fla.

⁸ Ch. 2017-142, Laws of Fla.

⁹ part X, ch. 627, F.S.

¹⁰ Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above

does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will be uninsured.

III. Effect of Proposed Changes:

The bill expands the required notice applicable to homeowner's property insurance policies to include notice that the purchase of hurricane insurance does not include flood insurance. The bill no longer requires a homeowner's insurance policy to include the notice; instead the notice would be included with the policy documents upon initial issuance of the policy and at each renewal.

If passed the notice would read:

“LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.”

“FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD, EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT.”

The new notice requirements will apply to policies issued or renewed on or after July 1, 2019.

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.

or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Policyholders should become better aware of flood insurance and their potential need to purchase such coverage.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:**VIII. None. Statutes Affected:**

This bill substantially amends section 627.7011 of the Florida Statutes.

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

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

CS by Banking and Insurance on January 30, 2018:

The CS:

- Removes the requirement that the notice be signed by the applicant.
- Makes technical changes to the wording of the notice.
- Changes the effective date to July 1, 2019.

B. Amendments:

None.



252350

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2018	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 16 - 42

and insert:

(4) Upon the initial issuance and each renewal of a homeowner's insurance policy, the insurer shall ~~must~~ include with the policy documents, in bold type no smaller than 18 points, the following statement:

"LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN



252350

11 IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE.
12 PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

13
14 "FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE
15 PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD
16 INSURANCE PROGRAM OR AN AUTHORIZED INSURER. YOUR
17 HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE
18 FOR DAMAGE RESULTING FROM FLOOD, EVEN IF HURRICANE
19 WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT
20 SEPARATE FLOOD INSURANCE THIS COVERAGE, YOU MAY HAVE
21 UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE
22 NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE
23 ~~THESE COVERAGES~~ WITH YOUR INSURANCE AGENT."

24
25 The intent of this subsection is to encourage policyholders to
26 purchase sufficient coverage to protect them in case events
27 excluded from the standard homeowners policy, such as law and
28 ordinance enforcement and flood, combine with covered events to
29 produce damage or loss to the insured property. The intent is
30 also to encourage policyholders to discuss these issues with
31 their insurance agent.

32 Section 2. The amendment made by this act to s. 627.7011,
33 Florida Statutes, applies to policies issued or renewed on or
34 after July 1, 2019.

35 Section 3. This act shall take effect July 1, 2019.

36
37 ===== T I T L E A M E N D M E N T =====

38 And the title is amended as follows:

39 Delete lines 5 - 7



252350

40 and insert:

41 absence of law and ordinance and flood insurance
42 coverage; requiring insurers issuing such policies to
43 include the disclosure with the policy documents upon
44 the initial issuance of the policy and each renewal;
45 providing applicability; providing an



936514

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2018	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Taddeo) recommended the following:

1 **Senate Amendment to Amendment (252350)**

2
3 Delete lines 15 - 16

4 and insert:

5 PURCHASE OF FLOOD INSURANCE ~~FROM THE NATIONAL FLOOD~~
6 ~~INSURANCE PROGRAM.~~ YOUR

By Senator Taddeo

40-01437-18

20181282__

1 A bill to be entitled
 2 An act relating to residential property insurance;
 3 amending s. 627.7011, F.S.; revising a mandatory
 4 homeowner's insurance policy disclosure regarding the
 5 absence of flood insurance coverage; requiring the
 6 homeowner to place his or her initials on a specified
 7 acknowledgment; providing applicability; providing an
 8 effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (4) of section 627.7011, Florida
 13 Statutes, is amended to read:
 14 627.7011 Homeowners' policies; offer of replacement cost
 15 coverage and law and ordinance coverage.-
 16 (4) A homeowner's insurance policy must include in bold
 17 type no smaller than 18 points the following statement, and the
 18 homeowner must place his or her initials in the space indicated:
 19
 20 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE
 21 THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO
 22 CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE
 23 NATIONAL FLOOD INSURANCE PROGRAM. HURRICANE INSURANCE
 24 DOES NOT INCLUDE FLOOD INSURANCE. WITHOUT THIS
 25 COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE
 26 DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.
 27
 28 ...(insert initials)...I UNDERSTAND THAT IF I PURCHASE
 29 HURRICANE INSURANCE, IT DOES NOT INCLUDE FLOOD

40-01437-18

20181282__

30 INSURANCE."
 31
 32 The intent of this subsection is to encourage policyholders to
 33 purchase sufficient coverage to protect them in case events
 34 excluded from the standard homeowners policy, such as law and
 35 ordinance enforcement and flood, combine with covered events to
 36 produce damage or loss to the insured property. The intent is
 37 also to encourage policyholders to discuss these issues with
 38 their insurance agent.
 39 Section 2. The amendment made by this act to s. 627.7011,
 40 Florida Statutes, applies to policies issued or renewed on or
 41 after July 1, 2018.
 42 Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-30-18

Meeting Date

1282

Bill Number (if applicable)

252350

Amendment Barcode (if applicable)

Topic Flood Insurance

Name Christine Ashburn

Job Title Chief-Communications + Legislative Affairs

Address 2101 Maryland Circle

Phone 850-513-3746

Tallahassee FL

32303

Email

Speaking: For Against Information

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

Representing Citizens Property Insurance Corp.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/30/18

1282

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jay Liles

Job Title

Address PO Box 6870

Phone 850/294-5604

Street

Tallahassee FL 32309

Email jliles@fwfonline.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Wildlife Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Banking and Insurance

BILL: SB 1302

INTRODUCER: Senator Brandes

SUBJECT: Consumer Report Security Freezes

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Favorable
2.			CM	
3.			RC	

I. Summary:

SB 1302 prohibits consumer reporting agencies from charging a consumer or a consumer's representative fees for placing, removing, or temporarily lifting a security freeze on a consumer report. A security freeze prevents a consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the consumer. Once a consumer puts a credit freeze in place, he or she receives a personal identifier to use each time to freeze, unfreeze, and refreeze their account. A credit freeze prevents individuals from accessing a consumer's credit report to open a new account, such as a credit card. Currently, Florida law permits a consumer reporting agency to charge a fee not exceeding \$10 for such actions.

In recent years, data breaches¹ have been increasing in frequency, scale, sophistication, and severity of impact. In late 2013, Target experienced a data breach that provided cybercriminals with access to 41 million customer payment card accounts² (customer name, credit or debit card number, and the card's expiration date) and contact information for more than 60 million Target customers.³ In 2017, Equifax, one of the three major credit-reporting agencies in the United States, reported that the sensitive personal information of an estimated 143 million American

¹ A data breach occurs when a cybercriminal successfully infiltrates a data source and extracts sensitive information. This can be done physically by accessing a computer or network to steal local files, or by bypassing network security remotely. See TRENDMICRO, *Data Breaches 101* (Oct. 23, 2015) available at

<https://www.trendmicro.com/vinfo/us/security/news/cyber-attacks/data-breach-101> (last viewed Jan. 24, 2018).

² *Target to pay \$18.5M for 2013 data breach that affected 41 million consumers*, (May 23, 2017), available at <https://www.usatoday.com/story/money/2017/05/23/target-pay-185m-2013-data-breach-affected-consumers/102063932/> (last viewed Jan. 25, 2018).

³ Federal Trade Commission, *Are you affected by the recent Target hack?* <https://www.consumer.ftc.gov/blog/2013/12/are-you-affected-recent-target-hack> (last viewed Jan. 24, 2018).

consumers⁴ was disclosed in a data breach earlier that year. The cybercriminals accessed the names, Social Security numbers, birth dates, and addresses and, in some instances, driver's license numbers of these consumers. They also accessed credit card numbers of about 209,000 consumers and dispute documents with personal identifying information of about 182,000 consumers.⁵

II. Present Situation:

Consumer Reports and Consumer Reporting Agencies

Consumer reports include any written, oral, or other communication of any information by a consumer reporting agency on a consumer's credit worthiness, credit standing, credit capacity, general reputation, personal characteristics, or mode of living.⁶ Consumer reports generally list the consumer's name, address, and Social Security number, credit cards, loans, debts, and history of timely bill payment.⁷ Information contained in such reports are used as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; and other purposes authorized under federal law.⁸

Consumer reporting agencies assemble or evaluate consumer credit information or other information on consumers and furnish consumer reports to third parties.⁹ Consumer reporting agencies generally may provide consumer credit reports and credit scores to lenders, retail stores, employers, residential real estate management companies, payment processors, retail stores, debt buyers and collectors, insurance companies, communications and utility companies.¹⁰ The three largest consumer-reporting agencies are Equifax, Experian, and TransUnion.¹¹

Federal Fair Credit Reporting Act (FCRA)

The federal Fair Credit Reporting Act (FCRA) governs the collection and use of consumer report information and establishes the framework for the credit reporting system in the United States.¹² The FCRA was enacted to prevent the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; improve the accuracy and integrity of consumer reports; and promote the efficiency of the nation's banking and consumer credit systems.¹³ The FCRA regulates the practices of consumer reporting agencies (e.g., Equifax,

⁴ Equifax, *Cybersecurity Incident and Important Consumer Information*, available at <https://www.equifaxsecurity2017.com/frequently-asked-questions/> (last viewed Jan. 25, 2018). Subsequently, on October 2, 2017, Equifax announced that approximately 2.5 million additional U.S. consumers were potentially impacted.

⁵ Federal Trade Commission, *the Equifax Data Breach: What to Do*, <https://www.consumer.ftc.gov/blog/2017/09/equifax-data-breach-what-do>

⁶ See 15 U.S.C. 1681a(d).

⁷ See 15 U.S.C. 1681c.

⁸ See 15 U.S.C. 1681b.

⁹ See 15 U.S.C. 1681a(f).

¹⁰ Consumer Financial Protection Bureau, *List of Consumer Reporting Companies*, pgs. 4-5 (2016). http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf (last viewed January 26, 2018).

¹¹ See fn. 10 at pg. 8.

