

Tab 1	SB 72 by Brandes (CO-INTRODUCERS) Perry, Baxley, Hutson; (Similar to CS/H 00007) Civil Liability for Damages Relating to COVID-19					
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951728	A	S	UNFAV	CM, Powell	btw L.108 - 109:	03/03 08:50 AM
321008	A	S	UNFAV	CM, Pizzo	Delete L.131 - 136:	03/03 08:50 AM
358018	A	S	UNFAV	CM, Pizzo	Delete L.141 - 157:	03/03 08:50 AM
466366	A	S	UNFAV	CM, Pizzo	Delete L.148 - 150:	03/03 08:50 AM
928904	A	S	UNFAV	CM, Pizzo	Delete L.152 - 154:	03/03 08:50 AM
475864	A	S	WD	CM, Torres	btw L.163 - 164:	03/03 08:50 AM
407288	A	S	UNFAV	CM, Torres	btw L.163 - 164:	03/03 08:50 AM
624688	A	S	UNFAV	CM, Taddeo	btw L.163 - 164:	03/03 08:50 AM

Tab 2	SB 430 by Rodriguez; (Similar to H 00991) Petroleum Fuel Measuring Devices					
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168096	A	S	RCS	CM, Rodriguez	Delete L.23 - 29:	03/03 08:50 AM
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Tab 3	SB 848 by Powell; (Identical to H 00483) Electronic Legal Documents					
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Hooper, Chair
Senator Wright, Vice Chair

MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Wright, Vice Chair; Senators Burgess, Diaz, Garcia, Gruters, Hutson, Pizzo, Powell, Taddeo, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 WEST PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 72 Brandes (Similar CS/H 7)	Civil Liability for Damages Relating to COVID-19; Providing requirements for a civil action based on a COVID-19-related claim; providing that the plaintiff has the burden of proof in such action; providing a statute of limitations; providing severability; providing retroactive applicability, etc. JU 01/25/2021 Favorable CM 02/15/2021 Temporarily Postponed CM 03/02/2021 Favorable RC	Favorable Yeas 7 Nays 4
2	SB 430 Rodriguez (Similar H 991)	Petroleum Fuel Measuring Devices; Preempting the regulation of petroleum fuel measuring devices to the state and the Department of Agriculture and Consumer Services; prohibiting the department from enforcing certain provisions for violations of rules relating to petroleum fuel measuring devices; exempting department petroleum fuel measuring device rules from enforcement under specified provisions, etc. CM 03/02/2021 Fav/CS TR RC	Fav/CS Yeas 11 Nays 0
3	SB 848 Powell (Identical H 483)	Electronic Legal Documents; Revising the definition of the term "online notarization"; clarifying that supervising the witnessing of an electronic record by an online notary public is a notarial act; revising the statutory form for an affidavit for acceptance of and reliance upon a power of attorney to reflect means of notarization; revising the form for a petition of summary relief for the sale or transfer of certain property owned by an absentee to reflect means of notarization, etc. CM 03/02/2021 Favorable JU RC	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, March 2, 2021, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: February 2, 2021

I respectfully request that **Senate Bill # 72**, relating to Civil Liability for Damages Relating to COVID-19, 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

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

951728

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to Covid-19

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone 305-358-6644

Street

Miami

City

FL

State

33131

Zip

Email scain@stblaw.com

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

03.02.21

Meeting Date

72

Bill Number (if applicable)

321008

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

321008

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to Covid-19

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone 305-358-6644

Street

Miami

FL

33131

Email scain@stblaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

03.02.21

Meeting Date

72

Bill Number (if applicable)

466366

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

466366

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to Covid-19

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone 305-358-6644

Street

Miami

FL

33131

Email scain@stblaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

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

03.02.21

Meeting Date

72

Bill Number (if applicable)

928904

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-0170

Email William@fljustice.org

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

928904

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to Covid-19

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone 305-358-6644

Street

Miami

FL

33131

Email scain@stblaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

03.02.21

Meeting Date

72

Bill Number (if applicable)

475864

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-0170

Email William@fljustice.org

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

03.02.21

Meeting Date

72

Bill Number (if applicable)

407288

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Name William Large

Job Title President

Address 210 South Monroe Street

Street

Phone 850-222-0170

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

407288

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to Covid-19

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone 305-358-6644

Street

Miami

FL

33131

Email scain@stblaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

03.02.21

Meeting Date

72

Bill Number (if applicable)

624688

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

624688

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to Covid-19

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone 305-358-6644

Street

Miami

FL

33131

Email scain@stblaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

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

03.02.21

Meeting Date

72

Bill Number (if applicable)

358018

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

358018

Amendment Barcode (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone (305) 358-6644

Street

Miami

FL

33131

Email scain@stfblaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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

Reset Form

THE FLORIDA SENATE
APPEARANCE RECORD

March 2, 2021

Meeting Date

72

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

Email Tim.nungesser@nfib.org

City

State

Zip

Speaking: For Against Information

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

Representing NFIB

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

March 2, 2021
Meeting Date

72
Bill Number (if applicable)

Topic Civil Liability/COVID-19

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 South Adams Street

Phone 224-2250

Street

Tallahassee

FL

32311

Email spadgett@frla.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name Jake Farmer

Job Title Director of Government Affairs

Address 227 S Adams Street

Phone 352-359-6835

Street

Tallahassee

FL

32301

Email jake@frf.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

03.02.21

Meeting Date

72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

March 2, 2021

Meeting Date

SB 72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name Stephen Cain

Job Title Attorney

Address One Southeast Third Avenue, Suite 3000

Phone 305-358-6644

Street

Miami

FL

33131

Email scain@stfbllaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/21

Meeting Date

72

Bill Number (if applicable)

Topic COVID-19 Liability Protections

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Senoir Policy Director

Address 136 S Bronough St

Phone 850-521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3-2-2021

Meeting Date

72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name Spencer Pylant

Job Title Vice President of Government Affairs

Address 1601 Biscayne Blvd., Ballroom Level

Phone 305-577-5421

Street

Miami

FL

33132

Email spylant@miamichamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Greater Miami Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/21

Meeting Date

~~79~~ 72

Bill Number (if applicable)

Topic Liability

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title

Address Street

Phone

City

State

Zip

Email

Speaking: For Against Information

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

Representing AFL-CIO

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)

3/2/11
Meeting Date

~~77~~ 72
Bill Number (if applicable)

Topic Liability

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE

APPEARANCE RECORD

March 2

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

Meeting Date

72

Bill Number (if applicable)

Topic COVID Immunity for Business

Amendment Barcode (if applicable)

Name Barbara Devane

Job Title

Address 625 E Broadway St

Phone 251-4280

Tallahassee FL 32308

Email barbadevane1@yahoo.com

Speaking: [] For [x] Against [] Information.

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

Representing FL NOW & FL Alliance for Retired Americans

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/21
Meeting Date

72
Bill Number (if applicable)

Topic Shielding COVID Liability

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

Address 4343 West Flagler Dr.

Phone 786-363-4436

Street

Miami

FL

33134

Email kgross@aclufl.org

City

State

Zip

Speaking: For Against Information

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

Representing ACLU of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2 Mar 21

Meeting Date

72

Bill Number (if applicable)

Topic Covid Civil Liability Protection

Amendment Barcode (if applicable)

Name James Mosteller

Job Title Advocacy Associate

Address 215 S. Monroe Street, STE. 420

Phone 850-727-3712

Street

Tallahassee

FL

32309

Email JamesM@afloridapromise.org

City

State

Zip

Speaking: For Against Information

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

Representing Foundation for Florida's Future

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/21

Meeting Date

72

Bill Number (if applicable)

Topic Covid Liability

Amendment Barcode (if applicable)

Name Travis Moore

Job Title

Address P.O. Box 2020

Phone 727.421.6902

Street

St. Petersburg FL

33731

Email travis@moore-relations.com

City

State

Zip

Speaking: For Against Information

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

Representing Community Associations Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

March 2 2020
Meeting Date

SB 72
Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID 19 Amendment Barcode (if applicable)

Name Dilep Echeverri "DEE-YAY-GOH ETCH-UH-VAY-REE"

Job Title Legislative Liaison

Address 200 W College Ave Phone _____
Street

TLH Email decheverri@afphq.org
City State Zip

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

Representing Americans For Prosperity

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

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

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Reset Form

THE FLORIDA SENATE

APPEARANCE RECORD

3/1/2021

Meeting Date

72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title

Address 104 South Monroe Street

Phone 850-425-1344

Street

Tallahassee

FL

32301

City

State

Zip

Email TcgLobby@aol

Speaking: For Against Information

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

Representing NAACP Florida State Conference

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name Danielle Scoggins

Job Title Vice President of Public Policy

Address 200 S. Monroe St.

Phone 8502241400

Street

Tallahassee

FL

32301

Email danielles@floridarealtors.org

City

State

Zip

Speaking: For Against Information

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

Representing The Florida Realtors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/2/2024
Meeting Date

SB 72
Bill Number (if applicable)

Topic Civil Liberty for Democracy

Amendment Barcode (if applicable)

Name Ned Bowman

Job Title Ex Director

Address 1983 Centre Pointe Blvd

Phone 850 524 6609

Tallahassee FL 32311
City State Zip

Email Ned@FPMA.org

Speaking: For Against Information

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

Representing FPMA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/21

Meeting Date

72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N Adams St

Phone 221-7173

Street

Tallahassee

FL

32312

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

72

Bill Number (if applicable)

Topic Civil Liability for Damages Relating to COVID-19

Amendment Barcode (if applicable)

Name David Cruz

Job Title Legislative Counsel

Address P.O. Box 1757

Phone 850-701-3676

Street

Tallahassee

FL

32301

Email dcruz@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

SB0072_BAR 2021-01-12

Policy Implications¹

The Florida Bar is not doing an analysis for SB72. The Bar does not have an official legislative position related to the proposed legislation.

Fiscal Impact

The Florida Bar has not identified any fiscal impact with the proposed legislation.

¹ The Florida Bar Board of Governor's has Standing Board Policies to establish the Board's powers to maintain and supervise the Bar's legislative program. The Bar will not advocate a legislative or political issue unless the Board determines that the matter is related to the Bar's purposes as set forth in the Rules Regulating The Florida Bar and is otherwise consistent with applicable court decisions. These policies govern the limits and procedures regarding legislative or political involvement by the Bar and Bar groups funded by mandatory and voluntary dues.

"Mandatory Bar Group" means The Florida Bar and groups within The Florida Bar funded by mandatory member dues in the current or immediate prior bar fiscal years. The Board or the Executive Committee may approve a legislative or political issue if it meets one of the following criteria:

- 1) Questions concerning the regulation and discipline of attorneys;
- 2) Matters relating to the improvement of the functioning of the courts, judicial efficacy, and efficiency;
- 3) Increasing the availability of legal services to society;
- 4) Regulation of attorneys' client trust accounts; or
- 5) The education, ethics, competence, integrity, and regulations as a body, of the legal profession.

"Voluntary Bar Group" means a group within The Florida Bar funded by voluntary member dues in the current and immediate prior bar fiscal years. The board will permit a voluntary bar group to take a position on a legislative or political issue only when the issue:

- 1) is within the group's subject matter jurisdiction as described in the group's section's bylaws;
- 2) either is beyond the scope of the bar's permissible legislative or political activity, or is within the bar's permissible scope of legislative or political activity and the proposed section position is consistent with an official bar position on that issue; and
- 3) does not have the potential for deep philosophical or emotional division among a substantial segment of the bar's membership.

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 Commerce and Tourism

BILL: SB 72

INTRODUCER: Senator Brandes and others

SUBJECT: Civil Liability for Damages Relating to COVID-19

DATE: February 12, 2021

REVISED: 3/1/2021

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 72 creates civil liability protections for individuals, businesses, governmental entities, and other organizations against COVID-19-related claims. The bill, however, excludes healthcare providers from the liability protections created in the bill.

The bill establishes preliminary requirements that a plaintiff must complete before the case is allowed to proceed. A court must determine whether:

- The complaint was pled with particularity;
- A physician's affidavit was simultaneously submitted stating that, within a reasonable degree of medical certainty, the physician believed that the defendant caused, through acts or omissions, the plaintiff's damages, injury, or death. If the plaintiff did not meet these requirements, the court must dismiss the action, but the plaintiff is not barred from correcting the deficiencies and refile the claim.
- The defendant made a good faith effort to substantially comply with authoritative or controlling health standards when the action accrued. If the court determines that the defendant made the requisite good faith effort, the defendant is immune from civil liability. If, in contrast, the court determines that the defendant did not make the requisite good faith effort, the action may proceed.

If a plaintiff meets these preliminary requirements, then he or she bears the burden of proving that the defendant did not make the good faith effort. Additionally, the plaintiff must meet the heightened standard of proving that the defendant's acts or omissions were grossly negligent by the clear and convincing evidence standard.

A COVID-19-related lawsuit must be brought within 1 year after a cause of action accrues unless the cause of action occurred before the effective date of the bill. However, if a cause accrues before the effective date of the bill, the plaintiff has 1 year from the effective date of the act to bring the claim.

The bill takes effect upon becoming a law and applies retroactively. However, the bill does not apply in a civil action against a particular defendant if the suit is filed before the bill's effective date.

