

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Brandes, Chair
Senator Gibson, Vice Chair

MEETING DATE: Tuesday, March 2, 2021**TIME:** 1:30—3:30 p.m.**PLACE:** Pat Thomas Committee Room, 412 Knott Building**MEMBERS:** Senator Brandes, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, Rouson, and Thurston

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|---|---|---|-----------------------------|
| PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 WEST PENSACOLA STREET, TALLAHASSEE, FL 32301 | | | |
| 1 | SB 752 Gruters (Identical H 67) | Public Defender Duties; Specifying additional circumstances under which a public defender may not be appointed to represent a defendant, etc. JU 03/02/2021 Favorable CJ RC | Favorable Yeas 11 Nays 0 |
| 2 | CS/SB 602 Commerce and Tourism / Burgess (Similar H 339) | Business Organizations; Revising requirements relating to inspecting certain records of limited liability companies; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; revising requirements for proceedings relating to unsettled demands for payment, etc. CM 02/15/2021 Fav/CS JU 03/02/2021 Favorable RC | Favorable Yeas 11 Nays 0 |
| 3 | SB 728 Broxson (Identical H 733) | Credit for Reinsurance; Transferring specified authority and duties relating to credit for reinsurance from the Commissioner of Insurance to the Office of Insurance Regulation; revising the attorney designation requirement in reinsurance agreements with certain assuming insurers under certain circumstances; specifying requirements for assuming insurers and reinsurance agreements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; providing construction, etc. BI 02/16/2021 Favorable JU 03/02/2021 Favorable RC | Favorable Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

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

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|---|-----------------------------|
| 4 | SB 702 Thurston (Similar H 253) | Individual Retirement Accounts; Specifying that interests in certain individual retirement funds or accounts which are exempt from creditor claims continue to be exempt after certain transfers incident to divorce; providing retroactive applicability, etc. BI 02/16/2021 Favorable JU 03/02/2021 Fav/CS RC | Fav/CS Yeas 11 Nays 0 |
| 5 | SB 82 Baxley (Identical H 659) | Sponsorship Identification Disclaimers; Modifying provisions governing general independent expenditure disclaimers to conform to changes made by the act; removing an exemption for text messages from certain requirements governing political advertisement disclaimers to conform to changes made by the act; establishing sponsorship identification disclaimer requirements for certain text messages; modifying existing requirements governing telephone call disclaimers; requiring specified persons and organizations sending certain paid text messages to have and maintain a registered agent for specified purposes, etc. EE 02/16/2021 Favorable JU 03/02/2021 Favorable RC | Favorable Yeas 11 Nays 0 |
| 6 | CS/SB 920 Environment and Natural Resources / Bradley (Identical H 287) | Liability of Persons Providing Areas for Public Outdoor Recreational Purposes; Expanding the applicability of the limitation of liability for persons who provide areas to the public for outdoor recreational purposes without charge, etc. EN 02/15/2021 Fav/CS JU 03/02/2021 Favorable RC | Favorable Yeas 11 Nays 0 |
| 7 | SB 1060 Bradley (Similar H 891) | Limitation of Liability for Voluntary Engineering Services; Defining the term "structures specialist"; exempting engineers, architects, and structures specialists from liability for certain voluntary engineering services under certain circumstances, etc. JU 03/02/2021 Fav/CS RI RC | Fav/CS Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

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

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|--------------------------|
| 8 | SB 582 Rodrigues (Similar H 241) | Parental Rights; Creating the "Parents' Bill of Rights"; prohibiting the state, its political subdivisions, other governmental entities, or other institutions from infringing on parental rights unless specified conditions are met; requiring each district school board to develop and adopt a policy to promote parental involvement in the public school system; prohibiting health care practitioners and their employees from providing health care services or prescribing medicinal drugs to a minor child without a parent's written consent, etc. JU 03/02/2021 Fav/CS ED RC | Fav/CS Yeas 8 Nays 3 |
| 9 | SB 748 Brandes (Similar H 1197) | Courts; Deleting the requirement that the Clerk of the Supreme Court physically keep books, records, and other materials in the clerk's office; requiring clerks of court to develop a plan to procure or develop by a specified date a statewide technological solution for identifying mandatory monetary assessments in criminal cases; providing for the periodic inflationary adjustment of the monetary jurisdictional limit applicable to all actions at law in county courts filed on or after a specified date, beginning in 2030; requiring the clerk of a district court of appeal to have an office at the headquarters of the court, etc. JU 03/02/2021 Fav/CS ACJ AP | Fav/CS Yeas 11 Nays 0 |
| 10 | SB 662 Brandes (Identical H 1459) | Resentencing; Authorizing the state attorney of a judicial circuit in which an offender was sentenced for a felony offense to petition the sentencing court to resentence the offender if the original sentence no longer advances the interests of justice; authorizing a court to grant or deny the petition; requiring a court to provide an opportunity for victims of the offender's crimes to present statements, etc. JU 03/02/2021 Fav/CS ACJ AP | Fav/CS Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

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

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--------------------------|---|-----------------------|
| 11 | SB 144 Brandes | <p>Searches of Cellular Phones and Other Electronic Devices; Expanding the grounds for issuance of a search warrant to include content held within a cellular phone, portable electronic communication device, or microphone-enabled household device when such content constitutes evidence relevant to proving that a felony has been committed; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; prohibiting the use of certain communication content in any trial, hearing, or other proceeding which was obtained without a specified warrant, etc.</p> <p>CJ 01/26/2021 Favorable JU 03/02/2021 Temporarily Postponed RC</p> | Temporarily Postponed |

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 752

INTRODUCER: Senator Gruters

SUBJECT: Public Defender Duties

DATE: March 1, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Ravelo</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 2. | <u> </u> | <u> </u> | <u>CJ</u> | <u> </u> |
| 3. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

I. Summary:

SB 752 clarifies that a court may not appoint a public defender as a co-counsel on a case where the defendant is also represented by private counsel. The bill, however, does not prohibit the appointment of a public defender in situations where a defendant is no longer represented by private counsel.

The bill takes effect July 1, 2021.

II. Present Situation:

Every person has the right to legal representation during a criminal proceeding. While a person may hire a private attorney, the Due Process Clause of the 14th Amendment to the United States Constitution requires the appointment of an attorney for those who otherwise cannot afford legal representation in a criminal proceeding where a loss of liberty, such as jail, is at stake.¹ In Florida, indigent criminal defendants may be appointed legal representation from the Public Defender, the Regional Conflict Counsel, or a private court-appointed attorney. Generally, the courts appoint the public defender to represent an indigent defendant, but may appoint the Regional Conflict Counsel or a private court-appointed attorney if the Public Defender or Regional Conflict Counsel has a conflict of interest.²

The Public Defender is a constitutional officer elected in each judicial circuit to represent the indigent in criminal proceedings.³ Each Public Defender appoints assistant-public-defenders to

¹ *Argersinger v. Hamlin*, 407 U.S. 25, 37-38 (1972) (quoting *Stevenson v. Holzman*, 458 P.2d 414, 418 (Or. 1969) *See also Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (“[I]n our adversary system of criminal justice, any person ... who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.”)).

² Section 27.511(5), F.S. and s. 27.40(1) and (2)(a), F.S.

³ FLA. CONST. art. V, s. 18.

assist in these duties and may only represent indigent clients upon appointment from a court order. The courts are prohibited from appointing a public defender to someone who is not indigent.⁴ A public defender may represent any person who is determined to be indigent and is:

- Under arrest for, or charged with, a felony,
- Under arrest for, or charged with:
 - A misdemeanor,
 - A violation of chapter 316 punishable by imprisonment,
 - Criminal contempt, or
 - A special law or county or municipal ordinance,
- Alleged to be a delinquent child,
- The subject of a petition to be involuntarily placed as a mentally ill person under part I of chapter 394 (Baker Act), involuntarily placed as a sexually violent predator under part V of chapter 394 (Jimmy Ryce Act), or involuntarily admitted to residential services as a person with developmental disabilities under chapter 393, or
- Appealing any civil or criminal matter previously listed.⁵

The clerk of the court is responsible for determining indigent status of someone seeking to be represented by the Public Defender.⁶ Indigent status can be based on either a taxable income equal to or below 200 percent of the federal poverty guidelines,⁷ or on the utilization of any form of TANF, poverty related veteran's benefits, or SSI benefits. There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value not exceeding \$5,000.⁸

Appointment of Public Defender as Co-Counsel

Current Florida law or rule of procedure does not expressly authorize the appointment of a public defender as co-counsel for a case in which a defendant has obtained a private attorney. In a recent case, the Public Defender of the 13th Judicial Circuit was appointed as co-counsel for Michael Keetley, a defendant facing the death penalty. In this specific case, Keetley met the indigent status requirement, but he retained a private attorney. Keetley's private attorney successfully argued for the appointment of a public defender as co-counsel after noting the complexity of the case and the possibility of the case being re-litigated due to an inadequate defense.^{9,10} On appeal, an appellate court refused to issue a ruling on the merits of the case because the public defender failed to establish the prerequisites to invoking the appellate court's

⁴ Section 27.40, F.S.

⁵ Section 27.51(1), s. 394.4598(1) and s. 394.916 F.S.

⁶ Section 27.52(2), F.S.

⁷ Based on the 2021 guidelines, an applicant under this scenario would qualify if his or her income were equal to or below \$25,760 (200% of \$12,880) for a single person household, adding \$9,080 for each additional person in the household. U.S. Dept. of Health and Human Service, *HHS Poverty Guidelines for 2021*, <https://aspe.hhs.gov/poverty-guidelines> (last visited Feb. 24, 2021).

⁸ Section 27.52(2)(a)(1) F.S.

⁹ *Holt for Thirteenth Judicial Circuit, Hillsborough County v. Keetley*, 250 So. 3d 206, 208 (Fla. 2d DCA 2018).

¹⁰ *Defense Counsel in Death Penalty Cases*, 31 HOFSTRA L. REV. 913, 952 (2003) https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/2003guidelines.pdf (last visited Feb. 25, 2021).

certiorari jurisdiction.¹¹ Despite this case, a separate appellate court ruled that a public defender cannot be appointed as co-counsel in a case where a defendant has already retained private counsel.¹²

III. Effect of Proposed Changes:

The bill will prevent a judge from appointing the Public Defender in cases where the defendant is already represented by a private defense counsel.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

¹¹ *Keetley*, 250 So. 3d at 210.

¹² One court found that the appointment of a public defender “is to ensure that indigent defendants are afforded the opportunity for representation by counsel[T]his purpose is not furthered by appointing the public defender to represent a defendant who, although indigent, is already represented by a privately retained attorney. *Behr v. Gardner*, 442 So. 2d 980, 982 (Fla. 1st DCA 1983) (on motion for rehearing).

C. Government Sector Impact:

The bill will prevent a court from appointing the public defender as a co-counsel to a case where the defendant has retained a private defense counsel. Although this situation appears to have rarely occurred, the bill will prevent the resources of public defenders from being used in cases where the defendant is represented by a private defense counsel.

A defendant who retains a private defense counsel may still be declared indigent for costs and eligible to have the state pay for certain due process services that are necessary to prepare a legal defense, such as the costs of transcribing depositions, witnesses, mental health professionals, travel expenses, and legal research.¹³ Thus, services that could have been provided by the public defender as co-counsel may still otherwise be provided with state funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 27.51, 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.

¹³ Section 27.52(5)(f), F.S.

By Senator Gruters

23-00995-21

2021752__

1 A bill to be entitled
2 An act relating to public defender duties; amending s.
3 27.51, F.S.; specifying additional circumstances under
4 which a public defender may not be appointed to
5 represent a defendant; providing an effective date.
6

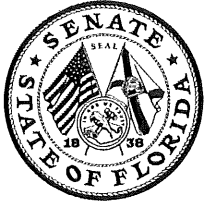
7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Subsection (2) of section 27.51, Florida
10 Statutes, is amended to read:

11 27.51 Duties of public defender.—

12 (2) The court may not appoint the public defender to
13 represent, even on a temporary basis, any person who is not
14 indigent. If a defendant has retained private counsel, the court
15 may not appoint the public defender to represent that defendant
16 simultaneously on the same case. The court, however, may appoint
17 private counsel in capital cases as provided in ss. 27.40 and
18 27.5303.

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



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 3, 2021

I respectfully request that **Senate Bill #752**, relating to Public Defender Duties, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant
Celia Georgiades, Committee Administrative Assistant

COMMITTEE: Judiciary
ITEM: SB 752
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

| FINAL VOTE | | | 3/02/2021 Motion to vote "YEA" after Roll Call | | | | | |
|------------|-----|--------------------|--|-----|-----|-----|-----|-----|
| Yea | Nay | SENATORS | Yea | Nay | Yea | Nay | Yea | Nay |
| X | | Baxley | | | | | | |
| X | | Boyd | | | | | | |
| X | | Bradley | | | | | | |
| X | | Broxson | | | | | | |
| X | | Mayfield | | | | | | |
| X | | Polsky | | | | | | |
| X | | Rodrigues | | | | | | |
| X | | Rouson | | | | | | |
| X | | Thurston | | | | | | |
| X | | Gibson, VICE CHAIR | | | | | | |
| VA | | Brandes, CHAIR | | | | | | |
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| 11 | 0 | TOTALS | FAV | - | | | | |
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 602

INTRODUCER: Commerce and Tourism Committee and Senator Burgess

SUBJECT: Business Organizations

DATE: March 1, 2021

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|------------|----------------|-----------|------------------|
| 1. Harmsen | McKay | CM | Fav/CS |
| 2. Davis | Cibula | JU | Favorable |
| 3. _____ | _____ | RC | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 602 amends several sections of the Florida Business Corporation Act (FBCA), contained in ch. 607, F.S., and several related statutes. These changes address concerns raised by corporations and the legal community pursuant to a complete revision of the FBCA in 2019.¹ Specifically, the bill:

- Narrows the circumstances under which a shareholder may assert his or her appraisal rights;
- Modifies the market out exception to accommodate privately-held corporations whose stock is not traded on an organized market, but who do have a comparable trading process;
- Addresses appraisal arbitrage, wherein disinterested parties abuse the appraisal rights afforded under Florida law to churn additional profits from the process;
- Makes clarifying and conforming changes to fix minor errors in the 2019 and 2020² FBCA legislation;
- Revises the timeframe for eligible entities to be able to use the name of a dissolved corporation; and
- Clarifies the application of corporation not-for-profit statutes in ch. 617, F.S., to the operation of condominiums, cooperatives, homeowners associations, timeshares, and mobile homeowners associations organized under chs. 718, 719, 720, 721, and 723, F.S.

¹ Chapter 2019-90, Laws of Fla. CS/CS/HB 1009 was signed into law on June 7, 2019, and took effect on January 1, 2020.

² Chapter 2020-32, Laws of Fla. CS/SB 838 was signed into law on June 18, 2020, and took effect upon becoming law.

II. Present Situation:

In 2019, the Legislature substantially amended ch. 607, F.S., the Florida Business Corporation Act (FBCA), to reflect changes to the Model Business Corporation Act³ and ch. 605, F.S., the Florida Revised Limited Liability Corporate Act (FRLCA). In 2020, the Legislature made several clarifying and conforming changes to the FBCA.

Since the 2019 update of the FBCA, the Florida Bar Business Law Section (Business Law Section) has identified three additional areas of concern.⁴ This bill, drafted with input from the Business Law Section and other community stakeholders, modifies the FBCA's provisions to address perceived abuses and fairness issues.

Further discussion of the present situation is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Appraisal Rights

Minority shareholders may dissent to corporate or majority shareholder action by asserting their appraisal rights, pursuant to ss. 607.1301-607.1340, F.S., which requires a corporation to buy the minority shareholders' stock at its "fair value."⁵ This remedy is one of the few protections against actions that "... fundamentally change the nature of the shareholders' investments without the check and balance of informed shareholder approval, and [provide] the opportunity for dissenters to withdraw from the corporation."⁶

A minority shareholder may assert his or her appraisal rights, but only in specific instances. These instances occur when a fundamental corporate change occurs, including (and subject to substantial restrictions and limits) the "domestication or conversion to another type of business entity, a merger, a share exchange, a disposition of all or substantially all of the corporation's assets, an amendment to a corporation's articles of incorporation that creates fractional shares, and in other cases involving a corporation's articles of incorporation, bylaws, or a resolution of its board of directors."^{7,8}

³ American Bar Association, *Model Business Corporation Act* (2016), available at https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf (last visited Feb. 22, 2021).

⁴ Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 1-2 (Feb. 2021) (on file with the Senate Committee on Judiciary).

⁵ Section 607.1302(1), F.S. Section 607.1301(5), F.S., defines "fair value" as the value of the corporation's shares immediately before the effectiveness of the corporate action in question, using commonly-used valuation concepts and techniques, without discounting for lack of marketability or minority status of the shares.

⁶ Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:1 (2020); see also, *South End Improvement Group, Inc. by & through Bank of New York v. Mulliken*, 602 So. 2d 1327, 1332 (Fla. 4th DCA 1992).

⁷ Section 607.1302(1), F.S.

⁸ Gregory Yadley and Christina Nethero, *Florida Corporate Practice: Appraisal Rights* s. 11:2.C (2020).

The appraisal process is effectuated through a judicial hearing, where a court appraises the fair value of the shareholder's interests and assesses the corporation for payment of both the fair value and any accrued interest, calculated according to s. 55.03, F.S.

Triggers of a Minority Shareholder's Appraisal Rights

Section 3 amends s. 607.1302, F.S., to narrow the instances that trigger a minority shareholder's appraisal rights. Section 607.1302(1)(g), F.S., currently entitles shareholders to assert appraisal rights where an amendment to the articles of incorporation or bylaws adversely alters or abolishes the shareholder's voting rights or other rights. The Florida Bar received input that this entitlement could lead to unnecessary and superficial filing of charter amendments that do not actually alter the fundamental corporate governance for the purpose of unjust assertion of appraisal rights.⁹ To prevent such frivolous charter amendments, the bill deletes the broader entitlement in s. 607.1302(1)(g), F.S.

Section 3 also amends current s. 607.1302(1)(i), F.S., to allow minority shareholders who experience specific fundamental corporate changes to assert appraisal rights. This right extends only to shareholders in a corporation with 100 or fewer shareholders, whose shares were authorized on, or after October 1, 2003.

Minority shareholders may still assert their appraisal rights under several other bases enumerated in s. 607.1302(1), F.S.

Market Out Exception to Appraisal Rights

Thirty-eight states, including Florida, operate under the "market out exception," which restricts the appraisal rights available to shareholders of stock in large or publicly traded corporations. "[P]ublic shareholders presumptively have an available market. ... [W]hen a public market exists..., public shareholders must employ market price instead of court-appraisal as the measure of their interests."¹⁰

In Florida, the market out exception excludes shareholders from asserting appraisal rights if their shares are a covered security; are not a covered security, but are traded in an organized market; or are issued by an open end management investment company that is registered with the Securities and Exchange Commission.¹¹

Section 3 broadens the market out exception found in s. 607.1302(2), F.S., by prohibiting appraisal actions that are asserted in connection with a corporation's merger, share exchange, or disposition of corporate assets (as permitted by the corporation's articles of incorporation or bylaws), or those that adversely affect a shareholder of a closely held corporation or a shareholder who holds shares issued prior to October 1, 2003.

This amendment will limit a minority shareholder's ability to assert his or her appraisal rights, if made pursuant to s. 607.1302(1)(f) or (h), F.S., if the shares can be sold on an organized market

⁹ Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *supra* note 4, at 3-4.

¹⁰ Gil Matthews, *The "Market Exception" in Appraisal Statutes* (March 30, 2020), available at <https://corpgov.law.harvard.edu/2020/03/30/the-market-exception-in-appraisal-statutes/> (last visited Feb. 22, 2021).

¹¹ Section 607.1302(2)(a), F.S.

that is liquid and where the value of the shares is reasonably calculated to arrive at a price that reflects an arm's length transaction.

Section 3 also amends the market out exception to apply where the shares held are not a covered security, and therefore are not traded in an organized market, but are subject to a "comparable trading process." The bill defines a "comparable trading process" as one where: (1) the share's market price is determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of a comparable publicly traded company; and (2) the corporation repurchases the shares at pricing set by its board of directors based on the independent valuation and subject to established terms and conditions that have been provided to the shareholders. This will permit companies that meet these requirements to prohibit appraisal actions by their minority shareholders, and to instead apply the market out exception.

Section 607.1302(2)(b), F.S., outlines the point in time at which a minority shareholder's right to assert appraisal rights is determined. Section 3 of the bill clarifies that, in cases in which the corporate action in question will be approved by shareholders' signed, written consent, the corporate qualities must be scrutinized at the point at which the record date was fixed to determine the shareholders entitled to sign the consent.

Abuse of Appraisal Rights

The Florida Bar Business Law Section has perceived an abuse of the appraisal rights provisions in Florida.¹² Appraisal arbitrage is when activist investors buy up shares of a corporation merely for the purpose of gaining earnings on any possible upside to the corporation's shares, and asserting appraisal rights to earn interest off of the action.¹³ This bill seeks to address the arbitrage issue by:

- Involving courts in the determination of the appropriate interest to award in appraisal matters, and giving them leeway to award no interest;
- Giving corporations the right to prepay their interest; and
- Requiring the shareholder to acquire a beneficial ownership of shares prior to the initiation of the applicable corporate action that gave rise to appraisal.

Award of Accrued Interest in an Appraisal Action

Section 2 amends s. 607.1301, F.S., to update the definition of "accrued interest" as it applies to a shareholder's appraisal rights. Currently, interest on payments made pursuant to an assertion of one's appraisal rights is calculated at the statutory judgment interest rate as described in s. 55.03, F.S. The bill requires the parties in an appraisal action either to agree to an interest rate between themselves, or to accept a rate determined by a court to be equitable. The court's rate may not exceed the statutory judgment rate described in s. 55.03, F.S. Additionally, this section permits a

¹² Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *White Paper for S.B. 602 & H.B. 339: An Act Relating to Corporations and Other Entities*, 6 (Feb. 2021) (on file with the Senate Committee on Judiciary).

¹³ American Bar Association, *Appraisal Arbitrage* (May 14, 2020), available at https://www.americanbar.org/groups/business_law/publications/the_business_lawyer/find_by_subject/buslaw_tbl_mci_appraisal/#:~:text=In%20the%20controversial%20practice%20of,the%20price%20of%20the%20deal.&text=Thus%2C%20awards%20that%20are%20skewed,practices%20likely%20encourage%20appraisal%20arbitrage. (last visited Feb. 25, 2021).

court to prohibit the payment of interest where it finds that the shareholder who asserted his or her appraisal rights acted arbitrarily or not in good faith in doing so.

Sections 6, 7, and 8 make conforming changes to ss. 607.1322, 607.1326, and 607.1330, F.S., respectively, to reflect both that the rate of interest is variable, and that a court may choose not to award accrued interest pursuant to the amended definition of the term in section 2 of the bill.

Prepayment of Interest

Section 7 amends s. 607.1326, F.S., to give corporations the option to prepay the fair value of the shares that are subject a shareholder's appraisal action. Such prepayment shortens the amount of time during which interest can accrue, and therefore mitigates risk to the corporation. Specifically, the bill allows the corporation to prepay all, or any part of the amount, that it determines is due to the shareholder. If the corporation makes the prepayment within 90 days after the appraisal notice, then the corporation may only be liable for the accrued interest on any amount above what it prepaid to the shareholder. If the corporation makes a payment after the 90-day period, but before a judicial determination of the interest due, then the corporation must prepay at the statutory judgment rate provided for in s. 55.03, F.S., and may be liable for additional interest on any excess payment due, calculated from the date the corporate action became effective.

Section 8 makes conforming changes to s. 607.1330, F.S., to acknowledge the prepayment options provided for in section 7 of the bill.