¹² 15 U.S.C. s. 1681 *et seq.*

¹³ Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years->

Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.¹⁴

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA, which added a number of provisions to help consumers and businesses combat identity theft and mitigate the damage when identity theft occurs, and establish a national fraud alert system.¹⁵ The FCRA, as amended by the FACT Act, allows a consumer or the consumer's representative to assert a good-faith suspicion to a consumer reporting agency that he or she has been or is about to become the victim of identity theft.¹⁶ This requires the agency to place an initial fraud alert on the consumer report for at least 90 days at no charge to the consumer.¹⁷ A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to 7 years if an identity theft report is submitted to the consumer reporting agency.¹⁸ However, fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.¹⁹

Florida Statutes Relating to Consumer Report Security Freezes

2006 Florida Law

In response to concerns regarding identity theft, Florida and the majority of states have adopted laws that allow a consumer to freeze access to his or her consumer report and prevent anyone from trying to open a new account or new credit. In 2006, legislation was enacted in Florida.²⁰ In Florida, a consumer can place a security freeze on his or her consumer report by sending a written request by certified mail to a consumer reporting agency.²¹ With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the consumer.²² Additionally, while a security freeze is in effect, a consumer-reporting agency may not change a consumer's name, address, date of birth, or social security number in a consumer report without sending the consumer written confirmation of the change.²³

[experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcra-report.pdf](https://www.ficr.org/experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcra-report.pdf). (last viewed Jan. 12, 2017)

¹⁴ *Id.*

¹⁵ P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf>. (last viewed January 24, 2018).

¹⁶ 15 U.S.C. s. 1681c-1(a)(1).

¹⁷ *Id.*

¹⁸ 15 U.S.C. s. 1681c-1(b).

¹⁹ 15 U.S.C. ss. 1681c-1 and 1681m(e).

²⁰ Ch. 2006-124, Laws of Fla.

²¹ Section 501.005(2), F.S.

²² Section 501.005(1), (12), and (15), F.S. Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.

²³ Section 501.005(14), F.S.

A consumer reporting agency must place a security freeze within 5 business days after receiving a request and must provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the removal of a security freeze.²⁴ A consumer reporting agency may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identification number or password.²⁵ However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and prohibits a consumer reporting agency from charging any fee to a victim of identity theft.²⁶

2014 Keeping I.D. Safe (KIDS) Act

The 2006 law did not contain a mechanism for freezing the credit for individuals who do not have an existing credit report. Therefore, in 2014, the Keeping I.D. Safe (KIDS) Act became law in Florida, and Florida law now contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate).²⁷ To place the security freeze, a representative of the protected consumer must submit a request to the consumer reporting agency and provide sufficient proof of authority and identification.²⁸ With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the protected consumer's record.²⁹ Additionally, while a security freeze is in effect, a consumer reporting agency must send the protected consumer's representative written confirmation of a change to the protected consumer's name, address, date of birth, or social security number.³⁰

A consumer reporting agency must place a security freeze within 30 days after confirming the authenticity of a security freeze request and must provide the protected consumer's representative with a unique personal identifier to be used by the protected consumer's representative when providing authorization for the removal of a security freeze.³¹ A consumer reporting agency may charge a fee up to \$10 when a security freeze is placed or removed or when the consumer reporting agency reissues a lost unique personal identifier.³² However, the law prohibits a consumer reporting agency from charging a fee to the representative of a protected consumer who is a victim of identity theft.³³

Regardless of whether a security freeze is requested on an existing consumer report or on a record created to identify a protected consumer, the request for a security freeze must be made to each consumer reporting agency. For example, when a request to place a security freeze is made to three consumer reporting agencies, the consumer or protected consumer's representative

²⁴ Section 501.005(3), (4), F.S.

²⁵ Section 501.005(13)(a), (c), F.S.

²⁶ Section 501.005(13)(b), F.S.

²⁷ Ch. 2014-66, Laws of Fla.; s. 501.0051, F.S.

²⁸ Section 501.0051(2), F.S.

²⁹ Section 501.0051(1)(f)2., (8), F.S. Subsection 501.0051(8), F.S., allows for the release of information otherwise protected by a security freeze to persons and entities similar to those listed in s. 501.005(12) and (15), F.S.

³⁰ Section 501.0051(10), F.S.

³¹ Section 501.0051(4), (5), F.S.

³² Section 501.0051(9)(a) and (b), F.S.

³³ Section 501.0051(9)(c), F.S.

would be charged up to \$10 by each, for a total of up to \$30.³⁴ Additionally, the consumer or protected consumer's representative incurs fees of up to \$10 by each consumer reporting agency when there is a need to temporarily lift a security freeze, remove a security freeze, or replace a lost unique personal identifier.

State Survey of Laws Relating to Consumer Report Security Freezes

Most states allow fees for placing a security freeze, and fees generally range from \$2 to \$10.³⁵ Among the states that do not allow fees for placing a security freeze, the majority allow some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report. Indiana and South Carolina prohibit all fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 501.005, F.S., to prohibit consumer reporting agencies from charging consumer fees who elect to place, remove, or temporarily lift a security freeze on a consumer report. The consumer reporting agency may charge a reasonable fee, not to exceed \$10, if the consumer fails to retain the original personal identification number or password provided by the consumer reporting agency.

Section 2 amends s. 501.0051, F.S., to similarly prohibit such fees when a representative places, removes, or temporarily lifts a security freeze on a protected consumer's consumer report.

Section 3 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁴ However, Equifax is waiving its fees for placing, temporarily lifting, or removing a security freeze through January 31, 2018. EQUIFAX, *Place, Temporarily Lift or Permanently Remove a Security Freeze*, https://www.freeze.equifax.com/Freeze/jsp/SFF_PersonalIDInfo.jsp (last viewed January 24, 2018).

³⁵ EQUIFAX, *What are the security freeze fees in my state?*, <https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state> (last viewed Jan. 4, 2018); EXPERIAN, *Security Freeze*, <https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/> (last visited Jan. 4, 2018); TRANSUNION, *Credit Freeze Information by State*, <https://www.transunion.com/credit-freeze/credit-freeze-information-by-state> (last viewed Jan. 4, 2018).

³⁶ *Id.*

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The elimination of the security freeze fees could potentially increase the utilization of security freezes and reduce identity theft. Consumers and their representatives will no longer pay fees of up to \$10 related to placing, removing, or temporarily lifting a security freeze on a consumer report.

Consumer reporting agencies will no longer collect such fees.

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: 501.005 and 501.0051.

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 Brandes

24-01395A-18

20181302__

A bill to be entitled

An act relating to consumer report security freezes; amending s. 501.005, F.S.; deleting the authorization for consumer reporting agencies to charge specified fees to consumers electing to place, remove, or temporarily lift a security freeze on their consumer reports; amending s. 501.0051, F.S.; deleting the authorization for consumer reporting agencies to charge a specified fee to representatives of protected consumers electing to place a security freeze on such consumer's consumer reports; deleting the authorization for consumer reporting agencies to charge a specified fee to protected consumers or representatives of protected consumers who elect to remove a security freeze on such consumer's consumer reports; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2), paragraph (d) of subsection (5), paragraph (c) of subsection (11), subsection (13), and paragraph (c) of subsection (17) of section 501.005, Florida Statutes, are amended to read:

501.005 Consumer report security freeze.—

(2) A consumer may place a security freeze on his or her consumer report by:

~~(c) Paying a fee authorized under this section.~~

(5) A consumer may allow his or her consumer report to be accessed for a designated period of time while a security freeze

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24-01395A-18

20181302__

is in effect by contacting the consumer reporting agency and requesting that the freeze be temporarily lifted. The consumer must provide the following information to the consumer reporting agency as part of the request:

~~(d) Payment of a fee authorized by this section.~~

(11) A security freeze shall remain in place until the consumer requests that it be removed. A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal from the consumer, who, upon making the request for removal, must provide the following:

~~(e) Payment of a fee authorized by this section.~~

(13) (a) A consumer reporting agency may not charge a reasonable fee, ~~not to exceed \$10,~~ to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report.

~~(b) A consumer reporting agency shall not charge any fee:~~

~~1. To a consumer 65 years of age or older for the initial placement or removal of a security freeze; or~~
~~2. To a victim of identity theft who has submitted, at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.~~

(b)(e) A consumer reporting agency may charge a reasonable fee, not to exceed \$10, if the consumer fails to retain the original personal identification number or password provided by the consumer reporting agency and the agency must reissue the personal identification number or password or provide a new personal identification number or password to the consumer.

Page 2 of 6

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59 (17) Any written disclosure by a consumer reporting agency,
 60 pursuant to 15 U.S.C. s. 1681g, to any consumer residing in this
 61 state shall include a written summary of all rights the consumer
 62 has under this section, and, in the case of a consumer reporting
 63 agency which compiles and maintains consumer reports on a
 64 nationwide basis, a toll-free telephone number which the
 65 consumer can use to communicate with the consumer reporting
 66 agency. The information set forth in paragraph (b) of the
 67 written summary of rights must be in at least 12-point boldface
 68 type. The written summary of rights required under this section
 69 is sufficient if it is substantially in the following form:

70 (c) When you place a security freeze on your consumer
 71 report, you will be provided a personal identification number or
 72 password to use if you choose to remove the freeze on your
 73 consumer report or authorize the release of your consumer report
 74 for a designated period of time after the security freeze is in
 75 place. To provide that authorization, you must contact the
 76 consumer reporting agency and provide all of the following:

- 77 1. The personal identification number or password.
- 78 2. Proper identification to verify your identity.
- 79 3. Information specifying the period of time for which the
 80 report shall be made available.

81 ~~4. Payment of a fee authorized by this section.~~

82 Section 2. Subsection (2), paragraph (a) of subsection (7),
 83 subsection (9), and paragraph (c) of subsection (14) of section
 84 501.0051, Florida Statutes, are amended to read:

85 501.0051 Protected consumer report security freeze.—

86 (2) A representative may place a security freeze on a
 87 protected consumer's consumer report by:

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88 (a) Submitting a request to a consumer reporting agency in
 89 the manner prescribed by that agency; and

90 (b) Providing the agency with sufficient proof of authority
 91 and sufficient proof of identification of the representative;
 92 ~~and~~

93 ~~(c) Paying the agency a fee as authorized under this~~
 94 ~~section.~~

95 (7) A consumer reporting agency shall remove a security
 96 freeze from a protected consumer's consumer report or record
 97 only under either of the following circumstances:

98 (a) Upon the request of a representative or a protected
 99 consumer. A consumer reporting agency shall remove a security
 100 freeze within 30 days after receiving a request for removal from
 101 a protected consumer or his or her representative.

102 1. A representative submitting a request for removal must
 103 provide all of the following:

104 a. Sufficient proof of identification of the representative
 105 and sufficient proof of authority as determined by the consumer
 106 reporting agency.

107 b. The unique personal identifier provided by the consumer
 108 reporting agency pursuant to subsection (5).

109 ~~c. A fee as authorized under this section.~~

110 2. A protected consumer submitting a request for removal
 111 must provide both ~~all~~ of the following:

112 a. Sufficient proof of identification of the protected
 113 consumer as determined by the consumer reporting agency.

114 b. Documentation that the sufficient proof of authority of
 115 the protected consumer's representative to act on behalf of the
 116 protected consumer is no longer valid.