II. Present Situation:

Background

The COVID-19 pandemic has affected the state of Florida in ways that were unimaginable one year ago. The toll on individuals, businesses, and the economy has been catastrophic. According to the Department of Health, 1,892,301 positive COVID-19 cases have been diagnosed in the state, 78,744 residents have been hospitalized, and 30,478 people have died of the virus.¹

As the pandemic forced businesses to close, millions of Americans lost their jobs. The U.S. economy contracted at the greatest rate since World War II. In Florida, general revenue collections for Fiscal Year 2019-20 were down nearly \$1.9 billion from the forecast projections made in January 2020. The vast majority of the loss, 84.7 percent, came from a loss of sales tax revenues, the largest component and category most affected by the pandemic. The Revenue Estimating Conference adopted a forecast for sales tax revenues in December 2020, as compared to the January 2020 forecast, that anticipates a loss to General Revenue of approximately \$2 billion in Fiscal Year 2020-21 and \$1 billion in Fiscal Year 2021-22. The sales tax losses are attributable to a substantial loss in the tourism and recreation areas, often driven by out-of-state tourism, and also by reduced sales to local residents at restaurants and venues, including leisure activities impacted by the pandemic.²

Governor DeSantis issued Executive Order No. 20-52 on March 9, 2020, declaring a state of emergency and issuing guidelines to halt, mitigate, or reduce the spread of the outbreak. The order has been extended 5 times,³ most recently by Executive Order No. 20-316, issued on December 29, 2020.

During the pandemic, government-issued health standards and guidance detailing how to best combat the virus have sometimes been in conflict. They sometimes changed rapidly, making appropriate responses difficult. Businesses and individuals often scurried to provide appropriate responses based upon the information they received at any given time.

As businesses and entities struggle to re-open or keep their doors open, a growing concern has been expressed that unfounded or opportunistic lawsuits for COVID-19-related claims could threaten their financial survival. The concern is that time, attention, and financial resources diverted to respond to the lawsuits could be the difference between individuals and entities

¹ Florida Department of Health, Division of Disease Control and Health Protection, *Florida's COVID-19 Data and Surveillance Dashboard*, <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429> (last visited Feb. 26, 2021).

² *Executive Summary, Revenue Estimating Conference for the General Revenue Fund & Financial Outlook Statement*, August 14, 2020, and subsequently updated. <http://edr.state.fl.us/Content/conferences/generalrevenue/archives/200814gr.pdf> (last visited Mar. 1, 2021).

³ A state of emergency declared under the State Emergency Management Act may not last for more than 60 days unless it is renewed by the Governor. Section 252.36(2), F.S.

succeeding or failing as they attempt to emerge from the pandemic. One protection that has been offered is the provision of heightened legal immunity from COVID-19 claims to fend off meritless lawsuits and preserve scant resources.

COVID-Related Lawsuits

According to the Congressional Research Service,⁴ a growing number of plaintiffs have filed tort lawsuits in hopes of being compensated for personal injuries that resulted from alleged exposure to COVID-19 or from the failure of a defendant to properly treat the virus. Some examples of the lawsuits include:

- The relatives of deceased family members, who allegedly contracted the virus in the workplace, have filed cases stating that the employers caused the decedents' deaths because they failed to implement workplace safety measures.
- Many cruise ship passengers have filed lawsuits against cruise lines alleging that the cruise line exposed them to the virus or caused them to contract the virus while on a cruise.
- Plaintiffs have sued assisted living facilities and nursing homes. They allege that their relatives died because these entities negligently exposed their relatives to the virus or failed to diagnose them in a timely or appropriate manner, and then treat the symptoms.
- Businesses that folded have sued their insurance companies challenging the denial of their coverage for claims of business interruptions.
- Consumers have filed suits seeking financial reimbursement for travel, events, and season passes at recreational venues which were cancelled or closed because of the pandemic.
- Employees have sued their employers alleging that the employer unlawfully terminated them because they contracted the virus.
- Stockholders have sued public companies alleging that the companies violated federal securities laws when they did not accurately state the pandemic's toll on the companies' finances as required in mandatory disclosure statements.⁵

The Congressional Research Service states that proponents of COVID-19 liability protections assert that litigation and the cost of legal fees will cripple businesses, individuals, schools, and non-profit organizations and deter the organizations from reopening. Proponents are concerned that these entities will shape their business decision-making to avoid liability. This unwillingness to continue or reopen businesses will delay the national economic recovery. Others believe that

⁴ The Congressional Research Service works solely for the U.S. Congress and provides policy and legal analysis to both members and committees of the House and Senate. It is a legislative branch agency housed within the Library of Congress. <https://www.loc.gov/crsinfo/>.

⁵ Congressional Research Service, *COVID-19 Liability: Tort, Workplace Safety, and Securities Law* (Sept. 24, 2020), <https://crsreports.congress.gov/product/pdf/R/R46540> (last visited Mar. 1, 2021).

many COVID-19-related claims “are generally meritless, and therefore serve primarily to benefit plaintiffs’ lawyers rather than vindicate injured person’s legal rights.”⁶

In contrast, opponents of liability protections disagree. They maintain that organizations would encounter only minimal legal exposure for COVID-19 liability. The opponents also contend that providing a shield for defendants would harm the public by permitting defendants to commit negligent acts with legal protections. It would also remove any incentives for businesses to take precautions against the spread of the virus.⁷

Florida Lawsuits

It is difficult to determine how many COVID-19-related lawsuits have been filed in the state. Staff contacted the Office of the State Courts Administrator to ask if it could determine how many claims have been filed in the state courts. The office did not have that data available. One database estimates that 582 complaints relating to COVID-19 have been filed in Florida, but this data does not delineate between those which are filed in state courts versus federal courts.⁸

Many of the claims that have been filed in the federal district courts of the state are suits against cruise ship lines where passengers allege that they contracted the virus while on the cruise.

Legislative and Executive Responses of Other States

At least 17 states have enacted legislation to provide civil liability immunity to individuals and entities from COVID-19-related claims.⁹ At least two additional states have issued executive orders to provide liability limitations.¹⁰ These laws do not reflect separate healthcare liability protections. To date, no similar federal legislation has been enacted, although S. 4317 was introduced in the Senate on July 27, 2020, and referred to committee.¹¹

In general terms, the legislation enacted by other states provides protections if a defendant acts in good faith to substantially comply with the applicable COVID-19 standards. The immunity does not apply if the defendant’s acts or omissions constitute gross negligence or willful or wanton misconduct.

⁶ *Id.* at 2.

⁷ *Id.* at 3.

⁸ Hunton Andrews Kurth LLP, *COVID-19 Complaint Tracker*, <https://www.huntonak.com/en/covid-19-tracker.html> (last visited Mar. 1, 2021).

⁹ The states are: Alabama, Georgia, Idaho, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Utah, and Wyoming. Additional, and sometimes separate, legislation has been enacted by 17 states that provides medical liability limitations for health care facilities and workers. The database was current as of December 14, 2020. National Conference of State Legislatures, *State Action on Coronavirus (COVID-19)*, <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx#db> (last visited Mar. 1, 2021).

¹⁰ Alabama Executive Order signed by Governor Kay Ivey on May 8, 2020, and Arkansas Executive Order 20-33 signed by Governor Asa Hutchison on June 5, 2020.

¹¹ Safe to Work Act, s. 4317 –116th Cong. (2020) <https://www.congress.gov/bill/116th-congress/senate-bill/4317/actions> (last visited Mar. 1, 2021).

Torts: Negligence, Elements, and Standards

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.¹² When a plaintiff files a tort claim, he or she alleges that the defendant’s “negligence” caused the injury. Negligence is defined as the failure to use reasonable care. It means the care that a reasonably careful person would use under similar circumstances. According to the Florida Standard Jury Instructions, negligence means “doing something that a reasonably careful person would not do” in a similar situation or “failing to do something that a reasonably careful person would do” in a similar situation.¹³

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant’s negligence, the plaintiff bears the legal burden of proving that the defendant’s alleged action was a breach of the duty that the defendant owed to the plaintiff.¹⁴

Negligence Pleadings

To establish a claim for relief and initiate a negligence lawsuit, a plaintiff must file a “complaint.” The complaint must state a cause of action and contain: a short and plain statement establishing the court’s jurisdiction, a short and plain statement of the facts showing why the plaintiff is entitled to relief, and a demand for judgment for relief that the plaintiff deems himself or herself entitled. The defendant responds with an “answer,” and provides in short and plain terms the defenses to each claim asserted, admitting or denying the averments in response.¹⁵

Under the Florida Rules of Civil Procedure, there is a limited group of allegations that must be pled with “particularity.” These allegations include allegations of fraud, mistake, and a denial of performance or occurrence.¹⁶

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:

- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff’s injury; and
- Damages – That the plaintiff suffered actual harm or loss.

Burden or Standard of Proof

A “burden of proof” is the obligation a party bears to prove a material fact. The “standard of proof” is the level or degree to which an issue must be proved.¹⁷ The plaintiff carries the burden

¹² BLACK’S LAW DICTIONARY (11th ed. 2019).

¹³ Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

¹⁴ Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff’s negligence caused the injury.

¹⁵ Fla. R. Civ. P. 1.110.

¹⁶ Fla. R. Civ. P. 1.120(b) and (c).

¹⁷ 5 Fla. Prac. Civil Practice s. 16.1, (2020 ed.)

of proving, by a specific legal standard, that the defendant breached the duty that was owed to the plaintiff that resulted in the injury. In civil cases, two standards of proof generally apply:

- The “greater weight of the evidence” standard, which applies most often in civil cases, or
- The “clear and convincing evidence” standard, which applies less often, and is a higher standard of proof.¹⁸

However, both of these standards are lower than the “reasonable doubt” standard which is used in criminal prosecutions.¹⁹ Whether the greater weight standard or clear and convincing standard applies is determined by case law or the statutes that govern the underlying substantive issues.²⁰

Greater Weight of the Evidence

The greater weight of the evidence standard of proof means “the more persuasive and convincing force and effect of the entire evidence in the case.”²¹ Some people explain the “greater weight of the evidence” concept to mean that, if each party’s evidence is placed on a balance scale, the side that dips down, even by the smallest amount, has met the burden of proof by the greater weight of the evidence.

Clear and Convincing

The clear and convincing standard, a higher standard of proof than a preponderance of the evidence, requires that the evidence be credible and the facts which the witness testifies to must be remembered distinctly. The witness’s testimony “must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue.” The evidence must be so strong that it guides the trier of fact to a firm conviction, to which there is no hesitation, that the allegations are true.²²

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence.

Slight Negligence

Slight negligence is generally defined to mean the failure to exercise a great amount of care.²³

Ordinary Negligence

Ordinary negligence, which is also referred to as simple negligence, is the standard of care applied to the vast majority of negligence cases. It is characterized as the conduct that a reasonable and prudent person would know could possibly cause injury to a person or property.²⁴

¹⁸ *Id.*

¹⁹ Thomas D. Sawaya, *Florida Personal Injury Law and Practice with Wrongful Death Actions*, s. 24:4 (2020).

²⁰ 5 Fla. Prac. Civil Practice s. 16.1 (2020 ed.).

²¹ Fla. Std. Jury Instr. 401.3, *Greater Weight of the Evidence*.

²² *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983) as discussed in the Sawaya treatise, *supra* at note 19.

²³ Sawaya, *supra* at s. 2:12.

²⁴ *Id.*

Gross Negligence

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a “reasonably prudent person knows will probably and most likely result in injury to another” person.²⁵

In order for a plaintiff to succeed on a claim involving gross negligence, he or she must prove:

- Circumstances, which, when taken together, create a clear and present danger;
- Awareness that the danger exists; and
- A conscious, voluntary act or omission to act, that will likely result in an injury.^{26, 27}

Access to Courts – *Kluger v. White*

The State Constitution provides in Article 1, s. 21, the “Access to courts” section,

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Case law has demonstrated, however, that this provision is not absolute. In 1973, the Florida Supreme Court issued an opinion, *Kluger v. White*,²⁸ a case which construed the access to courts provision. In broad terms, the case before the Court involved the abolition of a statute governing a tort action for property damage in an automobile accident case. When the Legislature abolished the remedy, it did not provide an alternative protection to the injured party.

The Court was confronted with the issue of whether the Legislature could abolish a right of access to the courts. The Court determined that the Legislature may not abolish a pre-1968 common law right or a statutory cause of action unless the Legislature provides a reasonable alternative to that action or unless an overpowering public necessity exists for abolishing the right of action. The Court applies a three-part test to determine whether a statute violates the access to courts provision:

- Does the change abolish a preexisting right of access?
- If so, whether a reasonable alternative exists to protect that preexisting right of access.
- If no reasonable alternative exists, whether an overwhelming public necessity exists.²⁹

Restrictions on the ability to bring a lawsuit have been upheld as constitutional, but the point at which a restriction becomes an unconstitutional bar is not well defined.

Statute of Limitations

A statute of limitations establishes a time limit for a plaintiff to file an action, or the case will be barred. An action for a negligence claim must be brought within 4 years after the cause of action accrues.³⁰

²⁵ *Id.*

²⁶ *Id.*

²⁷ Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.

²⁸ *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

²⁹ *Eller v. Shova*, 630 So. 2d 537 (Fla. 1993).

³⁰ Section 95.11(3), F.S.