Beneficial Ownership Required by Record Date

Sections 4 and 5 amend ss. 607.1303 and 607.1321, F.S., respectively, to require a shareholder who wishes to assert his or her appraisal rights to have a beneficial ownership of his or her shares in the corporation by the record date established for the triggering corporate action. Additionally, the bill now requires the shareholder to assert his or her appraisal rights as to all of the shares he or she owns.

Section 5 also amends s. 607.1321, F.S., to require shareholders to have beneficially owned shares in the corporation on the date a tender offer for purchase was made pursuant to s. 607.11035, F.S.

Clarifying and Conforming Changes

Section 1 makes a grammar change from the use of the disjunctive "or" to the conjunctive "and" in s. 605.0410, F.S. According to The Florida Bar Business Law Section, this change is made to correct a glitch that was not caught in previous legislation.¹⁴

Sales in dissolution were transferred to ss. 607.1401-607.1410, F.S., by the 2019 FBCA legislation. **Section 3** removes a reference to a sale in dissolution from s. 607.1302(1)(d), F.S., to conform to prior changes. This section also makes a nonsubstantive grammatical change to s. 607.1302(1)(c), F.S.

¹⁴ The Florida Bar Business Law Section, Chapter 607 Drafting Subcommittee, *supra* note 4, at 9.

SB 892 (2019) inadvertently changed the period of time from 120 days to 1 year that a dissolved entity's name is unavailable after the effective date of its dissolution. **Section 9** reverts to the 120-day period and makes a separate, non-substantive conforming change.¹⁵

Section 12 clarifies that ch. 617, F.S., regarding corporations not-for-profit, applies to ch. 718, F.S., regarding condominiums, ch. 719, F.S., regarding cooperatives, ch. 720, F.S., regarding homeowners associations, ch. 721, F.S., F.S., regarding timeshares, and ch. 723, F.S., regarding mobile homeowners associations, only to the extent that there is a conflict between the chapters. The bill further clarifies that chs. 718-721 and 723, F.S., control where a conflict arises between those chapters and ch. 617, F.S.

Section 617.0725, F.S., requires not-for-profit corporations to meet specific quorum or voting requirements in order to amend their articles of incorporation's or bylaw's quorum or voting requirements. **Section 10** amends s. 617.0725, F.S., to clarify that a corporation that is an association, as defined in s. 720.301(9), F.S., or any corporation regulated under ch. 718 or 719, F.S., is exempt from this requirement. Generally, chs. 718-720, F.S., govern homeowners' associations, condominium boards, and cooperative boards.

Section 11 updates a cross-references and corrects a scrivener error.

Effective Date

Section 13 of the bill provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁵ Department of State, *Senate Bill 602 Agency Analysis* (January 28, 2021) (on file with the Senate Committee on Judiciary).

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

None.

B. Private Sector Impact:

Several changes will impact certain shareholders negatively; this may be counteracted by the reduction of inflated payments to appraisal arbitrageurs. Additionally, corporations and shareholders will need to familiarize themselves with the changes made to their rights and responsibilities.

C. Government Sector Impact:

CS/SB 602 deletes the provision that defined the interest applicable in appraisal proceedings. As a result, courts may be called on more frequently to determine the interest rate and accrued interest due in such cases.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0410, 607.1301, 607.1302, 607.1303, 607.1321, 607.1322, 607.1326, 607.1330, 607.1405, 617.0725, 617.0825, and 617.1703.

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

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

CS by Commerce and Tourism on February 15, 2021:

Clarifies that associations and corporations governed by chs. 718-720, F.S., (e.g., homeowners associations, condominium boards, and cooperative boards) are exempt from the restriction in s. 617.0725, F.S., that prevents not-for-profit corporations from amending the quorum or voting requirement in articles of incorporation or bylaws without approval from the prior-established quorum or voting requirement.

B. Amendments:

None.

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

By the Committee on Commerce and Tourism; and Senator Burgess

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A bill to be entitled

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

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

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

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

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

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

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

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

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

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

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

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

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

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(1) "Accrued interest" means interest ~~from the date the~~
~~corporate action becomes effective until the date of payment,~~ at
the rate agreed to by the corporation and the shareholder
asserting appraisal rights, or at the rate determined by the
court to be equitable, which rate may not be greater than the
rate of interest ~~of interest~~ determined for judgments pursuant
to s. 55.03; however, if the court finds that the shareholder
asserting appraisal rights acted arbitrarily or otherwise not in
good faith, no interest shall be allowed by the court,
~~determined as of the effective date of the corporate action.~~

Section 3. Subsections (1) and (2) of section 607.1302,
Florida Statutes, are amended to read:

607.1302 Right of shareholders to appraisal.—

(1) A shareholder of a domestic corporation is entitled to
appraisal rights, and to obtain payment of the fair value of
that shareholder's shares, in the event of any of the following
corporate actions:

(a) Consummation of a domestication or a conversion of such
corporation pursuant to s. 607.11921 or s. 607.11932, as
applicable, if shareholder approval is required for the
domestication or the conversion;

(b) Consummation of a merger to which such corporation is a
party:

1. If shareholder approval is required for the merger under
s. 607.1103 or would be required but for s. 607.11035, except
that appraisal rights shall not be available to any shareholder
of the corporation with respect to shares of any class or series
that remains outstanding after consummation of the merger where
the terms of such class or series have not been materially

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88 altered; or

89 2. If such corporation is a subsidiary and the merger is
90 governed by s. 607.1104;

91 (c) Consummation of a share exchange to which the
92 corporation is a party as the corporation whose shares will be
93 acquired, except that appraisal rights shall not be ~~are not~~
94 available to any shareholder of the corporation with respect to
95 any class or series of shares of the corporation that is not
96 acquired in the share exchange;

97 (d) Consummation of a disposition of assets pursuant to s.
98 607.1202 if the shareholder is entitled to vote on the
99 disposition, ~~including a sale in dissolution~~, except that
100 appraisal rights shall not be available to any shareholder of
101 the corporation with respect to shares or any class or series
102 if:

103 1. Under the terms of the corporate action approved by the
104 shareholders there is to be distributed to shareholders in cash
105 the corporation's net assets, in excess of a reasonable amount
106 reserved to meet claims of the type described in ss. 607.1406
107 and 607.1407, within 1 year after the shareholders' approval of
108 the action and in accordance with their respective interests
109 determined at the time of distribution; and

110 2. The disposition of assets is not an interested
111 transaction;

112 (e) An amendment of the articles of incorporation with
113 respect to a class or series of shares which reduces the number
114 of shares of a class or series owned by the shareholder to a
115 fraction of a share if the corporation has the obligation or the
116 right to repurchase the fractional share so created;

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117 (f) Any other merger, share exchange, disposition of
118 assets, or amendment to the articles of incorporation, in each
119 case to the extent provided as of the record date by the
120 articles of incorporation, bylaws, or a resolution of the board
121 of directors providing for appraisal rights, except that no
122 bylaw or board resolution providing for appraisal rights may be
123 amended or otherwise altered except by shareholder approval;

124 ~~(g) An amendment to the articles of incorporation or bylaws~~
125 ~~of the corporation, the effect of which is to alter or abolish~~
126 ~~voting or other rights with respect to such interest in a manner~~
127 ~~that is adverse to the interest of such shareholder, except as~~
128 ~~the right may be affected by the voting or other rights of new~~
129 ~~shares then being authorized of a new class or series of shares;~~

130 ~~(h)~~ An amendment to the articles of incorporation or bylaws
131 of a corporation, the effect of which is to adversely affect the
132 interest of the shareholder by altering or abolishing appraisal
133 rights under this section;

134 (h) ~~(i)~~ With regard to a class of shares prescribed in the
135 articles of incorporation in any corporation as to which that
136 particular class of shares was in existence prior to October 1,
137 2003, including any shares within that class subsequently
138 authorized by amendment, and for classes of shares authorized on
139 or after October 1, 2003, in any corporation with 100 or fewer
140 shareholders ~~prior to October 1, 2003, including any shares~~
141 ~~within that class subsequently authorized by amendment~~, any
142 amendment of the articles of incorporation if the shareholder is
143 entitled to vote on the amendment and if such amendment would
144 adversely affect such shareholder by:

145 1. Altering or abolishing any preemptive rights attached to

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any of his, her, or its shares;

2. Altering or abolishing the voting rights pertaining to any of his, her, or its shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his, her, or its shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his, her, or its percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his, her, or its shares, or making any of his, her, or its shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore been cumulative;

6. Reducing the stated dividend preference of any of the shareholder's preferred shares; or

7. Reducing any stated preferential amount payable on any of the shareholder's preferred shares upon voluntary or involuntary liquidation;

(i)~~(j)~~ An amendment of the articles of incorporation of a social purpose corporation to which s. 607.504 or s. 607.505 applies;

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The market price of the corporation's shares is determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of comparable publicly traded companies; and

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

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233 corporation and provides the corporation's shareholders with a
234 trading market comparable to that typically available had the
235 corporation's shares been traded in an organized market.

236 Section 4. Subsection (1) of section 607.1303, Florida
237 Statutes, is amended, and paragraph (c) is added to subsection
238 (2) of that section, to read:

239 607.1303 Assertion of rights by nominees and beneficial
240 owners.—

241 (1) A record shareholder may assert appraisal rights as to
242 fewer than all the shares registered in the record shareholder's
243 name but owned by a beneficial shareholder or a voting trust
244 beneficial owner only if:

245 (a) The record shareholder objects with respect to all
246 shares of the class or series owned by the beneficial
247 shareholder or the voting trust beneficial owner;

248 (b) The particular beneficial shareholder or voting trust
249 beneficial owner acquired all such shares before the record date
250 established under s. 607.1321 in connection with the applicable
251 corporate action; and

252 (c) The record shareholder ~~and~~ notifies the corporation in
253 writing of its ~~the~~ name and address (if the record shareholder
254 beneficially owns the shares as to which appraisal rights are
255 being asserted) or notifies the corporation in writing of the
256 name and address of the particular ~~of each~~ beneficial
257 shareholder or voting trust beneficial owner on whose behalf
258 appraisal rights are being asserted.

259
260 The rights of a record shareholder who asserts appraisal rights
261 for only part of the shares held of record in the record

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shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(c) Acquired all shares of the class or series before the record date established under s. 607.1321 in connection with the applicable corporate action.

Section 5. Subsections (1), (2), and (3) of section 607.1321, Florida Statutes, are amended to read:

607.1321 Notice of intent to demand payment.—

(1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must have beneficially owned the shares of such class or series as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote;

(b) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent, if the proposed corporate action is effectuated, to demand payment for all shares of such class or series beneficially owned by the shareholder as of the record date for the shareholders' meeting at which the proposed corporate action is to be submitted to a vote ~~if the proposed corporate action is effectuated;~~ and

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291 (c) ~~(b)~~ Must not vote, or cause or permit to be voted, any
292 shares of such class or series in favor of the proposed
293 corporate action.

294 (2) If a proposed corporate action requiring appraisal
295 rights under s. 607.1302 is to be approved by written consent, a
296 shareholder who wishes to assert appraisal rights with respect
297 to any class or series of shares:

298 (a) Must have beneficially owned the shares of such class
299 or series as of the record date established for determining who
300 is entitled to sign a written consent;

301 (b) Must assert such appraisal rights for all shares of
302 such class or series beneficially owned by the shareholder as of
303 the record date for determining who is entitled to sign the
304 written consent; and

305 (c) Must not sign a consent in favor of the proposed
306 corporate action with respect to that class or series of shares.

307 (3) If a proposed corporate action specified in s.
308 607.1302(1) does not require shareholder approval pursuant to s.
309 607.11035, a shareholder who wishes to assert appraisal rights
310 with respect to any class or series of shares:

311 (a) Must have beneficially owned the shares of such class
312 or series as of the date the offer to purchase is made pursuant
313 to s. 607.11035;

314 (b) Must deliver to the corporation before the shares are
315 purchased pursuant to the offer a written notice of the
316 shareholder's intent to demand payment if the proposed corporate
317 action is effected for all shares of such class or series
318 beneficially owned by the shareholder as of the date the offer
319 to purchase is made pursuant to s. 607.11035; and

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320 (c) ~~(b)~~ Must not tender, or cause or permit to be tendered,
321 any shares of such class or series in response to such offer.

322 Section 6. Paragraph (a) of subsection (2) of section
323 607.1322, Florida Statutes, is amended to read:

324 607.1322 Appraisal notice and form.—

325 (2) The appraisal notice must be delivered no earlier than
326 the date the corporate action became effective, and no later
327 than 10 days after such date, and must:

328 (a) Supply a form that specifies the date that the
329 corporate action became effective and that provides for the
330 shareholder to state:

331 1. The shareholder's name and address.

332 2. The number, classes, and series of shares as to which
333 the shareholder asserts appraisal rights.

334 3. That the shareholder did not vote for or consent to the
335 transaction.

336 4. Whether the shareholder accepts the corporation's offer
337 as stated in subparagraph (b)4.

338 5. If the offer is not accepted, the shareholder's
339 estimated fair value of the shares and a demand for payment of
340 the shareholder's estimated value plus accrued interest, if and
341 to the extent applicable.

342 Section 7. Section 607.1326, Florida Statutes, is amended
343 to read:

344 607.1326 Procedure if shareholder is dissatisfied with
345 offer.—

346 (1) A shareholder who is dissatisfied with the
347 corporation's offer as set forth pursuant to s. 607.1322(2) (b)4.
348 must notify the corporation on the form provided pursuant to s.

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349 607.1322(1) of that shareholder's estimate of the fair value of
350 the shares and demand payment of that estimate plus accrued
351 interest, if and to the extent applicable.

352 (2) A shareholder who fails to notify the corporation in
353 writing of that shareholder's demand to be paid the
354 shareholder's stated estimate of the fair value plus accrued
355 interest, if and to the extent applicable, under subsection (1)
356 within the timeframe set forth in s. 607.1322(2)(b)2. waives the
357 right to demand payment under this section and shall be entitled
358 only to the payment offered by the corporation pursuant to s.
359 607.1322(2)(b)4.

360 (3) With respect to a shareholder who properly makes demand
361 for payment pursuant to subsection (1), at any time after the
362 shareholder makes such demand, including during a court
363 proceeding under s. 607.1330, the corporation shall have the
364 right to prepay to the shareholder all or any portion of the
365 amount that the corporation determines to be due under s.
366 607.1322(2)(b)3. and the shareholder shall be obligated to
367 accept such prepayment.

368 (a) If such prepayment is made within 90 days after the
369 earlier of the date on which the appraisal notice is provided by
370 the corporation under s. 607.1322(1) or the deadline date by
371 which the appraisal notice is required to be provided by the
372 corporation under s. 607.1322(2), accrued interest will be
373 payable, if at all, to the shareholder entitled to appraisal
374 rights, calculated and accrued from the date on which the
375 corporate action became effective and only on amounts that are
376 determined to be due to the shareholder and are above the amount
377 so prepaid. Accrued interest will not be payable to the

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shareholder entitled to appraisal rights on the prepayment previously made to the shareholder by the corporation pursuant to this paragraph.

(b) If such prepayment is made more than 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to be provided by the corporation under s. 607.1322(2), the prepayment must include accrued interest on the amount of the prepayment, calculated at the rate of interest determined for judgments pursuant to s. 55.03 and calculated and accrued from the date that the corporate action became effective through the date of the prepayment previously made to the shareholder by the corporation pursuant to this paragraph. In addition, accrued interest will be payable to the shareholder entitled to appraisal rights on such amounts, if any, determined to be due to the shareholder in excess of the prepaid amount, calculated and accrued from the date on which the corporate action became effective.

Section 8. Subsections (1) and (5) of section 607.1330, Florida Statutes, are amended to read:

607.1330 Court action.—

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest, if and to the extent applicable, calculated and accrued from the date the corporate action became effective and taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant

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to s. 607.1326(3) ~~from the date of the corporate action~~. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(5) Each shareholder entitled to appraisal rights who is made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares as found by the court, plus accrued interest, if and to the extent applicable and as found by the court, taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3).

Section 9. Subsection (5) of section 607.1405, Florida Statutes, is amended to read:

607.1405 Effect of dissolution.—

(5) Except as provided in s. 607.1422(4), the name of a dissolved corporation is not available for assumption or use by another eligible entity until 120 days ~~1 year~~ after the effective date of dissolution unless the dissolved corporation provides the department with a record, signed as required by s. 607.0120, permitting the immediate assumption or use of the name by another eligible entity.

Section 10. Section 617.0725, Florida Statutes, is amended to read:

617.0725 Quorum.—An amendment to the articles of incorporation or the bylaws which adds, changes, or deletes a greater or lesser quorum or voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum

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and voting requirements then in effect or proposed to be adopted, whichever is greater. This section does not apply to any corporation that is an association, as defined in s. 720.301(9), or any corporation regulated under chapter 718 or chapter 719.

Section 11. Subsection (9) of section 617.0825, Florida Statutes, is amended to read:

617.0825 Board committees and advisory committees.—

(9) This section does not apply to a committee established under chapter 718, chapter 719, or chapter 720 to perform the functions set forth in s. 718.303(3), s. 719.303(3), s. 720.305(2), ~~s. 720.303(2), or s. 720.3035(1), or s. 720.405,~~ respectively.

Section 12. Section 617.1703, Florida Statutes, is amended to read:

617.1703 Application of chapter.—

(1)(a) This chapter is applicable to a corporation that is an association as defined in and regulated by any of chapter 718 regarding condominiums, chapter 719 regarding cooperatives, chapter 720 regarding homeowners' associations, chapter 721 regarding timeshares, or chapter 723 regarding mobile homeowners' associations, except:

1. For ~~In the event of~~ any conflict between the provisions of this chapter and chapter 718 ~~regarding condominiums,~~ chapter 719 ~~regarding cooperatives,~~ chapter 720 ~~regarding homeowners' associations,~~ chapter 721 ~~regarding timeshares,~~ or chapter 723;
or

2. As otherwise provided for in chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723.

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465 (b) If subparagraph (a)1. or subparagraph (a)2. applies
466 ~~regarding mobile home owners' associations,~~ the applicable
467 provisions of such other respective chapters shall apply.

468 (2) The provisions of ss. 617.0605-617.0608 do not apply to
469 corporations regulated by any of the foregoing chapters or to
470 any other corporation where membership in the corporation is
471 required pursuant to a document recorded in the county property
472 records.

473 Section 13. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 20, 2021

I respectfully request that **Senate Bill #602**, relating to Business Organizations, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Danny", written over a horizontal line.

Senator Danny Burgess
Florida Senate, District 20

[DRAFT 01-31-2021]

WHITE PAPER FOR S.B. 602 & H.B. 339

***“AN ACT RELATING TO CORPORATIONS AND OTHER
ENTITIES”***

Prepared by
The Florida Bar Business Law Section
Chapter 607 Drafting Subcommittee
Co-Chairs, Philip B. Schwartz and Gary I. Teblum

February __, 2021

INTRODUCTION & BACKGROUND

This bill proposes changes to Article 13 (the appraisal rights sections) of the Florida Business Corporation Act ("FBCA").

This bill is the next step in a series of legislative proposals developed by the Business Law Section of The Florida Bar ("Section") to update and modernize Florida's business corporation act (Chapter 607). In 2015, a drafting subcommittee (the "Drafting Subcommittee") was organized under the auspices of the Section's Corporations, Securities and Financial Services Committee. The Drafting Subcommittee worked for almost five years to develop a comprehensive proposal to update and modernize Florida's corporate statute based in large part on the 2016 version of the Model Business Corporation Act (the "Model Act") and to harmonize certain provisions of Chapter 607 with the provisions of other Florida entity statutes.

The Drafting Subcommittee's original proposal was presented to the Florida legislature for consideration during the 2019 legislative session. The final bill as adopted (CS/CS/HB 1009), which largely followed the proposal developed by the Drafting Subcommittee, unanimously passed the Florida House of Representatives on April 25, 2019 and unanimously passed the Florida Senate on April 30, 2019. The bill was signed into law by Governor DeSantis on June 7, 2019 and became effective on January 1, 2020. The bill as adopted was designated as Laws of Florida, Chapter 2019-90 (the "revised act").

Like all comprehensive updates of Florida's entity statutes, after passage of the revised act, a number of issues were raised about the new act. The revised act was a large piece of legislation (the bill that passed the legislature in 2019 was more than 500 pages). In the course of the Drafting Subcommittee's final review of the legislation as adopted and in the months that followed its enactment, a number of glitches were identified in the revised act, including typos, errors in cross references, and inconsistencies in the structure and/or terminology used in various sections. In order to address these various glitches that were identified, the Drafting Subcommittee developed a glitch bill addressing these issues. That glitch bill, which was presented to the Florida legislature during the 2020 Florida legislative session (the "2020 glitch bill"), unanimously passed the Florida Senate on February 26, 2020, and unanimously passed the Florida House of Representatives on March 13, 2020 (CS/SB 838). Because of the COVID-19 pandemic, the 2020 glitch bill was not presented to Governor DeSantis for his signature until June 3, 2020. Once presented, on June 18, 2020, the 2020 glitch bill was signed into law by Governor DeSantis, and became effective immediately upon becoming law. The 2020 glitch bill as adopted was designated as Laws of Florida, Chapter 2020-32.

In the fall of 2019, before the revised act became effective, the Section presented a series of programs to publicize the revised act, and several articles about the revised act were published in legal publications. Although the revised act widely circulated during the period in which the proposal was developed by the Drafting Committee, as is typical of comprehensive entity statute updates, there were issues raised by members of the legal community as the revised act was about to become law. A number of these issues were presented to the Drafting Subcommittee in early 2020 after the proposal that became the 2020 glitch bill was already being considered by the Florida legislature. The issues raised were largely concerns expressed by several large publicly traded corporations organized in Florida who were concerned about the implications of

changes made in the revised act to the provisions relating to shareholders' appraisal rights (Article 13 of the FBCA).

While the Drafting Subcommittee agreed that the issues being raised were worthy of consideration, the Drafting Subcommittee also believed that, because of the timing, these issues should be carefully considered during 2020 and that if changes were determined to be required to be made to the FBCA regarding those issues, that it would make the most sense for these changes to be presented to the legislature in a new bill to be considered during the 2021 legislative session.

Notwithstanding, in January 2020, the Drafting Subcommittee began consideration of one of the issues raised, and between January 2020 and late February 2020 the Drafting Subcommittee developed a temporary legislative fix seeking to resolve that issue (and that proposal was added to the version of the 2020 glitch bill adopted by the Florida House of Representatives. Although this temporary legislative fix would have worked, the Co-Chairs of the Drafting Subcommittee did not believe it to be the best solution to resolve the issue that had been raised. Further, because this temporary legislative fix was finalized after the Florida Senate had adopted the 2020 glitch bill, the Florida Senate was unwilling to consider this change on the Senate floor. Following dialogue between the Florida House and the Florida Senate, the House agreed to remove this change from the 2020 glitch bill so that the 2020 glitch bill, which included important clean up changes to the revised act, could become law.

At the same time, the Co-Chairs of the Drafting Committee committed to the member of the House who had sponsored the 2020 glitch bill that the issues that had been raised would be considered by the Drafting Subcommittee in 2020, and that a proposal dealing with the concerns raised would be developed for consideration by the Florida legislature during the 2021 legislative session.

The bill discussed in this White Paper (designated as H.B. 339 and S.B. 602) was developed by the Drafting Subcommittee at a series of "zoom" meetings held in the spring and summer of 2020. The bill as presented includes proposed changes to Article 13 of the FBCA, as follows:

- Changes to §607.1302(1) modifying in certain respects the types of circumstances under which a shareholder has a right to seek appraisal rights;
- Changes to §607.1302(2) dealing with the "market out" exception to §607.1302(1); and
- Changes to various sections of Article 13 to address perceived abuses by persons seeking to engage in appraisal rights arbitrage, as illustrated by disputes that have recently arisen in appraisal rights litigation in the Florida courts.