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20181302__

117 ~~e. A fee as authorized under this section.~~
 118 (9) (a) A consumer reporting agency may not charge any a
 119 reasonable fee, ~~not to exceed \$10,~~ to place or remove a security
 120 freeze.
 121 (b) A consumer reporting agency may ~~also~~ charge a
 122 reasonable fee, not to exceed \$10, if the representative fails
 123 to retain the original unique personal identifier provided by
 124 the consumer reporting agency and the agency must reissue the
 125 unique personal identifier or provide a new unique personal
 126 identifier to the representative.
 127 ~~(c) A consumer reporting agency may not charge a fee under~~
 128 ~~this section to the representative of a protected consumer who~~
 129 ~~is a victim of identity theft if the representative submits, at~~
 130 ~~the time the security freeze is requested, a copy of a valid~~
 131 ~~investigative report, an incident report, or a complaint with a~~
 132 ~~law enforcement agency about the unlawful use of the protected~~
 133 ~~consumer's identifying information by another person.~~
 134 (14) A written disclosure by a consumer reporting agency,
 135 pursuant to 15 U.S.C. s. 1681g, to a representative and
 136 protected consumer residing in this state must include a written
 137 summary of all rights that the representative and protected
 138 consumer have under this section and, in the case of a consumer
 139 reporting agency that compiles and maintains records on a
 140 nationwide basis, a toll-free telephone number that the
 141 representative can use to communicate with the consumer
 142 reporting agency. The information provided in paragraph (b) must
 143 be in at least 12-point boldfaced type. The written summary of
 144 rights required under this section is sufficient if it is
 145 substantially in the following form:

Page 5 of 6

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24-01395A-18

20181302__

146 (c) To remove the security freeze on the protected
 147 consumer's record or report, you must contact the consumer
 148 reporting agency and provide all of the following:
 149 1. Proof of identification as required by the consumer
 150 reporting agency.
 151 2. Proof of authority over the protected consumer as
 152 required by the consumer reporting agency.
 153 3. The unique personal identifier provided by the consumer
 154 reporting agency.
 155 ~~4. Payment of a fee.~~
 156 Section 3. This act shall take effect July 1, 2018.

Page 6 of 6

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The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores
Chair, Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 16, 2018

I respectfully request that **Senate Bill #1302**, relating to **Consumer Report Security Freezes**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

1-30-18

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

Meeting Date

1302

Bill Number (if applicable)

Topic waive

Amendment Barcode (if applicable)

Name Andrew Liebert

Job Title Dep. Dir. Leg. Affairs - Department of Agriculture

Address P1-10 capitol

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Department of Agriculture

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)

1/30/18

Meeting Date

1302

Bill Number (if applicable)

Topic Consumer Report Security Freezes

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Assoc. State Director

Address 200 W. College Ave.
Street

Phone 850 228-4243

Tally
City

FL
State

32301
Zip

Email zsmith@aarpa.org

Speaking: For Against Information

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

Representing AARP

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)

1/30/2018

Meeting Date

SB 1302

Bill Number (if applicable)

Topic SB 1302

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Deputy Chief Financial Officer

Address 400 N Monroe St, PL 11

Phone 850-413-4902

Street

Tallahassee

FL

32399

Email elizabeth.boyd@myfloridacfo.com

City

State

Zip

Speaking: For Against Information

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

Representing CFO Patronis

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)

1/30/2018

SB 1302

Meeting Date

Bill Number (if applicable)

Topic SB 1302

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Deputy Chief Financial Officer

Address 400 N Monroe St, PL 11

Phone 850-413-4902

Street

Tallahassee

FL

32399

Email elizabeth.boyd@myfloridacfo.com

City

State

Zip

Speaking: For Against Information

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

Representing CFO Patronis

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 Banking and Insurance

BILL: SB 1316

INTRODUCER: Senator Simmons

SUBJECT: Uniform Voidable Transactions Act

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1316 amends Florida’s version of the Uniform Fraudulent Transfer Act (UFTA). The UFTA codified as ch. 726, F.S., provides a creditor with the means to reach assets that a debtor has transferred to another person to keep them from being used to satisfy a debt. In 2014, the Uniform Law Commission adopted amendments and renamed the UFTA as the Uniform Voidable Transactions Act (UVTA). This bill adopts the UVTA in Florida. The bill:

- Provides that a creditor making a claim has the burden of proving the elements of their claim by a preponderance of the evidence;
- Changes the way partnerships are considered insolvent and subjects partnerships to the same solvency standard as other debtors; and
- Adds a choice of law provision by providing a claim for relief is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

The bill also outlines how the UVTA applies to a business organization structured as a series organization, a form of business organization recognized in some other states.

The statute of limitations for filing an action to set aside a transfer or obligation is the later of 4 years from the transfer or obligation, or 1 year from when the transfer or obligation was or could have been discovered. The bill changes the 1 year provision to provide that it begins to run when the wrongful nature of the transfer or obligation was or could reasonably have been discovered.

II. Present Situation:

According to the National Conference of Commissioners on Uniform State Laws, 45 states and the U.S. Virgin Islands have adopted the Uniform Fraudulent Transfer Act (“UFTA”).¹ UFTA provides a creditor with the means to reach assets that a debtor has transferred to another person to keep them from being used to satisfy a debt. Florida enacted the UFTA in 1987² and codified it as ch. 726, F.S.

Chapter 726, F.S., provides redress to creditors by allowing them to recover assets from debtors, when the debtors have fraudulently transferred assets to third parties or incurred obligations before or after a creditor’s claim arises. For example, s. 726.105(1), F.S., provides that a transfer made is fraudulent as to a creditor if the debtor made the transfer:

- With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

Section 726.105(2), F.S., provides factors that a court uses to determine whether actual intent exists.

Section 726.106, F.S., provides that a transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the debtor made the transfer without receiving a reasonably equivalent value in exchange for the transfer and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Similar statutes have led to confusion in some courts in other jurisdictions that have adopted the UFTA. Courts have held that creditors must show intent to hinder, delay, or defraud by “clear and convincing evidence” or have shifted the burden to transferees to show a debtor is not insolvent.³

In either situation, the UFTA provides statutory remedies to creditors, most notably through a “clawback” action, whereby a prevailing creditor may have a debtor’s fraudulent transfer or obligation made to a third party voided and surrendered back to the creditor.⁴ These remedies are generally subject to a 4-year statute of limitations, unless otherwise specified in s. 726.110, F.S. The UFTA contains some exceptions to the clawback remedy, primarily for any “person who

¹ <http://www.uniformlaws.org/shared/docs/fraudulent%20transfer/UVTA%20-%20Summary.pdf> (last visited January 13, 2018).

² Chapter 87-79, L.O.F.

³ https://www.americanbar.org/publications/probate_property_magazine_2012/2015/july_august_2015/2015_aba_rpte_pp_v29_3_article_foster_boughman_uniform_voidable_transactions_act.html (last visited January 13, 2018).

⁴ s. 726.108, F.S.

took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.”⁵

In 2014, National Conference of Commissioners on Uniform State Laws amended the UFTA. The amendments included renaming the act as the “Uniform Voidable Transactions Act” (UVTA). A commenter argues that “the UVTA is not a new act; it is the UFTA, renamed and lightly amended.”⁶ The UVTA has been adopted in 16 states and is under consideration in 2018 in five other states, including Florida.⁷

III. Effect of Proposed Changes:

The bill makes changes to ch. 726, F.S., to adopt the UVTA in Florida. The UVTA includes numerous “Official Comments” from the drafters for use in interpreting the UVTA. Although this bill does not adopt the comments as Florida law, Florida courts have used comments from uniform acts as interpretative aids.⁸

Changes in Title and Style (Sections 1, 2, 5, and 6)

Section 2 amends s. 726.101, F.S., to change the name of the “Uniform Fraudulent Transfer Act” to the “Uniform Voidable Transactions Act.” **Section 1** changes the chapter title from “Fraudulent Transfers” to “Voidable Transactions.” **Sections 5 and 6** amend ss. 726.105 and 726.106, F.S., to replace the word “fraudulent” with “voidable.”

Definitions (Sections 3 and 7)

Section 3 amends s. 726.102, F.S., regarding definitions for ch. 726, F.S. The bill adds the following definitions:

- "Claims law" means a fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.
- "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- "Organization" means a person other than an individual.
- "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- "Sign" means to execute or adopt a tangible symbol, or attach to or logically associate with the record an electronic symbol, sound, or process, with present intent to authenticate or adopt a record.

The bill amends the definition of “person” to include limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative

⁵ s. 726.109(1), F.S.

⁶ Kenneth C. Kettering, *The Uniform Voidable Transactions Act; or, the 2014 Amendments to the Uniform Fraudulent Transfer Act*, *The Business Lawyer*, Volume 70, Summer 2015 at p. 779.

⁷[http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable%20Transactions%20Act%20Amendments%20\(2014\)%20-%20Formerly%20Fraudulent%20Transfer%20Act](http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable%20Transactions%20Act%20Amendments%20(2014)%20-%20Formerly%20Fraudulent%20Transfer%20Act) (last visited January 24, 2018).

⁸ See, e.g., *Winner v. Cataldo*, 559 So.2d 696 (Fla.3d DCA 1990).

association, unincorporated nonprofit association, common law business trust, statutory trust, and association joint venture.

Section 7 amends s. 726.107, F.S., to provide that an obligation is incurred evidenced by a “record” so that obligations can be evidenced by electronic or other records instead of just written documents.

Insolvency (Section 4)

Section 4 amends s. 726.103, F.S., which provides the statutory criteria for insolvency under the Act. Current law provides that a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at fair valuation.⁹ A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.¹⁰ The bill provides that the party against whom the presumption of insolvency is directed has the burden to prove that nonexistence of insolvency is more probable than the existence of insolvency.

Under current law, s. 726.103(3), F.S., provides a different calculation of insolvency for partnerships than for other persons. A partnership is considered insolvent if the sum of the partnership's debts is greater than the aggregate, at fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts. The bill amends s. 726.103, F.S., to remove the special definition of insolvency for partnerships and treats a partnership like a person. Thus, under the bill, a partnership is insolvent if, at a fair valuation, the sum of the partnership's debts is greater than the sum of the partnerships' assets.

Burden and Standard of Proof (Sections 5 and 6)

Sections 5 and 6 amend ss. 726.105 and 726.106, F.S., to provide that a creditor has the burden of proof to prove the elements necessary to show a transfer is voidable. The bill sets the standard as preponderance of the evidence. This will make clear to Florida practitioners that the burden of proof is on the creditor and the standard of proof is preponderance of the evidence.