Statutes of limitations are created to encourage a plaintiff to initiate an action while witnesses and evidence can be found. They also serve as a shield to protect a defendant from having to defend against a claim that occurred so long ago that precise memories have grown hazy.³¹ A statute of limitations begins to run when the cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs.³² In a personal injury action based on the negligent act of another, the last element occurs when the plaintiff is injured.³³

Retroactive Application of a Statute

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.³⁴ When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural law is neither simple nor certain.”³⁵ The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.³⁶

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.³⁷ Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.³⁸

In a case challenging the application of an increase in the standard of proof from a preponderance of the evidence to the clear and convincing evidence standard after the plaintiff had filed a complaint, the court concluded that the statute could apply retroactively.³⁹ The Florida Supreme Court has noted that burden of proof requirements are procedural and may be abrogated retroactively because litigants do not have a vested right in a method of procedure.⁴⁰

³¹ 35 Fla. Jur 2d *Limitations and Laches* s. 1 (2020).

³² Section 95.031(1), F.S.

³³ 35 Fla. Jur 2d *Limitations and Laches* s. 65 (2020).

³⁴ *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

³⁵ *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fa. 2000).

³⁶ *Love* at 184.

³⁷ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).

³⁸ *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

³⁹ *Stein v. Miller Industries, Inc.*, 564 So. 2d 539 (Fla. 4th DCA 1990).

⁴⁰ *Walker & LaBerge, Inc. v. Halligan*, 344 So. 2d 239, 243 (Fla. 1977).

The Court also permitted retroactive application of a statute that altered the plaintiff's burden of proof.⁴¹

III. Effect of Proposed Changes:

SB 72 provides heightened liability protections against COVID-19-related claims due to the threat of unknown and potentially unbounded liability claims that may arise from the pandemic. The protections are extended widely to all persons, businesses, or other entities except for healthcare providers.

WHEREAS Clauses

According to the "Whereas Clauses" the State continues to operate under a declared state of emergency, but one in which Floridians must be allowed to earn a living and support their families, and one in which businesses are encouraged to operate safely and contribute to the state's success, well-being, and economic recovery. Because the Legislature recognizes the significant risks that businesses, entities, and institutions accept to provide services to the public during the pandemic, the Legislature is willing to extend protections to alleviate liability concerns, while continuing to provide for the public health. The final clause notes that the Legislature finds that the unprecedented nature of the COVID-19 pandemic, and the indefinite legal environment that has followed, require swift and decisive action.

Legislative Findings

According to the legislative findings, the creation of heightened legal protections is necessary to reduce the threat of unlimited liability and legal exposure for businesses, educational institutions, governmental entities, and religious institutions as they seek to recover and contribute to the well-being of the state. The legislative findings conclude that there are no alternative means to meet this public necessity of providing legal protections caused by the sudden and unprecedented nature of the COVID-19 pandemic. Therefore, the public interest, as a whole, is best served by providing relief to these entities so that they may remain viable and contribute to the economic recovery of the state.

Legislative findings have a unique place in case law. The Florida Supreme Court has determined that they are to be given great weight. In the case of *University of Miami v. Echarte*, the Court stated that "legislative determinations of public purpose and facts are presumed correct and entitled to deference, unless clearly erroneous."⁴² The Court reflected on the *Kluger* decision and referred to its test. The Court also examined whether the Legislature expressly found that no alternative or less onerous method existed, thereby establishing a necessary requirement.

⁴¹ *Love, supra.*

⁴² *University of Miami v. Echarte*, 618 So. 2d 189, 196 (Fla. 1993).

Pursuing a COVID-19 –Related Claim

A COVID-19-related Claim Defined and Who is Protected Under the Bill

A COVID-19-related claim is defined as a civil liability claim for damages, injury, or death that arises from, or is related to, COVID-19.⁴³ The bill provides protections for any civil liability claim against a person,⁴⁴ a natural person, business entity, including certain charitable organizations and non-profits, a public or non-public educational institution, a governmental entity, or a religious institution. Although the bill extensively defines what or who a healthcare provider is, healthcare providers are excluded from the liability protections established by the bill. The bill provides definitions for an educational institution, governmental entity, healthcare provider, and a religious institution.

Preliminary Procedures for a Plaintiff

The bill requires two preliminary steps from a plaintiff. In each civil action for a COVID-19-related claim, a plaintiff must:

- Set forth the pleadings with particularity; and
- Provide, at the same time that the complaint is filed, an affidavit signed by a physician, stating that the plaintiff’s COVID-19-related claim for damages, injury, or death was caused by the defendant’s acts or omissions. The physician who submits an affidavit must be actively licensed in the state. Additionally, the physician must state that it is his or her belief, within a reasonable degree of medical certainty, that the plaintiff’s COVID-related damages, injury, or death occurred as a result of the defendant’s acts or omissions.

These preliminary procedures are similar to the pre-suit investigation requirements for a claimant filing a medical malpractice claim. According to s. 766.104(1), F.S., the attorney filing the action must make a reasonable investigation to determine that there are grounds for a good-faith belief that negligence has occurred in the care or treatment of the claimant. The complaint or initial pleading must contain a certificate of counsel stating that a reasonable investigation supported the belief that there are grounds for an action against the defendant. Good faith may be demonstrated if the claimant or counsel has received a written opinion from an expert that there appears to be evidence of medical negligence. If the court determines that the certificate was not made in good faith and that there is no justiciable issue presented against the health care provider, the court must award attorney fees and taxable costs against the claimant’s counsel and must submit the matter to The Florida Bar for disciplinary review against the attorney.

The Court’s Responsibilities

Before a trial may proceed, a court must determine whether:

⁴³ A “COVID-19-related claim” is defined as” a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution which arises from or is related to COVID-19, otherwise known as the novel coronavirus. The term includes any such claim for damages, injury, or death. Any such claim, no matter how denominated, is a COVID-19 related claim for purposes of this section. The term does not include a claim against a healthcare provider, regardless of whether the healthcare provider meets one or more of the definitions in this subsection.”

⁴⁴ A “person” is broadly defined in the statutes to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

- The plaintiff submitted a complaint that was pled with particularity; and
- The physician's affidavit complied with the necessary requirements.

If the plaintiff did not meet these two requirements, the court must dismiss the case *without* prejudice, meaning that the plaintiff is not prohibited from correcting deficiencies and refile the claim.

The court must also determine whether a defendant made a good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time that the cause of action accrued. At this stage of the proceeding, the only admissible evidence is limited to evidence pertinent to whether the defendant made a good faith effort to comply with the health standards of guidance.

If the court decides that the defendant met the good faith compliance burden, the defendant is immune from civil liability and the proceeding ends. However, if the court determines that the defendant did not make a good faith effort, the plaintiff may proceed. In order to prevail, the plaintiff must demonstrate that the defendant acted with at least gross negligence which is proven by clear and convincing evidence. If these two burdens are not met, the defendant will not be held liable for an act or omission pertaining to a COVID-19-related claim. The plaintiff bears the burden of proving that the defendant did not make a good faith effort to substantially comply with the authoritative or controlling government-issued health standards or guidance that were in place at the time the action accrued.

The Plaintiff's Burden to Prove Gross Negligence by the Clear and Convincing Standard

As discussed above in the "Present Situation," gross negligence is defined as the type of conduct that a reasonably prudent person knows will probably and most likely result in an injury to another person. Under this standard, a plaintiff will need to prove that the defendant's conduct was grossly negligent, meaning that the likelihood of injury to another person was known by the defendant to be imminent.

The plaintiff will need to demonstrate gross negligence by the "clear and convincing" standard of evidence. This is applied less often in civil cases and is a higher standard of proof than the greater weight of the evidence standard. To meet this standard, the plaintiff must provide evidence that is credible, that is remembered distinctly by the witness, and must be so strong that the trier of fact has a firm conviction, without hesitation, that the allegations are true.

Taken together, a plaintiff has high burdens to prevail in a COVID-19-related claim.

Statute of Limitations

SB 72 requires a plaintiff to bring a civil action within 1 year after the cause of action accrues. Generally, a negligence action must be brought within 4 years after a cause of action accrues. Therefore, this bill reduces the amount of time that a plaintiff has to bring an action. If, however, the cause of action accrues before the effective date of the bill, which is the date it becomes law, the plaintiff has one year from the effective date of the bill to bring a claim. While this could be a reduction in the amount of time that a plaintiff has to bring a COVID-19-related claim, there is

precedent for this. Court opinions have held that a reduction in the statute of limitations is not unconstitutional if the claimant is given a reasonable amount of time to file the action.⁴⁵

Retroactive Application

This act takes effect upon becoming a law and applies retroactively. The bill applies retroactively to actions filed after the effective date of the bill even if the action accrued before the effective date. The bill, however, does not apply to a claim that is filed against a particularly named defendant before the effective date of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Bar submitted a brief response on the Agency Bill Analysis Request form and stated that it had not identified any fiscal impact with the proposed legislation. The response also stated that The Florida Bar would not be providing an analysis for the bill and does not have an official legislative position for the proposed legislation.⁴⁶

⁴⁵ *Foley v. Morris*, 339 So. 2d 215 (Fla. 1976).

⁴⁶ The Florida Bar, *SB 72 Analysis*, (Jan. 12, 2021) (on file with the Senate Committee on Commerce and Tourism).

C. Government Sector Impact:

The Office of the State Courts Administrator states that the bill's impact on the judicial workload cannot be quantified with data that is currently available. The analysis stated, however, that the bill is not anticipated to create a significant increase to the judicial workload. The analysis did note that the Rules of Civil Procedure and jury instructions might need to be reviewed and revised to make certain that they accommodate the new procedures created in the bill. The analysis also stated that the additional requirements for plaintiffs could result in fewer COVID-19-related cases being filed, possibly reducing revenues from civil filing fees, but there is not enough information to accurately determine this.⁴⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 768.38 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.

⁴⁷ Office of the State Courts Administrator, *2021 Judicial Impact Statement, SB 72* (Jan. 21, 2021) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31076> (last visited Mar. 1, 2021).



951728

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2021	.	
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The Committee on Commerce and Tourism (Powell) recommended the following:

Senate Amendment

Between lines 108 and 109
insert:

(e) "Government-issued health standards or guidance" means any of the following which are related to COVID-19 or other infectious diseases and which apply to the defendant's operations and provided standards or guidance for operating at the time of the alleged act or omission:

1. A federal, state, or local law, regulation, or



951728

11 ordinance.

12 2. A written order or other document published by a
13 federal, state, or local government or regulatory body.

14 3. Standards or guidance issued by the Agency for Health
15 Care Administration, the Centers for Disease Control and
16 Prevention, the National Institutes of Health, the United States
17 Food and Drug Administration, or the Centers for Medicare and
18 Medicaid Services.



321008

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2021	.	
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The Committee on Commerce and Tourism (Pizzo) recommended the following:

Senate Amendment

Delete lines 131 - 136
and insert:

(b) The plaintiff must present affidavit testimony from a medical expert, as defined in s. 766.202, which attests to the expert's belief, within a reasonable degree of medical probability, that the person whose injury or death gave rise to the action was infected with COVID-19 at the time that the cause of action accrued and that the plaintiff's infection by COVID-19



321008

11 resulted in injury, damages, or death.



358018

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2021	.	
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The Committee on Commerce and Tourism (Pizzo) recommended the following:

Senate Amendment

Delete lines 141 - 157
and insert:

2. The defendant is immune from civil liability. The defendant is immune from civil liability if the defendant complied with all applicable executive orders issued by the Governor in association with the declared state of emergency for COVID-19 and any guidelines from the Centers for Disease Control and Prevention applicable at the time the cause of action



358018

11 accrued. The defendant may plead immunity at any stage of the
12 proceeding.

13 a. At a summary judgment hearing on the issue of immunity,
14 evidence is limited to evidence tending to demonstrate whether
15 the defendant complied with all applicable executive orders
16 issued by the Governor in association with the declared state of
17 emergency for COVID-19 and any guidelines from the Centers for
18 Disease Control and Prevention applicable at the time the cause
19 of action accrued.

20 b. If the court determines at a summary judgment hearing
21 that the defendant complied with the executive orders and
22 guidelines, the defendant is immune from civil liability for
23 ordinary negligence.

24 c. If the court determines at a summary judgment hearing
25 that the defendant did not comply with the executive orders and
26 guidelines, the plaintiff may proceed with the action. However,
27 absent at least gross negligence proven by clear and convincing
28 evidence, the defendant is not civilly liable for any act or
29 omission relating to a COVID-19-related claim.

30 (d) The burden of proof is upon the plaintiff to
31 demonstrate that the defendant did not comply with the executive
32 orders and guidelines under subparagraph (c)2.



466366

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2021	.	
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The Committee on Commerce and Tourism (Pizzo) recommended the following:

Senate Amendment

Delete lines 148 - 150

and insert:

b. If the trier of fact determines that the defendant made a good faith effort, the defendant is immune from liability.

c. If the trier of fact determines that the defendant did not make



928904

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2021	.	
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The Committee on Commerce and Tourism (Pizzo) recommended the following:

Senate Amendment

Delete lines 152 - 154
and insert:
action. The defendant is not liable for any act or omission
relating to a COVID-19-related claim unless the plaintiff can
demonstrate by the greater weight of the evidence that the
injury was caused by the negligent acts or omissions of the
defendant.