Additionally, the Drafting Subcommittee has engaged in a dialogue with members of the Real Property, Probate and Trust Law Section of the Florida Bar (the "RPPTL Section") regarding their desire to make certain changes to Chapter 617 (the "Florida Not-For-Profit Corporation Act") to deal with issues relating to condominiums, cooperatives, homeowners'

associations, timeshares, and mobile home owner's association organized under Chapters 718, 719, 720, 721, and 723 of the Florida Statutes, respectively.

These substantive revisions, and the effect thereof, are described more specifically below.

Grounds for appraisal rights and the "market-out" exception (§607.1302 of the FBCA)

Section 607.1302 lists the corporate events that trigger shareholder appraisal rights. Appraisal rights are available to shareholders for certain enumerated fundamental events, and allow a minority shareholder to seek to receive the "fair value" for his, her or its shares if he, she or it believe that the corporate event is not providing "fair value" or is otherwise not supportive of the particular proposed fundamental corporate event. The FBCA has included the right of shareholders to seek appraisal rights for many years, and many of the corporate events that trigger shareholder appraisal rights (such as in the event of a merger, conversion, or share exchange) are in the corporate statutes of most U.S. states. Similarly, Chapter 605 of the Florida Statutes (the "Florida Revised Limited Liability Company Act, or FRLCA), adopted in 2013, provides for member appraisal rights in a similar manner to what is included in the FBCA.

In this section of the revised act adopted in 2019 and effective on January 1, 2020, the grounds for a shareholder to seek appraisal rights were expanded, largely to harmonize these triggering events with the corollary provisions contained in FRLCA. Changes were also made to the language in this provision of the FBCA to update the language based on changes made in the 2016 version of the Model Act. These corollary changes were also made in the corollary section of the FBCA (§605.1006 of FRLCA) so that the provisions were substantively the same following adoption of the revised act.

In early 2020, a number of lawyers (primarily lawyers representing publicly traded companies organized in Florida) raised concerns about which of these new grounds for appraisal rights should be covered by the "market out" exception in §607.1302(2). Those same lawyers also raised concerns about whether one of more of the triggering events giving rise to appraisal rights that been added to the FBCA in the revised act to harmonize this provision with the corollary provision in FRLCA went too far. While there was not consensus of the Drafting Subcommittee on how to proceed when this issue was first raised in early January 2020, this issue led the Co-Chairs of the Drafting Subcommittee to conclude that both of these issues should be further considered.

During the Drafting Subcommittee's consideration of this bill, the following issues were addressed:

1. Grounds for appraisal rights – changes to §607.1302(1).

One of the triggering events that was added to §607.1302(1) in the revised act was new subsection (g), which reads as follows:

(g) An amendment to the articles of incorporation or bylaws of the corporation, the effect of which is to alter or abolish voting or other rights with respect to such interest in a manner that is adverse to the interest of such shareholder, except as the

right may be affected by the voting or other rights of new shares then being authorized of a new class or series of shares;

In theory, a fundamental change in a corporation's articles of incorporation or bylaws that abolishes fundamental rights of a shareholder ought to be the type of event that allows a minority shareholder to assert appraisal rights. At the same time, this provision is extremely broad and may bring proposed charter amendments that are not relating to fundamental rights within the ambit of this provision.

In an earlier version of this provision of the FBCA, following an earlier version of the Model Act, there had been a statutory provision in the FBCA that allowed shareholders to assert appraisal rights for certain more-narrowly enumerated changes to articles of incorporation (and that provision remains in the corporate statutes in 16 states). This provision was eliminated in Florida in 2003 for classes of shares created on or after October 1, 2003.

After discussion, the Drafting Subcommittee concluded that while some types of changes to articles of incorporation should give rise to appraisal rights, subparagraph (1)(g) was considered too broad and would likely bring proposed charter amendments that are not related to fundamental corporate changes in rights within the ambit of this provision. The Drafting Subcommittee also concluded that the provision eliminated in 2003 (which is contained in subparagraph (h) of §607.1302(1) in the bill) provides appraisal rights for the specific types of changes to articles of incorporation that can more reasonably be considered fundamental changes.

At the same time, there was a consensus among members of the Drafting Subcommittee that these provisions were primarily intended to provide protections for shareholders in closely held corporations, and as a result, the decision was made by the Drafting Subcommittee to only have these particular grounds for appraisal rights apply to Florida corporations with 100 or fewer shareholders.

Finally, a decision was made by the Drafting Subcommittee to leave consideration of whether to harmonize (and the extent of any such harmonization) the corollary provisions in FRLLCA to a future legislative effort focused on LLCs which explores the differences in form between corporations and LLCs and, in particular, which explores the effect of the corollary provision of subparagraph (g) on the rights of minority holders of LLCs. Thus, the corollary equivalent of subparagraph (g) above remains in Florida's LLC statute.

2. Events giving rise to the "market out" exception

Chapter 13 provides an exception to appraisal rights for certain situations in which shareholders may either accept the appraisal-triggering corporate action or sell their shares in an organized market described in §607.1302(2)(a). This is often referred to as the "market out" exception. The theory behind the "market out" exception is that the shareholder, if dissatisfied with the proposed corporate action, can choose to sell his, her, or its shares into an organized market that is liquid and where the value of the shares is reasonably calculated to arrive at a price reflective of an arm's length transaction.

After consideration, the Drafting Subcommittee considered each of the grounds that trigger appraisal rights and concluded that the grounds under §607.1302(1)(f) and (h) should be added to the triggering events that should be excluded by the "market out" provision in subparagraph (2)(a). Thus, the lead in sentence of subsection (2) has been amended to read as follows:

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

3. Modifications to subsection (2)(a) of §607.1302(2)

In the revised act, changes were made to add the words "traded in an organized market" to §607.1302(2)(a)2. The purpose of this change, which was based on the change to this provision in the corollary section of the 2016 version of the Model Act, was intended to make sure, in the context of publicly traded companies that are not traded on an exchange, that the market for such securities is liquid and is reasonably calculated to arrive at a price reflective of an arm's length transaction. The Drafting Subcommittee continues to believe that this wording should continue to be included in this statutory provision.

However, following adoption of the revised act, the Drafting Subcommittee became aware of the unique circumstance of a large Florida private company which files reports under the Securities Exchange Act of 1934 and has hundreds of thousands of shareholders (largely employees) and billions of dollars in revenues that has developed a robust platform that allows its shareholders to buy and sell the company's stock at a price determined based on periodically obtained independent third party valuations. Because of the addition of the "traded in an organized market" language to the "market out" exception in this section of the FBCA, this company (and any other companies that might have a truly parallel set of circumstances), might very well be hard-pressed to qualify for the market out exception, or at least the added language created some ambiguity in this regard. The Drafting Subcommittee was strongly of the view that this company (and any other companies that might have a truly parallel set of circumstances), with this robust trading and valuation platform, should fall within the "market out" exception, because the robust process created by this company appears to meet (and any companies that might have a truly parallel set of circumstances would likely meet) the intent of both criteria established for an organized market.

In an effort to resolve this issue, the Drafting Subcommittee (i) added language to revised subparagraph section (2)(a)2. to provide that a corporation subject to "a comparable trading process" would be considered as being "traded in an organized market", and (ii) defined what the words "comparable trading process" are intended to mean for this purpose. The new definition, which is included in §607.1302(2)(d), provides that a "comparable trading process" shall be deemed to exist if:

1. The market price of the corporation's shares is determined at least quarterly based on an independent valuation and by following a formalized process that is designed to determine a value for the corporation's shares that is comparable to the value of comparable publicly traded companies; and

2. The corporation repurchases the shares at pricing set by its board of directors based on the independent valuation and subject to certain terms and conditions established by the corporation and provides the corporation's stockholders with a trading market comparable to what would typically be available if the corporation's shares were traded in an organized market.

Through this fix, the Drafting Subcommittee believes that it has dealt with the unique circumstances of this particular large Florida corporation (and any companies that might have a truly parallel set of circumstances) without changing the basic requirements that in order for the "market out" exception to apply, a corporation must have the hallmarks of liquidity and a methodology to set a fair valuation of the shares that is typically found in an organized trading market. The Drafting Subcommittee also reviewed this provision with the identified Florida corporation impacted by the change in the revised act, and that corporation is believed to be supportive of the change recommended by the Drafting Subcommittee in this bill.

4. Other changes to §607.1302

Two additional non-substantive clean up changes were made to §607.1302, as follows:

- A. Subsection (1)(d) was modified to remove the words "including a sale in dissolution" from that section. This change was made in the 2016 version of the Model Act and was inadvertently left out of the changes to this section made in the revised act. Sales in dissolution are now covered by the provisions of Article 14 of the FBCA and these words no longer need to be in this section.
- B. Subsection (2)(b) dealing with evaluating the applicability of the "market out" exception is modified to clarify when the exception will be evaluated where the shareholders are signing a written consent approving the corporate action requiring appraisal rights.

Proposed changes to the FBCA to counter perceived appraisal rights arbitrage abuses that have recently arisen in Florida

Throughout the country, there has been a perceived abuse of the appraisal rights provisions by certain hedge funds and other persons similarly acting who acquire shares of stock that are entitled to appraisal rights subsequent to the announcement of the pendency of a proposed appraisal rights transaction, then exercise those appraisal rights, then proceed as parties to an appraisal rights proceeding and, in that process, then seek (i) to realize on an asserted spread between their position as to what is the fair value of the shares and the company's position as to what is the fair value of the shares and (ii) whether or not it turns out that there was such an actual spread, to collect interest on the fair value at the statutory judgment interest rate provided for in §55.03, Florida Statutes (which is often a rate of return substantially in excess of what the appraisal rights that these hedge funds could get by investing the same dollars in fairly conservative investments).

Although these hedge funds (and other persons similarly acting) who are appraisal rights arbitrageurs had initially focused on transactions involving Delaware corporations where Delaware appraisal rights were triggered, the ability to realize significant returns on those transactions has been dramatically cut back by virtue of certain changes in the Delaware General Corporation Law targeted against this abuse. As a result, appraisal rights arbitrageurs have now branched out in an effort to secure this arbitrage play in other states, including Florida. Indeed, several cases have already been filed in Florida, with one recent decision rendered (but under the FBCA as in effect before the changes that took effect on January 1, 2020).

The Drafting Subcommittee after studying this issue concluded that curbing this perceived abuse by appraisal rights arbitrageurs while still preserving meaningful appraisal rights for shareholders of Florida corporations who became shareholders prior to the record date for consideration of the corporate action triggering appraisal rights should be added to the FBCA. In an effort to curb the abuse, the proposed appraisal rights legislation makes three primary changes, summarized as follows:

- Modifying the definition of “accrued interest” to allow the courts to determine the appropriate amount of “accrued interest” with certain parameters;
- Giving the corporation the right to prepay to the shareholder asserting appraisal rights all or any portion of its determined amount of fair value in order to cut off further accrual of interest on such prepaid amount; and
- Requiring a shareholder to have acquired beneficial ownership of shares prior to the record date established under §607.1321, in connection with the applicable corporate action in order for that shareholder to exercise appraisal rights.

Changes to §§ 607.1301, 607.1322, 607.1626 and 607.1330 – Interest

Accrued Interest Definition

Rather than continuing to set an accrued interest rate tied to the statutory judgment interest rate, the proposed new definition of accrued interest in §607.1301 borrows a concept from §607.1436 (election to purchase instead of dissolution), directing the court to set the rate of interest (if the parties can’t otherwise agree), but with a cap on the rate the court can set equal to the statutory judgment rate provided for by §55.03, Florida Statutes (consistent with the existing statute). The change goes further, again following the approach taken in §607.1436, by directing the court not to allow any interest in circumstances where the court finds that the shareholder asserting appraisal rights acted arbitrarily or not in good faith.

References to “accrued interest” in several other of the appraisal rights provisions are also revised to recognize that there is no set interest rate and that there may be cases where no accrued interest would be allowed. Those revised references generally appear as “. . . accrued interest, if and to the extent applicable. . .”

Right to Prepay

For those corporations that would like to manage their interest rate risk in the context of appraisal rights proceedings, the proposed appraisal rights legislation, in §607.1326, gives the corporation the option, at any time after the shareholder exercising appraisal rights makes demand for payment, to prepay to that shareholder all or any portion of the corporation's estimate of the fair value of the shares, and thus to cut off any further accrual of interest on the amount so prepaid, as follows:

- Partial Free Ride Period. If the prepayment is made within 90 days after the earlier of the date on which the corporation delivers to the shareholder the appraisal notice under §607.1322(1) or the latest date by which the corporation is required to deliver that appraisal notice, there would be no required accrued interest on such prepaid amount (essentially, a “partial free ride period”), with any applicable accrued interest running only on the excess of determined or agreed upon fair value over the amount prepaid.
- Prepayment After 90 Days. Recognizing that a prepayment could be made at any time, including after such 90 day period, the proposed appraisal rights legislation provides that, if the prepayment is made after the applicable 90 day period expires, (i) the prepayment must include accrued interest on the amount of the prepayment at the statutory judgment rate provided in §55.03, Florida Statutes, and (ii) interest may also be due on any amount determined to be owing to the shareholder above the amount so prepaid, computed from the date that the corporate action became effective.

Changes to §§ 607.1303 and 607.1321- Ownership of shares required on the record date

Because most appraisal right arbitrageurs are not historical shareholders of the corporation, but rather purchase their shares after the announcement date of, or record date for, the meeting at which the corporate action is to be voted upon or the effective date of the written consent approving such corporate action, as the case may be, the proposed appraisal rights legislation, in §607.1303 and §607.1321 and in a further effort to curb the perceived abuses associated with appraisal rights arbitrage, requires a shareholder (i) to have beneficial ownership of the shares as of the record date established under §607.1321 in connection with the applicable corporate action in order for that shareholder to be able to exercise appraisal rights with respect to such shares and (ii) must exercise appraisal rights with respect to all shares beneficially owned (an “all or none requirement”).

Moreover, in order to cover the field, if a proposed corporate action with respect to which appraisal rights are triggered does not require shareholder approval pursuant to §607.11035, Florida Statutes, (i.e., a transaction involving a tender offer followed by a “mop-up merger”), a shareholder who wishes to assert appraisal rights with respect to any class or series of shares of that corporation must have beneficially owned the shares of such class or series as of the date the offer to purchase is made pursuant to §607.11035.

Changes to the Florida Not-For-Profit Corporation Act (Chapter 617)

As noted above, the Drafting Subcommittee has engaged in a dialogue with members of the RPPTL Section regarding the desire by the members of the RPPTL Section to make certain changes to Chapter 617 (the "Florida Not-For-Profit Corporation Act") to deal with issues relating to condominiums, cooperatives, homeowners' associations, timeshares, and mobile home owner's association organized under Chapters 718, 719, 720, 721, and 723 of the Florida Statutes, respectively.

This bill includes two changes based on these discussions:

- Changes to §617.0825(9). The 2020 glitch bill included one substantive change dealing with a substantive update and modernization of §617.0825 (dealing with non-profit corporation committees). In the 2020 glitch bill, certain carve outs from §617.0825 were added in paragraph (9) at the request of the RPPTL Section. Those changes are further modified in this bill to correct two scrivener's errors in the list of exceptions.
- Changes to §617.1703. In its discussions with members of the RPPTL Section, the RPPTL Section sought a further exception to carve out from the provisions of s. 617.0725 corporation's organized under Chapters 718, 719, 720, 721, and 723 of the Florida Statutes. The Drafting Subcommittee pointed out that rather than continue to create exceptions in Chapter 617 for these types of entities, the parties should instead focus on the language of §617.1703, which currently opts out corporations organized under Chapter 617 to the extent that a particular provision in Chapters 718, 719, 720, 721, and 723 of the Florida Statutes covers that issue.

After discussion, agreement was reached that rather than continue to add exceptions to Chapter 617, it made more sense to clarify the scope of the exception language in §607.1703 so that it is broad enough to cover all exceptions that might occur between the provisions of Chapter 617 and the provisions dealing with not-for-profit corporations organized under Chapters 718, 719, 720, 721, and 723 of the Florida Statutes.

Based on that agreement, clarifying changes to §607.1703 are proposed in this bill.

Other Changes

Two additional non-substantive changes are included in the bill.

First, a change is proposed to §605.0410 to fix a glitch in paragraph (b) of subsection 3 (to change an "or" to an "and" in a situation where the "or" is clearly incorrect).

Second, a change is proposed in §607.1405 (dealing with voluntary dissolution of a Florida corporation) to change the period in which an entity name is not available after the effective date of a dissolution to be 120 days instead of one year. This proposed change was identified and requested by the Division of Corporations of the Florida Department of State and is supported by the Drafting Committee. The proposed change corrects an inadvertent change that was made in this Section in the revised act. The proposed change would make this Section

consistent with the FBCA provision as it existed prior to the adoption of the revised act and also with the parallel provision of §605.0717 of FRLCA.

Effective Date

The bill provides that the changes in the bill shall become effective upon becoming law. These are clarifying changes and the Drafting Subcommittee does not believe that a delayed effective date is necessary for these changes under the circumstances.

Further information.

This White Paper was prepared by the Drafting Committee. The co-chairs of the Drafting Committee, Philip B. Schwartz and Gary I. Teblum, are available to answer any questions regarding this bill. The contact information for Messrs. Schwartz and Teblum is as follows:

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2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of State

| <u>BILL INFORMATION</u> | |
|--------------------------------|-------------------------------|
| BILL NUMBER: | <u>SB 602</u> |
| BILL TITLE: | <u>Business Organizations</u> |
| BILL SPONSOR: | <u>Senator Burgess</u> |
| EFFECTIVE DATE: | <u>Upon becoming law</u> |

| <u>COMMITTEES OF REFERENCE</u> |
|---------------------------------------|
| 1) Commerce and Tourism |
| 2) Judiciary |
| 3) Rules |
| 4) N/A |
| 5) N/A |

| <u>CURRENT COMMITTEE</u> |
|---------------------------------|
| Commerce and Tourism |

| <u>SIMILAR BILLS</u> | |
|-----------------------------|----------------------------------|
| BILL NUMBER: | Click or tap here to enter text. |
| SPONSOR: | Click or tap here to enter text. |

| <u>PREVIOUS LEGISLATION</u> | |
|------------------------------------|-----|
| BILL NUMBER: | N/A |
| SPONSOR: | N/A |
| YEAR: | N/A |
| LAST ACTION: | N/A |

| <u>IDENTICAL BILLS</u> | |
|-------------------------------|-------------------------|
| BILL NUMBER: | HB 339 |
| SPONSOR: | Representative Robinson |

| Is this bill part of an agency package? |
|--|
| N/A |

| <u>BILL ANALYSIS INFORMATION</u> | |
|---|----------------------------------|
| DATE OF ANALYSIS: | January 28, 2021 |
| LEAD AGENCY ANALYST: | Brittany Dover |
| ADDITIONAL ANALYST(S): | Sean Toner |
| LEGAL ANALYST: | Click or tap here to enter text. |
| FISCAL ANALYST: | Click or tap here to enter text. |

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Business Organizations; Revising requirements relating to inspecting certain records of limited liability companies; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; revising requirements for proceedings relating to unsettled demands for payment, etc.

2. SUBSTANTIVE BILL ANALYSIS**1. PRESENT SITUATION:**

Chapter 607, F.S., aka the Florida Business Corporations Act, was modernized by the 2019 Legislature and further revised by the 2020 Legislature. The 2019 provisions made Florida's profit corporation statutes more flexible and harmonized with the limited liability company (Chapter 605, F.S.), not-for-profit corporation (Chapter 617, F.S.), partnership and limited partnership (Chapter 620, F.S.) statutes where practical. The revisions in 2020 merely clarified or corrected minor irregularities, discrepancies and oversights.

2. EFFECT OF THE BILL:

This bill further clarifies and corrects minor issues and oversights. Only one substantive correction affecting the Department of State was noted. The bill corrects the number of days FDOS is required to hold the name of a voluntarily dissolved Florida profit corporation. If passed, the number of days required will be 120 days, which was the number of days required prior to the modernization of Chapter 607. The current statutes requires FDOS to hold the name for a period of one year.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y ☐ N ☒

| | |
|--|---|
| If yes, explain: | N/A |
| Is the change consistent with the agency's core mission? | Y <input type="checkbox"/> N <input type="checkbox"/> |
| Rule(s) impacted (provide references to F.A.C., etc.): | N/A |

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

| | |
|-------------------------------------|---------|
| Proponents and summary of position: | Unknown |
| Opponents and summary of position: | Unknown |

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒

| | |
|--------------------------------|----------------------------------|
| If yes, provide a description: | Click or tap here to enter text. |
| Date Due: | Click or tap here to enter text. |
| Bill Section Number(s): | Click or tap here to enter text. |

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒

| | |
|--------|-----|
| Board: | N/A |
|--------|-----|

| | |
|-------------------------|-----|
| | |
| Board Purpose: | N/A |
| Who Appoints: | N/A |
| Changes: | N/A |
| Bill Section Number(s): | N/A |

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Y ☐ N ☒

| | |
|---|----------------------------------|
| Revenues: | None |
| Expenditures: | Click or tap here to enter text. |
| Does the legislation increase local taxes or fees? If yes, explain. | No |
| If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase? | N/A |

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Y ☐ N ☒

| | |
|--|----------------------------------|
| Revenues: | None |
| Expenditures: | Click or tap here to enter text. |
| Does the legislation contain a State Government appropriation? | No |
| If yes, was this appropriated last year? | N/A |

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Y ☐ N ☒

| | |
|---------------|----------------------------------|
| Revenues: | None |
| Expenditures: | Click or tap here to enter text. |
| Other: | N/A |

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES?

Y ☐ N ☒

| | |
|-------------------------|-----|
| If yes, explain impact. | N/A |
|-------------------------|-----|

| | |
|----------------------|-----|
| Bill Section Number: | N/A |
|----------------------|-----|

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y ☒ N ☐

| | |
|--|--|
| If yes, describe the anticipated impact to the agency including any fiscal impact. | <p>DOS is actively working to implement a new commercial-off-the shelf (COTS) business registry system, which will allow DOS to: 1.) modernize its business registry; 2.) provide business owners with new and improved service deliverables; 3.) improve efficiency and productivity; 4.) provide more accurate data collection, processing, and retrieval; 5.) further improve statutory compliance, reporting, and statistical data; 6.) implement new, improved or revised statutory filing requirements; and 7.) systematically address and resolve issues such as unauthorized filing activity.</p> <p>The period FDOS is required to hold the name of a voluntarily dissolved Florida profit corporation must be specified and coded into the new system. Although a possibility, a change order to revise the name hold period to 120 days in lieu of one year is not anticipated at this time and could incur additional cost from the selected vendor.</p> |
|--|--|

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y ☐ N ☒

| | |
|--|-----|
| If yes, describe the anticipated impact including any fiscal impact. | N/A |
|--|-----|

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

| | |
|---------------------------|--|
| Issues/concerns/comments: | |
|---------------------------|--|

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

602

Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title Attorney

Address 119 S. Monroe Street, Ste. 200

Phone 850-205-9000

Street

Tallahassee

FL

32301

City

State

Zip

Email adl@MHDfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Business 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

APPEARANCE RECORD

3/2/21
Meeting Date

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

602
Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____ Phone _____
Street

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

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)

COMMITTEE: Judiciary
ITEM: CS/SB 602
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

| FINAL VOTE | | | 3/02/2021 Motion to vote "YEA" after Roll Call | | | | | |
|------------|-----|--------------------|--|-----|-----|-----|-----|-----|
| Yea | Nay | SENATORS | Yea | Nay | Yea | Nay | Yea | Nay |
| X | | Baxley | | | | | | |
| X | | Boyd | | | | | | |
| X | | Bradley | | | | | | |
| X | | Broxson | | | | | | |
| X | | Mayfield | | | | | | |
| X | | Polsky | | | | | | |
| X | | Rodrigues | | | | | | |
| X | | Rouson | | | | | | |
| X | | Thurston | | | | | | |
| X | | Gibson, VICE CHAIR | | | | | | |
| VA | | Brandes, CHAIR | | | | | | |
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| 11 | 0 | TOTALS | FAV | - | | | | |
| Yea | Nay | | Yea | Nay | Yea | Nay | Yea | Nay |

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 728

INTRODUCER: Senator Broxson

SUBJECT: Credit for Reinsurance

DATE: March 1, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Arnold | Knudson | BI | Favorable |
| 2. | Davis | Cibula | JU | Favorable |
| 3. | | | RC | |

I. Summary:

SB 728 provides insurers with credit for reinsurance and eliminates additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” and meets requirements set forth in the bill. The requirements include, but are not limited to:

- Minimum capital and surplus requirements;
- Minimum solvency or capital ratios;
- Annual confirmation from the domiciliary supervisory authority stating that the reinsurer meets the capital, surplus, and minimum solvency or capital ratio requirements; and
- Prompt claims payment practices.