Defenses (Section 9)

Section 9 amends s. 726.109, F.S. Current law provides a defense to actions alleging actual intent to defraud the creditor if the person took in good faith and for a reasonably equivalent value. The bill requires that the reasonably equivalent value must be given to the debtor.

The bill provides that recovery pursuant to a judgment for the asset transferred or the amount necessary to satisfy the creditor's claim is available only against the first transferee of the asset and an immediate transferee. It exempts transferees who took in good faith from having the judgment enforced against them.

Another defense provided in ch. 726, F.S., is that a transfer is not voidable if the transfer results from a termination of a lease upon default by the debtor when the termination is pursuant to the

⁹ s. 726.103(1), F.S.

¹⁰ s. 726.103(2), F.S.

lease terms or by enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The bill revises the later defense related to the UCC by specifying that the defense does not include the acceptance of collateral in full or partial satisfaction of the obligation it secures.

The bill outlines who carries the burden of proving the defenses or right to attach judgments against transferees. Anyone seeking to invoke the defenses in s. 726.109, F.S., has the burden of proving the applicability of that defense. A creditor has the burden of proving applicability of judgments against a first transferee or an immediate transferee. A good faith transferee has the burden of proving they are a good faith transferee or a mediate good faith transferee. The standard of proof is a preponderance of the evidence.

Statute of Limitations (Section 10)

Under current law, a claim that a transaction is voidable is extinguished unless brought within 4 years or, if later, within 1 year after the transaction was or could have reasonably been discovered by the claimant. This bill amends the 1 year time period in s. 726.110, F.S., to within 1 year after the transaction and its wrongful nature was or could have reasonably been discovered by the claimant.

Choice of Law (Section 13)

The bill creates s. 726.113, F.S. It provides that a claim for relief is governed by the law of the jurisdiction where the debtor is located when the transfer is made or the obligation is incurred. The bill provides criteria for determining a debtor's physical location for purposes of ch. 726, F.S.:

- A debtor that is an individual is located at his or her principal residence.
- A debtor that is an organization and has only one place of business is located at its place of business.
- A debtor that is an organization and has more than one place of business is located at its chief executive office.

This provision only governs claims under ch. 726, F.S. The bill does not affect a debtor's entitlement to homestead protections under the Florida Constitution.

Series Organizations (Section 14)

A series mechanism "creates an elastic single vehicle for operating multiple businesses or owning multiple properties in a limited liability environment."¹¹ It allows, for example, a limited liability company to designate specific assets in a specific series. Once designated, creditors of one series cannot look to the assets of another series even if the series are owned by the same limited liability company. This emulates creating multiple limited liability companies without actually doing so.¹² The bill creates s. 726.114, F.S., to govern how ch. 726, F.S., applies to

¹¹ Adam Hiller, *But Series-ly, Folks – The Series Laws and How They (May) Intersect with Bankruptcy Law*, 20 Am. Bankr. Inst. L. Rev. 353, 354 (2012).

¹² *Id.* at 354-355.

series organizations. It defines “series organization” as “an organization that, pursuant to the law under which it is organized, has the following characteristics:

- The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.
- Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of, or associated with, the protected series only, and not against the property of, or associated with, the organization or other protected series of the organization.
- Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of, or associated with, a protected series of the organization.”

The bill provides that a series organization and each protected series of the organization is a separate person for purposes of ch. 726, F.S.

One commenter argues that a state should adopt the series organization provision of the UVTA because the choice of law provision of the UVTA could result in a transfer made by a series organization of another state being governed by Florida’s voidable transfer law.¹³

Electronic Signatures (Section 15)

The Electronic Signatures in the Global and National Commerce Act of 2000 (E-Sign Act) provides that electronic signatures, contracts, and records with respect to a transaction are valid as a written document. The E-Sign Act does not require contracts, records, or signatures in electronic form. It also provides that if a statute requires a transaction to a consumer be made in writing, then the use of electronic record satisfies the requirement if the consumer consents or is informed of the right to have it in non-electronic form. Additionally, the E-Sign Act does not apply to court orders, notice of cancellation of utility services, foreclosure or eviction, cancellation of health insurance, or a recall of a product.

Section 15 creates s. 726.115, F.S., to provide that ch. 726, F.S., modifies, limits, and supersedes the E-Sign Act but does not modify limit or supersede the portion of the Act regarding consumer disclosures, or authorize electronic delivery of any of the prohibited notices described in the E-Sign Act.

Technical Changes (Sections 8, 11, and 12)

Sections 8, 11, and 12 make technical changes.

Effective Date (Section 16)

Section 16 provides an effective date of July 1, 2018.

¹³ Kenneth C. Kettering, *The Uniform Voidable Transactions Act; or, the 2014 Amendments to the Uniform Fraudulent Transfer Act*, *The Business Lawyer*, Volume 70, Summer 2015 at p. 831-832.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill does not appear to have a significant fiscal impact on the private sector.

C. Government Sector Impact:

The bill does not appear to have a significant fiscal impact on government.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 726.101, 726.102, 726.103, 726.105, 726.106, 726.107, 726.108, 726.109, 726.110, 726.111, and 726.112.

This bill creates the following sections of the Florida Statutes: 726.113, 726.114, and 726.115.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Simmons

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1 A bill to be entitled
 2 An act relating to the Uniform Voidable Transactions
 3 Act; providing a directive to the Division of Law
 4 Revision and Information; amending s. 726.101, F.S.;
 5 revising a short title; amending s. 726.102, F.S.;
 6 revising and defining terms; amending s. 726.103,
 7 F.S.; removing conditions under which a partnership is
 8 insolvent; imposing upon certain debtors the burden of
 9 proving insolvency; amending ss. 726.105 and 726.106,
 10 F.S.; imposing upon certain creditors the burden of
 11 proving elements of a claim for relief; amending s.
 12 726.107, F.S.; conforming provisions to changes made
 13 by the act; amending s. 726.108, F.S.; providing
 14 conditions under which attachments or other
 15 provisional remedies are available to creditors;
 16 amending s. 726.109, F.S.; revising the parties
 17 subject to judgments for recovery of a creditor's
 18 claim; revising conditions under which a transfer is
 19 not voidable; imposing upon specified persons the
 20 burden of proving certain applicability, claim
 21 elements, and adjustments; providing requirements for
 22 standard of proof; amending ss. 726.110, 726.111, and
 23 726.112, F.S.; conforming provisions to changes made
 24 by the act; creating s. 726.113, F.S.; providing that
 25 claims for relief are governed by specified claims
 26 law; creating s. 726.114, F.S.; defining terms;
 27 providing applicability of specified provisions for
 28 series organizations and the protected series of such
 29 organizations; creating s. 726.115, F.S.; providing

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30 applicability of a specified federal act; providing an
 31 effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. The Division of Law Revision and Information is
 36 directed to rename chapter 726, Florida Statutes, entitled
 37 "FRAUDULENT TRANSFERS," as "VOIDABLE TRANSACTIONS."
 38 Section 2. Section 726.101, Florida Statutes, is amended to
 39 read:
 40 726.101 Short title.—This act may be cited as the "Uniform
 41 Voidable Transactions Fraudulent Transfer Act."
 42 Section 3. Section 726.102, Florida Statutes, is amended to
 43 read:
 44 726.102 Definitions.—As used in this chapter ~~ss. 726.101-~~
 45 ~~726.112~~:
 46 (1) "Affiliate" means:
 47 (a) A person that ~~who~~ directly or indirectly owns,
 48 controls, or holds with power to vote, 20 percent or more of the
 49 outstanding voting securities of the debtor, other than a person
 50 that ~~who~~ holds the securities:
 51 1. As a fiduciary or agent without sole discretionary power
 52 to vote the securities; or
 53 2. Solely to secure a debt, if the person has not in fact
 54 exercised the power to vote; ~~-~~
 55 (b) A corporation 20 percent or more of whose outstanding
 56 voting securities are directly or indirectly owned, controlled,
 57 or held with power to vote, by the debtor or a person that ~~who~~
 58 directly or indirectly owns, controls, or holds, with power to

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59 vote, 20 percent or more of the outstanding voting securities of
60 the debtor, other than a person that who holds the securities:

61 1. As a fiduciary or agent without sole discretionary power
62 to vote the securities; or

63 2. Solely to secure a debt, if the person has not in fact
64 exercised the power to vote;—

65 (c) A person whose business is operated by the debtor under
66 a lease or other agreement, or a person substantially all of
67 whose assets are controlled by the debtor; or

68 (d) A person that who operates the debtor's business under
69 a lease or other agreement or controls substantially all of the
70 debtor's assets.

71 (2) "Asset" means property of a debtor, but the term does
72 not include:

73 (a) Property to the extent it is encumbered by a valid
74 lien;

75 (b) Property to the extent it is generally exempt under
76 nonbankruptcy law; or

77 (c) An interest in property held in tenancy by the
78 entireties to the extent it is not subject to process by a
79 creditor holding a claim against only one tenant.

80 (3) "Charitable contribution" means a charitable
81 contribution as that term is defined in s. 170(c) of the
82 Internal Revenue Code of 1986, if that contribution consists of:

83 (a) A financial instrument as defined in s. 731(c)(2)(C) of
84 the Internal Revenue Code of 1986; or

85 (b) Cash.

86 (4) "Claim," except as used in "claim for relief," means a
87 right to payment, whether or not the right is reduced to

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88 judgment, liquidated, unliquidated, fixed, contingent, matured,
89 unmatured, disputed, undisputed, legal, equitable, secured, or
90 unsecured.

91 (5) "Claims law" means fraudulent conveyance, fraudulent
92 transfer, or voidable transfer laws or other laws of similar
93 effect.

94 (6)-(5) "Creditor" means a person that who has a claim.

95 (7)-(6) "Debt" means liability on a claim.

96 (8)-(7) "Debtor" means a person that who is liable on a
97 claim.

98 (9) "Electronic" means technology having electrical,
99 digital, magnetic, wireless, optical, electromagnetic, or
100 similar capabilities.