475864

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/03/2021	.	
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The Committee on Commerce and Tourism (Torres) recommended the following:

Senate Amendment (with title amendment)

Between lines 163 and 164

insert:

(5) (a) For the purposes of benefits provided under chapters 112 and 440 and any other benefits provided by law to individuals suffering injury or illness through the course and scope of employment, the following individuals shall be presumed to have contracted COVID-19 in the course and scope of his or her employment:



475864

11 1. A person licensed under chapter 458, chapter 459,
12 chapter 461, chapter 463, chapter 464, chapter 465, chapter 466,
13 or chapter 483;

14 2. An employee of a:

15 a. Facility licensed, certified, or approved by any state
16 agency and for which chapter 395, chapter 400, chapter 429, or
17 chapter 766 apply;

18 b. Federally qualified health center as defined in 42
19 U.S.C. s. 1396d(1)(2)(B); or

20 c. Sole proprietorship, group practice, partnership, or
21 corporation that provides health care services by physicians
22 covered by s. 627.419, that is directly supervised by one or
23 more of such physicians, and that is wholly owned by one or more
24 of those physicians or by a physician and the spouse, parent,
25 child, or sibling of that physician;

26 3. An emergency medical technician as defined in s.
27 401.23(11); or

28 4. A paramedic as defined in 401.23(17).

29 (b) The presumption in paragraph (a) may be rebutted if the
30 defendant proves by clear and convincing evidence that the
31 individual's infection did not arise out of the course and scope
32 of his or her employment.

33
34 ===== T I T L E A M E N D M E N T =====

35 And the title is amended as follows:

36 Delete line 8

37 and insert:

38 providing a statute of limitations; providing that
39 certain individuals are presumed to have contracted



40 COVID-19 in the course and scope of their employment;
41 specifying how a defendant may rebut such presumption;
42 providing



LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2021	.	
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The Committee on Commerce and Tourism (Torres) recommended the following:

Senate Amendment (with title amendment)

Between lines 163 and 164
insert:

(5) Any business that is insured under an insurance policy providing coverage for premises liability shall receive a rebate of any insurance premiums paid or accrued from an insurance carrier or insurance provider for any period where the business was unable to use the business premises due to authoritative or controlling government-issued health standards or guidance.



407288

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

And the title is amended as follows:

Delete line 8

and insert:

providing a statute of limitations; requiring that
certain businesses receive rebates from insurance
carriers or providers for any period where the
business was unable to use the business premises due
to certain government-issued standards or guidance;
providing



624688

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/03/2021	.	
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	.	

The Committee on Commerce and Tourism (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Between lines 163 and 164

insert:

(5) For any cause of action accruing on or after the effective date of this section, to be eligible for liability protections provided herein, the defendant must prove by clear and convincing evidence that, before the cause of action accrued, it posted a notice in the form of a sign prominently displayed at the business entrance in a clear and conspicuous



624688

11 manner which stated the following:

12

13 THIS NOTICE IS PROVIDED PURSUANT TO SECTION 768.38,
14 FLORIDA STATUTES. THIS ESTABLISHMENT IS NOT LIABLE FOR
15 TRANSMISSION OF OR EXPOSURE TO COVID-19.

16

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

18 And the title is amended as follows:

19 Delete line 8

20 and insert:

21 providing a statute of limitations; requiring a
22 business to prove that, before the cause of action
23 accrued, it posted a specified sign at the business
24 entrance as a condition of eligibility for liability
25 protection under the act; providing

By Senator Brandes

24-00824B-21

202172__

1 A bill to be entitled
 2 An act relating to civil liability for damages
 3 relating to COVID-19; creating s. 768.38, F.S.;

4 providing legislative findings and intent; defining
 5 terms; providing requirements for a civil action based
 6 on a COVID-19-related claim; providing that the
 7 plaintiff has the burden of proof in such action;
 8 providing a statute of limitations; providing
 9 severability; providing retroactive applicability;
 10 providing an effective date.

11

12 WHEREAS, on March 9, 2020, Governor Ron DeSantis issued
 13 Executive Order Number 20-52 declaring a state of emergency for
 14 the State of Florida due to the COVID-19 pandemic, and

15 WHEREAS, in light of the ongoing nature of the COVID-19
 16 pandemic, the Governor has repeatedly extended the state of
 17 emergency, including most recently on December 29, 2020, in
 18 Executive Order Number 20-316, and

19 WHEREAS, the State of Florida continues under a declared
 20 state of emergency, and

21 WHEREAS, throughout the declared state of emergency, the
 22 Governor's executive orders included industry-specific
 23 restrictions to prevent the spread of COVID-19 based on the best
 24 information available at the time, allowing and encouraging
 25 certain businesses to continue to safely operate, and

26 WHEREAS, a strong and vibrant economy is essential to
 27 ensure that Floridians may continue in their meaningful work and
 28 ultimately return to the quality of life they enjoyed before the
 29 COVID-19 outbreak, and

Page 1 of 6

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

24-00824B-21

202172__

30 WHEREAS, Floridians must be allowed to earn a living and
 31 support their families without unreasonable government
 32 intrusion, and

33 WHEREAS, the Governor's responsible reopening strategy
 34 allowed businesses to continue to safely operate, bolstering
 35 consumer confidence, while also enforcing reasonable
 36 restrictions, and

37 WHEREAS, the Legislature recognizes that certain
 38 businesses, entities, and institutions operating within the
 39 state are essential to the state's continuing success and well-
 40 being, and

41 WHEREAS, the Legislature recognizes that many businesses,
 42 entities, and institutions accept significant risk in order to
 43 provide their services to the public, and

44 WHEREAS, the Legislature further recognizes that the threat
 45 of frivolous and potentially limitless civil liability,
 46 especially in the wake of a pandemic, causes businesses,
 47 entities, and institutions to react in a manner detrimental to
 48 the state's economy and residents, and

49 WHEREAS, the Legislature recognizes that practical, bright-
 50 line guidance protecting prudent businesses, entities, and
 51 institutions significantly alleviates such liability concerns,
 52 while also continuing to provide for the public health, and

53 WHEREAS, the Legislature finds that the unprecedented and
 54 rare nature of the COVID-19 pandemic, together with the
 55 indefinite legal environment that has followed, requires the
 56 Legislature to act swiftly and decisively, NOW, THEREFORE,
 57

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

Page 2 of 6

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

24-00824B-21

202172__

59
60 Section 1. Section 768.38, Florida Statutes, is created to
61 read:
62 768.38 Liability protections for COVID-19-related claims.—
63 (1) The Legislature finds that the COVID-19 outbreak in the
64 state threatens the continued viability of certain business
65 entities, educational institutions, governmental entities, and
66 religious institutions that contribute to the overall well-being
67 of the state. The threat of unknown and potentially unbounded
68 liability to such businesses, entities, and institutions, in the
69 wake of a pandemic that has already left many of these
70 businesses, entities, and institutions vulnerable, has created
71 an overpowering public necessity to provide an immediate and
72 remedial legislative solution. Therefore, the Legislature
73 intends for certain business entities, educational institutions,
74 governmental entities, and religious institutions to enjoy
75 heightened legal protections against liability as a result of
76 the COVID-19 pandemic. The Legislature also finds that there are
77 no alternative means to meet this public necessity, especially
78 in light of the sudden, unprecedented nature of the COVID-19
79 pandemic. The Legislature finds the public interest as a whole
80 is best served by providing relief to these businesses,
81 entities, and institutions so that they may remain viable and
82 continue to contribute to the state.
83 (2) As used in this section, the term:
84 (a) "Business entity" has the same meaning as provided in
85 s. 606.03. The term also includes a charitable organization as
86 defined in s. 496.404 and a corporation not for profit as
87 defined in s. 617.01401.

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202172__

88 (b) "COVID-19-related claim" means a civil liability claim
89 against a person, including a natural person, a business entity,
90 an educational institution, a governmental entity, or a
91 religious institution which arises from or is related to COVID-
92 19, otherwise known as the novel coronavirus. The term includes
93 any such claim for damages, injury, or death. Any such claim, no
94 matter how denominated, is a COVID-19-related claim for purposes
95 of this section. The term does not include a claim against a
96 healthcare provider, regardless of whether the healthcare
97 provider meets one or more of the definitions in this
98 subsection.
99 (c) "Educational institution" means a school, including a
100 preschool, elementary school, middle school, junior high school,
101 secondary school, career center, or postsecondary school,
102 whether public or nonpublic.
103 (d) "Governmental entity" means the state or any political
104 subdivision thereof, including the executive, legislative, and
105 judicial branches of government; the independent establishments
106 of the state, counties, municipalities, districts, authorities,
107 boards, or commissions; or any agencies that are subject to
108 chapter 286.
109 (e) "Healthcare provider" means:
110 1. A provider as defined in s. 408.803.
111 2. A clinical laboratory providing services in the state or
112 services to health care providers in the state, if the clinical
113 laboratory is certified by the Centers for Medicare and Medicaid
114 Services under the federal Clinical Laboratory Improvement
115 Amendments and the federal rules adopted thereunder.
116 3. A federally qualified health center as defined in 42

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

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202172__

117 U.S.C. s. 1396d(1)(2)(B), as that definition exists on the
 118 effective date of this act.

119 4. Any site providing health care services which was
 120 established for the purpose of responding to the COVID-19
 121 pandemic pursuant to any federal or state order, declaration, or
 122 waiver.

123 5. A health care practitioner as defined in s. 456.001.

124 6. A health care professional licensed under part IV of
 125 chapter 468.

126 7. A home health aide as defined in s. 400.462(15).

127 (f) "Religious institution" has the same meaning as
 128 provided in s. 496.404.

129 (3) In a civil action based on a COVID-19-related claim:

130 (a) The complaint must be pled with particularity.

131 (b) At the same time the complaint is filed, the plaintiff
 132 must submit an affidavit signed by a physician actively licensed
 133 in the state which attests to the physician's belief, within a
 134 reasonable degree of medical certainty, that the plaintiff's
 135 COVID-19-related damages, injury, or death occurred as a result
 136 of the defendant's acts or omissions.

137 (c) The court must determine, as a matter of law, whether:

138 1. The plaintiff complied with paragraphs (a) and (b). If
 139 the plaintiff did not comply with paragraphs (a) and (b), the
 140 court must dismiss the action without prejudice.

141 2. The defendant made a good faith effort to substantially
 142 comply with authoritative or controlling government-issued
 143 health standards or guidance at the time the cause of action
 144 accrued.

145 a. During this stage of the proceeding, admissible evidence

24-00824B-21

202172__

146 is limited to evidence tending to demonstrate whether the
 147 defendant made such a good faith effort.

148 b. If the court determines that the defendant made such a
 149 good faith effort, the defendant is immune from civil liability.

150 c. If the court determines that the defendant did not make
 151 such a good faith effort, the plaintiff may proceed with the
 152 action. However, absent at least gross negligence proven by
 153 clear and convincing evidence, the defendant is not liable for
 154 any act or omission relating to a COVID-19-related claim.

155 (d) The burden of proof is upon the plaintiff to
 156 demonstrate that the defendant did not make a good faith effort
 157 under subparagraph (c)2.

158 (4) A civil action for a COVID-19-related claim must be
 159 commenced within 1 year after the cause of action accrues.
 160 However, a plaintiff whose cause of action for a COVID-19-
 161 related claim accrued before the effective date of this act must
 162 commence such action within 1 year of the effective date of this
 163 act.

164 Section 2. If any provision of this act or its application
 165 to any person or circumstance is held invalid, the invalidity
 166 does not affect other provisions or applications of the act
 167 which can be given effect without the invalid provision or
 168 application, and to this end the provisions of this act are
 169 severable.

170 Section 3. This act shall take effect upon becoming a law
 171 and shall apply retroactively. However, the provisions of this
 172 act shall not apply in a civil action against a particularly
 173 named defendant which is commenced before the effective date of
 174 this act.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: January 22, 2021

I respectfully request that **Senate Bill #430**, relating to Petroleum Fuel Measuring Devices, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

SB 430
Bill Number (if applicable)

Topic Retro Fuel Measuring Devices

Amendment Barcode (if applicable)

Name Ned Bowman

Job Title Ex Director

Address 198 Centra Point Blvd

Phone 850-524-6609

Street

Tallahassee FL 32308

City

State

Zip

Email

Speaking: For Against Information

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

Representing FRMA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/21
Meeting Date

430
Bill Number (if applicable)

Topic Petro/leum Fuel Marketing Devices

Amendment Barcode (if applicable)

Name Emily Buckley

Job Title Director LA

Address 400 S Monroe St
Street

Phone 850 617 7700

Tallahassee FL 32399
City State Zip

Email emily.buckley@fdacs.gov

Speaking: For Against Information

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

Representing FDACS

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 Commerce and Tourism

BILL: CS/SB 430

INTRODUCER: Commerce and Tourism Committee; Senator Rodriguez

SUBJECT: Petroleum Fuel Measuring Devices

DATE: March 3, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Fav/CS
2.			TR	
3.			RC	

I. Summary:

CS/SB 430 preempts regulation of petroleum fuel measuring devices to the State and the department of Agriculture and Consumer Services (department) and eliminates the department's authority to impose penalties for violations of petroleum fuel measuring device rules unless an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure.

The bill takes effect July 1, 2021.