The bill defines a reciprocal jurisdiction as:

- A non-United States jurisdiction that is subject to an in-force covered agreement¹ with the United States or, in the case of a covered agreement between the United States and the European Union,² an EU member state;
- A United States jurisdiction that meets the National Association of Insurance Commissioners’ requirements for accreditation; or
- Any other qualified jurisdiction that meets the Office of Insurance Regulation’s requirements as set forth in rule.

The bill also provides insurers with protections against reinsurer failure that include, but are not limited to, requiring the reinsurer to post collateral equal to all outstanding reinsurance liabilities

¹ The bill defines a “covered agreement” to mean an agreement entered into pursuant 31 U.S.C ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

² The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

in the event the reinsurer enters into receivership; requiring the reinsurer to consent to the jurisdiction of courts of the State of Florida; and requiring the reinsurer to post collateral equal to all outstanding liabilities if the reinsurer resists enforcement of a court order from a jurisdiction in which it has consented.

The bill's revisions to Florida law governing credit for reinsurance enact 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786).

The bill takes effect July 1, 2021.

II. Present Situation:

Reinsurance

Reinsurance is insurance that a primary insurance company purchases from a second insurance company to protect itself from major losses sustained by its policyholders. The large-scale losses are generally caused by natural disasters such as wildfires or hurricanes. The primary insurance company is referred to as the ceding insurer and the second insurance company is referred to as the reinsurer. In this contract of indemnity, the reinsurer agrees to compensate the ceding insurer for all or part of the losses and loss adjustment expenses the ceding insurer incurs under insurance policies it has issued to its policyholders.³ The vast majority of reinsurers, who are domiciled overseas, do not write insurance policies of their own to policyholders.

Through the reinsurance contract, the insurer reduces its probable maximum loss on either an individual risk (facultative reinsurance) or a specific class of insurance policies (treaty reinsurance) by ceding a portion of its liability to the reinsurer.⁴ Reinsurance serves to: (1) increase underwriting capacity; (2) stabilize underwriting results; (3) protect against catastrophic losses; (4) finance expanding volume; (5) withdraw from a class or line of business, or a geographic area, within a short time period; and (6) share large risks with other companies.⁵ Reinsurers may in turn further spread their assumed risk by purchasing reinsurance protection, which is called retrocession.⁶

Reinsurance creates privity of contract between the insurer and reinsurer, and does not modify the insured's policy with its insurer.⁷ Therefore, the reinsurance contract does not discharge the insurer from its primary liability to its policyholders or its obligation to pay policyholder claims.⁸

³ National Association of Insurance Commissioners, *Glossary of Insurance Terms* https://content.naic.org/consumer_glossary.htm#R (last visited Feb. 25, 2021).

⁴ Barron's Dictionary of Insurance Terms, 437 (6th ed. 2013).

⁵ *Id.*

⁶ The Center for Insurance Policy and Research, National Association of Insurance Commissioners, *Reinsurance*, (last updated Feb. 26, 2020), available at https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited Feb. 25, 2021).

⁷ U.S. Department of Treasury, Federal Insurance Office, *The Breadth and Scope of the Global Reinsurance Market and the Critical Role Such Market Plays in Supporting Insurance in the United States*, 7 (December 2014), available at <https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/FIO%20-Reinsurance%20Report.pdf> (last visited Feb. 25, 2021).

⁸ *Id.*

Similarly, only the insurer has direct rights to recover from the reinsurer unless expressly provided for in the reinsurance contract.⁹

Florida regulates reinsurance under s. 624.610, F.S., and rule 69O-144, F.A.C.

Regulation of Reinsurance

The United States (U.S.) is both the largest insurance market and reinsurance market in the world by premium volume.¹⁰ Furthermore, roughly half of all business originates from North America.¹¹ In support of U.S. domestic insurers, non-U.S. reinsurers provide a majority of the available reinsurance protection to fulfill the needs of the U.S. insurance market. In 2018, offshore reinsurers assumed 65.7 percent of U.S. ceded premiums.¹² Together, offshore reinsurers and alien-owned¹³ U.S. reinsurers assumed 88.9 percent of U.S. ceded premiums during the same year.¹⁴ Such access to alien reinsurance contributes to the global diversification of risk, provides claims burden relief to U.S. reinsurers, and mitigates financial impacts of catastrophes.¹⁵

The purchase of reinsurance from reinsurers not domiciled or licensed in the U.S. may expose U.S. domestic insurers to additional credit risk to the extent that any reinsurer is unable to meet the obligation assumed in the reinsurance contract. It similarly presents significant challenges to U.S. state insurance regulators charged with regulating insurer solvency.

Direct Regulation of Authorized Reinsurers

The Office of Insurance Regulation (OIR) directly regulates authorized reinsurers¹⁶ domiciled and licensed in Florida as well as reinsurers licensed in Florida, but domiciled in a foreign state.¹⁷ When an insurer cedes business to a licensed reinsurer, the insurer is permitted under statutory accounting rules to recognize a reduction in its liabilities for the amount of ceded liabilities, without a regulatory requirement for the reinsurer to post collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.¹⁸ A reinsurer licensed in a state is subject to solvency and other regulations imposed by the state which are applicable to insurance companies generally.

⁹ *Morris & Co. v. Skandinavia Ins. Co.*, 279 U.S. 405, 408 (1929); *Citizens Cas. Co. v. Am. Glass. Co.*, 166 F.2d 91, 95 (7th Cir. 1948).

¹⁰ See *supra* note 7, at 1.

¹¹ *Id.*

¹² Reinsurance Association of America, *Offshore Reinsurance in the U.S. Market: 2018 Data*, 13, available at https://www.reinsurance.org/RAA/Industry_Data_Center/Offshore_Report/Offshore_Report_2018_Data.html (last visited Feb. 25, 2021).

¹³ In the insurance context, “alien” means domiciled in a foreign country. “Alien” is distinguishable from “foreign,” which means domiciled in a state other than the one in which the company is writing business.

¹⁴ See *supra* note 12, at 14.

¹⁵ International Association of Insurance Supervisors, *Reinsurance and Financial Stability*, 8 (July 2012), available at <https://www.iaisweb.org/file/34046/reinsurance-and-financial-stability> (last visited Feb. 25, 2021).

¹⁶ An “authorized” reinsurer is one that is licensed or accredited in a given state.

¹⁷ Section 624.610(3)(a) and (b), F.S.

¹⁸ *Id.*

Indirect Regulation of Unauthorized Reinsurers

In the absence of direct supervisory authority, OIR indirectly regulates unauthorized reinsurers¹⁹ by limiting the ceding insurer's credit for reinsurance unless the reinsurer posts collateral to secure the reinsurer's ultimate payment of the reinsured liabilities.²⁰

The 2007 Legislature reduced the collateral requirements for insurers to receive credit for reinsurance commensurate with the financial strength of the reinsurer and the quality of the regulatory regime, and authorized OIR to enact rulemaking to implement corresponding regulatory changes.²¹ In considering whether to allow credit for reinsurance, the reinsurer must hold surplus in excess of \$250 million and have a secure financial strength rating (SFSR) from at least two statistical rating organizations deemed acceptable by the Commissioner of OIR (Commissioner).²² The Commissioner must also consider:

- The domiciliary regulatory jurisdiction of the reinsurer;
- The structure and authority of the domiciliary regulator with regard to solvency regulation and the financial surveillance of the reinsurer;
- The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction;
- The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles;
- The domiciliary regulator's willingness to cooperate with U.S. regulators in general and OIR in particular;
- The history of performance by reinsurers in the domiciliary jurisdiction;
- Any documented evidence of substantial problems with the enforcement of valid U.S. judgments in the domiciliary jurisdiction; and
- Any other matters deemed relevant by the Commissioner.²³

¹⁹ An "unauthorized" reinsurer fails to meet the definition of an authorized reinsurer. *See supra* note 13. Furthermore, "unauthorized" is distinguishable from "non-U.S." A U.S. reinsurer that does not meet the definition of "authorized" reinsurer is considered "unauthorized." However, non-U.S. reinsurers cannot become accredited in a U.S. state based on their own domestic license.

²⁰ Historically, in order to receive financial statement credit for unauthorized reinsurance, a U.S. insurer must have been the beneficiary of security posted by the unauthorized reinsurer, providing collateral equal to 100 percent of the actuarially-estimated liabilities under the reinsurance contract.

²¹ Chapter 2007-1, s. 15, Laws of Fla.

²² Section 624.610(3)(e), F.S.

²³ Section 624.610(3)(e)(1)-(8), F.S.

The collateral required to allow 100 percent credit shall be no less than the percentage specified for the lowest rating as indicated in the SFSR below:²⁴

| Rating | Collateral Required | AM Best | S&P | Moody's | Fitch | Demotech |
|-----------------------|---------------------|--------------------------------|---|---------------------------------------|---|----------|
| Secure – 1 | 0% | A++ | AAA | Aaa | AAA | A" |
| Secure – 2 | 10% | A+ | AA+, AA, AA- | Aa1, Aa2, Aa3 | AA+, AA, AA- | A' |
| Secure – 3 | 20% | A | A+, A | A1, A2 | A+, A | A |
| Secure – 4 | 50% | A- | A- | A3 | A- | n/a |
| Secure – 5 | 75% | B++, B+ | BBB+, BBB, BBB- | Baa1, Baa2, Baa3 | BBB+, BBB, BBB- | n/a |
| Vulnerable – 6 | 100% | B, B-, C++, C+, C, C-, D, E, F | BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R | Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C | BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD | n/a |

Revisions to NAIC Model Law 785 and Regulation 786

The 2019 revisions to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) incorporate substantive provisions from the 2017 Bilateral Agreement between the United States and European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement) reached between the U.S. Department of the Treasury, U.S. Trade Representative, and the European Union (EU).

The Covered Agreement, in part, commits the U.S. to phasing-out state-based reinsurance collateral requirements for EU reinsurers by 2022.²⁵ It further exempts EU reinsurers from current U.S. domiciliary requirements for authorized reinsurer status by creating a new, broader classification of jurisdiction called “reciprocal jurisdiction.”²⁶ Credit for Reinsurance Model Law (#785) defines a “reciprocal jurisdiction” as a jurisdiction that meets one of the following requirements:

- “A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or in the case of a covered agreement between the United States and European Union, is a member state of the European Union”;²⁷
- “A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or
- A qualified jurisdiction, as determined by the commissioner²⁸

²⁴ Rule 69O-144.007(4), F.A.C.

²⁵ United States Department of Treasury, Federal Insurance Office, *Statement of the United States on the Covered Agreement with the European Union*, 1 (September 22, 2017), available at https://home.treasury.gov/system/files/311/US_Covered_Agreement_Policy_Statement_Issued_September_2017_1.pdf (last visited Feb. 25, 2021).

²⁶ *Id.*

²⁷ National Association of Insurance Commissioners, Credit for Reinsurance Model Law-785, 7 (Summer 2019), available at <https://www.naic.org/store/free/MDL-785.pdf> (last visited Feb. 25, 2021).

²⁸ *Id.*

“Covered agreements” are authorized under 31 U.S.C. ss. 313 and 314 where the term is defined. The term means:

a written bilateral or multilateral agreement regarding prudential measures with respect to the business of insurance or reinsurance that—

(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

(B) relates to the recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.²⁹

NAIC Accreditation and Adoption of Model Laws

NAIC accreditation is a certification that legal, regulatory, and organizational oversight standards and practices are being fulfilled by a state insurance department to promote sound insurer financial solvency regulation. The accreditation program is also designed to allow for interstate cooperation and reduces regulatory redundancies.³⁰ For example, the OIR’s examinations may be recognized by other member states, thereby avoiding the need to have a Florida domestic insurer examined by multiple states.³¹

Presently, each of the 50 states, the District of Columbia, and Puerto Rico are accredited. Once accredited, a state is subject to a full accreditation review every 5 years, as well as interim reviews.³² One major component of NAIC accreditation standards is the adequacy of “solvency laws and regulations in each accredited state to protect consumers” and guaranty funds, through the adoption of model laws.³³

Effective January 1, 2019, NAIC included the 2011 revisions to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards.³⁴ It subsequently included the 2019 revisions to Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) as accreditation standards to be effective October 1, 2022.³⁵

²⁹ 31 U.S.C. s. 313(r)(2).

³⁰ National Association of Insurance Commissioners, *Financial Regulation Standards and Accreditation Program*, 2 (December 2019), available at https://content.naic.org/sites/default/files/inline-files/FRSA%20Pamphlet%2012-2019_0.pdf (last visited Feb. 25, 2021).

³¹ *Id.*

³² National Association of Insurance Commissioners, *State Legislative Brief: The NAIC Accreditation Program* (November 2019), available at https://www.naic.org/documents/cmte_legislative_liaison_brief_accreditation.pdf (last visited Feb. 25, 2021).

³³ See *supra* note 29.

³⁴ *Id.*

³⁵ National Association of Insurance Commissioners, *CIPR Topics: Reinsurance* (September 1, 2019), available at https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited Feb. 25, 2021).

III. Effect of Proposed Changes:

Section 1 amends s. 624.610, F.S., which provides the criteria under which an insurer is given credit for reinsurance. The bill provides insurers with credit for reinsurance if the reinsurer is domiciled in a “reciprocal jurisdiction” and meets the requirements of this section. It defines “reciprocal jurisdiction” as a jurisdiction that is:

- A non-U.S. jurisdiction that is subject to an in-force covered agreement³⁶ with the U.S. or, in the case of a covered agreement between the United States and the European Union,³⁷ an E.U. member state;
- A U.S. jurisdiction that meets the NAIC’s requirements for accreditation; or
- Any other qualified jurisdiction that meets the OIR’s requirements as set forth in rule.

Additional requirements of the qualified jurisdiction to be specified by Financial Services Commission (FSC)³⁸ rule include:

- The jurisdiction allows an insurer domiciled, or having its head office, in the jurisdiction to take credit for reinsurance ceded to an insurer domiciled in the United States in the same manner as reinsurance ceded to insurers domiciled in that jurisdiction.
- The jurisdiction does not require an assuming insurer domiciled in the United States to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the jurisdiction or as a condition for allowing the ceding insurer to take credit for the ceded risk.
- The jurisdiction provides written confirmation that it recognizes the state regulatory approach to group supervision and group capital and that insurers and insurance groups domiciled, or maintaining their headquarters, in a jurisdiction accredited by the National Association of Insurance Commissioners are subject only to worldwide prudential insurance group supervision by the domiciliary state and are not subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.
- The jurisdiction provides written confirmation that information regarding insurers and their parent, subsidiary, or affiliated entities shall be provided to the office in accordance with a memorandum of understanding or similar document between the office and such qualified jurisdiction.

A reinsurer domiciled in a reciprocal jurisdiction must maintain minimum capital and surplus in the amount of \$250 million, or a greater amount as specified by FSC rule, and certain minimum solvency or capital ratios. A non-U.S. jurisdiction subject to an in-force covered agreement must maintain a minimum solvency or capital ratio specified in the covered agreement. A U.S. jurisdiction must maintain a risk-based capital ratio of 300 percent of the authorized control

³⁶ The bill defines a “covered agreement” to mean an agreement entered into pursuant 31 U.S.C. ss. 313 and 314 (The Dodd-Frank Wall Street Reform and Consumer Protection Act) which is effective or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

³⁷ The United States entered into such an agreement on September 22, 2017, the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance.

³⁸ The Financial Services Commission is comprised of the Governor, Attorney General, Chief Financial Officer and the Commissioner of Agriculture.

level,³⁹ calculated pursuant to s. 624.4085, F.S. A qualified jurisdiction subject to this section must maintain a minimum solvency or capital ratio determined by OIR to be an effective measure of solvency.

The reinsurer's supervisory authority must annually confirm to OIR whether the reinsurer complies with these minimum requirements. In the event the reinsurer falls below these minimum requirements, or if regulatory action is taken against it for serious noncompliance with applicable law, the reinsurer must provide written notice to OIR.

The reinsurer must consent to the jurisdiction of Florida state courts and the designation of the CFO for purposes of lawful service of process in any action, suit, or proceeding brought by the insurer against the reinsurer. The reinsurer must consent to pay all final judgements declared enforceable in the jurisdiction where the judgment was obtained, and the reinsurance contract must contain a provision requiring the reinsurer to provide security equal to 100 percent of reinsurance liabilities in the event the reinsurer resists enforcement of a final judgment or a properly enforceable arbitration award.

The reinsurer must agree to provide security equal to 100 percent of reinsurance liabilities and notify the insurer if the reinsurer enters into receivership for conservation, rehabilitation, or liquidation purposes.

Upon request by OIR, the reinsurer must provide the following additional documentation:

- Annual audited financial statements, for the 2-year period before entering into the reinsurance agreement and on an annual basis thereafter, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.
- The solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor, for the 2-year period before entering into the reinsurance agreement.
- Before entering into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more regarding reinsurance assumed from ceding insurers domiciled in the U.S.
- Before entering into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the reinsurer.
- Additional information as reasonably required by OIR.

The reinsurer must pay claims promptly pursuant to FSC rule.

OIR may revoke the reinsurer's eligibility for recognition if the reinsurer fails to meet one or more of the requirements of the subsection. In the event OIR revokes the reinsurer's eligibility,

³⁹ Risk-based capital is a capital adequacy standard that represents the amount of required capital an insurer must maintain, based on the inherent risks in the insurer's operations. It is determined by a formula that considers certain material risks depending on the type of insurer, and generates the regulatory minimum amount of capital that a company is required to maintain to avoid regulatory action. The risk-based capital standards raises a safety net for insurers, is uniform among states, and operates as a tripwire system to give state insurance regulators authority for timely corrective action.

the insurer does not qualify for credit for reinsurance except to the extent the reinsurer has provided collateral to secure the reinsurance liabilities.

Many reinsurers domiciled in what the bill defines as “reciprocal jurisdictions” are currently required under Florida law to hold surplus in excess of \$250 million and have a secure financial strength rating from at least two statistical rating agencies.⁴⁰ The bill will allow reinsurers in reciprocal jurisdictions to instead meet the requirements created by this bill. This will allow insurers in this state to receive credit for reinsurance obtained from reinsurers having a surplus of less than \$250 million if the reinsurer is domiciled in a reciprocal jurisdiction and otherwise meets the requirements established by the bill.

Section 2 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Allowing insurers to receive credit for reinsurance and eliminating additional collateral requirements for reinsurers if the reinsurer is domiciled in a “reciprocal jurisdiction” provides U.S. domestic insurers with greater access to global reinsurance and improves diversification of risk.

⁴⁰ See s. 624.610(3)(e), F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.610, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Broxson

1-00660A-21

2021728__

A bill to be entitled

An act relating to credit for reinsurance; amending s. 624.610, F.S.; making a technical change; transferring specified authority and duties relating to credit for reinsurance from the Commissioner of Insurance to the Office of Insurance Regulation; revising the attorney designation requirement in reinsurance agreements with certain assuming insurers under certain circumstances; adding conditions under which a ceding insurer must be allowed credit for reinsurance; defining the terms "reciprocal jurisdiction" and "covered agreement"; specifying requirements for assuming insurers and reinsurance agreements; requiring the office to publish a list of reciprocal jurisdictions on its website; authorizing the office to remove reciprocal jurisdictions under a specified circumstance; specifying documentation requirements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; providing construction; specifying a limitation on credit taken by a ceding insurer; requiring the office to publish on its website a list of certain assuming insurers; authorizing the office to revoke or suspend an assuming insurer's eligibility under certain circumstances; prohibiting credit for reinsurance under certain circumstances; providing exceptions; making technical changes; conforming provisions to changes made by the act; providing an effective date.

1-00660A-21

2021728__

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

Section 1. Present subsections (4) through (15) of section 624.610, Florida Statutes, are redesignated as subsections (5) through (16), respectively, a new subsection (4) is added to that section, and subsection (2), paragraphs (c), (e), and (f) of subsection (3), present subsection (4), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) are amended, to read:

624.610 Reinsurance.—

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a reduction ~~deduction~~ from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3)(a), paragraph (3)(b), ~~or~~ paragraph (3)(c), or subsection (4). Credit must be allowed under paragraph (3)(a) or paragraph (3)(b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and

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59 successors in interest. To enable the office to determine the
60 sufficiency of the trust fund, the assuming insurer shall report
61 annually to the office information substantially the same as
62 that required to be reported on the NAIC Annual Statement form
63 by authorized insurers. The assuming insurer shall submit to
64 examination of its books and records by the office and bear the
65 expense of examination.

66 2.a. Credit for reinsurance must not be granted under this
67 subsection unless the form of the trust and any amendments to
68 the trust have been approved by:

69 (I) The insurance regulator of the state in which the trust
70 is domiciled; or

71 (II) The insurance regulator of another state who, pursuant
72 to the terms of the trust instrument, has accepted principal
73 regulatory oversight of the trust.

74 b. The form of the trust and any trust amendments must be
75 filed with the insurance regulator of every state in which the
76 ceding insurer beneficiaries of the trust are domiciled. The
77 trust instrument must provide that contested claims are valid
78 and enforceable upon the final order of any court of competent
79 jurisdiction in the United States. The trust must vest legal
80 title to its assets in its trustees for the benefit of the
81 assuming insurer's United States ceding insurers and their
82 assigns and successors in interest. The trust and the assuming
83 insurer are subject to examination as determined by the
84 insurance regulator.

85 c. The trust remains in effect for as long as the assuming
86 insurer has outstanding obligations due under the reinsurance
87 agreements subject to the trust. No later than February 28 of

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each year, the trustee of the trust shall report to the insurance regulator in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire prior to the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than \$20 million. Not less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers and trusteed surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made and in the possession of the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trusteed surplus.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trusteed account in an amount not

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less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trusted account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trusted surplus of which \$100 million must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the insurance regulator an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the office ~~commissioner~~ may

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allow credit, but only if the assuming insurer holds surplus in excess of \$250 million and has a secure financial strength rating from at least two statistical rating organizations deemed acceptable by the office ~~commissioner~~ as having experience and expertise in rating insurers doing business in Florida, including, but not limited to, Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the office ~~commissioner~~ shall consider the following:

1. The domiciliary regulatory jurisdiction of the assuming insurer.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer.

3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles.

5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.

6. The history of performance by reinsurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.

8. Any other matters deemed relevant by the office

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175 ~~commissioner~~. The office ~~commissioner~~ shall give appropriate
176 consideration to insurer group ratings that may have been
177 issued. The office ~~commissioner~~ may, in lieu of granting full
178 credit under this subsection, reduce the amount required to be
179 held in trust under paragraph (c).