101 (10)-(8) "Insider" includes:

102 (a) If the debtor is an individual:

103 1. A relative of the debtor or of a general partner of the
104 debtor;

105 2. A partnership in which the debtor is a general partner;

106 3. A general partner in a partnership described in
107 subparagraph 2.; or

108 4. A corporation of which the debtor is a director,
109 officer, or person in control;

110 (b) If the debtor is a corporation:

111 1. A director of the debtor;

112 2. An officer of the debtor;

113 3. A person in control of the debtor;

114 4. A partnership in which the debtor is a general partner;

115 5. A general partner in a partnership described in

116 subparagraph 4.; or

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117 6. A relative of a general partner, director, officer, or
 118 person in control of the debtor;~~;~~
 119 (c) If the debtor is a partnership:
 120 1. A general partner in the debtor;
 121 2. A relative of a general partner in, a general partner
 122 of, or a person in control of the debtor;
 123 3. Another partnership in which the debtor is a general
 124 partner;
 125 4. A general partner in a partnership described in this
 126 paragraph ~~subparagraph 3~~; or
 127 5. A person in control of the debtor;~~;~~
 128 (d) An affiliate, or an insider of an affiliate as if the
 129 affiliate were the debtor; ~~and~~
 130 (e) A managing agent of the debtor.
 131 ~~(11)(9)~~ "Lien" means a charge against or an interest in
 132 property to secure payment of a debt or performance of an
 133 obligation, and includes a security interest created by
 134 agreement, a judicial lien obtained by legal or equitable
 135 process or proceedings, a common-law lien, or a statutory lien.
 136 (12) "Organization" means a person other than an
 137 individual.
 138 ~~(13)(10)~~ "Person" means an individual;~~;~~ partnership;
 139 limited partnership; business corporation; nonprofit business
 140 corporation; public~~;~~ corporation; limited liability company;
 141 limited cooperative association; unincorporated nonprofit
 142 association; ~~organization,~~ government or governmental
 143 subdivision, instrumentality, or agency;~~;~~ business trust; common
 144 law business trust; statutory trust; ~~;~~ estate; ~~;~~ trust;~~;~~
 145 association; joint venture; or any other legal or commercial

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146 entity.
 147 ~~(14)(11)~~ "Property" means anything that may be the subject
 148 of ownership.
 149 ~~(15)(12)~~ "Qualified religious or charitable entity or
 150 organization" means:
 151 (a) An entity described in s. 170(c)(1) of the Internal
 152 Revenue Code of 1986; or
 153 (b) An entity or organization described in s. 170(c)(2) of
 154 the Internal Revenue Code of 1986.
 155 (16) "Record" means information that is inscribed on a
 156 tangible medium or that is stored in an electronic or other
 157 medium and is retrievable in perceivable form.
 158 ~~(17)(13)~~ "Relative" means an individual related by
 159 consanguinity within the third degree as determined by the
 160 common law, a spouse, or an individual related to a spouse
 161 within the third degree as so determined, and includes an
 162 individual in an adoptive relationship within the third degree.
 163 (18) "Sign" or "signed" means, with present intent to
 164 authenticate or adopt a record:
 165 (a) To execute or adopt a tangible symbol; or
 166 (b) To attach to or logically associate with the record an
 167 electronic symbol, sound, or process.
 168 ~~(19)(14)~~ "Transfer" means every mode, direct or indirect,
 169 absolute or conditional, voluntary or involuntary, of disposing
 170 of or parting with an asset or an interest in an asset, and
 171 includes payment of money, release, lease, license, and creation
 172 of a lien or other encumbrance.
 173 ~~(20)(15)~~ "Valid lien" means a lien that is effective
 174 against the holder of a judicial lien subsequently obtained by

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175 legal or equitable process or proceedings.

176 Section 4. Section 726.103, Florida Statutes, is amended to
177 read:

178 726.103 Insolvency.—

179 (1) A debtor is insolvent if, at a fair valuation, the sum
180 of the debtor's debts is greater than the sum ~~all~~ of the
181 debtor's assets ~~at a fair valuation~~.

182 (2) A debtor that ~~who~~ is generally not paying its ~~his or~~
183 ~~her~~ debts as they become due, for reasons other than as a result
184 of a bona fide dispute, is presumed to be insolvent. The party
185 against which the presumption is directed has the burden of
186 proving that the nonexistence of insolvency is more probable
187 than its existence.

188 ~~(3) A partnership is insolvent under subsection (1) if the~~
189 ~~sum of the partnership's debts is greater than the aggregate, at~~
190 ~~a fair valuation, of all of the partnership's assets and the sum~~
191 ~~of the excess of the value of each general partner's~~
192 ~~nonpartnership assets over the partner's nonpartnership debts.~~

193 ~~(3)(4)~~ Assets under this section do not include property
194 that has been transferred, concealed, or removed with intent to
195 hinder, delay, or defraud creditors or that has been transferred
196 in a manner making the transfer voidable under this chapter ~~ss-~~
197 ~~726.101-726.112~~.

198 ~~(4)(5)~~ Debts under this section do not include an
199 obligation to the extent it is secured by a valid lien on
200 property of the debtor not included as an asset.

201 Section 5. Section 726.105, Florida Statutes, is amended to
202 read:

203 726.105 Transfers or obligations voidable ~~fraudulent~~ as to

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204 present and future creditors.—

205 (1) A transfer made or obligation incurred by a debtor is
206 voidable ~~fraudulent~~ as to a creditor, whether the creditor's
207 claim arose before or after the transfer was made or the
208 obligation was incurred, if the debtor made the transfer or
209 incurred the obligation:

210 (a) With actual intent to hinder, delay, or defraud any
211 creditor of the debtor; or

212 (b) Without receiving a reasonably equivalent value in
213 exchange for the transfer or obligation, and the debtor:

214 1. Was engaged or was about to engage in a business or a
215 transaction for which the remaining assets of the debtor were
216 unreasonably small in relation to the business or transaction;
217 or

218 2. Intended to incur, or believed or reasonably should have
219 believed that the debtor ~~he or she~~ would incur, debts beyond the
220 debtor's ~~his or her~~ ability to pay as they became due.

221 (2) In determining actual intent under paragraph (1)(a),
222 consideration may be given, among other factors, to whether:

223 (a) The transfer or obligation was to an insider.

224 (b) The debtor retained possession or control of the
225 property transferred after the transfer.

226 (c) The transfer or obligation was disclosed or concealed.

227 (d) Before the transfer was made or obligation was
228 incurred, the debtor had been sued or threatened with suit.

229 (e) The transfer was of substantially all the debtor's
230 assets.

231 (f) The debtor absconded.

232 (g) The debtor removed or concealed assets.

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233 (h) The value of the consideration received by the debtor
234 was reasonably equivalent to the value of the asset transferred
235 or the amount of the obligation incurred.

236 (i) The debtor was insolvent or became insolvent shortly
237 after the transfer was made or the obligation was incurred.

238 (j) The transfer occurred shortly before or shortly after a
239 substantial debt was incurred.

240 (k) The debtor transferred the essential assets of the
241 business to a lienor that ~~who~~ transferred the assets to an
242 insider of the debtor.

243 (3) A creditor making a claim for relief under subsection
244 (1) has the burden of proving the elements of the claim for
245 relief by a preponderance of the evidence.

246 Section 6. Section 726.106, Florida Statutes, is amended to
247 read:

248 726.106 Transfers or obligations voidable ~~fraudulent~~ as to
249 present creditors.—

250 (1) A transfer made or obligation incurred by a debtor is
251 voidable ~~fraudulent~~ as to a creditor whose claim arose before
252 the transfer was made or the obligation was incurred if the
253 debtor made the transfer or incurred the obligation without
254 receiving a reasonably equivalent value in exchange for the
255 transfer or obligation and the debtor was insolvent at that time
256 or the debtor became insolvent as a result of the transfer or
257 obligation.

258 (2) A transfer made by a debtor is voidable ~~fraudulent~~ as
259 to a creditor whose claim arose before the transfer was made if
260 the transfer was made to an insider for an antecedent debt, the
261 debtor was insolvent at that time, and the insider had

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262 reasonable cause to believe that the debtor was insolvent.

263 (3) Subject to s. 726.103(2), a creditor making a claim for
264 relief under subsection (1) or subsection (2) has the burden of
265 proving the elements of the claim for relief by a preponderance
266 of the evidence.

267 Section 7. Section 726.107, Florida Statutes, is amended to
268 read:

269 726.107 When transfer made or obligation incurred.—For the
270 purposes of this chapter ~~ss. 726.101-726.112~~:

271 (1) A transfer is made:

272 (a) With respect to an asset that is real property other
273 than a fixture, but including the interest of a seller or
274 purchaser under a contract for the sale of the asset, when the
275 transfer is so far perfected that a good faith purchaser of the
276 asset from the debtor against which ~~whom~~ applicable law permits
277 the transfer to be perfected cannot acquire an interest in the
278 asset that is superior to the interest of the transferee.

279 (b) With respect to an asset that is not real property or
280 that is a fixture, when the transfer is so far perfected that a
281 creditor on a simple contract cannot acquire a judicial lien
282 otherwise than under this chapter ~~ss. 726.101-726.112~~ that is
283 superior to the interest of the transferee.

284 (2) If applicable law permits the transfer to be perfected
285 as provided in subsection (1) and the transfer is not so
286 perfected before the commencement of an action for relief under
287 this chapter ~~ss. 726.101-726.112~~, the transfer is deemed made
288 immediately before the commencement of the action.

289 (3) If applicable law does not permit the transfer to be
290 perfected as provided in subsection (1), the transfer is made

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291 when it becomes effective between the debtor and the transferee.

292 (4) A transfer is not made until the debtor has acquired
293 rights in the asset transferred.

294 (5) An obligation is incurred:

295 (a) If oral, when it becomes effective between the parties;
296 or

297 (b) If evidenced by a record writing, when the record
298 signed writing ~~executed~~ by the obligor is delivered to or for
299 the benefit of the obligee.

300 Section 8. Section 726.108, Florida Statutes, is amended to
301 read:

302 726.108 Remedies of creditors.—

303 (1) In an action for relief against a transfer or
304 obligation under this chapter ss. 726.101-726.112, a creditor,
305 subject to the limitations in s. 726.109, may obtain:

306 (a) Avoidance of the transfer or obligation to the extent
307 necessary to satisfy the creditor's claim;

308 (b) An attachment or other provisional remedy against the
309 asset transferred or other property of the transferee if and to
310 the extent available under ~~in accordance with~~ applicable law; or

311 (c) Subject to applicable principles of equity and in
312 accordance with applicable rules of civil procedure:

313 1. An injunction against further disposition by the debtor
314 or a transferee, or both, of the asset transferred or of other
315 property;

316 2. Appointment of a receiver to take charge of the asset
317 transferred or of other property of the transferee; or

318 3. Any other relief the circumstances may require.

319 (2) If a creditor has obtained a judgment on a claim

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320 against the debtor, the creditor, if the court so orders, may
321 levy execution on the asset transferred or its proceeds.