II. Present Situation:

The Department of Agriculture and Consumer Services

Generally

The Department of Agriculture and Consumer Services (department) has broad duties, including safeguarding the public from deceptive business practices, supporting Florida's agricultural economy, and protecting the environment.¹ Nineteen divisions and offices within the department support its mission.² The Division of Consumer Services inspects all measuring devices used in selling or distributing fuel at retail gas pumps and ensures the use of security mechanisms on gas pumps that help to prevent the use of skimmers.³ This division also provides consumer education

¹ Florida Department of Agriculture and Consumer Services, *About Us*, available at <https://www.freshfromflorida.com/About-Us/> (last visited Mar. 3, 2021).

² Florida Department of Agriculture and Consumer Services, *Divisions & Offices*, available at <https://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 3, 2021).

³ See s. 525.07, F.S.; Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, available at <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited Mar. 3, 2021).

regarding a variety of scams and frauds that target Florida residents, including identity theft and credit card fraud.⁴

Petroleum Inspection and Enforcement

The department conducts routine inspections of petroleum distribution systems and analyzes samples of petroleum⁵ products.⁶ These inspections include regular testing of gasoline, alternative fuels,⁷ kerosene, diesel, fuel oil, antifreeze products, and brake fluid.⁸ Petroleum fuel must be labeled accurately,⁹ and any mislabeled product must be placed under a stop-sale order with the device or storage tanks of that product sealed until a release order is issued.¹⁰

The department is also required to inspect all measuring devices used in selling or distributing petroleum fuel at wholesale and retail.¹¹ The department may put a sticker on each petroleum measuring device that has been inspected by the department, and at that point, the device owner is responsible for its proper use and maintenance.¹² Each individual who owns or manages a petroleum measuring device must ensure that the device is measuring properly based upon the tolerances¹³ defined by the department.¹⁴

Additionally, each individual who owns or manages a petroleum measuring device must affix or install a security measure to restrict the unauthorized access of customer payment card Information.¹⁵ Individuals must remedy any inadequate security measure within five days of receiving a written notice of noncompliance from the department.¹⁶ After the fifth day of noncompliance, further use of the retail petroleum measuring device may be prohibited by the department, and a repeat violation found on the same device is cause for the measuring device to

⁴ See, e.g., Florida Department of Agriculture and Consumer Services, *Scams and Fraud*, available at <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud> (last visited Mar. 3, 2021).

⁵ Petroleum fuels include gasoline, kerosene (except when used as aviation fuel), diesel fuel, benzene, other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in Florida. See s. 525.01(b), F.S.

⁶ See ch. 525, F.S., Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, available at <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited Mar. 3, 2021).

⁷ Alternative fuels include methanol, denatured ethanol, E85, and biodiesel. See s. 525.01(c), F.S.

⁸ See ch. 525, F.S., Florida Department of Agriculture and Consumer Services, *Petroleum Inspection*, available at <https://www.freshfromflorida.com/Business-Services/Petroleum-Inspection> (last visited Mar. 3, 2021).

⁹ Petroleum fuel is deemed to be mislabeled if the measuring device is labeled so as to misrepresent the product as to quality, content, or performance, or if the labeling on the measuring device is false or misleading. See s. 525.035(2), F.S.

¹⁰ See s. 525.035, F.S.

¹¹ Section 525.07(1)(a), F.S.

¹² Section 525.07(1)(b), F.S.

¹³ Tolerance refers to the total allowable error in excess or deficiency within a measurement. See s. 525.07(2), F.S.

¹⁴ Section 525.07(3), F.S.

¹⁵ The security measure must include (1) the placement of pressure-sensitive security tape over the panel opening that leads to the scanning device for the retail petroleum fuel measuring device in a manner that will restrict the unauthorized opening of the panel, (2) a device or system that will render the retail petroleum measuring device inoperable if there is an unauthorized opening of the panel, (3) a device or system that encrypts the customer payment card information in the scanning device, or (4) another security measure approved by the department. See s. 525.07(10), F.S.

¹⁶ See s. 525.07(10), F.S.

immediately be taken out of service.¹⁷ The department may also seize any skimming device¹⁸ for use as evidence.¹⁹

For violations of ch. 525, F.S., the department has the authority to issue warning letters, impose administrative fines, or revoke or suspend any registration issued by the department.²⁰

Card Skimmers

A card skimmer is an electronic device that is illegally installed inside gas pumps to collect a consumer's credit or debit card information when a card is swiped through the reader.²¹ Criminals sell the consumer's information or use the information to make illegal purchases.²² The department has discovered and removed over 4,860 skimmers since 2015.²³ The use, possession, or sale of a skimmer is punishable as a third-degree felony under Florida law.²⁴

Local Regulations

Currently, local governments are not prohibited from enacting fuel pump security measures that are more restrictive than the rules established by the department. For instance, Lee County requires each fuel pump to be equipped with a visible lock, a system that would render the pump inoperable if it is accessed without a security code, or a device that encrypts customer payment card information.²⁵ Failure to affix an adequate security measure may result in fines of \$250 per gas pump for every day that the appropriate devices are not installed.²⁶ Collier County,²⁷ Charlotte County,²⁸ and the Village of Estero²⁹ also have local fuel pump ordinances.

¹⁷ *Id.*

¹⁸ A skimming device means a self-contained device that is (1) designed to read and store in the device's internal memory information encoded on the computer chip, magnetic strip or stripe, or other storage mechanism of a payment card or from another device that directly reads the information from a payment card; and (2) is incapable of processing the payment card information for the purpose of obtaining, purchasing, or receiving goods, services, money, or anything else of value from a merchant. *See* s. 817.625(1)(b), F.S.

¹⁹ *See* s. 525.07(10), F.S.

²⁰ Section 525.16, F.S., gives the department the authority to issue a warning letter, impose an administrative fine in the Class II category, or revoke or suspend any registration issued by the department. Additionally, s. 525.16, F.S., establishes that any person who violates ch. 525, F.S., commits a misdemeanor of the first degree. Under this section, the department may also submit cases for prosecution, and the department may bring an action in circuit court to enjoin the violation of any provision in ch. 525, F.S.

²¹ Florida Department of Agriculture and Consumer Services, *Card Skimmers*, available at <https://www.freshfromflorida.com/Consumer-Resources/Scams-and-Fraud/Card-Skimmers> (last visited Mar. 3, 2021).

²² Federal Trade Commission, *Watch Out for Card Skimming at the Gas Pump* (Aug. 7, 2018), available at <https://www.consumer.ftc.gov/blog/2017/06/avoid-skimmers-pump> (last visited Mar. 3, 2021).

²³ Florida Department of Agriculture and Consumer Services, *FDACS Makes Three Arrests in Gas Pump Skimmer Investigation*, available at <https://www.fdacs.gov/News-Events/Press-Releases/2021-Press-Releases/FDACS-Makes-Three-Arrests-in-Gas-Pump-Skimmer-Investigation> (last visited Mar. 3, 2021).

²⁴ Section 817.625(2)(a), F.S. A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084 F.S.

²⁵ *See* Lee County, Florida Ordinance No. 19-09.

²⁶ *Id.*

²⁷ *See* Collier County, Florida Ordinance No. 18-55.

²⁸ *See* Charlotte County, Florida Ordinance No. 19-026.

²⁹ *See* Village of Estero, Ordinance No. 18-25.

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.³⁰

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.³¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.³² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.³³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.³⁴ Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.³⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.³⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.³⁷

III. Effect of Proposed Changes:

The bill removes the ability for local jurisdictions to create and enforce regulations regarding petroleum fuel measuring devices that are beyond the rules established by the department.

The bill also eliminates the department's authority to impose penalties under s. 525.16, F.S.,³⁸ for violations of petroleum fuel measuring device rules under s. 525.07(10), F.S.,³⁹ unless an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure.

³⁰ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

³¹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

³² *Mulligan*, 934 So.2d at 1243.

³³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

³⁴ See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

³⁵ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

³⁶ *Id.*

³⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

³⁸ Section 525.16, F.S., gives the department the authority to issue a warning letter, impose an administrative fine in the Class II category, or revoke or suspend any registration issued by the department. Additionally, s. 525.16, F.S., establishes that any person who violates ch. 525, F.S., commits a misdemeanor of the first degree. Under this section, the department may also submit cases for prosecution, and the department may bring an action in circuit court to enjoin the violation of any provision in ch. 525, F.S.

³⁹ Section 525.07(10), F.S., requires every person who owns or manages a retail petroleum fuel measuring device to install or affix an unaltered security measure to restrict the unauthorized access of customer payment card information.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The department will be unable to impose monetary administrative penalties against owners and managers of petroleum fuel measuring devices who violate s. 525.07(10), F.S. Additionally, owners and managers of petroleum fuel measuring devices may be able to install less expensive security measures to restrict the unauthorized access of customer payment card information if they are currently subject to more stringent requirements pursuant to a local ordinance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 525.07 and 525.16 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 Commerce and Tourism on March 2, 2021:

The committee substitute clarifies that the department does not have the authority to impose penalties under s. 525.16, F.S., for violations of petroleum fuel measuring device rules under s. 525.07(10), F.S., unless an owner or operator of a petroleum fuel measuring device has failed to install a security device or measure.

- B. **Amendments:**

None.



168096

LEGISLATIVE ACTION

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

The Committee on Commerce and Tourism (Rodriguez) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 29
and insert:
however, s. 525.16 may not be used to enforce this subsection unless the device owner or operator has failed to install a security device or measure.

Section 2. Subsection (6) is added to section 525.16, Florida Statutes, to read:

525.16 Administrative fine; penalties; prosecution of cases



168096

11 by state attorney.-

12 (6) This section may not be used to enforce rules adopted
13 pursuant to s. 525.07(10)(f) unless the device owner or operator
14 has failed to install a security device or measure.

15

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

17 And the title is amended as follows:

18 Delete lines 8 - 11

19 and insert:

20 petroleum fuel measuring devices unless an owner or
21 operator fails to take certain security measures;
22 amending s. 525.16, F.S.; exempting department
23 petroleum fuel measuring device rules from enforcement
24 under specified provisions unless an owner or operator
25 fails to take certain security measures; providing an
26 effective date.

By Senator Rodriguez

39-00726-21

2021430__

1 A bill to be entitled
 2 An act relating to petroleum fuel measuring devices;
 3 amending s. 525.07, F.S.; preempting the regulation of
 4 petroleum fuel measuring devices to the state and the
 5 Department of Agriculture and Consumer Services;
 6 prohibiting the department from enforcing certain
 7 provisions for violations of rules relating to
 8 petroleum fuel measuring devices; amending s. 525.16,
 9 F.S.; exempting department petroleum fuel measuring
 10 device rules from enforcement under specified
 11 provisions; providing an effective date.

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

15 Section 1. Paragraph (f) of subsection (10) of section
 16 525.07, Florida Statutes, is amended to read:

17 525.07 Powers and duties of department; inspections;
 18 unlawful acts.-

19 (10)

20 (f) The regulation of petroleum fuel measuring devices is
 21 preempted to the state and to the department, which shall
 22 enforce, and may adopt rules to administer, this subsection;
 23 however, s. 525.16 may not be used to enforce this subsection.

24 Section 2. Subsection (6) is added to section 525.16,
 25 Florida Statutes, to read:

26 525.16 Administrative fine; penalties; prosecution of cases
 27 by state attorney.-

28 (6) This section may not be used to enforce rules adopted
 29 pursuant to s. 525.07(10)(f).

Page 1 of 2

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

39-00726-21

2021430__

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

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Commerce and Tourism

Subject: Committee Agenda Request

Date: February 11, 2021

I respectfully request that **Senate Bill #848**, relating to Electronic Legal Documents, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Bobby Powell".

Senator Bobby Powell
Florida Senate, District 30

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/21

Meeting Date

848

Bill Number (if applicable)

Topic Electronic Legal Documents (Commerce and Tourism)

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 106 E. College Ave Suite 1200

Phone 850-999-4100

Street

Tallahassee

FL

32301

Email medenfield@deanmean.com

City

State

Zip

Speaking: For Against Information

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

Representing The Real Property, Probate and Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 848

INTRODUCER: Senator Powell

SUBJECT: Electronic Legal Documents

DATE: March 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.			JU	
3.			RC	

I. Summary:

In 2019, the Legislature assigned online notaries with the duty of witnessing documents via audio-video technology, in addition to more traditional notarial duties performed via electronic media. SB 848 amends part II of ch. 117, F.S., “Online Notarizations,” to clarify the procedures applicable to the supervision of the witnessing of electronic records, and to conform language throughout. The bill also updates statutory forms used by notaries public and online notaries to reflect the principal signer or witness to appear via audio-video technology.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 117, F.S., to authorize notaries public, civil-law notaries, and commissioners of deeds to register as online notaries to provide online notary services through two-way, remote audio-video communication technology, similar to skype and zoom.¹ This audio-video technology enables real time, two-way communication where the parties (online notary, principal, and any witnesses) can see, hear, and communicate with each other electronically.

An online notary may perform most of the traditional notary public’s duties, including the administration of oaths and affirmations, taking of acknowledgements; attestation to photocopies of certain documents, verification of vehicle identification numbers; and the certification of the contents of a safe-deposit box.² Additionally, section 117.285, F.S., allows online notaries to supervise the witnessing of electronic records.³ Generally, a notary public is not required to witness a document when all parties are physically present together.

¹ Chapter 2019-71, Laws of Fla. CS/CS/HB 409 (2019) was signed into law on June 7, 2019, and took effect on January 1, 2020.