180 (f) If the assuming insurer is not authorized or accredited
181 to transact insurance or reinsurance in this state pursuant to
182 paragraph (a) or paragraph (b), the credit permitted by
183 paragraph (c) or paragraph (d) must not be allowed unless the
184 assuming insurer agrees in the reinsurance agreements:

185 1.a. That in the event of the failure of the assuming
186 insurer to perform its obligations under the terms of the
187 reinsurance agreement, the assuming insurer, at the request of
188 the ceding insurer, shall submit to the jurisdiction of any
189 court of competent jurisdiction in any state of the United
190 States, will comply with all requirements necessary to give the
191 court jurisdiction, and will abide by the final decision of the
192 court or of any appellate court in the event of an appeal; and

193 b. To designate the Chief Financial Officer, pursuant to s.
194 48.151, ~~or a designated attorney~~ as its true and lawful attorney
195 upon whom may be served any lawful process in any action, suit,
196 or proceeding instituted by or on behalf of the ceding company.

197 2. This paragraph is not intended to conflict with or
198 override the obligation of the parties to a reinsurance
199 agreement to arbitrate their disputes, if this obligation is
200 created in the agreement.

201 (4) Credit must be allowed when the reinsurance is ceded to
202 an assuming insurer meeting the requirements of this subsection.

203 (a) The assuming insurer must be licensed in, and have its

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head office in or be domiciled in, as applicable, a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that is any of the following:

1. A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority; or, in the case of a covered agreement between the United States and the European Union, a jurisdiction that is a member state of the European Union. As used in this subsection, the term "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is currently in effect or in a period of provisional application and which addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

2. A United States jurisdiction that meets the requirements for accreditation under the Financial Regulation Standards and Accreditation Program of the National Association of Insurance Commissioners.

3. A qualified jurisdiction, as determined by the office, which is not otherwise described in subparagraph 1. or subparagraph 2. and which meets all of the following additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by commission rule:

a. The jurisdiction allows an insurer domiciled, or having its head office, in the jurisdiction to take credit for reinsurance ceded to an insurer domiciled in the United States

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in the same manner as reinsurance ceded to insurers domiciled in that jurisdiction.

b. The jurisdiction does not require an assuming insurer domiciled in the United States to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the jurisdiction or as a condition for allowing the ceding insurer to take credit for the ceded risk.

c. The jurisdiction provides written confirmation that it recognizes the state regulatory approach to group supervision and group capital and that insurers and insurance groups domiciled, or maintaining their headquarters, in a jurisdiction accredited by the National Association of Insurance Commissioners are subject only to worldwide prudential insurance group supervision by the domiciliary state and are not subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

d. The jurisdiction provides written confirmation that information regarding insurers and their parent, subsidiary, or affiliated entities shall be provided to the office in accordance with a memorandum of understanding or similar document between the office and such qualified jurisdiction.

The office shall timely publish on its website a list of reciprocal jurisdictions. The office may remove a reciprocal jurisdiction determined to no longer meet the requirements of this paragraph.

(b)1. The assuming insurer must have and maintain on an

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ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in the amount of \$250 million or in a greater amount specified by commission rule.

2. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis:

a. Minimum capital and surplus equivalents, or net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, in the amount of \$250 million or in a greater amount specified by commission rule.

b. A central fund containing a balance of \$250 million or a greater amount specified by commission rule.

(c) If credit is allowed for reinsurance ceded to the assuming insurer pursuant to:

1. Subparagraph (a)1., the assuming insurer must maintain a minimum solvency or capital ratio specified in the applicable covered agreement.

2. Subparagraph (a)2., the assuming insurer must maintain a risk-based capital ratio of 300 percent of the authorized control level, calculated in accordance with s. 624.4085.

3. Subparagraph (a)3., the assuming insurer must maintain a solvency or capital ratio determined by the office to be an effective measure of solvency.

(d) The assuming insurer must, in a form specified by the commission:

1. Agree to provide prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if

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any regulatory action is taken against it for serious noncompliance with applicable law of any jurisdiction.

2. Consent in writing to the jurisdiction of the courts of this state and to the designation of the Chief Financial Officer, pursuant to s. 48.151, as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer. This subparagraph does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such agreement is unenforceable under applicable insolvency or delinquency laws.

3. Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor which have been declared enforceable in the jurisdiction where the judgment was obtained.

4. Confirm in writing that it will include in each reinsurance agreement a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement, if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or enforcement of a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

5. Confirm in writing that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree to notify the

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ceding insurer and the office and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer if the assuming insurer enters into such a solvent scheme of arrangement. Such security must be consistent with subsection (5) or as specified by commission rule.

(e) If requested by the office, the assuming insurer or its legal successor must provide, on behalf of itself and any legal predecessors, the following additional documentation:

1. The assuming insurer's annual audited financial statements, for the 2-year period before entering into the reinsurance agreement and on an annual basis thereafter, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

2. The solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor, for the 2-year period before entering into the reinsurance agreement.

3. Before entering into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more regarding reinsurance assumed from ceding insurers domiciled in the United States.

4. Before entering into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer.

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349 5. Additional information as reasonably required by the
350 office.

351 (f) The assuming insurer must maintain a practice of prompt
352 payment of claims under reinsurance agreements and must report
353 to the office reinsurance recoverables that are more than 90
354 days overdue or that are in dispute, as specified by commission
355 rule.

356 (g) The assuming insurer must annually provide to the
357 office confirmation from its reciprocal jurisdiction, on a form
358 adopted by the commission or as otherwise specified by
359 commission rule, that, as of the preceding December 31 or as of
360 the annual date otherwise statutorily reported to the reciprocal
361 jurisdiction, the assuming insurer complied with the
362 requirements of paragraphs (b) and (c).

363 (h) This subsection does not preclude an assuming insurer
364 from providing the office with information on a voluntary basis.

365 (i) If subject to a legal process of rehabilitation,
366 liquidation, or conservation, as applicable, the ceding insurer
367 or its representative may seek and, if determined appropriate by
368 the court in which the proceedings are pending, obtain an order
369 requiring that the assuming insurer post security for all
370 outstanding ceded liabilities.

371 (j) This subsection does not limit or alter in any way the
372 capacity of parties to a reinsurance agreement to agree on
373 requirements for security or other terms in the reinsurance
374 agreement, except as expressly prohibited by this section or
375 other applicable law or commission rule.

376 (k)1. Credit may be taken under this subsection only for
377 reinsurance agreements entered into, amended, or renewed on or

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378 after the date on which the assuming insurer has satisfied the
379 requirements to assume reinsurance under this subsection, and
380 only with respect to losses incurred and reserves reported on or
381 after the later of the date on which the assuming insurer has
382 met all eligibility requirements pursuant to this subsection or
383 the effective date of the new reinsurance agreement, amendment,
384 or renewal.

385 2. This paragraph does not alter or impair a ceding
386 insurer's right to take credit for reinsurance for which, and to
387 the extent that, credit is not available under this subsection,
388 if the reinsurance qualifies for credit under any other
389 applicable provision of law or commission rule.

390 3. This subsection does not authorize an assuming insurer
391 to withdraw or reduce the security provided under any
392 reinsurance agreement, except as authorized by the terms of the
393 agreement.

394 4. This subsection does not limit or alter in any way the
395 capacity of parties to any reinsurance agreement to renegotiate
396 the agreement.

397 (l) The office shall timely publish on its website a list
398 of assuming insurers that meet all of the requirements of this
399 subsection.

400 (m) If the office determines that an assuming insurer no
401 longer meets one or more of the requirements of this subsection,
402 the office may revoke or suspend the eligibility of the assuming
403 insurer for recognition under this subsection.

404 1. During the suspension of an assuming insurer's
405 eligibility, a reinsurance agreement issued, amended, or renewed
406 after the effective date of the suspension does not qualify for

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407 credit, except to the extent that the assuming insurer's
408 obligations under the contract are secured in accordance with
409 subsection (5).

410 2. If an assuming insurer's eligibility is revoked, a
411 credit for reinsurance may not be granted after the effective
412 date of the revocation with respect to any reinsurance agreement
413 entered into by the assuming insurer, including a reinsurance
414 agreement entered into before the date of revocation, except to
415 the extent that the assuming insurer's obligations under the
416 contract are secured in a form acceptable to the office and
417 consistent with subsection (5).

418 (5)-(4) An asset allowed or a reduction ~~deduction~~ from
419 liability taken for the reinsurance ceded by an insurer to an
420 assuming insurer not meeting the requirements of subsections
421 (2), and (3), and (4) is allowed in an amount not exceeding the
422 liabilities carried by the ceding insurer. The reduction
423 ~~deduction~~ must be in the amount of funds held by or on behalf of
424 the ceding insurer, including funds held in trust for the ceding
425 insurer, under a reinsurance contract with the assuming insurer
426 as security for the payment of obligations thereunder, if the
427 security is held in the United States subject to withdrawal
428 solely by, and under the exclusive control of, the ceding
429 insurer, or, in the case of a trust, held in a qualified United
430 States financial institution, as defined in paragraph (6) (b)
431 ~~(5) (b)~~. This security may be in the form of:

432 (a) Cash in United States dollars;

433 (b) Securities listed by the Securities Valuation Office of
434 the National Association of Insurance Commissioners and
435 qualifying as admitted assets pursuant to part II of chapter

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625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6) (a) ~~(5) (a)~~, effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the office.

(6) (a) ~~(5) (a)~~ For purposes of paragraph (5) (c) ~~(4) (e)~~ regarding letters of credit, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by United States or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the office.

(12) ~~(11)~~

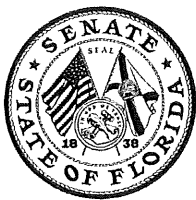
(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the office may require the filing of any supporting information relating to the ceding of such risks as it deems

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necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the office that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the commission under subsection (15) ~~(14)~~. If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

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



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 25, 2021

I respectfully request that **Senate Bill 728**, relating to Credit for Reinsurance, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Doug Broxson".

Senator Doug Broxson
Florida Senate, District 1

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

March 2, 2021

Meeting Date

SB728

Bill Number (if applicable)

Topic Credit for Reinsurance

Amendment Barcode (if applicable)

Name Joy M. Ryan

Job Title Shareholder/Meenan Law Firm

Address 300 S. Duval St., Suite 410

Phone 850-425-4000

Street

Tallahassee

Florida

32301

City

State

Zip

Email joy@meenanlawfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Insurance Council

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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

SB 728
Bill Number (if applicable)

Topic Credit for Reinsurance

Amendment Barcode (if applicable)

Name Grant Phillips

Job Title Deputy Government Affairs Director

Address 200 E Gaines
Street

Phone 850-413-2427

City

State

Zip

Email Grant.Phillips@Flor.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Office of Insurance Regulation

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

COMMITTEE: Judiciary
ITEM: SB 728
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 702

INTRODUCER: Judiciary Committee and Senator Thurston

SUBJECT: Individual Retirement Accounts

DATE: March 4, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Schrader | Knudson | BI | Favorable |
| 2. | Bond | Cibula | JU | Fav/CS |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 702 clarifies that any interest in an individual retirement account (IRA) or individual retirement annuity received in a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. As the bill clarifies, but does not modify, existing law or practice, the bill is remedial in nature and applies retroactively to all transfers made incident to divorce.

The bill is effective upon becoming a law.

II. Present Situation:

Asset Protections Available in Florida

A creditor can collect money owed by filing an action for a judgment in state court. A judgment is an order of the court creating an obligation, such as a debt. The creditor may then use that judgment to collect from the debtor, i.e., executing the judgement, using certain legal tools such as garnishing of wages and bank accounts and attaching liens to personal and real property. The Florida Constitution and Florida Statutes both contain exemptions to protect certain real and personal property of natural persons from forced sale by creditors. State constitutional exemptions, such as those for homestead property,¹ can only be modified through a proposed constitutional amendment that is subsequently approved by the electorate. Exemptions provided

¹ See FLA. CONST. art. X, s. 4.

in Florida Statutes may be modified through the regular legislative process. Chapter 222, F.S., specifies the types of property that is exempt from the claims of creditors.

Section 222.21, F.S., provides that pension money and certain tax-exempt funds or accounts are exempt from legal processes, such as forced sale. Subsection (1) protects certain money received by any debtor as a pensioner of the United States. Subsection (2) protects any money or other assets payable to an owner, a participant, or a beneficiary from, and any interest² therein of any owner, beneficiary, or participant if the fund or account meets certain qualifications. These funds or accounts are commonly known as qualified, tax-exempt retirement accounts, and must be:

- Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or other governing instrument preapproved by the Internal Revenue Service (IRS) as exempt from taxation under certain sections of the Internal Revenue Code of 1986 (IRC), as amended, regarding qualified retirement plans,³ unless the exemption was overturned in a final, non-appealable, proceeding;
- Maintained in accordance with a plan or governing instrument determined by the IRS to be exempt from taxation under certain sections of the IRC regarding qualified retirement plans,⁴ unless such exemption was overturned in a final, non-appealable, proceeding; or
- Not maintained in accordance with one of the above-described plans or governing instruments, if the person claiming the exemption proves by a preponderance of the evidence that the fund or account is maintained in substantial compliance with the applicable sections regarding tax-exempt retirement accounts, or would have been in substantial compliance with the applicable requirements for exemption under those sections, but for the negligent or wrongful conduct of another person.

The fund or account need not be maintained in accordance with a plan or governing instrument covered by any part of the Employee Retirement Income Security Act (ERISA) to be exempt.⁵ The funds or accounts are only protected to the extent they are not otherwise subject to claims of an alternate payee under a qualified domestic relations order, or claims of a surviving spouse pursuant to an order determining elective share and contribution in accordance with ch. 732, F.S.

Paragraph (2)(c) of s. 222.21, F.S., provides that the exemption for such money, other assets, or interest in these qualified, tax-exempt retirement accounts survives the owner's death upon a direct transfer or other eligible rollover excluded from gross income under the IRC,⁶ such as, but not limited to, the direct transfer or eligible rollover to an inherited individual retirement account (IRA).⁷ This allows a beneficiary to enjoy the exemption upon transfer. Paragraph (2)(c) expressly states that it is intended to clarify existing law, be remedial in nature, and to apply

² Under Florida law, the word "interest," as used in statute providing exemption from creditors' claims for any interest of owner, beneficiary, or participant in enumerated tax-preferred funds or accounts, is a broad term encompassing many rights of a party, tangible, intangible, legal, and equitable. *In re Maddox*, 713 F.2d 1526, 1530 (11th Cir. 1983).

³ 26 U.S.C. ss. 401(a) (stock bonus, pension, and profit sharing plans), 403(a) and 403(b) (annuity plans), 408 (individual retirement accounts (IRAs)), 408A (Roth IRAs), 409 (tax credit employee stock ownership plans), 414 (provides definitions and special rules for certain plans, such as retirement plans for government and church employees), 457(b) (deferred compensation plans), or 501(a) (defining organizations exempt from taxation, including those defined in 401(a)).

⁴ *Id.*

⁵ Section 222.21(2)(b), F.S.

⁶ Section 222.21(2)(c), F.S.

⁷ See 26 U.S.C. s. 408(d)(3); pursuant to s. 222.21(2), F.S., individual retirement accounts, and interests therein, maintained in accordance with 26 U.S.C. s. 408 are exempted from legal processes, such as forced sale by creditors.

retroactively to all inherited individual retirement accounts without regard to the date the account was created.

The specified tax-exempt retirement plans enumerated in subsection (2) are exempt from all legal proceedings, including bankruptcy, even though bankruptcy is a federal proceeding governed by the United States Bankruptcy Code (Bankruptcy Code).⁸

Transfer of Section 408 Retirement Accounts Incident to Divorce

Retirement accounts exempted from taxation by s. 408 of the IRC are exempted from legal processes, such as forced sale, by Florida law.⁹ Section 408 of the IRC contemplates individual retirement accounts (IRAs) and individual retirement annuities.¹⁰ An individual retirement account is a trust created or organized in the United States for the exclusive benefit of an individual, or his beneficiaries, of which the governing document meets certain requirements.¹¹ An individual retirement annuity is an annuity contract, or an endowment contract, issued by an insurance company which meets certain requirements.¹² An interest in an individual retirement account or individual retirement annuity may be transferred, but only upon the death or divorce of the original owner.¹³ The transfer of an interest in an individual retirement account or individual retirement annuity incident to divorce is not a taxable event.¹⁴ Effective upon such transfer, the interest in the individual retirement account or individual retirement annuity is treated as the account of the spouse.¹⁵

Exempted Property in Bankruptcy Proceedings

The Bankruptcy Code expressly recognizes exemptions provided under the state or local law of the domicile of the debtor.¹⁶ Florida is an opt-out state, meaning that when a Florida resident files for bankruptcy, Florida law provides the exemptions available to the debtor—not the Bankruptcy Code.¹⁷ Florida law contains a number of exemptions included in the Bankruptcy Code, such as IRAs and pensions, profit sharing, and retirement benefits.¹⁸ Florida also exempts all inherited IRA accounts from creditor claims.¹⁹ Likewise, the Bankruptcy Code exempts retirement funds in a fund or account exempt from taxation under most of the same sections of the IRC, such as those applicable to stock bonus, pension, and profit sharing plans, annuity plans, IRAs, and deferred compensation plans.²⁰

⁸ 11 U.S.C. s. 101, *et. seq.*; 11 U.S.C. s. 522(b)(3)(A).

⁹ Section 222.21(2), F.S.

¹⁰ 26 U.S.C. s. 408(a)-(c).

¹¹ *See* 26 U.S.C. s. 408(a), *et. seq.*

¹² 26 U.S.C. s. 408(b).

¹³ 26 U.S.C. s. 408(d).

¹⁴ 26 U.S.C. s. 408(d)(6).

¹⁵ *Id.*

¹⁶ 11 U.S.C. s. 522(b)(3)(A).

¹⁷ Section 222.20, F.S.

¹⁸ Section 222.21(2), F.S.

¹⁹ Section 222.21(2)(c), F.S.

²⁰ 11 U.S.C. s. 522(d)(12) exempts “retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under sections 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.”

Section 222.21(2), F.S., exempts qualified plans exempt from taxation under ss. 401(a), 403(a) and 403(b), specifically, 408,

Regarding the exemption for an IRA or an interest therein where such was awarded incident to a divorce, a recent bankruptcy court decision in the United States Bankruptcy Appellate Panel for the 8th Circuit, *In re Lerbakken*, 590 B.R. 895 (B.A.P. 8th Cir. 2018), may indicate a need to clarify Florida's exemption.

In *Lerbakken*, the 8th Circuit Bankruptcy Appellate Panel stated that two requirements must be satisfied in order for a debtor to claim funds as exempt retirement funds pursuant to the Bankruptcy Code:

- The amount must be retirement funds; and
- The retirement funds must be in an account that is exempt from taxation under one of the provisions of the IRC.²¹

The Bankruptcy Code does not define the term “retirement funds,” so the term is applied within its ordinary meaning: sums of money set aside for the day an individual stops working.²² In *Lerbakken*, the 8th Circuit Bankruptcy Appellate Panel held that funds held in a 401K and IRA accounts awarded to a Chapter 7 debtor as part of a stipulated property settlement in a divorce proceeding were not “retirement funds” because while the debtor's former spouse had saved funds in those accounts for a joint retirement, any interest the debtor held in those accounts resulted from a property settlement. However, it is notable that the ruling was an 8th Federal Circuit opinion on appeal from the United States Bankruptcy Court for the District of Minnesota. Thus, the *Lerbakken* Court's ruling interpreting the meaning of “retirement funds” in would not be controlling in the 11th Circuit (of which Florida is a part).

The issue of whether an IRA is exempt from bankruptcy proceedings when awarded incident to a divorce proceeding has arisen in the 11th Circuit recently.²³ During the course of the proceedings, the United States Bankruptcy Court for the Middle District of Florida, Tampa Division, acknowledged that, although the authority to make the certification for appeal had shifted from Bankruptcy Court to the district court during the pendency of ruling on a motion for appeal, there did exist a “matter of public importance” on the IRA issue and “no controlling decision of the Eleventh Circuit or the Supreme Court exists.”²⁴ Further, the Bankruptcy Court acknowledges that “conflicting opinions from other jurisdictions arguably exist.”²⁵ Thus, the Bankruptcy Court had intended to certify the issue for appellate review.²⁶

408A, 414, 457(b), specifically, and 501(a) of the IRC. Unlike the Bankruptcy Code, Florida additionally exempts qualified tax credit employee stock ownership plans exempted from taxation under section 409 of the IRC.

²¹ 11 U.S.C. s. 522(d)(12).

²² *Clark v. Rameker*, 573 U.S. 122, 127 (2014).

²³ This case has been recently dismissed without prejudice on upon the parties reaching settlement in the matter. *Carapella v. Glass*, No. 8:19-cv-3050-T-02 (M.D. Fla. Jan. 8, 2021). Thus, the Court did not reach a decision on the IRA issue.

²⁴ *In re Glass*, 613 B.R. 33, 41 (Bankr. M.D. Fla. 2020).

²⁵ *Id.* at 41.

²⁶ *Id.* at 34. Under 28 U.S.C. s. 158(d)(2)(A), the grounds for certification for direct review in a court of appeals are: (i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of Supreme Court of the United States, or involves a matter of public importance; (ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or (iii) an immediate appeal from the judgment, order, or decree may materially advance the progression of the case or proceeding in which the appeal is taken.

III. Effect of Proposed Changes:

Section 1 amends paragraph (2)(c) of s. 222.21, F.S., to clarify that any interest in any IRA or individual retirement annuity received in a transfer incident to divorce as described in s. 408(d)(6) of the Internal Revenue Code of 1986 (IRC), as amended, continues to be exempt from creditor claims after the transfer, regardless of the date the transfer was made.

To the extent s. 222.21(a), F.S., exempts a transferee's interest in an IRA or individual retirement annuity upon a transfer incident to divorce pursuant to s. 408(d)(6) of the IRC, the bill clarifies current law, which exempts such interests from the claims of the transferee's creditors.

Existing law provides that s. 222.21(2)(c), F.S., is intended to clarify existing law, is remedial in nature, and shall have retroactive application. As a result, the provision of the bill will apply retroactively as well.

Section 2 provides that the act shall take effect upon becoming a law

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Retroactive Application

Once a bill becomes law, it is presumed to apply only prospectively. The presumption against retroactive application may be rebutted by clear evidence of legislative intent.²⁷

To determine if the terms of a statute and the purpose of the enactment indicate retroactive application, a court may consider the language, structure, purpose, and legislative history of the enactment.²⁸

²⁷ *Florida Ins. Guar. Ass'n, Inc. v. Devon Neighborhood Ass'n, Inc.*, 67 So. 3d 187 (Fla. 2011).

²⁸ *Id.*

If the legislation clearly expresses an intent that the law apply retroactively, then the second inquiry is whether retroactive application is constitutionally permissible.²⁹ Even when the Legislature has clearly expressed its intention that the statute be given a retroactive application, courts must refuse to do so if it impairs vested rights, creates new obligations, imposes new penalties,³⁰ or impairs an obligation of contract.³¹ For example, ex post facto legislation, i.e., a law that expands criminal liability retroactively by either creating a new crime for past conduct or by increasing the penalty for past conduct, is forbidden by both the Florida Constitution and the United States Constitution. Statutes that do not alter vested rights but relate only to remedies or procedure may be applied retroactively.³²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 222.21, Florida Statutes.

²⁹ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010); *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

³⁰ *Id.*

³¹ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

³² *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d 494 (Fla. 1999).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on March 2, 2021:

The committee substitute differs from the underlying bill in terms of style and grammar but not substance.

B. Amendments:

None.

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

By Senator Thurston

33-00380-21

2021702__

A bill to be entitled
An act relating to individual retirement accounts;
amending s. 222.21, F.S.; specifying that interests in
certain individual retirement funds or accounts which
are exempt from creditor claims continue to be exempt
after certain transfers incident to divorce; providing
retroactive applicability; providing an effective
date.