322 Section 9. Section 726.109, Florida Statutes, is amended to
323 read:

324 726.109 Defenses, liability, and protection of transferee
325 or obligee.—

326 (1) A transfer or obligation is not voidable under s.
327 726.105(1) (a) against a person that ~~who~~ took in good faith and
328 for a reasonably equivalent value given the debtor or against
329 any subsequent transferee or obligee.

330 (2) (a) Except as otherwise provided in this section, to the
331 extent a transfer is voidable in an action by a creditor under
332 s. 726.108(1) (a), the creditor may recover judgment for the
333 value of the asset transferred, as adjusted under subsection
334 (3), or the amount necessary to satisfy the creditor's claim,
335 whichever is less. The judgment may be entered against:

336 1. ~~(a)~~ The first transferee of the asset or the person for
337 whose benefit the transfer was made; or

338 2. ~~(b)~~ An immediate or mediate transferee of the first ~~Any~~
339 ~~subsequent~~ transferee other than:

340 a. A good faith transferee that ~~who~~ took for value; or

341 b. An immediate or mediate good faith transferee of a
342 person described in sub-subparagraph a ~~from any subsequent~~
343 ~~transferee.~~

344 (b) Recovery pursuant to s. 726.108(1) (a) or (2) of or from
345 the asset transferred or its proceeds, by levy or otherwise, is
346 available only against a person described in subparagraph (a)1.
347 or subparagraph (a)2.

348 (3) If the judgment under subsection (2) is based upon the

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349 value of the asset transferred, the judgment must be for an
350 amount equal to the value of the asset at the time of the
351 transfer, subject to adjustment as the equities may require.

352 (4) Notwithstanding voidability of a transfer or an
353 obligation under this chapter ~~ss. 726.101-726.112~~, a good faith
354 transferee or obligee is entitled, to the extent of the value
355 given the debtor for the transfer or obligation, to:

356 (a) A lien on or a right to retain an ~~any~~ interest in the
357 asset transferred;

358 (b) Enforcement of an ~~any~~ obligation incurred; or

359 (c) A reduction in the amount of the liability on the
360 judgment.

361 (5) A transfer is not voidable under s. 726.105(1) (b) or s.
362 726.106 if the transfer results from:

363 (a) Termination of a lease upon default by the debtor when
364 the termination is pursuant to the lease and applicable law; or

365 (b) Enforcement of a security interest in compliance with
366 Article 9 of the Uniform Commercial Code other than acceptance
367 of collateral in full or partial satisfaction of the obligation
368 it secures.

369 (6) A transfer is not voidable under s. 726.106(2):

370 (a) To the extent the insider gave new value to or for the
371 benefit of the debtor after the transfer was made, except to the
372 extent unless the new value was secured by a valid lien;

373 (b) If made in the ordinary course of business or financial
374 affairs of the debtor and the insider; or

375 (c) If made pursuant to a good faith effort to rehabilitate
376 the debtor and the transfer secured present value given for that
377 purpose as well as an antecedent debt of the debtor.

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378 (7) (a) The transfer of a charitable contribution that is
379 received in good faith by a qualified religious or charitable
380 entity or organization is not a fraudulent transfer under s.
381 726.105(1) (b) or s. 726.106(1).

382 (b) However, a charitable contribution from a natural
383 person is a fraudulent transfer if the transfer was received on,
384 or within 2 years before, the earlier of the date of
385 commencement of an action under this chapter, the filing of a
386 petition under the federal Bankruptcy Code, or the commencement
387 of insolvency proceedings by or against the debtor under any
388 state or federal law, including the filing of an assignment for
389 the benefit of creditors or the appointment of a receiver,
390 unless:

391 1. The transfer was consistent with the practices of the
392 debtor in making the charitable contribution; or

393 2. The transfer was received in good faith and the amount
394 of the charitable contribution did not exceed 15 percent of the
395 gross annual income of the debtor for the year in which the
396 transfer of the charitable contribution was made.

397 (8) (a) A party that seeks to invoke subsection (1),
398 subsection (4), subsection (5), or subsection (6) has the burden
399 of proving the applicability of that subsection.

400 (b) Except as otherwise provided in paragraphs (c) and (d),
401 the creditor has the burden of proving each applicable element
402 of subsection (2) or subsection (3).

403 (c) The transferee has the burden of proving the
404 applicability to the transferee under subparagraph (2) (a) 2.

405 (d) A party that seeks adjustment under subsection (3) has
406 the burden of proving the adjustment.

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407 (9) The standard of proof required to establish matters
 408 referred to in this section is a preponderance of the evidence.

409 (10) The creditor has the burden of proving the requisite
 410 elements of any claim under this chapter, as set forth in ss.
 411 726.105(3) and 726.106(3).

412 Section 10. Section 726.110, Florida Statutes, is amended
 413 to read:

414 726.110 Extinguishment of claim for relief ~~cause of~~
 415 ~~action.~~ A claim for relief ~~cause of action~~ with respect to a
 416 ~~fraudulent~~ transfer or obligation under this chapter ~~ss.~~
 417 ~~726.101-726.112~~ is extinguished unless action is brought:

418 (1) Under s. 726.105(1)(a), within 4 years after the
 419 transfer was made or the obligation was incurred or, if later,
 420 within 1 year after the transfer or obligation and its wrongful
 421 nature was or could reasonably have been discovered by the
 422 claimant;

423 (2) Under s. 726.105(1)(b) or s. 726.106(1), within 4 years
 424 after the transfer was made or the obligation was incurred; or

425 (3) Under s. 726.106(2), within 1 year after the transfer
 426 was made or the obligation was incurred.

427 Section 11. Section 726.111, Florida Statutes, is amended
 428 to read:

429 726.111 Supplementary provisions.—Unless displaced by the
 430 provisions of this chapter ~~ss. 726.101-726.112~~, the principles
 431 of law and equity, including the law merchant and the law
 432 relating to principal and agent, estoppel, laches, fraud,
 433 misrepresentation, duress, coercion, mistake, insolvency, or
 434 other validating or invalidating cause, supplement those
 435 provisions.

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436 Section 12. Section 726.112, Florida Statutes, is amended
 437 to read:

438 726.112 Uniformity of application and construction.—Chapter
 439 87-79, Laws of Florida, shall be applied and construed to
 440 effectuate its general purpose to make uniform the law with
 441 respect to the subject of the law among states enacting the law
 442 ~~it~~.

443 Section 13. Section 726.113, Florida Statutes, is created
 444 to read:

445 726.113 Governing law.—

446 (1) For the purposes of this section, the following
 447 provisions determine a debtor's physical location:

448 (a) A debtor that is an individual is located at his or her
 449 principal residence.

450 (b) A debtor that is an organization and has only one place
 451 of business is located at its place of business.

452 (c) A debtor that is an organization and has more than one
 453 place of business is located at its chief executive office.

454 (2) A claim for relief in the nature of a claim for relief
 455 under this chapter is governed by the claims law of the
 456 jurisdiction in which the debtor is located when the transfer is
 457 made or the obligation is incurred.

458 (3) This section does not affect the governing law for any
 459 other claims or issues between the parties arising outside of
 460 this chapter or other claims law. If this section requires the
 461 application of the claims law of a foreign jurisdiction, such a
 462 determination does not affect which jurisdiction's exemption
 463 laws apply, the availability of exemptions under applicable law,
 464 or the debtor's entitlement to any protections afforded to the

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465 debtor's homestead under the Florida Constitution.

466 Section 14. Section 726.114, Florida Statutes, is created
467 to read:

468 726.114 Application to series organization.-

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

470 (a) "Protected series" means an arrangement, however
471 denominated, created by a series organization that, pursuant to
472 the law under which the series organization is organized, meets
473 the criteria set forth in paragraph (b).

474 (b) "Series organization" means an organization that,
475 pursuant to the law under which it is organized, has the
476 following characteristics:

477 1. The organic record of the organization provides for
478 creation by the organization of one or more protected series,
479 however denominated, with respect to specified property of the
480 organization, and for records to be maintained for each
481 protected series that identify the property of, or associated
482 with, the protected series.

483 2. Debt incurred or existing with respect to the activities
484 of, or property of or associated with, a particular protected
485 series is enforceable against the property of, or associated
486 with, the protected series only, and not against the property
487 of, or associated with, the organization or other protected
488 series of the organization.

489 3. Debt incurred or existing with respect to the activities
490 or property of the organization is enforceable against the
491 property of the organization only, and not against the property
492 of, or associated with, a protected series of the organization.

493 (2) A series organization and each protected series of the

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494 organization is a separate person for purposes of this chapter,
495 even if for other purposes a protected series is not a person
496 separate from the organization or other protected series of the
497 organization. Provisions of law other than this chapter
498 determine whether and to what extent a series organization and
499 each protected series of the organization is a separate person
500 for purposes other than the purposes of this chapter.

501 Section 15. Section 726.115, Florida Statutes, is created
502 to read:

503 726.115 Relation to Electronic Signatures in Global and
504 National Commerce Act.-This chapter modifies, limits, and
505 supersedes the federal Electronic Signatures in Global and
506 National Commerce Act, 15 U.S.C. ss. 7001, et seq., but does not
507 modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s.
508 7001(c), or authorize electronic delivery of any of the notices
509 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

510 Section 16. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Anitere Flores, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill 1316**, relating to Uniform Voidable Transactions Act, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

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

1 / 30 / 18
Meeting Date

SB 1316
Bill Number (if applicable)

Topic UNIFORM VOIDABLE TRANSFERS ACT

Amendment Barcode (if applicable)

Name KENNETH PRATT

Job Title SENIOR VP OF GOVERNMENTAL AFFAIRS

Address 1001 THOMASVILLE RD. STE 201
Street

Phone 850-589-8020

TALLAHASSEE FL 32301
City State Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing FLORIDA BANKERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/30/18

Meeting Date

1316

Bill Number (if applicable)

Topic UVTA

Amendment Barcode (if applicable)

Name Brittany Finkbeiner

Job Title Attorney

Address 215 S. Monroe St. Ste. 215
Street

Phone (850) 999-4100

Tallahassee FL 32301
City State Zip

Email b.finkbeiner@deanned.com

Speaking: For Against Information

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

Representing Real Property, Probate & Trust Law Section of FL Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/30/18
Meeting Date

SB 1316
Bill Number (if applicable)

Topic UVTA

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title _____

Address 119 South Monroe Street
Street

Phone 850-205-9000

tallahassee FL 32301
City State Zip

Email aimee.diazlyon@mhdhim.com

Speaking: For Against Information

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

Representing The Business Law Section of the Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Banking and Insurance

BILL: CS/SB 1880

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Public Records/Security of Data and Information Technology in Citizens Property Insurance Corporation

DATE: January 30, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1880 creates a public records exemption for data and information from information technology (IT) systems owned by, under contract with, or maintained by Citizens Property Insurance Corporation (Citizens). The bill exempts from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the following data and information held by Citizens:

- Records that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches.
- Portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information and IT resources.