² Florida Governor’s Office, *Duties of a Notary Public*, 13 (Dec. 17, 2019), available at, https://www.flgov.com/wp-content/uploads/Governor's%20Notary_Reference_Manual_12.17.19%20edited1.pdf (last visited Mar. 1, 2021).

³ This duty was newly created by ch. 2019-71, Laws of Fla. (*see supra* note 1).

The Department of State (department) governs the registration of online notaries public (online notaries), and as a prerequisite, requires registrants to:⁴

- Be commissioned or appointed as a notary public pursuant to ch. 117, F.S., a civil-law notary under ch. 118, or a commissioner of deeds under part IV of ch. 721;
- Complete training that covers the duties, obligations, and technology requirements for serving as an online notary;
- Pay a \$10 notary public registration fee;
- Have a current contract with a remote online notarization service provider whose technologies and credentialing processes satisfy the statutory minimum requirements; and
- Maintain a \$25,000 bond and a current errors and omissions insurance policy.

Online Notarizations

To perform an online notarization, an online notary must first determine whether the principal⁵ is located outside of Florida at the time of notarization. If so, the online notary must confirm that the principal understands that the notarization will occur according to Florida law.

Next, the online notary must confirm the principal's identity.⁶ An online notary may do so by documenting that he or she personally knows the principal, or, if the notary does not know the principal, by documenting all of the following:

- The principal's remote presentation of a government-issued identification;⁷
- The notary's credential analysis⁸ of the identification to ensure its validity; and
- The notary's identity proofing⁹ of the principal, wherein a third party provides knowledge-based authentication questions that must be correctly answered by the principal in a limited amount of time.

If the notary cannot document these steps, then he or she is not permitted to perform the online notarization. If the online notary can confirm the pertinent identities, then the online notary may witness the principal electronically sign the document. Then the online notary adds his or her unique electronic signature and digital notary seal using tamper-evident technology that would document any subsequent change to the document.¹⁰

⁴ Section 117.225, F.S.; Fla. Admin. Code, R. 1N-7.001 (2020). *See also*, Department of State, *Remote Online Notary Public*, <https://dos.myflorida.com/sunbiz/other-services/notaries/remote-online-notary-public/> (last visited Mar. 1, 2021).

⁵ Section 117.201(12), F.S., defines a principal as “an individual whose signature is acknowledged, witnessed, or attested to in an online notarization, or who takes an oath or affirmation administered by an online notary public.”

⁶ Section 117.265(4), F.S.

⁷ Section 117.05(5)(b)2., F.S., lists acceptable identification as: Florida identification card or driver license; a U.S. passport; a passport issued by a foreign government if it is stamped by the U.S. Bureau of Citizenship and Immigration Services; a driver license of id card issued by a state other than Florida, or a territory in the U.S., Canada, or Mexico; an id card issued by the U.S. armed forces; a veteran health id card; an inmate id card issued by if the principal is still in the Florida Department of Correction's or U.S. Department of Justice's custody; an id card issued by the U.S. Bureau of Citizenship and Immigration Services; or, where all of the inmate's identifications were confiscated upon his or her confinement—a sworn, written statement from a law enforcement officer that states that the inmate is the person whose signature is to be notarized.

⁸ Section 117.201(3), F.S. *See also*, s. 117.295(3)(b), F.S.

⁹ Section 117.201(7), F.S. *See also*, s. 117.295(3)(a), F.S.

¹⁰ Section 117.255, F.S.

For all online notarizations, an online notary must:

- Make and maintain a recording of the audio-video component (video) of the notarization, including the credential analysis and identity proofing he or she performed, if any;¹¹ and
- Create an entry in his or her electronic journal of notarizations that notes specific information about the notarization, including types of identification used and the names and addresses of all parties involved.¹²

The online notary must maintain both the electronic journal and the recordings for at least 10 years after the notarization. An online notary, his or her estate, or guardian may transfer these documents to a secure repository should he or she become incapable of maintaining them before the 10 years have elapsed.¹³

Remote Witnessing of Documents

An online notary may also supervise the witnessing of electronic records via the same audio-video platform used for online notarization.¹⁴ If the witness is physically present with the principal, he or she can generally confirm his or her identity by stating his or her name and current address on the recording. If the witness is connected via audio-video communication technology (outside of the principal's presence), the online notary must confirm the witness' identity by presentation of government-issued identification and performance of a credential analysis and identity proofing, as required for the principal in an online notarization.¹⁵

In certain circumstances,¹⁶ an online notary and his or her remote online notarization service provider must provide a higher level of scrutiny to supervise the witnessing of a document. For example:

- Where the online notary has reason to believe that the principal is impaired or unable to care for him or herself, the notary must ensure that the witness is physically-present with the principal at the time of witnessing.¹⁷
- The remote online notarization service provider must give the principal a notice that, if he or she is a vulnerable adult,¹⁸ the witnessing of a document via audio-video technology is not valid.¹⁹
- The online notary must engage in a specific colloquy with the principal to ensure that the principal is mentally capable of understanding the nature and effect of the document at the time of witnessing.²⁰

¹¹ Section 117.245(2), F.S.

¹² Section 117.245(1), F.S.

¹³ Section 117.245(4), F.S.

¹⁴ Section 117.285, F.S.

¹⁵ *See supra* "Online Notarizations."

¹⁶ An online notary must perform additional inquiries where the document to be witnessed is a will, trust and testamentary aspect, healthcare advanced directive, waiver of spousal rights, or power of attorney concurrent with a will. Section 117.285(5), F.S.

¹⁷ Section 117.285(5)(a)-(b), F.S.

¹⁸ Section 415.102, F.S., defines a "vulnerable adult" as a person who is 18 years or older, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

¹⁹ Section 117.285(5)(c), F.S.

²⁰ Section 117.285(5)(d)-(e), F.S.

The above processes do not guarantee the ultimate effectiveness of the witnessing procedure.²¹

Retroactive Application of a Statute

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective.

The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.²² When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural law is neither simple nor certain.”²³ The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.²⁴

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.²⁵ Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.²⁶

III. Effect of Proposed Changes:

General Requirements

Section 1 amends s. 117.201(9), F.S., to clarify that an “online notarization” is the online notary’s performance of a notarial act during which a principal *or any witness* appears electronically.

Section 2 amends s. 117.285, F.S., to specify that the supervision of the witnessing of an electronic record by an online notary pursuant to ch. 117, F.S., is a ‘notarial act.’²⁷

²¹ For example, s. 117.285(5)(f), F.S., states that “[a] principal’s responses to the question in paragraphs (a) and (d) may be offered as evidence regarding the validity of the instrument, but an incorrect answer may not serve as the sole basis to invalidate an instrument.”

²² *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

²³ *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000).

²⁴ *Love* at 184.

²⁵ *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla. 2004).

²⁶ *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

²⁷ “Notarial act” is an undefined term, but is used commonly in ch. 117, F.S., to denote those acts that a notary public or online notary may perform. *See, e.g.*, ss. 117.021(7), 117.201(5), 117.245, and 117.265(3), F.S., which all use the term “notarial act” to refer to an act performed by a notary in the course of his or her duty as a notary.

Procedural Requirements

Section 2 also creates an explicit requirement that an online notary must comply with the online notarization procedures of part II of ch. 117, F.S., including, e.g., the retention of records and recording of the notarial act.²⁸

Section 117.265(4), F.S., currently requires online notaries who perform an online notarization to verify the principal's identity according to specific procedures. **Section 2** of the bill additionally amends s. 117.285(2), F.S., regarding the witnessing of a document where the witness appears remotely from the principal, to conform to the procedures outlined in s. 117.265(4), F.S.

Therefore, the bill requires an online notary of such a witnessing to verify both the witness' *and principal's* identities by either documenting that he or she personally knows the principal, or, if the notary does not know the principal, by documenting all of the following:

- The individual's remote presentation of a government-issued identification;²⁹
- The notary's credential analysis³⁰ of the identification to ensure its validity; and
- The notary's identity proofing³¹ of the individual, wherein a third party provides knowledge-based authentication questions that must be correctly answered by the individual in a limited amount of time.

Section 117.285(2), F.S., does not require an online notary to confirm a principal's identity if the witness is physically present with the principal at the time the document is witnessed; however, the online notary must verify the witness' identity by the witness' statement of his or her name and address on the record.³²

Section 2 further amends s. 117.285(5), F.S., to clarify that a heightened scrutiny and additional duties apply when "fewer than two witnesses are in the physical presence of the principal." This section of the bill then restates in newly created s. 117.285(5)(k), F.S., that the requirements of s. 117.285(5), F.S., do not apply if two or more witnesses appear in the physical presence of the principal at the time of the notarial act.

Conforming Changes to Statutory Forms

In 2019, as part of the overall creation of online notarization by ch. 2019-71, Laws of Florida, the Legislature updated section 117.05(4)(c), F.S., to require Florida notaries to indicate in a jurat or notarial certificate (included as part of their notarization) whether the person appeared in-person, or by audio-video communication to sign the notarized document.

Sections 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3., 732.703(5)(b)4., and 747.051(1), F.S.,³³ contain statutory forms that must be notarized or witnessed to have effect.

²⁸ See, s. 117.245, F.S.

²⁹ See *supra*, note 8.

³⁰ Section 117.201(3), F.S. See also, s. 117.295(3)(b), F.S.

³¹ Section 117.201(7), F.S. See also, s. 117.295(3)(a), F.S.

³² Section 117.285(2), F.S.

³³ Sections 709.2119(2)(c), 732.401(2)(e), 732.503(1), 732.703(5)(b)3., F.S., 732.703(5)(b)4., and 747.051(1), F.S., respectively, contain statutory forms to complete a power of attorney, an election of a surviving spouse regarding the descent

The current version of these forms include only a statement that the act was “sworn to...before me by...” and therefore are incompatible with online notarization as authorized effective January 1, 2020. **Sections 3, 4, 5, 7, and 8** of the bill update these forms to allow the notary to indicate whether the subject of the notarization was physically present, or *appeared by online notarization*.

Section 723.503(1), F.S., includes a statutory form for a self-proving will. **Section 5** of the bill amends this statutory form to allow the notary to fill in both the state and county in which it was acknowledged or subscribed before the notary, for cases in which a document is prepared in Florida—but actually notarized in a different state.

Technical Corrections

Sections 2 and 6 amends ss. 117.285(6)(b) and 732.521(7), F.S., respectively, to correct erroneous cross-references.

Current law inaccurately describes the subject of both ss. 732.701 and 732.702, F.S., as “a waiver of spousal rights.” However, s. 732.701, F.S., addresses wills and devises, and s. 732.702, F.S., more specifically addresses waivers of spousal rights. **Section 2** amends s. 117.285(5), F.S., to clarify the subjects of these cross-references as “an agreement concerning succession *or* a waiver of spousal rights.”

Section 2 of the bill also corrects a reference in s. 117.285(5), F.S., to a *revocable* trust with testamentary aspects *as described in s. 736.0403(2)(b), F.S.* Only revocable trusts can have testamentary aspects, and therefore require the witnessing requirements described in s. 117.285(5), F.S. In a correlative change, the bill adds s. 117.285(h)2., F.S., to clarify that the witnessing requirements in s. 117.285(5), F.S., do not affect the nontestamentary aspects of a revocable trust under ch. 736, F.S.

Retroactivity and Effective Date

Section 9 states that the amendments made are remedial in nature and will apply retroactively to January 1, 2020—the date upon which ch. 2019-71, Laws of Florida, creating part II of ch. 117, F.S., took effect.

Section 10 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

of homestead, a self-proving will or codicil, divorce and beneficiary designations, and sale of transfer of an absentee’s property.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

Online notaries and their associated remote online notarization platforms may be required to update some of their practices as a result of the changes made in the bill. Additionally, those who practice estate law in Florida will need to familiarize themselves with the witnessing requirements established in the bill, as the number of documents witnessed by an online notary will likely increase.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.201, 117.285, 709.2119, 732.401, 732.503, 732.521, 732.703, and 747.051, F.S.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Powell

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2021848__

1 A bill to be entitled
 2 An act relating to electronic legal documents;
 3 amending s. 117.201, F.S.; revising the definition of
 4 the term "online notarization"; amending s. 117.285,
 5 F.S.; clarifying that supervising the witnessing of an
 6 electronic record by an online notary public is a
 7 notarial act; specifying applicability of online
 8 notarization procedures to supervision of the
 9 witnessing of an electronic record; modifying
 10 witnessing procedures; revising applicability;
 11 amending s. 709.2119, F.S.; revising the statutory
 12 form for an affidavit for acceptance of and reliance
 13 upon a power of attorney to reflect means of
 14 notarization; amending s. 732.401, F.S.; revising the
 15 statutory form for the notice of election relating to
 16 the descent of homestead property to reflect means of
 17 notarization; amending s. 732.503, F.S.; revising the
 18 statutory form for the self-proof of a will or codicil
 19 to reflect means of notarization; amending s. 732.521,
 20 F.S.; conforming a cross-reference; amending s.
 21 732.703, F.S.; revising statutory forms relating to
 22 the disposition of certain assets at death to reflect
 23 means of notarization; amending s. 747.051, F.S.;
 24 revising the form for a petition of summary relief for
 25 the sale or transfer of certain property owned by an
 26 absentee to reflect means of notarization; providing
 27 for construction and retroactive application;
 28 providing an effective date.
 29

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30 Be It Enacted by the Legislature of the State of Florida:
 31
 32 Section 1. Subsection (9) of section 117.201, Florida
 33 Statutes, is amended to read:
 34 117.201 Definitions.—As used in this part, the term:
 35 (9) "Online notarization" means the performance of a
 36 notarial act using electronic means in which the principal or
 37 any witness appears before the notary public by means of audio-
 38 video communication technology.
 39 Section 2. Section 117.285, Florida Statutes, is amended to
 40 read:
 41 117.285 Supervising the witnessing of electronic records.—
 42 Supervising the witnessing of an electronic record by an online
 43 notary public in accordance with this section is a notarial act.
 44 An online notary public may supervise the witnessing of
 45 electronic records by complying with the online notarization
 46 procedures of this part and using the same audio-video
 47 communication technology used for online notarization by a
 48 principal, as follows:
 49 (1) The witness may be in the physical presence of the
 50 principal or remote from the principal provided the witness and
 51 principal are using audio-video communication technology.
 52 (2) If the witness is remote from the principal and viewing
 53 and communicating with the principal by means of audio-video
 54 communication technology, the principal's and witness's
 55 identities ~~identity~~ must be verified in accordance with the
 56 procedures for identifying a principal as set forth in s.
 57 117.265(4). If the witness is in the physical presence of the
 58 principal, the witness must confirm his or her identity by

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59 stating his or her name and current address on the audio-video
60 recording as part of the act of witnessing.