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

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

222.21 Exemption of pension money and certain tax-exempt
funds or accounts from legal processes.—

(2)

(c) Any money or other assets or any interest in any fund
or account that is exempt from claims of creditors of the owner,
beneficiary, or participant under paragraph (a) does not cease
to be exempt after the owner's death by reason of a direct
transfer or eligible rollover that is excluded from gross income
under the Internal Revenue Code of 1986, including, but not
limited to, a direct transfer or eligible rollover to an
inherited individual retirement account as defined in s.
408(d)(3) of the Internal Revenue Code of 1986, as amended. Any
interest in any fund or account received in a transfer incident
to divorce as described in s. 408(d)(6) of the Internal Revenue
Code of 1986, as amended, continues to be exempt after the
transfer. This paragraph is intended to clarify existing law, is

33-00380-21

2021702__

30 remedial in nature, and shall have retroactive application to
31 all inherited individual retirement accounts and to all such
32 transfers incident to divorce without regard to the date an
33 account was created or the date the transfer was made.

34 Section 2. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jeff Brandes, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 22, 2021

I respectfully request that **Senate Bill #702**, relating to Individual Retirement Accounts, be placed on the:

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

A handwritten signature in black ink, reading "Perry E. Thurston, Jr." with a stylized flourish at the end.

Senator Perry E. Thurston, Jr.
Florida Senate, District 33

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

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/21

Meeting Date

702

Bill Number (if applicable)

Topic Support the IRA bill (Senate Judiciary)

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title _____

Address 106 E. College Ave Suite 1200

Phone 850-999-4100

Street

Tallahassee

FL

32301

City

State

Zip

Email medenfield@deanmean.com

Speaking: ☐ For ☐ Against ☐ Information

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

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

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 702
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 82

INTRODUCER: Senators Baxley and Huston

SUBJECT: Sponsorship Identification Disclaimers

DATE: March 1, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Rey</u> | <u>Roberts</u> | <u>EE</u> | Favorable |
| 2. | <u>Ravelo</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

I. Summary:

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

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

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

The bill takes effect October 1, 2021.

II. Present Situation:

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

Political Advertisements

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

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

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

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

Independent Expenditures

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

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

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

¹ Section 106.011(4) and (15), F.S.

² “Speech containing the “magic words” is “unambiguously campaign related,” *Buckley v. Valeo*, 96 S.Ct. 612, 81 (1976), while speech without these words is not,” *McConnell v. Federal Election Com’n*, 540 U.S. 93, 281 (2003).

³ Section 106.143(1) and (10)(f), F.S.

⁴ Section 106.011(12)(a), F.S.

⁵ Section 106.071(2) and (3), F.S. Subsection (3) exempts “novelty items” valued at \$10 or less that support, but do not oppose, a candidate or issue; it is difficult to see how such an exemption could apply to a text message.

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

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

Electioneering Communications

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

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

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

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

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

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

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

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

⁶ Section 106.011(8)(a), F.S.

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

⁸ Section 106.011(4), F.S.

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

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

III. Effect of Proposed Changes:

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

Specifically, the bill:

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

⁹ Section 106.1439(2), F.S.

required for coordinated telephone calls. These new mandates mirror current requirements for telephone calls.

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

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

The bill takes effect October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. **Government Sector Impact:**

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

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

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

VIII. Statutes Affected:

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

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

By Senator Baxley

12-00601-21

202182__

1 A bill to be entitled
2 An act relating to sponsorship identification
3 disclaimers; amending s. 106.011, F.S.; revising the
4 definition of the term "electioneering communication"
5 to conform to changes made by the act; amending s.
6 106.071, F.S.; modifying provisions governing general
7 independent expenditure disclaimers to conform to
8 changes made by the act; amending s. 106.143, F.S.;
9 removing an exemption for text messages from certain
10 requirements governing political advertisement
11 disclaimers to conform to changes made by the act;
12 amending s. 106.1439, F.S.; modifying provisions
13 governing general electioneering communications
14 disclaimer requirements to conform to changes made by
15 the act; amending s. 106.147, F.S.; establishing
16 sponsorship identification disclaimer requirements for
17 certain text messages; modifying existing requirements
18 governing telephone call disclaimers; providing
19 exceptions and restrictions; providing a penalty;
20 revising the definition of the term "person" to
21 conform to changes made by the act; amending s.
22 106.1475, F.S.; requiring specified persons and
23 organizations sending certain paid text messages to
24 have and maintain a registered agent for specified
25 purposes; providing exceptions; providing a penalty;
26 providing an effective date.

28 Be It Enacted by the Legislature of the State of Florida:
29

12-00601-21

202182__

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

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

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

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

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

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

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

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

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

12-00601-21

202182__

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

106.143 Political advertisements circulated prior to election; requirements.—

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

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

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

106.1439 Electioneering communications; disclaimers.—

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

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

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

12-00601-21

202182__

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

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

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

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

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

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

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

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202182__

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

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

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

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

131 1. Telephone call:

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

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

140 2. Text message:

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

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

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146 receive it.

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

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

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

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

159 (b) Represents a nonexistent person or organization.

160 (3)(2) Any text message or telephone call, not conducted by
161 independent expenditure, which expressly advocates for or
162 against a candidate or ballot measure ~~proposal~~ requires prior
163 written authorization by the candidate or sponsor of the ballot
164 measure ~~proposal~~ that the text message or telephone call
165 supports. A copy of such written authorization must be placed on
166 file with the qualifying officer by the candidate or sponsor of
167 the ballot measure before ~~proposal prior to~~ the time the text
168 messages or telephone calls commence.

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

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

12-00601-21

202182__

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

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

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

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

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

12-00601-21

202182__

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

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

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

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

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

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DENNIS BAXLEY
12th District

February 16, 2021

The Honorable Chair Jeff Brandes
414 Senate Office Building
Tallahassee, FL 32399

Dear Chair Brandes,

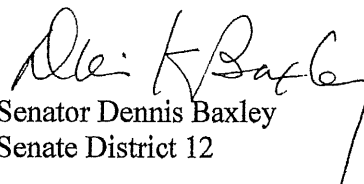
I would like to request that SB 82 Sponsorship Identification Disclaimers be heard in the next Judiciary Committee meeting.

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

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

I appreciate your favorable consideration.

Onward & Upward,


Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

COMMITTEE: Judiciary
ITEM: SB 82
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 920

INTRODUCER: Environment and Natural Resources Committee and Senator Bradley

SUBJECT: Liability of Persons Providing Areas for Public Outdoor Recreational Purposes

DATE: March 1, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------|----------------|-----------|------------------|
| 1. | Schreiber | Rogers | EN | Fav/CS |
| 2. | Ravelo | Cibula | JU | Favorable |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 920 expands the circumstances in which a state agency may accept responsibility for any injury, loss, or damage that occurs on private property to members of the public. Under existing law, a state agency may accept this responsibility as part of an agreement with a private landowner which allows for public access to the owner's land for outdoor recreational purposes.

Under the bill, a state agency may agree to accept liability for scenarios where members of the public cross private land to access public lands for outdoor recreational purposes. This would include, for example, a state agency entering into an agreement to allow members of the public to cross through private property in order to enter a state park.

The bill takes effect July 1, 2021.

II. Present Situation:

Limitation of Liability for Persons Making Areas Available to the Public for Outdoor Recreational Purposes

Under general legal principles of premises liability, a property owner or occupier may be found negligent based on a duty to maintain the property in a reasonably safe condition or a duty to

warn of dangerous conditions known to the owner or occupier that are not readily apparent.¹ Section 375.251, F.S., also known as the Florida Recreational Use Statute,² provides a limitation of liability to encourage persons to make land, water areas, and park areas available to the public for recreational purposes.³ Under the statute, an owner or lessee who provides the public with an area⁴ for outdoor recreational purposes⁵ owes no duty of care to keep the area safe for entry or use by others, or to give warning to persons entering the area of any hazardous conditions, structures, or activities on the area.⁶ An owner or lessee who provides the public with an area for outdoor recreational purposes:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area.⁷

This limitation of liability applies only if no charge is made for entry to or use of the area for outdoor recreational purposes and no other revenue is derived from patronage of the area for outdoor recreational purposes.⁸ Notwithstanding the inclusion of the term “public,” an owner or lessee who makes available to any person an area primarily for the purposes of hunting, fishing, or wildlife viewing is entitled to the limitation of liability so long as the owner or lessee provides written notice of this provision to the person before or at the time of entry or posts notice of this provision conspicuously upon the area.⁹

Section 375.251(3), F.S., provides a limitation of liability for an owner of an area who enters into a written agreement concerning the area with the state for outdoor recreational purposes.¹⁰ Where such agreements recognize that the state is responsible for personal injury, loss, or damage resulting in whole or in part from the state’s use of the area under the terms of the agreement,¹¹ the owner owes no duty of care to keep the area safe for entry or use by others, or to give

¹ See *Grimes v. Family Dollar Stores of Fla., Inc.*, 194 So. 3d 424, 427 (Fla. Dist. Ct. App. 2016); see *Phillips v. Republic Fin. Corp.*, 157 So. 3d 320, 326 (Fla. Dist. Ct. App. 2015) (noting the “crux of a cause of action for premises liability is not the ownership of the premises, but the negligence of the possessor in permitting licensees and invitees to come unwarned to an area where they could foreseeably be injured by a dangerous condition which is not readily apparent”).

² See *Hurst v. United States by & through Dep’t of the Agric. US Forest Serv.*, 782 F. App’x 978, 979 (11th Cir. 2019).

³ Section 375.251(1), F.S.; see ss. 253.42(4)(c), 373.1395(5), 589.19(4)(e)1., and 773.05, F.S. Several sections contain cross-references to the limitation of liability in s. 375.251, F.S.

⁴ Section 375.251(5)(a), F.S. As used in the section, “‘area’ includes land, water, and park areas.”

⁵ Section 375.251(5)(b), F.S. As used in the section, “‘outdoor recreational purposes’ includes, but is not limited to, hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, and visiting historical, archaeological, scenic, or scientific sites.”

⁶ Section 375.251(2)(a), F.S.; see *Abdin v. Fischer*, 374 So. 2d 1379, 1380-1381 (Fla. 1979) (holding that s. 375.251, F.S., is constitutional because, while it alters the standard of care owed, it does not deny access to the courts).

⁷ Section 375.251(2)(a), F.S.; see *City of Pensacola v. Stamm*, 448 So. 2d 39, 41-42 (Fla. Dist. Ct. App. 1984) (holding that s. 375.251, F.S., does not relieve government entities of liability as government entities are already charged with making areas available for public recreational use); see *Hurst*, 782 F. App’x at 982-983 (explaining that s. 375.251, F.S., shields the federal government from tort liability under the Federal Tort Claims Act if s. 375.251, F.S., would shield a private individual under like circumstances).

⁸ Section 375.251(2)(c), F.S.; see *Fernandez v. United States*, 766 F. App’x 787, 792-794 (11th Cir. 2019) (explaining that an owner or lessee is immune from liability so long as he makes no charges in the distinct area where the injury occurred).

⁹ Section 375.251(2)(b), F.S.

¹⁰ See ch. 2012-203, Laws of Fla.

¹¹ Section 768.28, F.S. The responsibility of the state recognized by the agreements described in s. 375.251(3), F.S., is subject to the limitations and conditions specified in the statutory waiver of sovereign immunity for liability for torts.

warning to persons entering the area of any hazardous conditions, structures, or activities on the area.¹² An owner who has entered into such an agreement:

- Is not presumed to extend any assurance that the area is safe for any purpose;
- Does not incur any duty of care toward a person who goes on the area that is subject to the agreement; or
- Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area that is subject to the agreement.¹³

This limitation of liability applies to all persons going on the area subject to the agreement, including invitees, licensees, and trespassers.¹⁴ The Legislature intended that the agreement should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement, but an agreement, executed after July 1, 2012, that provides for compensation exceeding such costs and expenses does not subject the owner or the state to liability.¹⁵

Section 375.251, F.S., does not relieve any person of liability that would otherwise exist for deliberate, willful, or malicious injury to persons or property.¹⁶ The section does not create or increase the liability of any person.¹⁷

III. Effect of Proposed Changes:

Section 1 amends s. 375.251, F.S., which limits the liability of persons who make areas available to the public for outdoor recreational purposes. The bill expands the section's definition of "outdoor recreational purposes" to include "traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes." This expressly applies the section's limitation of liability to include entering and exiting public lands, or lands owned or leased by a state agency, used for outdoor recreational purposes.

The bill also creates a definition for "state agency" for s. 375.251, F.S., defining it as "the state or any governmental or public entity created by law." The bill replaces the undefined term "state" with the defined term "state agency" in s. 375.251(3), F.S., broadening and clarifying the government entities to which that subsection applies.

Section 2 provides an effective date of July 1, 2021.

¹² Section 375.251(3)(a), F.S.

¹³ *Id.*

¹⁴ Section 375.251(3)(b), F.S.

¹⁵ Section 375.251(3)(c), F.S. This paragraph applies only to agreements executed after July 1, 2012.

¹⁶ Section 375.251(4), F.S.

¹⁷ *Id.*

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:

CS/SB 920 expands liability protections to include “traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes.” This additional liability protection may encourage private property owners to make areas available to the public for outdoor recreational purposes.

C. Government Sector Impact:

Broadening and clarifying the definition of “state agency” to include “the state or any governmental or public entity created by law” may allow previously ineligible government entities to engage in written agreements with private property owners who make areas available to the public for outdoor recreational purposes. For example, the new definition may include The Legislature and Florida public universities.

Because the bill allows the state to accept liability for injury, loss, or damages suffered by members of the public on private land, the state will be the defendant in any resulting premises liability lawsuits. However, the state’s liability is subject to its waiver of sovereign immunity under s. 768.28, F.S. That statute generally limits the collectability of damages by any one person to \$200,000 and to \$300,000 per incident, regardless of the

number of claimants. The payment of additional amounts may be approved by the Legislature in a claim bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 375.251, Florida Statutes.

IX. Additional Information:

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

CS by Environment and Natural Resources Committee on February 15, 2021:

The CS amends the title to reflect that the expanded definition of “outdoor recreational purposes” in the bill applies broadly throughout s. 375.251, F.S., and not only to the subsection on written agreements.

- B. Amendments:

None.

By the Committee on Environment and Natural Resources; and
Senator Bradley

592-02134-21

2021920c1

A bill to be entitled
An act relating to liability of persons providing
areas for public outdoor recreational purposes;
amending s. 375.251, F.S.; expanding the applicability
of the limitation of liability for persons who provide
areas to the public for outdoor recreational purposes
without charge; revising and defining terms; providing
an effective date.

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

Section 1. Subsections (3) and (5) of section 375.251,
Florida Statutes, are amended to read:

375.251 Limitation on liability of persons making available
to public certain areas for recreational purposes without
charge.—

(3) (a) An owner of an area who enters into a written
agreement concerning the area with a ~~the~~ state agency for
outdoor recreational purposes, where such agreement recognizes
that the state agency is responsible for personal injury, loss,
or damage resulting in whole or in part from the state agency's
~~state's~~ use of the area under the terms of the agreement subject
to the limitations and conditions specified in s. 768.28, owes
no duty of care to keep the area safe for entry or use by
others, or to give warning to persons entering or going on the
area of any hazardous conditions, structures, or activities
thereon. An owner who enters into a written agreement concerning
the area with a ~~the~~ state agency for outdoor recreational
purposes:

592-02134-21

2021920c1

1. Is not presumed to extend any assurance that the area is safe for any purpose;

2. Does not incur any duty of care toward a person who goes on the area that is subject to the agreement; or

3. Is not liable or responsible for any injury to persons or property caused by the act or omission of a person who goes on the area that is subject to the agreement.

(b) This subsection applies to all persons going on the area that is subject to the agreement, including invitees, licensees, and trespassers.

(c) It is the intent of this subsection that an agreement entered into pursuant to this subsection should not result in compensation to the owner of the area above reimbursement of reasonable costs or expenses associated with the agreement. An agreement that provides for such does not subject the owner or the state agency to liability even if the compensation exceeds those costs or expenses. This paragraph applies only to agreements executed after July 1, 2012.

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

(a) "Area" includes land, water, and park areas.

(b) "Outdoor recreational purposes" includes, but is not limited to, hunting, fishing, wildlife viewing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, motorcycling, ~~and~~ visiting historical, archaeological, scenic, or scientific sites, and traversing or crossing for the purpose of ingress and egress to and from, and access to and from, public lands or lands owned or leased by a state agency which are used for outdoor recreational purposes.

(c) "State agency" means the state or any governmental or

592-02134-21

2021920c1

59 public entity created by law.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

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

SENATOR JENNIFER BRADLEY
5th District

February 16, 2021

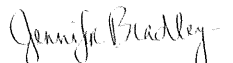
Senator Jeff Brandes, Chairman
Committee on Judiciary
414 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that CS/SB 920 be placed on the committee's agenda at your earliest convenience. This bill expands an existing statutory liability limitation relating to public lands and waterways to persons who make areas of their land available for public access to public recreational lands.

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

Sincerely,


Jennifer Bradley

cc: Tom Cibula, Staff Director

REPLY TO:

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

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/21
Meeting Date

920
~~1000~~
Bill Number (if applicable)

Topic Liability of Persons

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address 119 S Monroe St

Phone 858-228-1296

TALLAHASSEE FL 32301

City State Zip

Email Jim@magnumstatisticsllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Forestry 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)

COMMITTEE: Judiciary
ITEM: CS/SB 920
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
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TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1060

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Limitation of Liability for Voluntary Engineering Services

DATE: March 4, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Bond | Cibula | JU | Fav/CS |
| 2. | | | RI | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1060 creates immunity from civil liability for an engineer, architect, or structure specialist furnishing engineering or architectural services as a volunteer in response to a declared federal, state, or local emergency. The liability protection does not apply to an act or omission that was done with gross negligence or willful misconduct.

The bill is effective July 1, 2021.

II. Present Situation:

Urban Search and Rescue is a dangerous undertaking conducted in buildings that are fully or partially collapsed. Typically, these structures are multi-storied and contain heavy debris with a high potential for additional collapse. Rescue crews utilize trained professionals that assist them in moving or shoring up debris in order to rescue victims in and around the collapsed structure. Time is of the essence in these endeavors. The professionals must balance the safety of the rescuers with the need to find and retrieve trapped and injured civilians before they expire.

Professionals who Advise Urban Search and Rescue Teams

Engineers

An engineer is a professional practicing engineering. Engineering is:

any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.¹

Florida regulates engineers through the Department of Business and Professional Regulation.² Engineers are authorized to practice within a qualified business entity, such as a corporation.³

Architects

An architect is a professional practicing architecture. Architecture is the provision of:

services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.⁴

Florida regulates architects through the Department of Business and Professional Regulation.⁵ Architects are authorized to practice within a qualified business entity, such as a corporation.⁶

Structure Specialists

Structures Specialists are engineers who have been specially trained by the United States Army Corps of Engineers. Engineers trained as Structures Specialists can evaluate a damaged building or hazard in order to reduce the risks to rescue personnel and victims. Structures Specialists design shoring systems to stabilize structures for rescuers to gain safe access to the victims. The Structures Specialists are trained in Rescue Systems 1 (a basic rescue skills course). They also receive instruction in structural collapse patterns, hazard identification and building monitoring, rapid assessment of buildings, building triage and marking systems, advance shoring and shoring calculations.⁷

¹ Section 471.005(7), F.S.

² See generally, ch. 471, F.S.

³ Section 471.023, F.S.

⁴ Section 481.203(2), F.S.

⁵ See generally, ch. 481, F.S.

⁶ Section 481.219, F.S.

⁷ US Army Corps of Engineers, Urban Search and Rescue Program, Fact Sheet, February 2009.

Tort Law - In General

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.⁸ 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.⁹

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.¹⁰

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:

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

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence:

Slight Negligence

Slight negligence is generally defined to mean the failure to exercise a great amount of care.¹¹

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.¹²

Gross Negligence and Intentional Misconduct

Gross negligence means the failure of a person to exercise slight care. Florida courts have defined gross negligence as the type of conduct that a "reasonably prudent person knows will

⁸ BLACK'S LAW DICTIONARY (11th ed. 2019).

⁹ Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

¹⁰ 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.

¹¹ Sawaya, *Personal Injury & Wrongful Death Actions*, s. 1:2.

¹² *Id.*

probably and most likely result in injury to another” person.¹³ 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.^{14,15}

Intentional misconduct means that the defendant had actual knowledge of the wrongfulness of the conduct, that there was a high probability of injury or damage to the claimant and, despite that knowledge, the defendant intentionally pursued that course of conduct, resulting in injury or damage.¹⁶

Current Law Regarding Tort Liability for Emergency Action

Current law addresses some of the tort liability addressed in this bill. A licensed professional providing professional services during a declared emergency, where such services are related to the emergency, is not liable for professional malpractice so long as the professional acted as an ordinary reasonably prudent member of that profession would have acted under the same or similar circumstances.¹⁷

III. Effect of Proposed Changes:

The bill creates s. 768.30, F.S., to provide that an engineer, architect, or structures specialist is not liable for personal injury, wrongful death, property damages, or economic loss resulting from acts or omissions related to engineering or architectural services rendered on a volunteer basis during a state of emergency.

The bill gives tort immunity to a person who is one of the following:

- A Florida engineer, defined by reference to the definition of engineer in the state licensing law.
- An engineer licensed or registered outside of Florida “as a member of a mobile support unit of another state.” The term “mobile support unit” is not defined in the bill. As related to this bill, the term generally refers to units or teams, sometimes affiliated with a state National Guard, that travel to disaster sites as needed, including travel to other states, to aid in disaster response.¹⁸
- A Florida architect, defined by reference to the definition of architect in the state licensing law.
- An architect licensed or registered outside of Florida as a member of a mobile support unit of another state.
- A structures specialist, defined as a person who has been trained by and holds a current certification as a structures specialist from the United States Army Corps of Engineers.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Culpable negligence is a fourth degree of negligence but is not discussed in this analysis.

¹⁶ Fla. Std. Jury Instr. 503.1, *Punitive Damages - Bifurcated Procedure*.

¹⁷ Section 768.1345, F.S.

¹⁸ See generally, Connecticut ch. 517, s. 28-6; Indiana IC 10-14-3-19; Kansas s. 48-911; Nevada s. 414.037

The limitation on liability provided by the bill applies to an act or omission of an engineer, architect or structures specialist in the performance of his or her services on a volunteer basis. However, the limitation on liability does not apply to an act or omission constituting gross negligence or willful misconduct. The limitation on liability only applies during a declared national, state, or local emergency, or within 90 days after the end of such emergency.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 768.38, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on March 2, 2021:

The committee substitute clarifies that architectural services are also covered by the liability protections in the bill, and clarifies the language regarding tort liability to remove unnecessary language.

- B. **Amendments:**

None.

By Senator Bradley

5-00779-21

20211060__

A bill to be entitled
An act relating to limitation of liability for
voluntary engineering services; creating s. 768.38,
F.S.; defining the term "structures specialist";
exempting engineers, architects, and structures
specialists from liability for certain voluntary
engineering services under certain circumstances;
providing applicability; providing an effective date.

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

Section 1. Section 768.38, Florida Statutes, is created to
read:

768.38 Limitation of liability for certain voluntary
engineering services.—

(1) For the purposes of this section, the term "structures
specialist" means a person who has been trained by, and holds a
current certification from, the United States Army Corps of
Engineers as a structures specialist.

(2) An engineer as defined in s. 471.005, an architect as
defined in s. 481.203, or a structures specialist, and any
qualified business organization of such person, who voluntarily
provides engineering services related to a declared federal,
state, or local emergency may not be held liable for any
personal injury, wrongful death, property damage, or other
economic loss related to his or her acts or omissions in the
performance of his or her services if:

(a) Such person acted reasonably and in good faith; and

(b) The act did not involve gross negligence or willful

5-00779-21

20211060__

30 misconduct.