Such records are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, or information technology resources including those related to security of IT resources.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information.

The exemptions are similar to those currently in law for state agencies.

The exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of the bill.

The bill provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.² In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ s. 119.01(1), F.S.

⁶ s. 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ s. 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Public Record Exemptions Related to Information Technology

The Information Technology (IT) Security Act¹⁴ requires the Agency for State Technology and state agency¹⁵ heads to meet certain requirements relating to IT security. The IT Security Act provides that the following state agency information is confidential and exempt¹⁶ from public record requirements:

- Comprehensive risk assessments;¹⁷
- Internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources;¹⁸ and
- The results of internal audits and evaluations.¹⁹

Such confidential and exempt information must be disclosed to the Auditor General, the Cybercrime Office within the Department of Law Enforcement, Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.²⁰

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 282.318, F.S.

¹⁵ The term “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. As used in part I of this chapter, except as otherwise specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services. Section 282.0041(23), F.S.

¹⁶ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So.2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

¹⁷ Section 282.318(4)(d), F.S.

¹⁸ Section 282.318(4)(e), F.S.

¹⁹ Section 282.318(4)(g), F.S.

²⁰ Section 282.318(4)(d), (e), and (g), F.S.

In addition, the IT Security Act provides that records held by a state agency that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt.²¹ Portions of risk assessments, evaluations, external audits, and other reports of a state agency's IT security program for the data, information, and IT resources of the state agency that are held by a state agency are confidential and exempt from public record requirements.²² Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate the unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
 - Information relating to the security of the state agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - Physical or virtual security information that relates to the state agency's existing or proposed IT systems.²³

Such confidential and exempt records, and portions thereof, must be made available to the Auditor General, the Cybercrime Office within Department of Law Enforcement, Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. In addition, the records, and portions thereof, may be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.²⁴

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted²⁵ market. It is not a private insurance company.²⁶

Records and meetings held by Citizens regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open records laws^{27,28} Public disclosure of this information presents a significant security risk and would reveal weaknesses within Citizens' computer networks, raising the potential for exploitation.

Section 282.318, F.S., exempts from Open Meeting and Public Records laws data and information from technology systems owned, contracted, or maintained by a state agency.

²¹ Section 282.318(4)(i), F.S.

²² Section 282.318(5), F.S.

²³ Section 282.318(4)(i) and (5), F.S.

²⁴ *Id.*

²⁵ Admitted market means insurance companies licensed to transact insurance in Florida.

²⁶ Section 627.351(6)(a).1., F.S.

²⁷ FLA. CONST. art. I, s. 24 (c).

²⁸ Chapter 119, F.S.

However, s. 282.318(2), F.S., defines “state agency” as having the same meaning as provided in s. 282.0041, F.S. State agency is defined in s. 282.0041(23), F.S., as meaning:

[A]ny official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission.

Because Citizens is not created within the executive branch, it is not covered by the definition.

Therefore, Citizens is vulnerable to the disclosure of information and records which, if disclosed, could potentially compromise the confidentiality, integrity, and availability of its information technology system. Such system contains highly sensitive policyholder, insurer, claims, financial, accounting and banking, personnel, and other records.²⁹

III. Effect of Proposed Changes:

The bill creates public record and public meeting exemptions to protect data and records pertaining to the security of the Citizens information networks from disclosure. The bill provides that records held by Citizens that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt from public record requirements. In addition, portions of risk assessments, evaluations, audits, and other reports of Citizens’ IT security program for its data, information, and IT resources that are held by Citizens are confidential and exempt. Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
 - Information relating to the security of Citizens’ technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - Physical or virtual security information that relates to Citizens’ existing or proposed IT systems.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are confidential and exempt from public record requirements, unless a court, following an in camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. In the event of such a judicial determination, only that portion of a transcript that reveals nonexempt data and information may be disclosed to a third party.

²⁹ Section 627.351(6)(x), F.S., requires Citizens to hold the following records as confidential and exempt from disclosure under Florida’s public record laws: underwriting files, claim files, certain audit files, attorney-client privileged material, certain proprietary information licensed to Citizens, employee assistance program information, information relating to the medical condition or medical status of a Citizens employee, certain information relating to contract negotiations, and certain records related to closed meetings.

The bill requires the confidential and exempt records related to the public meeting exemption to be available to the Auditor General, the Cybercrime Office of Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The public record exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of the bill.

The bill provides a public necessity statement as required by the State Constitution, specifying that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

The bill provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.352 of the Florida Statutes.

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

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

CS by Banking and Insurance on January 30, 2018:

The CS makes a technical change correcting the 5 year sunset review date to October 2, 2023.

B. Amendments:

None.



323104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/30/2018	.	
	.	
	.	
	.	

The Committee on Banking and Insurance (Broxson) recommended the following:

Senate Amendment

Delete line 93
and insert:
on October 2, 2023, unless reviewed and saved from repeal

By Senator Broxson

1-01213B-18

20181880__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 627.352, F.S.; providing an exemption from public
 4 records requirements for certain records held by the
 5 Citizens Property Insurance Corporation which identify
 6 detection, investigation, or response practices for
 7 suspected or confirmed information technology security
 8 incidents; creating an exemption from public records
 9 requirements for certain portions of risk assessments,
 10 evaluations, audits, and other reports of the
 11 corporation's information technology security program;
 12 creating an exemption from public meetings
 13 requirements for portions of public meetings which
 14 would reveal such data and information; providing an
 15 exemption from public records requirements for a
 16 specified period for the recording and transcript of a
 17 closed meeting; authorizing disclosure of confidential
 18 and exempt information to certain agencies and
 19 officers; providing for future legislative review and
 20 repeal; providing a statement of public necessity;
 21 providing retroactive application; providing an
 22 effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 627.352, Florida Statutes, is created to
 27 read:
 28 627.352 Security of data and information technology in
 29 Citizens Property Insurance Corporation.-

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30 (1) The following data and information from technology
 31 systems owned by, under contract with, or maintained by Citizens
 32 Property Insurance Corporation are confidential and exempt from
 33 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
 34 (a) Records held by the corporation which identify
 35 detection, investigation, or response practices for suspected or
 36 confirmed information technology security incidents, including
 37 suspected or confirmed breaches, if the disclosure of such
 38 records would facilitate unauthorized access to or unauthorized
 39 modification, disclosure, or destruction of:
 40 1. Data or information, whether physical or virtual; or
 41 2. Information technology resources, including:
 42 a. Information relating to the security of the
 43 corporation's technologies, processes, and practices designed to
 44 protect networks, computers, data processing software, and data
 45 from attack, damage, or unauthorized access; or
 46 b. Security information, whether physical or virtual, which
 47 relates to the corporation's existing or proposed information
 48 technology systems.
 49 (b) Those portions of risk assessments, evaluations,
 50 audits, and other reports of the corporation's information
 51 technology security program for its data, information, and
 52 information technology resources which are held by the
 53 corporation, if the disclosure of such records would facilitate
 54 unauthorized access to or the unauthorized modification,
 55 disclosure, or destruction of:
 56 1. Data or information, whether physical or virtual; or
 57 2. Information technology resources, which include:
 58 a. Information relating to the security of the

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59 corporation's technologies, processes, and practices designed to
60 protect networks, computers, data processing software, and data
61 from attack, damage, or unauthorized access; or

62 b. Security information, whether physical or virtual, which
63 relates to the corporation's existing or proposed information
64 technology systems.

65 (2) Those portions of a public meeting as specified in s.
66 286.011 which would reveal data and information described in
67 subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I
68 of the State Constitution. No exempt portion of an exempt
69 meeting may be off the record. All exempt portions of such a
70 meeting must be recorded and transcribed. The recording and exempt
71 transcript of the meeting must remain confidential and exempt
72 from disclosure under s. 119.07(1) and s. 24(a), Art. I of the
73 State Constitution unless a court of competent jurisdiction,
74 following an in camera review, determines that the meeting was
75 not restricted to the discussion of data and information made
76 confidential and exempt by this section. In the event of such a
77 judicial determination, only that portion of the transcript
78 which reveals nonexempt data and information may be disclosed to
79 a third party.

80 (3) The records and portions of public meeting recordings
81 and transcripts described in subsection (2) must be available to
82 the Auditor General, the Cybercrime Office of the Department of
83 Law Enforcement, and the Office of Insurance Regulation. Such
84 records and portions of meetings, recordings, and transcripts
85 may be made available to a state or federal agency for security
86 purposes or in furtherance of the agency's official duties.

87 (4) The exemptions listed in this section apply to such

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88 records or portions of public meetings, recordings, and
89 transcripts held by the corporation before, on, or after July 1,
90 2018.

91 (5) This section is subject to the Open Government Sunset
92 Review Act in accordance with s. 119.15 and shall stand repealed
93 on October 2, 2022, unless reviewed and saved from repeal
94 through reenactment by the Legislature.

95 Section 2. (1)(a) The Legislature finds that it is a public
96 necessity that the following data or information from technology
97 systems owned, under contract, or maintained by the corporation
98 be confidential and exempt from s. 119.07(1), Florida Statutes,
99 and s. 24(a), Article I of the State Constitution:

100 1. Records held by the corporation which identify
101 detection, investigation, or response practices for suspected or
102 confirmed information technology security incidents, including
103 suspected or confirmed breaches, if the disclosure of such
104 records would facilitate unauthorized access to or unauthorized
105 modification, disclosure, or destruction of:

106 a. Data or information, whether physical or virtual; or

107 b. Information technology resources, which include:

108 (I) Information relating to the security of the
109 corporation's technologies, processes, and practices designed to
110 protect networks, computers, data processing software, and data
111 from attack, damage, or unauthorized access; or

112 (II) Security information, whether physical or virtual,
113 which relates to the corporation's existing or proposed
114 information technology systems.

115 2. Those portions of risk assessments, evaluations, audits,
116 and other reports of the corporation's information technology

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117 security program for its data, information, and information
 118 technology resources which are held by the corporation, if the
 119 disclosure of such records would facilitate unauthorized access
 120 to or the unauthorized modification, disclosure, or destruction
 121 of:

122 a. Data or information, whether physical or virtual; or
 123 b. Information technology resources, which include:

124 (I) Information relating to the security of the
 125 corporation's technologies, processes, and practices designed to
 126 protect networks, computers, data processing software, and data
 127 from attack, damage, or unauthorized access; or

128 (II) Security information, whether physical or virtual,
 129 which relates to the corporation's existing or proposed
 130 information technology systems.