61 (3) The act of witnessing an electronic signature means the
62 witness is either in the physical presence of the principal or
63 present through audio-video communication technology at the time
64 the principal affixes the electronic signature and the witness
65 hears the principal make a statement to the effect that the
66 principal has signed the electronic record.

67 (4) A witness remote from the principal and appearing
68 through audio-video communication technology must verbally
69 confirm that he or she is a resident of and physically located
70 within the United States or a territory of the United States at
71 the time of witnessing.

72 (5) Notwithstanding subsections (2) and (3), if an
73 electronic record to be signed is a will under chapter 732, a
74 revocable trust with testamentary aspects as described in s.
75 736.0403(2)(b) under chapter 736, a health care advance
76 directive, an agreement concerning succession or a waiver of
77 spousal rights under s. 732.701 or s. 732.702, respectively, or
78 a power of attorney authorizing any of the transactions
79 enumerated in s. 709.2208, all of the following apply when fewer
80 than two witnesses are in the physical presence of the principal
81 shall apply:

82 (a) Prior to facilitating witnessing of an instrument by
83 means of audio-video communication technology, a RON service
84 provider shall require the principal to answer the following
85 questions in substantially the following form:

86 1. Are you under the influence of any drug or alcohol today
87 that impairs your ability to make decisions?

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88 2. Do you have any physical or mental condition or long-
89 term disability that impairs your ability to perform the normal
90 activities of daily living?

91 3. Do you require assistance with daily care?

92 (b) If any question required under paragraph (a) is
93 answered in the affirmative, the principal's signature on the
94 instrument may only be validly witnessed by witnesses in the
95 physical presence of the principal at the time of signing.

96 (c) Subsequent to submission of the answers required under
97 paragraph (a), the RON service provider shall give the principal
98 written notice in substantially the following form:

99

100 NOTICE: If you are a vulnerable adult as defined in s. 415.102,
101 Florida Statutes, the documents you are about to sign are not
102 valid if witnessed by means of audio-video communication
103 technology. If you suspect you may be a vulnerable adult, you
104 should have witnesses physically present with you before
105 signing.

106

107 (d) The act of witnessing an electronic signature through
108 the witness's presence by audio-video communication technology
109 is valid only if, during the audio-video communication, the
110 principal provides verbal answers to all of the following
111 questions, each of which must be asked by the online notary
112 public in substantially the following form:

- 113 1. Are you currently married? If so, name your spouse.
114 2. Please state the names of anyone who assisted you in
115 accessing this video conference today.
116 3. Please state the names of anyone who assisted you in

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117 preparing the documents you are signing today.

118 4. Where are you currently located?

119 5. Who is in the room with you?

120 (e) An online notary public shall consider the responses to
121 the questions specified in paragraph (d) in carrying out of the
122 duties of a notary public as set forth in s. 117.107(5).

123 (f) A principal's responses to the questions in paragraphs
124 (a) and (d) may be offered as evidence regarding the validity of
125 the instrument, but an incorrect answer may not serve as the
126 sole basis to invalidate an instrument.

127 (g) The presence of a witness with the principal at the
128 time of signing by means of audio-video communication technology
129 is not effective for witnessing the signature of a principal who
130 is a vulnerable adult as defined in s. 415.102. The contestant
131 of an electronic record has the burden of proving that the
132 principal was a vulnerable adult at the time of executing the
133 electronic record.

134 (h) Nothing in this subsection shall:

135 1. Preclude a power of attorney, which includes banking or
136 investment powers enumerated in s. 709.2208, from being
137 effective with respect to any other authority granted therein or
138 with respect to the agent's authority in connection with a real
139 property, commercial, or consumer transaction or loan, to
140 exercise any power specified therein or to execute and deliver
141 instruments obligating the principal or to draw upon the
142 proceeds of such transaction or loan; or

143 2. Affect the nontestamentary aspects of a revocable trust
144 under chapter 736.

145 (i) The electronic record containing an instrument signed

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146 by witnesses who were present with the principal by means of
147 audio-video communication technology shall contain a perceptible
148 indication of their presence by such means.

149 (j) ~~Nothing in~~ This subsection does not shall affect the
150 application of s. 709.2119.

151 (k) The requirements of this subsection do not apply if
152 there are at least two witnesses in the physical presence of the
153 principal at the time of the notarial act.

154 (6) Pursuant to subpoena, court order, an authorized law
155 enforcement inquiry, or other lawful request, a RON service
156 provider or online notary public shall provide:

157 (a) The last known address of each witness who witnessed
158 the signing of an electronic record using audio-video
159 communication technology under this section.

160 (b) A principal's responses to the questions in paragraph
161 (5) (a) or paragraph (5) (d) ~~(5) (b)~~, as applicable.

162 (c) An uninterrupted and unedited copy of the recording of
163 the audio-video communication in which an online notarization is
164 performed.

165 (7) Except as set forth in s. 709.2202, an act of
166 witnessing performed pursuant to this section satisfies any
167 requirement that the witness must be a subscribing or attesting
168 witness or must be in the presence of the principal at the time
169 of signing.

170 (8) The law of this state governs the validity of
171 witnessing supervised by an online notary public pursuant to
172 this section, regardless of the physical location of the witness
173 at the time of witnessing. State and federal courts in this
174 state have subject matter jurisdiction over any dispute arising

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175 out of an act of witnessing pursuant to this section, and may
176 issue subpoenas for records or to require the appearance of
177 witnesses in relation thereto in accordance with applicable law.

178 Section 3. Paragraph (c) of subsection (2) of section
179 709.2119, Florida Statutes, is amended to read:

180 709.2119 Acceptance of and reliance upon power of
181 attorney.—

182 (2) A third person may require:

183 (c) A written affidavit executed by the agent under this
184 subsection which may, but need not, be in the following form:

185
186 STATE OF.....
187 COUNTY OF.....
188

189 Before me, the undersigned authority, personally appeared
190 ... (agent)... ("Affiant") by the means specified herein, who
191 swore or affirmed that:

192 1. Affiant is the agent named in the Power of Attorney
193 executed by ... (principal)... ("Principal") on ... (date)...

194 2. This Power of Attorney is currently exercisable by
195 Affiant. The principal is domiciled in ... (insert name of state,
196 territory, or foreign country)...

197 3. To the best of Affiant's knowledge after diligent search
198 and inquiry:

199 a. The Principal is not deceased;

200 b. Affiant's authority has not been suspended by initiation
201 of proceedings to determine incapacity or to appoint a guardian
202 or a guardian advocate;

203 c. Affiant's authority has not been terminated by the

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204 filing of an action for dissolution or annulment of Affiant's
205 marriage to the principal, or their legal separation; and

206 d. There has been no revocation, or partial or complete
207 termination, of the power of attorney or of Affiant's authority.

208 4. Affiant is acting within the scope of authority granted
209 in the power of attorney.

210 5. Affiant is the successor to ... (insert name of
211 predecessor agent)..., who has resigned, died, become
212 incapacitated, is no longer qualified to serve, has declined to
213 serve as agent, or is otherwise unable to act, if applicable.

214 6. Affiant agrees not to exercise any powers granted by the
215 Power of Attorney if Affiant attains knowledge that the power of
216 attorney has been revoked, has been partially or completely
217 terminated or suspended, or is no longer valid because of the
218 death or adjudication of incapacity of the Principal.

219
220
221 ... (Affiant) ...
222

223 Sworn to (or affirmed) and subscribed before me by means of
224 physical presence or online notarization this day of
225 ... (month)..., ... (year)..., by ... (name of person making
226 statement)...

227
228 ... (Signature of Notary Public ~~State of Florida~~) ...

229
230 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

231
232 Personally Known OR Produced Identification

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233 ... (Type of Identification Produced)...

234

235 Section 4. Paragraph (e) of subsection (2) of section

236 732.401, Florida Statutes, is amended to read:

237 732.401 Descent of homestead.—

238 (2) In lieu of a life estate under subsection (1), the
239 surviving spouse may elect to take an undivided one-half
240 interest in the homestead as a tenant in common, with the
241 remaining undivided one-half interest vesting in the decedent's
242 descendants in being at the time of the decedent's death, per
243 stirpes.

244 (e) The election must ~~shall~~ be made by filing a notice of
245 election containing the legal description of the homestead
246 property for recording in the official record books of the
247 county or counties where the homestead property is located. The
248 notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT'S INTEREST IN
HOMESTEAD PROPERTY

255 STATE OF.....
256 COUNTY OF.....

258 1. The decedent,, died on On
259 the date of the decedent's death, the decedent was married to
260, who survived the decedent.

261 2. At the time of the decedent's death, the decedent owned

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262 an interest in real property that the affiant believes to be
263 homestead property described in s. 4, Article X of the State
264 Constitution, which real property being in County,
265 Florida, and described as: ... (description of homestead
266 property)...

267 3. Affiant elects to take one-half of decedent's interest
268 in the homestead as a tenant in common in lieu of a life estate.

269 4. If affiant is not the surviving spouse, affiant is the
270 surviving spouse's attorney in fact or guardian of the property,
271 and an order has been rendered by a court having jurisdiction of
272 the real property authorizing the undersigned to make this
273 election.

274
275 ... (Affiant)...

278 Sworn to (or affirmed) and subscribed before me by means of
279 physical presence or online notarization this day of
280 ... (month) ..., ... (year) ..., by ... (affiant) ...

282 ... (Signature of Notary Public ~~State of Florida~~) ...

284 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

286 Personally Known OR Produced Identification

288 ... (Type of Identification Produced) ...

290 Section 5. Subsection (1) of section 732.503, Florida

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291 Statutes, is amended to read:
292 732.503 Self-proof of will.-
293 (1) A will or codicil executed in conformity with s.
294 732.502 may be made self-proved at the time of its execution or
295 at any subsequent date by the acknowledgment of it by the
296 testator and the affidavits of the witnesses, made before an
297 officer authorized to administer oaths and evidenced by the
298 officer's certificate attached to or following the will, in
299 substantially the following form:

300
301 STATE OF..... FLORIDA
302 COUNTY OF

303 I,....., declare to the officer taking my
304 acknowledgment of this instrument, and to the subscribing
305 witnesses, that I signed this instrument as my will.

306
307
308 Testator

309
310 We,.....and....., have been sworn by the officer
311 signing below, and declare to that officer on our oaths that the
312 testator declared the instrument to be the testator's will and
313 signed it in our presence and that we each signed the instrument
314 as a witness in the presence of the testator and of each other.

315
316
317 Witness

318
319

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320 Witness

321
322 Acknowledged and subscribed before me by means of
323 physical presence or online notarization by the testator,
324 (type or print testator's name), who is personally known to me
325 or ~~who~~ has produced (state type of identification-see s.
326 117.05(5)(b)2.) as identification, and sworn to and subscribed
327 before me by each of the following witnesses: (type or print
328 name of first witness) who is personally known to me or ~~who~~
329 has produced (state type of identification-see s.
330 117.05(5)(b)2.) as identification, by means of physical
331 presence or online notarization; and (type or print name of
332 second witness) who is personally known to me or ~~who~~ has
333 produced (state type of identification-see s. 117.05(5)(b)2.) as
334 identification, by means of physical presence or online
335 notarization. ~~and~~ Subscribed by me in the presence of the
336 testator and the subscribing witnesses, by the means specified
337 herein, all on (date).

338(Signature of Officer)...
339 ...(Print, type, or stamp commissioned name and affix official
340 seal)...

341
342 Section 6. Subsection (7) of section 732.521, Florida
343 Statutes, is amended to read:
344 732.521 Definitions.-As used in ss. 732.521-732.525, the
345 term:

346 (7) "Qualified custodian" means a person who meets the
347 requirements of s. 732.524(1) ~~s. 732.525(1)~~.