31 (3) The immunity from liability under this section also
32 applies to any person who is licensed or registered as an
33 engineer or architect in any other jurisdiction and who is
34 rendering aid in this state as a member of a mobile support unit
35 of another state.

36 (4) The immunity from liability under this section applies
37 only to services provided during, or within 90 calendar days
38 after the end of, a declared federal, state, or local emergency.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

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

SELECT COMMITTEE:
Select Committee on Pandemic
Preparedness and Response

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

February 17, 2021

Senator Jeff Brandes, Chairman
Committee on Judiciary
414 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1060 be placed on the committee's agenda at your earliest convenience. The bill would limit the liability of structural engineers who volunteer their services during a declared federal, state or local emergency.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bradley".

Jennifer Bradley

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

REPLY TO:

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

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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

THE FLORIDA SENATE

APPEARANCE RECORD

March 2, 2021

Meeting Date

1060

Bill Number (if applicable)

Topic Limitation of Liability for Voluntary Engineering Services

Amendment Barcode (if applicable)

Name Ray Colburn

Job Title Executive Director - Florida Fire Chiefs Association

Address 221 Pinewood Drive

Phone 850-900-5180

Street

Tallahassee

FL

32301

Email ray@ffca.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Fire Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 1060

Bill Number (if applicable)

281576

Amendment Barcode (if applicable)

Topic Limitation of Liability for Voluntary Engineering Services

Name Vicki L. Long

Job Title Executive Vice President

Address 104 E Jefferson St

Phone (850) 222-7590

Street

Tallahassee

FL

32301

City

State

Zip

Email vlong@aiafla.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of the American Institute of Architects

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 1060

Bill Number (if applicable)

281576

Topic Limitation of Liability for Voluntary Engineering Services

Amendment Barcode (if applicable)

Name George Levesque

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32301

City

State

Zip

Email george.levesque@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of the American Institute of Architects

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 1060 (as amended)

Bill Number (if applicable)

Topic Limitation of Liability for Voluntary Engineering Services

Amendment Barcode (if applicable)

Name George Levesque

Job Title Attorney

Address 301 S. Bronough St. Suite 600

Phone (850) 577-9090

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32301

City

State

Zip

Email george.levesque@gray-robinson.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of the American Institute of Architects

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

3/2/21

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

1060

Bill Number (if applicable)

Topic Limitation of Liability for Voluntary Engineering Services

Amendment Barcode (if applicable)

Name Allen Douglas

Job Title Executive Director

Address 125 S Gadsden St

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Phone 850-224-7121

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Engineering Society / American Council of Engineering Companies of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 1060 (as amended)

Bill Number (if applicable)

Topic Limitation of Liability for Voluntary Engineering Services

Amendment Barcode (if applicable)

Name Vicki L. Long

Job Title Executive Vice President

Address 104 E Jefferson St

Phone (850) 222-7590

Street

Tallahassee

FL

32301

City

State

Zip

Email vlong@aiafla.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of the American Institute of Architects

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)

COMMITTEE: Judiciary
ITEM: SB 1060
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 582

INTRODUCER: Judiciary Committee and Senators Rodrigues and Baxley

SUBJECT: Parental Rights

DATE: March 4, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Davis | Cibula | JU | Fav/CS |
| 2. | | | ED | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 582 establishes the “Parents’ Bill of Rights.” The bill provides that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. If those entities infringe upon a parent’s fundamental right, they must demonstrate that the action is reasonable and necessary to achieve a compelling state interest, and the action must be narrowly tailored and not otherwise served by less restrictive means.

The bill enumerates a list of rights that a parent possesses in order to direct the education of his or her child and be informed about the child’s educational programs. The bill also requires the school district to promote parental involvement in the public school system by providing access to the child’s studies and instructional materials while also recognizing a parent’s right to withdraw the child from objectionable portions of the school’s curriculum.

The bill also requires a parent’s permission before a health care practitioner may provide services, prescribe medicine to the child, or perform a medical procedure, unless otherwise provided by law. The bill provides a misdemeanor penalty for a health care practitioner or similar person who violates the health care provisions and subjects these persons to disciplinary actions.

The bill takes effect July 1, 2021.

II. Present Situation:

Constitutional Rights of Parents

Parental Guarantees in the United States Constitution

The Fourteenth Amendment to the U.S. Constitution provides that no State shall:

[D]eprive any person of life, *liberty*, or property, without due process of law.

The U.S. Supreme Court has recognized that the Due Process Clause guarantees more than simply fair process. The Due Process Clause contains an additional component that provides a heightened level of protection against any government interference when certain fundamental rights and liberty interests are involved. In *Troxel v. Granville*,¹ a case to determine the scope of grandparent visitation rights when pitted against a parent's rights, the Court noted that the Fourteenth Amendment "liberty interest" at issue – the interest that parents had in the care, custody, and control over their children – was perhaps the oldest of any fundamental liberty interest that the Court had recognized.

The Court reflected back to a 1923 decision,² when it determined that the "liberty" interest protected by the Due Process Clause included the right of parents to "establish a home and bring up children" and "to control the education of their own."

The Court also noted as early as 1925³ that a child was not simply the creature of the State and that the people who nurture the child and direct the child's destiny have the right, and the high duty, to recognize and prepare the child for additional obligations. In 1944, the Court confirmed the right of parents to direct the upbringing of their children when it stated:

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.⁴

Finally, in recounting the history of parental authority in 1979, the Court stated, "We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected."⁵

Parental Guarantees in the State Constitution

Similarly, the Florida Supreme Court has determined that the fundamental liberty interest in parenting one's child "is protected by both the Florida and federal constitutions. In Florida, it is specifically protected by our privacy provision."⁶ The Court also noted that the state

¹ *Troxel v. Granville*, 530 U.S. 57 (2000).

² *Troxel* quoting *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923).

³ *Troxel* quoting *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925).

⁴ *Troxel* quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

⁵ *Troxel* quoting *Parham v. J.R.* 442 U.S. 584, 602 (1979).

⁶ *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996).

constitutional privacy provision contained in article I, section 23 affords greater protection than that of the federal constitution.

The Court wrote in *Winfield v. Division of Pari-Mutuel Wagering*⁷ that the standard of review that must be used to evaluate whether a state has intruded into a citizen's private life is the "compelling state interest standard." Under that test, the burden of proof is on the state to justify its intrusion on privacy. The burden can be met by the state if it demonstrates that the regulation being challenged serves a compelling state interest and the regulation accomplishes its goal by using the least intrusive means.⁸

Statutory Rights of Parents of Students

Mandatory Attendance

All children who turn 6 years by February 1 of any school year and have not attained the age of 16 years are required to attend school regularly during the entire school term.⁹ Parents have the option to comply with school attendance laws by enrolling the student in a public school; a parochial, religious, or denominational school; a private school; a home education program; or a private tutoring program.¹⁰ The district school superintendent may authorize certificates of exemptions from school attendance requirements in certain situations.¹¹ A student who holds a valid certificate of exemption is exempt from attending school although the certificate expires at the end of the school year.¹²

School District Obligations

A parent of a K-12 public school student is afforded many statutory rights.¹³ Each school district is required to:

- Provide a parent with specific information about his or her child's educational progress, comprehensive information about opportunities for involvement in the child's education, and a framework for building and strengthening partnerships among parents and school district personnel.¹⁴
- Afford a parent the opportunity to enroll his or her child in instruction for exceptional students or challenge a district school board's determination of the child's eligibility for a gifted or special education program.¹⁵
- Establish a policy enabling a parent to object to and contest specific instructional materials.¹⁶
- Notify a parent and obtain his or her consent before a public school student may be referred to or offered contraceptive services at school facilities or travel in a privately owned motor vehicle to a school function.¹⁷

⁷ *Winfield v. Division of Pari-Mutual Wagering*, 477 So. 2d 544, 548 (Fla. 1985).

⁸ *Id.*

⁹ Section 1003.21(1)(a)1, F.S.

¹⁰ Section 1002.20(2)(b), F.S.

¹¹ Section 1003.21(3), F.S.

¹² *Id.*

¹³ Section 1002.20, F.S.

¹⁴ Section 1002.23, F.S.

¹⁵ Section 1003.57, F.S.

¹⁶ Section 1006.28(2)(a)2. and 3., F.S.

¹⁷ Sections 1002.20(3)(e) and (22)(c), F.S.

Parents' Rights to Exempt Their Child from Activities

No educational agency or institution may collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student, parent, or sibling of the student.¹⁸ In addition, a parent has the right to exempt his or her child from:

- A health examination on religious grounds.¹⁹
- School immunization requirements on religious or certain health grounds.²⁰
- Performing surgery or dissection in a biological science class.²¹
- Receiving instruction on reproductive health or any disease, including HIV/AIDS.²²
- Reciting the pledge of allegiance.²³
- Reciting the Declaration of Independence.²⁴

Access to Records and Information

The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies are protected under federal law.²⁵

Specifically, a parent of a K-12 student has the right to:²⁶

- Receive accurate and timely information regarding the student's academic progress and must be informed of ways a parent can help a student succeed in school.
- Access the student's education records, including the right to inspect and review those records.
- Challenge the content of education records in order to ensure that the records are not inaccurate, misleading, or otherwise a violation of privacy or other rights.
- Privacy with respect to the student's records and reports.
- Receive annual notice of the parent's rights with respect to education records.
- Receive report cards on a regular basis that clearly depict and grade the student's academic performance in each class or course, the student's conduct, and the student's attendance.²⁷
- Receive reports at regular intervals of the academic progress and other needed information regarding the student.
- Receive timely notification of any verified report of a substance abuse violation by the student.²⁸
- Access information relating to the school district's policies for promotion or retention, including high school graduation requirements.²⁹
- Access information relating to student eligibility to participate in extra-curricular activities.³⁰

¹⁸ Section 1002.222(1)(a), F.S.

¹⁹ Section 1002.20(3)(a), F.S.

²⁰ Section 1002.20(3)(b), F.S.

²¹ Section 1002.20(3)(c), F.S.

²² Section 1002.20(3)(d), F.S.

²³ Section 1002.20(12), F.S.

²⁴ Section 1003.421(4), F.S.

²⁵ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g; and s. 1002.22, F.S.

²⁶ Sections 1002.20, 1002.22(2), and 1006.28, F.S.

²⁷ Section 1002.20(14), F.S.

²⁸ Section 1002.20(3)(g).

²⁹ Section 1008.25, F.S.

³⁰ Section 1006.195(1), F.S.

- Access information relating to the state public education system, standards, and requirements.³¹
- Access, review, object to, and challenge instructional and supplemental education materials.³²

Parental Consent for Health Care

Any medical decision made to address a student's needs is a matter between the student, the student's parent, and a competent health care professional chosen by the parent.³³ The right to consent to medical treatment for a child resides with a parent who has the legal responsibility to maintain and support the child.³⁴ District school boards may adopt policies to ensure an appropriate response in emergency situations and the provision of first aid and emergency medical care.³⁵

When parental consent cannot be obtained, a licensed physician or osteopathic physician may render emergency medical care or treatment to an injured minor or a minor who is suffering from an acute illness, disease or condition if delay would endanger the minor's health or physical well-being. This provision only applies when parental consent cannot be obtained because:

- The minor's condition has rendered him or her unable to identify his or her parents, guardian, or legal custodian and the information is not known to the person accompanying the minor to the hospital; or
- The parents, guardian, or legal custodian cannot be immediately located by telephone at their residence or business.

The hospital must notify the parent or legal guardian as soon as possible after the emergency medical care or treatment is rendered. The hospital records must contain the reason why the consent was not initially obtained and must contain a statement by the attending physician that the emergency care was necessary the minor's health or physical well-being.³⁶

The statutes provide a list of people, in order of priority, who may consent to the medical care or treatment of a minor when, after a reasonable attempt, a person with the authority to give consent cannot be contacted by a medical provider and notice to the contrary has not been given to the provider. In order of priority those people are:

- A health care surrogate.
- The stepparent.
- The grandparent of the minor.
- An adult brother or sister of the minor.
- An adult aunt or uncle of the minor.³⁷

³¹ Section 1002.23, F.S.

³² Sections 1002.20(19) and 1006.28, F.S.

³³ Section 1006.0625, F.S.

³⁴ *O'Keefe v. Orea*, 731 So. 2d 680, 686 (Fla. 1st DCA 1998).

³⁵ Section 1001.43, F.S.

³⁶ Section 743.064, F.S.

³⁷ Section 743.0645, F.S. This section does not apply to a minor who has been committed to the Department of Children and Families or the Department of Juvenile Justice.

The treating provider's records must contain documentation that a reasonable attempt was made to contact the person who has the authority to consent to the minor's care.³⁸

III. Effect of Proposed Changes:

Sections 1 and 2 – The Parents' Bill of Rights

The bill creates a new chapter in the Florida Statutes, chapter 1014, which is entitled "Parents' Bill of Rights" and contains sections 1014.01 – 1014.06, F.S.

Section 3 – Legislative Findings and Definition of "Parent"

Section 3 contains the legislative findings and a definition. In these provisions, the Legislature finds that:

- It is a fundamental right of parents to direct the upbringing, education, and care of their minor children;
- Important information relating to a minor child should not be withheld, either inadvertently or purposefully, from a parent, including information regarding the minor child's health, well-being, and education, while the child is in the custody of the school district; and
- It is necessary to establish a consistent mechanism for parents to be notified of information relating to the health and well-being of their minor children.

A parent is defined to be a person who has legal custody of a minor child as a natural or adoptive parent or a legal guardian.

Section 4 – Prohibiting Actions that Infringe on Parental Rights

The bill provides that the following entities may not infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a parent's minor child:

- The state;
- State political subdivisions;
- Any other governmental entity; or
- Any other institution.

If any of these entities infringes on a parent's fundamental right, it must demonstrate that the action is reasonable and necessary to achieve a compelling state interest and the action is narrowly tailored and is not otherwise served by a less restrictive means. This "compelling interest" standard is the highest standard of review and is discussed above in the Present Situation under "Parental Guarantees in the State Constitution."

³⁸ *Id.*

Section 5 – Parental Rights

Rights Reserved to the Parent of a Minor Child

This section establishes that all parental rights are reserved to the parent of a minor child “without obstruction or interference” by any of the above-referenced governmental entities. Those rights include, but are not limited to the right to:

- Direct the education and care of the minor child.
- Direct the upbringing and the moral or religious training of the minor child.
- Apply to enroll the minor child in a public school or, as an alternative to public education, a private school, religious school, a home education program, or other available option as authorized by law.
- Access and review all school records relating to the minor child.
- Make health care decisions for the minor child, unless otherwise prohibited by law.
- Access and review all medical records of the minor child, unless prohibited by law or if the parent is the subject of an investigation of a crime committed against the minor child and a law enforcement agency or official requests that the information not be released.
- Consent in writing before a biometric scan of the minor child is made, shared, or stored.
- Consent in writing before any record of the minor child’s blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.
- Consent in writing before the state or any of its political subdivisions makes a video or voice recording of the minor child unless the recording is made during or as part of a court proceeding, or is made as part of a forensic interview in a criminal or Department of Children and Families investigation, or is to be used solely for the following purposes:
 - A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;
 - A purpose related to a legitimate academic or extracurricular activity;
 - A purpose related to regular classroom instruction;
 - Security or surveillance of buildings or grounds; or
 - A photo identification card.
- Be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has first been reported to a law enforcement agency or the Department of Children and Families and notifying the parent would impede the investigation.
- Consent in writing before his or her minor child’s grades are released to a law enforcement officer of law enforcement agency by an agency or institution as defined in s. 1002.22, F.S., unless the release is authorized by s. 1002.221, F.S., and in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g.

The bill clarifies that the rights expressed in this section do not:

- Authorize a parent of a minor child to engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law;
- Condone, authorize, approve, or apply to a parental action or decision that would end life;

- Prohibit a court of competent jurisdiction, law enforcement officer, or employee of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority; or
- Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

Discipline

Any employee of any of the above-referenced entities who encourages or coerces, or attempts to encourage or coerce a minor child to withhold information from his or her parent may be subject to disciplinary action.

Inalienable Rights

The final subsection states that a parent of a minor child has inalienable rights that are more comprehensive than those enumerated in this section, unless those rights have been legally waived or terminated. The bill also provides that the chapter does not prescribe all of a parent's rights and unless required by law, a parent's rights may not be limited or denied. Additionally, the chapter may not be construed to apply to a parental action or decision that would end life.

Section 6 – School District Notifications on Parental Rights

The bill requires each school board, in consultation with parents, teachers, and administrators, to develop and then adopt a policy that promotes parental involvement in the public school system. The policy must include:

- A plan, pursuant to s. 1002.23, F.S., for parental participation to improve parent and teach cooperation in areas such as homework, school attendance, and discipline.
- A program, pursuant to s. 1002.20(19)(b), F.S., for a parent to learn about the minor child's course of study, including the source of any supplemental education materials.
- Procedures for a parent to object to instructional materials and other materials used in the classroom. The objections may be based on beliefs regarding morality, sex, or religion or the belief that the materials or activities are harmful. Instructional materials are defined in s. 1006.28(2), F.S.,³⁹ and may include other materials used in the classroom, but are not limited to, textbooks, workbooks and worksheets, handouts, software, applications, and any digital media available to students.
- Procedures, pursuant to s. 1002.20(3)(d), F.S. for a parent to withdraw the minor child from any portion of the school district's plan as required under s. 1003.42(2)(n), F.S., which relates to sex education or instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality if the parent provides a written objection to the child's participation. The procedures must provide for a parent to be notified in advance of the course content so that he or she may withdraw the child from those portions of the course.

³⁹ "Instructional materials" means items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher may also offer sections of state-adopted instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers. Section 1006.29(2), F.S.

- Procedures, pursuant to s. 1006.195(1)(a), F.S., for a parent to learn about the nature and purpose of clubs and activities at the child's school, including those that are extracurricular or part of the school curriculum.
- Procedures for a parent to learn about parental rights and responsibilities under general law, including all of the following:
 - The right to opt the minor child out of any portion of the school district's comprehensive health education required by statute that relates to sex education instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality.
 - A plan to disseminate information about school choice options, including open enrollment.
 - The right of a parent to exempt the minor child from immunizations.
 - The right of a parent to review statewide, standardized assessment results.
 - The right to enroll the minor child in gifted or special education programs.
 - The right of a parent to inspect school district instructional materials.
 - The right of a parent to access information relating to the school district's policies for promotion or retention, including high school graduation requirements.
 - The right of a parent to receive a school report card and be informed of the child's attendance requirements.
 - The right of a parent to access information relating to the state public education system, state standards, report card requirements, attendance requirements, and instructional materials requirements.
 - The right of a parent to participate in parent-teacher association and organizations sanctioned by a district school board or the Department of Education.
 - The right of a parent to opt out of any district-level data collection relating to the minor child that is not required by law.

The information required in this section may be provided by the district school board electronically or posted on its website.

A parent may request, in writing, from the district school superintendent, the information required under this section. The superintendent must provide the information to the parent within 10 days. If the superintendent denies a parent's request for information or does not respond to the parent's request within 10 days, the parent may appeal the denial to the district school board. The parent's appeal must be placed on the agenda for the board's next public meeting. If it is too late for a parent's appeal to be placed on the agenda at the next meeting, it must be included on the agenda for the following meeting.

Section 7 – Parental Consent for Health Care Services

Unless the law provides otherwise a health care practitioner, as defined in s. 456.001, F.S., or someone employed by a health care practitioner, may not provide, solicit, or arrange to provide health care services or prescribe medicine to the minor child without first obtaining written consent from the parent.

A provider,⁴⁰ as defined in s. 408.803, F.S., may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written consent from the parent.

This section does not apply to services provided by a clinical laboratory unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility.

Exception

The provisions of this section which addresses parental consent for health care services do not apply to abortion, which is governed by chapter 390.

Penalties

A health care practitioner or other person who violates this section is subject to disciplinary action pursuant to s. 408.813 or s. 456.072, F.S., sections 8 and 9 of the bill, and commits a first degree misdemeanor which is punishable by up to 1 year imprisonment and a fine not to exceed \$1,000.⁴¹

Section 8 – Administrative Fines and Violations

The Agency for Health Care Administration may impose an administrative fine for a violation of the provisions regarding the parental consent for health care services. The violation is an unclassified violation and the fine may not exceed \$500 for each violation.

Section 9 – Grounds for Discipline

The Department of Health may take disciplinary action against someone who fails to comply with the parental consent requirements for health care services. The disciplinary actions range from refusing to certify a license or certify the license with restrictions, suspending or permanently revoking a license, restricting a license, imposing an administrative fine not to exceed \$10,000 for each offense, issuing a reprimand or letter of concern, placing the licensee on probation, taking corrective action, imposing an administrative fine for violations of patient rights, requiring the refund of fees billed and collected, and requiring that the practitioner to undergo remedial education.⁴²

Section 10 – Effective Date

The act takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ Section 408.803(11), F.S., defines a provider to mean any activity, service, agency, or facility regulated by the agency and listed in s. 408.802, F.S.

⁴¹ Sections 775.082(4)(a) and 775.083(1)(d), F.S.

⁴² Section 456.072(2), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The Legislature may wish to revise the bill to clarify the intent of newly added s. 1014.04 (1)(k), F.S. The new provision prohibits releasing a minor student's grades to a law enforcement officer or agency without prior parental consent unless authorized by s. 1002.221, F.S. Existing s. 1002.221(2)(c), F.S., however, permits the release of a student's education records without the written consent of the student or parent to parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and others.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 408.813 and 456.072.

This bill creates the following sections of the Florida Statutes: 1014.01, 1014.02, 1014.03, 1014.04, 1014.05, and 1014.06.

IX. Additional Information:

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

CS by Judiciary Committee on March 2, 2021:

An additional provision is added to the parental rights section of the bill. A parent must consent in writing before his or her minor child's grades may be released to a law enforcement officer or law enforcement agency unless that release is authorized in accordance with the provisions of the Family Educational Rights and Privacy Act.

- B. **Amendments:**

None.

By Senator Rodrigues

27-00890-21

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A bill to be entitled

An act relating to parental rights; creating chapter 1014, F.S.; creating s. 1014.01, F.S.; providing a short title; creating s. 1014.02, F.S.; providing legislative findings; defining the term "parent"; creating s. 1014.03, F.S.; prohibiting the state, its political subdivisions, other governmental entities, or other institutions from infringing on parental rights unless specified conditions are met; creating s. 1014.04, F.S.; prohibiting the state, its political subdivisions, other governmental entities, or other institutions from obstructing or interfering with specified parental rights; providing construction; authorizing discipline of state employees who encourage or coerce, or attempt to encourage or coerce, a minor child to withhold information from his or her parent; providing construction; creating s. 1014.05, F.S.; requiring each district school board to develop and adopt a policy to promote parental involvement in the public school system; specifying requirements for such policy; defining the term "instructional materials"; authorizing a district school board to provide such policy electronically or on its website; authorizing a parent to request certain information in writing from a district school superintendent; requiring the district school superintendent to provide requested information in a specified timeframe; authorizing a parent to appeal a district school superintendent's denial of, or failure

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to provide, requested information; requiring a district school board to place such appeal on the agenda for its next public meeting, or the subsequent meeting if it is too late to place such appeal on the next agenda; creating s. 1014.06, F.S.; prohibiting health care practitioners and their employees from providing health care services or prescribing medicinal drugs to a minor child without a parent's written consent; prohibiting a provider from allowing a medical procedure to be performed on a minor child in its facility without a parent's written consent; providing exceptions; providing applicability; providing for disciplinary action and criminal penalties; amending s. 408.813, F.S.; authorizing the Agency for Health Care Administration to impose an administrative fine on providers that violate certain parental consent requirements; amending s. 456.072, F.S.; authorizing the Department of Health to take disciplinary action against health care practitioners who fail to comply with certain parental consent requirements; providing an effective date.

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

Section 1. Chapter 1014, Florida Statutes, consisting of ss. 1014.01-1014.06, is created and shall be entitled "Parents' Bill of Rights."