131 (b) The Legislature also finds that those portions of a
 132 public meeting as specified in s. 286.011, Florida Statutes,
 133 which would reveal data and information described in subsection
 134 (1) are exempt from s. 286.011, Florida Statutes, and s. 24(b),
 135 Article I of the State Constitution. The recording and
 136 transcript of the meeting must remain confidential and exempt
 137 from disclosure under s. 119.07(1), Florida Statutes, and s.
 138 24(a), Article I of the State Constitution unless a court of
 139 competent jurisdiction, following an in camera review,
 140 determines that the meeting was not restricted to the discussion
 141 of data and information made confidential and exempt by this
 142 section. In the event of such a judicial determination, only
 143 that portion of the transcript which reveals nonexempt data and
 144 information may be disclosed to a third party.

145 (c) The Legislature further finds that it is a public

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146 necessity that records held by the corporation which identify
 147 detection, investigation, or response practices for suspected or
 148 confirmed information technology security incidents, including
 149 suspected or confirmed breaches, be made confidential and exempt
 150 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 151 the State Constitution if the disclosure of such records would
 152 facilitate unauthorized access to or the unauthorized
 153 modification, disclosure, or destruction of:

154 1. Data or information, whether physical or virtual; or
 155 2. Information technology resources, which include:

156 a. Information relating to the security of the
 157 corporation's technologies, processes, and practices designed to
 158 protect networks, computers, data processing software, and data
 159 from attack, damage, or unauthorized access; or

160 b. Security information, whether physical or virtual, which
 161 relates to the corporation's existing or proposed information
 162 technology systems.

163 (d) Such records must be made confidential and exempt for
 164 the following reasons:

165 1. Records held by the corporation which identify
 166 information technology detection, investigation, or response
 167 practices for suspected or confirmed information technology
 168 security incidents or breaches are likely to be used in the
 169 investigations of the incidents or breaches. The release of such
 170 information could impede the investigation and impair the
 171 ability of reviewing entities to effectively and efficiently
 172 execute their investigative duties. In addition, the release of
 173 such information before an active investigation is completed
 174 could jeopardize the ongoing investigation.

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175 2. An investigation of an information technology security
 176 incident or breach is likely to result in the gathering of
 177 sensitive personal information, including identification numbers
 178 and personal financial and health information. Such information
 179 could be used to commit identity theft or other crimes. In
 180 addition, release of such information could subject possible
 181 victims of the security incident or breach to further harm.

182 3. Disclosure of a record, including a computer forensic
 183 analysis, or other information that would reveal weaknesses in
 184 the corporation's data security could compromise that security
 185 in the future if such information were available upon conclusion
 186 of an investigation or once an investigation ceased to be
 187 active.

188 4. Such records are likely to contain proprietary
 189 information about the security of the system at issue. The
 190 disclosure of such information could result in the
 191 identification of vulnerabilities and further breaches of that
 192 system. In addition, the release of such information could give
 193 business competitors an unfair advantage and weaken the security
 194 technology supplier supplying the proprietary information in the
 195 marketplace.

196 5. The disclosure of such records could potentially
 197 compromise the confidentiality, integrity, and availability of
 198 the corporation's data and information technology resources. It
 199 is a public necessity that this information be made confidential
 200 in order to protect the technology systems, resources, and data
 201 of the corporation. The Legislature further finds that this
 202 public records exemption be given retroactive application
 203 because it is remedial in nature.

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204 (2) (a) The Legislature also finds that it is a public
 205 necessity that portions of risk assessments, evaluations,
 206 audits, and other reports of the corporation's information
 207 technology security program for its data, information, and
 208 information technology resources which are held by the
 209 corporation be made confidential and exempt from s. 119.07(1),
 210 Florida Statutes, and s. 24(a), Article I of the State
 211 Constitution if the disclosure of such portions of records would
 212 facilitate unauthorized access to or the unauthorized
 213 modification, disclosure, or destruction of:

214 1. Data or information, whether physical or virtual; or
 215 2. Information technology resources, which include:
 216 a. Information relating to the security of the
 217 corporation's technologies, processes, and practices designed to
 218 protect networks, computers, data processing software, and data
 219 from attack, damage, or unauthorized access; or
 220 b. Security information, whether physical or virtual, which
 221 relates to the corporation's existing or proposed information
 222 technology systems.

223 (b) The Legislature finds that it is valuable, prudent, and
 224 critical to the corporation to have an independent entity
 225 conduct a risk assessment, an audit, or an evaluation or
 226 complete a report of the corporation's information technology
 227 program or related systems. Such documents would likely include
 228 an analysis of the corporation's current information technology
 229 program or systems which could clearly identify vulnerabilities
 230 or gaps in current systems or processes and propose
 231 recommendations to remedy identified vulnerabilities.

232 (3) (a) The Legislature further finds that it is a public

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 233 necessity that those portions of a public meeting which could
 234 reveal information described in this section be made exempt from
 235 s. 286.011, Florida Statutes, and s. 24(b), Article I of the
 236 State Constitution. It is a public necessity that such meetings
 237 be made exempt from the open meetings requirements in order to
 238 protect the corporation's information technology systems,
 239 resources, and data. The information disclosed during portions
 240 of meetings would clearly identify the corporation's information
 241 technology systems and its vulnerabilities. This disclosure
 242 would jeopardize the information technology security of the
 243 corporation and compromise the integrity and availability of the
 244 corporation's data and information technology resources.

(b) The Legislature further finds that it is a public
 245 necessity that the recording and transcript of those portions of
 246 meetings specified in paragraph (a) be made confidential and
 247 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 248 Article I of the State Constitution unless a court determines
 249 that the meeting was not restricted to the discussion of data
 250 and information made confidential and exempt by this act. It is
 251 a public necessity that the resulting recordings and transcripts
 252 be made confidential and exempt from the public records
 253 requirements in order to protect the corporation's information
 254 technology systems, resources, and data. The disclosure of such
 255 recordings and transcripts would clearly identify the
 256 corporation's information technology systems and its
 257 vulnerabilities. This disclosure would jeopardize the
 258 information technology security of the corporation and
 259 compromise the integrity and availability of the corporation's
 260 data and information technology resources.
 261

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 262 (c) The Legislature further finds that this public meeting
 263 and public records exemption must be given retroactive
 264 application because it is remedial in nature.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-30-18

Meeting Date

1880

Bill Number (if applicable)

Topic Citizens Property Ins- Public Records Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief- Communications & Legislative Affairs

Address 2101 Maryland Circle Phone 850-513-3746
Street

Tallahassee FL 32303 Email _____
City State Zip

Speaking: For Against Information

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

Representing Citizens Property Insurance Corp

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Ethics and Elections, *Vice Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Pre-K - 12 Education
Governmental Oversight and Accountability

SELECT COMMITTEE:

Joint Select Committee on Collective Bargaining

SENATOR DENISE GRIMSLEY

26th District

January 30, 2018

The Honorable Anitere Flores, Chair
Banking and Insurance Committee
320 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Flores:

I am respectfully requesting permission to be excused from the Banking and Insurance Committee meeting today, January, 30th, 2018, due to presenting my bills, SB 170, relating to Rural Economic Development Initiative in the Government Oversight and Accountability Committee and SB 1486, relating to Department of Health in Health policy Committee at the same scheduled time.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley
State Senate, District 26

cc: James Knudson, Staff Director
Sheri Green, Committee Administrative Assistant

REPLY TO:

- 295 E. Interlake Boulevard, Lake Placid, Florida 33852 (863) 465-2626
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 413 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:
Judge:

Caption: Senate Committee on Banking and Insurance

Started: 1/30/2018 10:08:31 AM

Ends: 1/30/2018 10:41:47 AM Length: 00:33:17

10:08:55 AM Meeting called to order - quorum present
10:09:36 AM TAB 6 - SB 1316 by Sen. Simmons Uniform Voidable Transactions Act
10:09:55 AM Sen. Simmons recognized to explain the bill.
10:11:56 AM Sen. Simmons waives close.
10:12:14 AM Roll call vote on SB 1316 - Favorable
10:12:35 AM TAB 1 - S 478 Senator Hukill - Trusts
10:13:52 AM Senator Hukill recognized to explain the bill.
10:13:59 AM Sen. Hukill waives close.
10:14:11 AM Roll call vote on SB 478 - Favorable
10:14:51 AM TAB 4 - Senator Taddeo - Residential Property Insurance
10:15:32 AM Senator Taddeo recognized to explain the bill.
10:16:05 AM Amd. 252350 - Sen. Taddeo explain the amendment
10:16:26 AM Late filed amd. to amd. - 93654 Taddeo
10:16:39 AM Sen. Taddeo explain amd. to amd. - fwo/adopted
10:16:57 AM On Amd. as amended
10:19:20 AM Favorable
10:19:28 AM Sen. Taddeo waives close.
10:19:44 AM Vote on CS/SB 1282 - Favorable
10:20:16 AM TAB 5 - SB 1302 Senator Brandes - Cosumer Report Security
10:20:25 AM Sen. Brandes explains bill.
10:21:04 AM Sen. Brandes waives close.
10:21:17 AM Roll call on SB 1302 - Favorable
10:21:52 AM TAB 7 S 1880 Senator Broxson
10:22:00 AM Sen. Broxson explains bill.
10:22:24 AM Amd. 323104 - Broxson
10:22:43 AM Sen. Broxson explains amd. (technical) - fwo/adopted
10:23:06 AM Sen. Broxson waives close.
10:24:02 AM Recording Paused
10:27:44 AM Recording Resumed
10:28:17 AM Roll call on CS/SB 1880 - Favorable
10:29:03 AM TAB 3 - CS/SB 1052 - Lost or Abandoned Property
10:29:14 AM Senator Young recognized to explain the bill.
10:30:02 AM Amd. 114920 - Sen. Young explains the amendment - fwo/adopted
10:30:32 AM Amd. (late filed) 472418 - Sen. Young explains amd. fwo/adopted
10:31:52 AM Roll call on CS/SB 1052 - Favorable/CS
10:34:18 AM Recording Paused
10:37:33 AM Recording Resumed
10:38:20 AM TAB 2 -S 676 - Sen. Passidomo - Equitable Distribution of Marital Assets
10:38:45 AM Senator Passidomo recognized to explain the bill.
10:40:14 AM Bonnie Sockel-Stone, Family Law Section - Florida Bar
10:41:14 AM Roll call on SB 676 - Favorable
10:41:39 AM Meeting adjourned - Sen. Garcia