348 Section 7. Paragraph (b) of subsection (5) of section

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349 732.703, Florida Statutes, is amended to read:
 350 732.703 Effect of divorce, dissolution, or invalidity of
 351 marriage on disposition of certain assets at death.—
 352 (5) In the case of an asset described in paragraph (3) (a),
 353 paragraph (3) (b), or paragraph (3) (c), unless payment or
 354 transfer would violate a court order directed to, and served as
 355 required by law on, the payor:
 356 (b) As to any portion of the asset required by the
 357 governing instrument to be paid after the decedent’s death to a
 358 primary beneficiary explicitly designated in the governing
 359 instrument as the decedent’s spouse:
 360 1. If the death certificate states that the decedent was
 361 married at the time of his or her death to that spouse, the
 362 payor is not liable for making a payment on account of, or for
 363 transferring an interest in, that portion of the asset to such
 364 primary beneficiary.
 365 2. If the death certificate states that the decedent was
 366 not married at the time of his or her death, or if the death
 367 certificate states that the decedent was married to a person
 368 other than the spouse designated as the primary beneficiary at
 369 the time of his or her death, the payor is not liable for making
 370 a payment on account of, or for transferring an interest in,
 371 that portion of the asset to a secondary beneficiary under the
 372 governing instrument.
 373 3. If the death certificate is silent as to the decedent’s
 374 marital status at the time of his or her death, the payor is not
 375 liable for making a payment on account of, or for transferring
 376 an interest in, that portion of the asset to the primary
 377 beneficiary upon delivery to the payor of an affidavit validly

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378 executed by the primary beneficiary in substantially the
 379 following form:
 380
 381 STATE OF.....
 382 COUNTY OF.....
 383
 384 Before me, the undersigned authority, personally
 385 appeared by the means specified herein, ... (type or
 386 print Affiant’s name)... (“Affiant”), who swore or
 387 affirmed that:
 388 1. ... (Type or print name of Decedent)...
 389 (“Decedent”) died on ... (type or print the date of the
 390 Decedent’s death)...
 391 2. Affiant is a “primary beneficiary” as that
 392 term is defined in Section 732.703, Florida Statutes.
 393 Affiant and Decedent were married on ... (type or print
 394 the date of marriage)..., and were legally married to
 395 one another on the date of the Decedent’s death.
 396 ... (Affiant)...
 397 Sworn to or affirmed before me by means of
 398 physical presence or online notarization by the
 399 affiant who is personally known to me or ~~who~~ has
 400 produced ... (state type of identification)... as
 401 identification this day of ... (month)...,
 402 ... (year)...
 403 ... (Signature of Officer)...
 404 ... (Print, Type, or Stamp Commissioned name of Notary
 405 Public)...
 406

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407 4. If the death certificate is silent as to the decedent's
408 marital status at the time of his or her death, the payor is not
409 liable for making a payment on account of, or for transferring
410 an interest in, that portion of the asset to the secondary
411 beneficiary upon delivery to the payor of an affidavit validly
412 executed by the secondary beneficiary ~~affidavit~~ in substantially
413 the following form:

414 STATE OF.....
415 COUNTY OF.....

417 Before me, the undersigned authority, personally
418 appeared by the means specified herein, ...(type or
419 print Affiant's name)... ("Affiant"), who swore or
420 affirmed that:

421 1. ...(Type or print name of Decedent)...
422 ("Decedent") died on ...(type or print the date of the
423 Decedent's death)....

424 2. Affiant is a "secondary beneficiary" as that
425 term is defined in Section 732.703, Florida Statutes.
426 On the date of the Decedent's death, the Decedent was
427 not legally married to the spouse designated as the
428 "primary beneficiary" as that term is defined in
429 Section 732.703, Florida Statutes.

430 ... (Affiant) ...

431 Sworn to or affirmed before me by means of
432 physical presence or online notarization by the
433 affiant who is personally known to me or ~~was~~ has

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436 produced ...(state type of identification)... as
437 identification this day of ...(month)...,
438 ...(year)....
439 ...(Signature of Officer)...
440 ...(Print, Type, or Stamp Commissioned name of Notary
441 Public)...

442 Section 8. Subsection (1) of section 747.051, Florida
443 Statutes, is amended to read:

444 747.051 Summary procedure.-

445 (1) If the wife of any person defined as an absentee in s.
446 747.01(1), or his next of kin if said absentee has no wife,
447 shall wish to sell or transfer any property of the absentee
448 which has a gross value of less than \$5,000, or shall require
449 the consent of the absentee in any matter regarding the
450 absentee's children or in any other matter in which the gross
451 value of the subject matter is less than \$5,000, she may apply
452 to the circuit court for an order authorizing said sale,
453 transfer, or consent without opening a full conservatorship
454 proceeding as provided by this chapter. She may make the
455 application without the assistance of an attorney. Said
456 application shall be made by petition on the following form,
457 which form shall be made readily available to the applicant by
458 the clerk of the circuit court:

459 In the Circuit Court

460 In re: ...(Absentee)..., case number

30-00743B-21

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PETITION FOR SUMMARY RELIEF

Petitioner, ...(Name)..., whose residence is ...(Street & number)..., ...(City or town)..., and ...(County)..., Florida, and who is the ...(Describe relationship to absentee)... of the absentee, ...(Name)..., states that the absentee has been ...(Imprisoned or missing in action)... since ...(Date)... when ...(Describe details).... Petitioner desires to sell/transfer ...(Describe property)... of the value of ...(Value)... because ...(Give reasons).... The terms of sale/transfer are ...(Give reasons).... Petitioner requires the consent of the absentee for the purpose of

...(Petitioner)...

State of Florida
County of....

Sworn to (or affirmed) and subscribed before me by means of
 physical presence or online notarization this day of
....., ...(year)..., by ...(name of person making
statement)....

...(Signature of Notary Public ~~— State of Florida~~)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known OR Produced Identification
Type of Identification Produced.....

Section 9. The amendments made by this act are remedial in nature and shall apply retroactively to January 1, 2020.

Section 10. This act shall take effect upon becoming a law.

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Commerce Committee Judge:

Started: 3/2/2021 1:30:53 PM

Ends: 3/2/2021 3:14:03 PM Length: 01:43:11

1:30:58 PM Meeting called to order
1:31:05 PM Roll call
1:31:16 PM Quorum is present
1:31:27 PM Chair comments
1:32:17 PM Tab 1, SB 72, Senator Brandes
1:34:07 PM Senator Diaz question of sponsor
1:34:37 PM Response of sponsor
1:35:59 PM Senator Torres question to sponsor
1:36:28 PM Response of sponsor
1:37:09 PM Follow up question, Sen. Torres
1:37:20 PM Response of sponsor
1:38:43 PM Amendment Barcode 951728 by Senator Powell
1:41:49 PM Speaker, Steven Cain for amendment
1:42:52 PM Sponsor Brandes comments on amendment
1:43:19 PM Sen. Powell close on amendment
1:44:20 PM Amendment not adopted
1:44:31 PM Sen. Pizzo, 358018 Late filed amendment
1:46:39 PM Speaker, Steven Cain, FL Justice Assoc., for amendment
1:47:24 PM Speaker, William Large, FL Justice Institute, against amendment
1:48:43 PM Question by Sen. Pizzo to Speaker
1:48:57 PM Speaker response
1:49:17 PM Follow up question by Sen. Pizzo
1:49:31 PM Speaker Response
1:50:07 PM Sen. Brandes comments on amendment
1:51:15 PM Sen. Pizzo close on amendment
1:52:09 PM Amendment not adopted
1:52:20 PM Amendment 321008, by Sen. Pizzo
1:53:45 PM Speaker, Steven Cain, for amendment
1:55:57 PM Speaker, William Large, against amendment
1:57:37 PM Sen. Brandes comments on amendment
1:59:05 PM Sen. Pizzo closes on amendment
1:59:24 PM Amendment not adopted
1:59:34 PM Amendment 466366, by Sen. Pizzo
2:00:05 PM Speaker, Steven Cain, for amendment
2:01:10 PM Speaker, William Large against amendment
2:02:10 PM Sen. Brandes comments on amendment
2:03:01 PM Sen. Pizzo closes on amendment
2:04:37 PM Amendment not adopted
2:04:49 PM Amendment 928904, by Sen. Pizzo
2:05:57 PM Speaker, Steven Cain, for amendment
2:07:22 PM Speaker, William Large, against amendment
2:08:30 PM Sen. Brandes comments on amendment
2:09:02 PM Sen. Pizzo closes
2:09:44 PM Amendment is not adopted
2:10:41 PM Amendment 475864 by Sen. Torres
2:12:21 PM Sen. Torres withdraws amendment
2:12:31 PM Amendment 407288 by Sen. Torres
2:13:12 PM Speaker, Steven Cain, for amendment
2:14:09 PM Speaker, William Large, against amendment
2:15:24 PM Sen. Brandes comments on amendment
2:15:34 PM Sen. Torres closes on amendment
2:17:13 PM Amendment is not adopted

2:17:22 PM Request for roll call on Amendment 407288
2:17:46 PM Amendment not adopted
2:18:04 PM Amendment 624688 by Sen. Taddeo
2:19:35 PM Speaker, Steven Cain for amendment
2:20:35 PM Speaker, William Large, against amendment
2:21:45 PM Sen. Brandes comments on amendment
2:22:08 PM Sen. Taddeo closes on amendment
2:22:42 PM Amendment is not adopted
2:23:08 PM Back on the bill, Sen. Pizzo comments/questions on bill
2:24:03 PM Response of Sponsor and follow up question from Sen Pizzo
2:24:28 PM Back and forth between the two Senators
2:27:18 PM Sen. Powell question to sponsor
2:28:24 PM Response of Sponsor
2:28:25 PM Sen. Torres question
2:28:36 PM Sen. Brandes response
2:29:16 PM Sen. Powell question to sponsor
2:29:39 PM Sponsor response
2:29:46 PM And follow up of Sen. Powell
2:30:06 PM Sen. Brandes responds
2:30:43 PM Sen. Taddeo question to sponsor
2:30:57 PM Response of Sponsor
2:31:18 PM Follow up of Sen. Taddeo
2:31:37 PM Response of sponsor
2:32:02 PM David Cruz, Florida League of Cities, waive in support
2:32:07 PM Brewster Bevis, Associated Industries of Florida, waive in support
2:32:15 PM Ned Bowman, FPMA, waive in support
2:32:25 PM Danielle Scoggins, FL Realtors Assoc, waive in support
2:32:35 PM Pamela Burch-Fort, NAACP Florida State Conference, waive against
2:32:50 PM Diego Echeverri, Americans for Prosperity waive in support
2:32:59 PM Travis Moore, Community Assoc Institute waive in support
2:33:08 PM James Mosteller, Foundation for FL Future waive in support
2:33:16 PM Kara Gross, ACLU waive against
2:33:28 PM Barbara DeVane, FL NOW & FL Alliance for Retired Americans waive against
2:33:47 PM Speaker, Ida Eskamani, Florida Rising against bill
2:35:08 PM Speaker, Dr. Rich Templin, AFL-CIO, against bill
2:36:19 PM Speaker, Spencer Pylant, Greater Miami Chamber of Commerce, for the bill
2:37:32 PM Speaker, Susan McGrath, Florida Consumer Action Network, against the bill
2:38:21 PM Speaker, Carolyn Johnson, FL Chamber of Commerce, for the bill
2:39:25 PM Speaker, Steven Cain, against the bill
2:40:33 PM Speaker, William Large for the bill
2:42:15 PM Speaker, Jake Farmer, FL Retail Fed., for the bill
2:43:07 PM Speaker, Samantha Padgett, FL Restaurant for bill
2:44:24 PM Speaker, Tim Nungesser, NFIB for bill
2:46:47 PM Sen. Torres for comments
2:49:23 PM Sen. Pizzo comments/questions
2:51:44 PM Sen. Brandes waived close
2:51:56 PM Roll call SB 72
2:52:03 PM SB 72 passes favorably
2:52:32 PM Tab 2, SB 430, Sen. Rodriguez
2:53:37 PM Amendment Barcode 168096, by Sen. Rodriguez
2:54:12 PM Sen. Powell, question of sponsor
2:54:26 PM Response of sponsor
2:55:00 PM Sen. Powell, follow up
2:55:11 PM Sponsor response
2:56:43 PM Amendment adopted
2:56:57 PM Sen. Torres question of sponsor
2:57:39 PM Response of Sponsor
2:57:45 PM Speaker, Ned Bowman, waive in support
2:58:09 PM Speaker, Emily Buckley, DOACS
2:59:50 PM Sen. Pizzo question of speaker
3:00:25 PM Response of speaker
3:03:18 PM Back and forth with Sen. Pizzo and speaker

3:05:27 PM Sen. Taddeo question of speaker
3:06:34 PM Speaker response
3:06:42 PM Follow up questions and responses.
3:08:36 PM Sen. Torres, question of speaker
3:08:56 PM Speaker response
3:09:28 PM Follow up, Sen. Torres
3:09:39 PM Speaker Response
3:10:11 PM Sen. Rodriguez closes on bill
3:10:32 PM Roll call on SB 430
3:10:49 PM SB 430 passes favorably as a CS
3:11:12 PM Tab 3, SB 848, Sen. Powell
3:12:08 PM Speaker, Martha Edenfield, FL Real Property, FL Bar waive in support of bill
3:12:31 PM Sen. Powell closes on bill
3:13:02 PM Roll call on SB 848
3:13:12 PM SB 848 passes favorably
3:13:32 PM Sen. Wright moves adjournment
3:13:47 PM Meeting adjourned.