Section 2. Section 1014.01, Florida Statutes, is created to read:

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59 1014.01 Short title.—This section and ss. 1014.02-1014.06
60 may be cited as the "Parents' Bill of Rights."

61 Section 3. Section 1014.02, Florida Statutes, is created to
62 read:

63 1014.02 Legislative findings and definition.—

64 (1) The Legislature finds that it is a fundamental right of
65 parents to direct the upbringing, education, and care of their
66 minor children. The Legislature further finds that important
67 information relating to a minor child should not be withheld,
68 either inadvertently or purposefully, from his or her parent,
69 including information relating to the minor child's health,
70 well-being, and education, while the minor child is in the
71 custody of the school district. The Legislature further finds
72 that it is necessary to establish a consistent mechanism for
73 parents to be notified of information relating to the health and
74 well-being of their minor children.

75 (2) For purposes of this chapter, the term "parent" means a
76 person who has legal custody of a minor child as a natural or
77 adoptive parent or a legal guardian.

78 Section 4. Section 1014.03, Florida Statutes, is created to
79 read:

80 1014.03 Infringement of parental rights.—The state, any of
81 its political subdivisions, any other governmental entity, or
82 any other institution may not infringe on the fundamental right
83 of a parent to oversee the upbringing, education, health care,
84 and mental health of his or her minor child without
85 demonstrating that such action is reasonable and necessary to
86 achieve a compelling state interest and that such action is
87 narrowly tailored and is not otherwise served by a less

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88 restrictive means.

89 Section 5. Section 1014.04, Florida Statutes, is created to
90 read:

91 1014.04 Parental rights.—

92 (1) All parental rights are reserved to the parent of a
93 minor child in this state without obstruction or interference
94 from the state, any of its political subdivisions, any other
95 governmental entity, or any other institution, including, but
96 not limited to, all of the following rights of a parent of a
97 minor child in this state:

98 (a) The right to direct the education and care of his or
99 her minor child.

100 (b) The right to direct the upbringing and the moral or
101 religious training of his or her minor child.

102 (c) The right, pursuant to s. 1002.20(2)(b) and (6), to
103 apply to enroll his or her minor child in a public school or, as
104 an alternative to public education, a private school, including
105 a religious school, a home education program, or other available
106 options, as authorized by law.

107 (d) The right, pursuant to s. 1002.20(13), to access and
108 review all school records relating to his or her minor child.

109 (e) The right to make health care decisions for his or her
110 minor child, unless otherwise prohibited by law.

111 (f) The right to access and review all medical records of
112 his or her minor child, unless prohibited by law or if the
113 parent is the subject of an investigation of a crime committed
114 against the minor child and a law enforcement agency or official
115 requests that the information not be released.

116 (g) The right to consent in writing before a biometric scan

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of his or her minor child is made, shared, or stored.

(h) The right to consent in writing before any record of his or her minor child's blood or deoxyribonucleic acid (DNA) is created, stored, or shared, except as required by general law or authorized pursuant to a court order.

(i) The right to consent in writing before the state or any of its political subdivisions makes a video or voice recording of his or her minor child, unless such recording is made during or as part of a court proceeding or is made as part of a forensic interview in a criminal or Department of Children and Families investigation or is to be used solely for the following purposes:

1. A safety demonstration, including the maintenance of order and discipline in the common areas of a school or on student transportation vehicles;

2. A purpose related to a legitimate academic or extracurricular activity;

3. A purpose related to regular classroom instruction;

4. Security or surveillance of buildings or grounds; or

5. A photo identification card.

(j) The right to be notified promptly if an employee of the state, any of its political subdivisions, any other governmental entity, or any other institution suspects that a criminal offense has been committed against his or her minor child, unless the incident has first been reported to law enforcement or the Department of Children and Families and notifying the parent would impede the investigation.

(2) This section does not:

(a) Authorize a parent of a minor child in this state to

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engage in conduct that is unlawful or to abuse or neglect his or her minor child in violation of general law;

(b) Condone, authorize, approve, or apply to a parental action or decision that would end life;

(c) Prohibit a court of competent jurisdiction, law enforcement officer, or employee of a government agency that is responsible for child welfare from acting in his or her official capacity within the reasonable and prudent scope of his or her authority; or

(d) Prohibit a court of competent jurisdiction from issuing an order that is otherwise permitted by law.

(3) An employee of the state, any of its political subdivisions, or any other governmental entity who encourages or coerces, or attempts to encourage or coerce, a minor child to withhold information from his or her parent may be subject to disciplinary action.

(4) A parent of a minor child in this state has inalienable rights that are more comprehensive than those listed in this section, unless such rights have been legally waived or terminated. This chapter does not prescribe all rights to a parent of a minor child in this state. Unless required by law, the rights of a parent of a minor child in this state may not be limited or denied. This chapter may not be construed to apply to a parental action or decision that would end life.

Section 6. Section 1014.05, Florida Statutes, is created to read:

1014.05 School district notifications on parental rights.-

(1) Each district school board shall, in consultation with parents, teachers, and administrators, develop and adopt a

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175 policy to promote parental involvement in the public school
176 system. Such policy must include:

177 (a) A plan, pursuant to s. 1002.23, for parental
178 participation in schools to improve parent and teacher
179 cooperation in such areas as homework, school attendance, and
180 discipline.

181 (b) A program, pursuant to s. 1002.20(19)(b), for a parent
182 to learn about his or her minor child's course of study,
183 including the source of any supplemental education materials.

184 (c) Procedures, pursuant to s. 1006.28(2)(a)2., for a
185 parent to object to instructional materials and other materials
186 used in the classroom. Such objections may be based on beliefs
187 regarding morality, sex, or religion or on the belief that such
188 materials are harmful. For purposes of this section, the term
189 "instructional materials" has the same meaning as in s.
190 1006.29(2) and may include other materials used in the
191 classroom, including workbooks and worksheets, handouts,
192 software, applications, and any digital media made available to
193 students.

194 (d) Procedures, pursuant to s. 1002.20(3)(d), for a parent
195 to withdraw his or her minor child from any portion of the
196 school district's comprehensive health education required under
197 s. 1003.42(2)(n) which relates to sex education or instruction
198 in acquired immune deficiency syndrome education or any
199 instruction regarding sexuality if the parent provides a written
200 objection to his or her minor child's participation. Such
201 procedures must provide for a parent to be notified in advance
202 of such course content so that he or she may withdraw his or her
203 minor child from those portions of the course.

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(e) Procedures, pursuant to s. 1006.195(1)(a), for a parent to learn about the nature and purpose of clubs and activities offered at his or her minor child's school, including those that are extracurricular or part of the school curriculum.

(f) Procedures for a parent to learn about parental rights and responsibilities under general law, including all of the following:

1. Pursuant to s. 1002.20(3)(d), the right to opt his or her minor child out of any portion of the school district's comprehensive health education required under s. 1003.42(2)(n) which relates to sex education instruction in acquired immune deficiency syndrome education or any instruction regarding sexuality.

2. A plan to disseminate information about school choice options, pursuant to s. 1002.20(6), including open enrollment.

3. In accordance with s. 1002.20(3)(b), the right of a parent to exempt his or her minor child from immunizations.

4. In accordance with s. 1008.22, the right of a parent to review statewide, standardized assessment results.

5. In accordance with s. 1003.57, the right of a parent to enroll his or her minor child in gifted or special education programs.

6. In accordance with s. 1006.28(2)(a)1., the right of a parent to inspect school district instructional materials.

7. In accordance with s. 1008.25, the right of a parent to access information relating to the school district's policies for promotion or retention, including high school graduation requirements.

8. In accordance with s. 1002.20(14), the right of a parent

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to receive a school report card and be informed of his or her
minor child's attendance requirements.

9. In accordance with s. 1002.23, the right of a parent to
access information relating to the state public education
system, state standards, report card requirements, attendance
requirements, and instructional materials requirements.

10. In accordance with s. 1002.23(4), the right of a parent
to participate in parent-teacher associations and organizations
that are sanctioned by a district school board or the Department
of Education.

11. In accordance with s. 1002.222(1)(a), the right of a
parent to opt out of any district-level data collection relating
to his or her minor child not required by law.

(2) A district school board may provide the information
required in this section electronically or post such information
on its website.

(3) A parent may request, in writing, from the district
school superintendent the information required under this
section. The district school superintendent must provide such
information to the parent within 10 days. If the district school
superintendent denies a parent's request for information or does
not respond to the parent's request within 10 days, the parent
may appeal the denial to the district school board. The district
school board must place a parent's appeal on the agenda for its
next public meeting. If it is too late for a parent's appeal to
appear on the next agenda, the appeal must be included on the
agenda for the subsequent meeting.

Section 7. Section 1014.06, Florida Statutes, is created to
read:

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1014.06 Parental consent for health care services.—

(1) Except as otherwise provided by law, a health care practitioner as defined in s. 456.001 or an individual employed by such health care practitioner may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor child without first obtaining written parental consent.

(2) Except as otherwise provided by law or a court order, a provider as defined in s. 408.803 may not allow a medical procedure to be performed on a minor child in its facility without first obtaining written parental consent.

(3) This section does not apply to an abortion, which is governed by chapter 390.

(4) This section does not apply to services provided by a clinical laboratory, unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility. For purposes of this subsection, the term "clinical laboratory" has the same meaning as provided in s. 483.803.

(5) A health care practitioner or other person who violates this section is subject to disciplinary action pursuant to s. 408.813 or s. 456.072, as applicable, and commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. Paragraph (f) is added to subsection (3) of section 408.813, Florida Statutes, to read:

408.813 Administrative fines; violations.—As a penalty for any violation of this part, authorizing statutes, or applicable rules, the agency may impose an administrative fine.

(3) The agency may impose an administrative fine for a

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violation that is not designated as a class I, class II, class
III, or class IV violation. Unless otherwise specified by law,
the amount of the fine may not exceed \$500 for each violation.

Unclassified violations include:

(f) Violating the parental consent requirements of s.
1014.06.

Section 9. Paragraph (rr) is added to subsection (1) of
section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which
the disciplinary actions specified in subsection (2) may be
taken:

(rr) Failure to comply with the parental consent
requirements of s. 1014.06.

Section 10. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining,
Alternating Chair
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

January 28, 2021

The Honorable Jeff Brandes
Senate Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 582 – Parental Rights

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 582, relating to parental rights, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Ray Rodriguez".

Ray Rodriguez
Senate District 27

Cc: Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Celia Georgiades, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/21

Meeting Date

582

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Director

Address 2024 Shangri La Lane

Phone 850 322 3319

Street

Tally

FL

32303

Email _____

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing League Women Voters Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-21

Meeting Date

582

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Barbara Devane

Job Title _____

Address 625 E. Brevard St
Street

Phone 251-4280

City

State

Zip

Email barbadevane1@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

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

SB 582

Bill Number (if applicable)

Topic Parent's Rights

Amendment Barcode (if applicable)

Name Jon Harris Maurer

Job Title Public Policy Dir.

Address 201 E. Park Ave, Ste. 200A

Phone 850 681 0980

Street

TLH

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Equality Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

APPEARANCE RECORD

J60

3/2/21
Meeting Date

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

592
Bill Number (if applicable)

Topic PARENTAL RIGHTS

Amendment Barcode (if applicable)

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 1308 WINDSOR PL
Street
JACKSONVILLE FL 32205
City State Zip

Phone 813 435 5335

Email advocacy@floridachurches.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL FAITH ADVOCACY OFFICE

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.

Judiciary

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2001

Meeting Date

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

582

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Executive Director

Address 579 E. Call St.

Phone 850-321-9386

Street Tallahassee

City FL

State 32301

Zip

Email fctep@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Center for Fiscal + Economic Policy

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)

3-22-1

Meeting Date

582

Bill Number (if applicable)

Topic Parental Bill of Rights

Amendment Barcode (if applicable)

Name Devon Graham

Job Title Assistant State Director (American Atheists)

Address _____ Phone _____

Street

City

State

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing American Atheists.

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

3/2/2021

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

582

Meeting Date

Bill Number (if applicable)

Topic Parental Bill of Rights

Amendment Barcode (if applicable)

Name Laura Hernandez

Job Title Legislative Manager

Address 8889 Fontainebleau Blvd #202

Phone 776-547-0083

Street

Miami

FL

33172

City

State

Zip

Email Laura.Hernandez@prshc.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Alliance of Planned Parenthood Affiliates

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

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

Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/21

Meeting Date

582

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Counsel

Address P.O. Box 10788

Phone 850-570-9560

Street

Tallahassee

FL

32311

Email carrie.boyd@splcenter.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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

582
Bill Number (if applicable)

Topic Parent Bill of Rights

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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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/2021

Meeting Date

SB 582

Bill Number (if applicable)

Topic Parental Rights

Amendment Barcode (if applicable)

Name Michael Barrett

Job Title Associate for Education

Address 201 W. Park Ave

Phone (850) 205-6823

Street

Tallahassee

FL

32301

Email mbarrett@flacathconf.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/2/21
Meeting Date

582
Bill Number (if applicable)

Topic Parental Rights

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

City

State

Zip

Email kgross@aclufl.org

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.

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

March 2nd 2021

Meeting Date

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

SB 582

Bill Number (if applicable)

Topic

Parental Rights

Amendment Barcode (if applicable)

Name

David Sendar

Job Title

Senior Concerned Citizen

City School Board Parent
Lone Man
Sunter & Brewer
Deceased in 3041

Address

16 Wintergreen Drive

Street

Fruitland Park FL 34731

Phone

City

State

Zip

Email

Elementary School
Principal

Speaking:

☐

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

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

He went to
same school

Representing

Self

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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

S-001 (10/14/14)

COMMITTEE: Judiciary
ITEM: SB 582
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

| FINAL VOTE | | | 3/02/2021 Amendment 911724 late-filed | ¹ | 3/02/2021 Motion to change vote to "YEA" after Roll Call | ² | |
|------------|------------|--------------------|--|--------------|---|--------------|---------------------|
| Yea | Nay | SENATORS | Brandes | | Gibson | | |
| X | | Baxley | | | | | |
| X | | Boyd | | | | | |
| X | | Bradley | | | | | |
| X | | Broxson | | | | | |
| X | | Mayfield | | | | | |
| | X | Polsky | | | | | |
| X | | Rodrigues | | | | | |
| | X | Rouson | | | | | |
| | X | Thurston | | | | | |
| VC | | Gibson, VICE CHAIR | | | | | |
| X | | Brandes, CHAIR | | | | | |
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| 8 | 3 | | RCS | - | FAV | - | |
| Yea | Nay | TOTALS | Yea | Nay | Yea | Nay | Yea Nay |

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 748

INTRODUCER: Judiciary Committee and Senator Brandes

SUBJECT: Courts

DATE: March 3, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Davis | Cibula | JU | Fav/CS |
| 2. | | | ACJ | |
| 3. | | | AP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 748 revises a broad range of statutes that govern the operation of the court system. Some of the diverse changes are made to accommodate developments in technology, some reflect the impact COVID-19 has had on the court system, and one change recognizes the effect of inflation on the monetary jurisdictional thresholds in the county courts.

- The bill updates provisions controlling the maintenance of appellate court records to allow the electronic storage of court records at a remote location. These provisions are updated to keep pace with electronic technology rather than require the court clerk to keep manual control of the records.
- The clerks of court, working with the Florida Courts Technology Commission, must prepare a plan to procure or develop a statewide electronic solution that identifies all civil and criminal mandatory financial assessments required by statute.
- The jurisdictional amount of county courts will be adjusted beginning in 2030, and every 10 years afterwards, to account for inflation based on changes in the Consumer Price Index.
- The bill authorizes a person to postpone for jury service for up to 1 year when a public health emergency or a state of emergency is declared.

- Finally, the bill revises three criminal statutes to authorize the taking and certification of fingerprints when a guilty judgment is entered in a proceeding that is conducted remotely. The fingerprints no longer must be taken in open court and in the judge's presence.

The bill takes effect July 1, 2021.

II. Present Situation:

Responsibilities of the Clerk of the Florida Supreme Court

Chapter 25, F.S., is devoted to the organization and operation of the Florida Supreme Court. Among the provisions in the chapter are two statutes detailing the responsibilities of the Clerk of the Supreme Court. The clerk must keep all books, papers, records, files, and the seal of the Court in the clerk's office in the Supreme Court Building and in his or her custody.¹

Additionally, any decisions and opinions delivered by the Court or any justice must be filed and remain in the clerk's office. These decisions and opinions may not be removed unless ordered by the Court. The clerk is required to furnish certified copies of the decisions and opinions to any person who requests them and pays the necessary fees.² These statutes do not accommodate the developments in technology that allow for digital storage in a remote location.

Mandatory Monetary Assessments

The clerks of the circuit courts were required, by October 1, 2012, to develop a uniform form for the identification and imposition of all assessments mandated by statute. The clerks were required to work with their association and in consultation with the Office of the State Courts Administrator to develop the form. An assessment includes, but is not limited to, a fine or other monetary penalty, fee, service charge, or cost. The clerks are currently required to submit that form by October 1 of each year to the Supreme Court for approval. The form must contain updates to reflect recent changes made in the law. Once a form is approved by the Court, all circuit and county courts must use the form.³

According to information supplied in the *Judicial Branch 2021 Legislative Agenda*, the clerks' association, the Florida Court Clerks and Comptrollers, submitted the initial form matrix as required on October 1, 2012, and updated the form annually. The matrix is a catalogue of mandatory and discretionary fines, fees, charges, and costs in many areas, both civil and criminal. It provides the necessary statutory authority for each item with a brief description, states whether the item is mandatory or discretionary, provides the minimum and maximum amounts authorized, and often contains brief comments on the assessment.⁴ *The Judicial Branch 2021 Legislative Agenda* further states that the Supreme Court has never approved the form matrix because of "concerns that it is not a form within the meaning of the statute." However, the

¹ Section 25.221, F.S.

² Section 25.301, F.S.

³ Section 28.2457(1), (2), and (3), F.S.

⁴ Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, (January 21, 2021) (on file with the Senate Committee on Judiciary).

chief justice has provided the document each year to the chief judges of the trial courts for their use as a possible resource.⁵

The Judicial Management Council's Workgroup on Court Costs and Fines⁶ was established on December 31, 2018, within the Judicial Management Council. Its purpose is to review monetary assessments and identify methods that will reduce the disproportionate impact the assessments have on low income individuals.⁷ In June 2020, the Workgroup finalized its report, *Court Costs and Fines in Florida*, and the report was approved by the Judicial Management Council on August 31, 2020. The Workgroup recommended:

- Removing from statute the requirement for a uniform form for identifying and imposing assessments that the clerks produce; and
- Working in cooperation with the clerks of court to develop reforms, using an electronic system, to standardize the ability to identify and impose assessments and payments.

The Supreme Court approved these recommendations on November 4, 2020, at the Court Conference for consideration by the Legislature.⁸

Jurisdictional Amount of County Courts

A county court is a trial court that has jurisdiction over the following types of cases within its jurisdictional or monetary limits:

- All criminal misdemeanor cases not cognizable by the circuit courts.
- All violations of municipal and county ordinances.
- Disputes occurring in homeowner associations, but this jurisdiction is concurrent with the jurisdiction of the circuit courts.⁹

The statute governing the jurisdiction of county courts was amended in 2018 to increase the maximum jurisdictional amount of county courts in a three-step process. For all actions, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees, the jurisdictional amount is:

- \$15,000 if filed on or before December 31, 2019.
- \$30,000 if filed on or after January 1, 2020.
- \$50,000 if filed on or after January 1, 2023.¹⁰

⁵ *Id.*, at 13.

⁶ The Judicial Management Councils are described as “high-level management consultants” to the Florida Supreme Court. The first Judicial Management Council was established in 2012 and the current council is the Court’s fifth council. Each council is composed of 15 voting members including the Chief Justice and one other justice, members of each level of the court system, and members from the public. The council meets at least quarterly and is tasked with identifying potential crisis situations for the judiciary and developing strategies to meet those concerns; evaluating information that will improve the effectiveness and performance of the judicial branch; developing and monitoring the judiciary’s long-range planning work; reviewing the charges of the courts and Florida Bar commissions and committees, making revisions and proposing ways to coordinate the work of these groups; and addressing issues that the Supreme Court brings before the council. <https://www.flcourts.org/Administration-Funding/Judicial-Management-Council>

⁷ Fla. Admin. Order No. AOSC18-77.

⁸ *Judicial Branch Legislative Agenda*, *supra* note 4, at 15.

⁹ Section 34.01(1), F.S.

¹⁰ *Id.*; Ch. 2019-58, s. 9, Laws of Fla.

When the statute was amended in 2018, an additional provision was included requiring the Office of the State Courts Administrator to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2021. The report was to include recommendations regarding the adjustment of county court jurisdiction that considered the claim value of filings in both county and circuit courts, case events, the timeliness in processing cases, as well as any fiscal impact to the state resulting from the adjusted jurisdictional limits. The clerks of the county and circuit courts were tasked with providing data to assist in developing the report. The report was to include a review of fees to ensure that the court system is adequately funded and a review of the appellate jurisdiction of the district and circuit courts, including the use of appellate panels by circuit courts.

The Office of the State Courts Administrator issued its report entitled “Recommendations Regarding the Adjustment of County Court Jurisdiction” on February 1, 2021.¹¹

Maintenance of Appellate Court Records in the District Courts of Appeal

The statutes contain a number of provisions directing how court records are to be stored. Unfortunately, many of these provisions have become outdated and have not kept pace with changes in electronic technology and storage. Section 35.15, F.S., states that all decisions and opinions delivered by the district courts of appeal or one its judges must be filed and remain in the office of the clerk. The decisions and opinions may not be taken from the clerk’s office except by court order. However, the clerk must furnish to anyone who desires certified copies of the opinions and decision upon payment of the appropriate fees.

Section 35.24, F.S., requires each clerk for a district court of appeal to physically keep his or her records at the headquarters of the court. This provision does not envision advancements in technology and electronic storage that would permit a clerk to store records electronically at a remote location.

In a similar manner, s. 35.24, F.S., requires that all books, papers, records, files, and the court seal be kept in the clerk’s office. This also precludes electronic storage of these items at a remote location.

Jury Duty Postponement

The clerks of the court are responsible for summoning prospective jurors at least 14 days before they are to appear in court for jury selection.¹² If a person is summoned to attend as a juror and fails to attend without providing a sufficient excuse, he or she may be required to pay a fine that does not exceed \$100 and may be held in contempt of court.¹³

If someone has been summoned for jury duty, jury service may be postponed for up to 6 months once a written or oral request is made. The request may specify a date or time period to which

¹¹ Office of the State Courts Administrator, *Recommendations Regarding the Adjustment of County Court Jurisdiction*, (February 1, 2021) (on file with the Senate Committee on Judiciary).

¹² Section 40.23(1), F.S.

¹³ Section 40.23(3), F.S.

the service is to be postponed, and if that is stated, he or she will be given consideration for service once the assignment of the postponed date of jury service is made.¹⁴

According to the *Judicial Branch 2021 Legislative Agenda*, jury service in Florida has been postponed since March 2020 because of the COVID-19 pandemic. Once jury service resumes, some people who are summoned may not be able to attend on a particular date due to complications created by the pandemic. The examples are given that the person summoned might recently have returned to work after being unemployed during the pandemic or might be responsible for the care of someone who is at greater risk of health complications if he or she is exposed to COVID-19.¹⁵

Fingerprinting a Defendant upon Conviction

The criminal law statutes detail procedures that must be followed when a judgment is entered in certain misdemeanor and all felony offenses. A judgment of guilty or not guilty for a misdemeanor petit theft offense¹⁶ or a felony offense¹⁷ must contain:

- A written record, signed by the judge, and recorded by the clerk of the circuit court; or
- An electronic record that contains the judge's electronic signature and is recorded by the clerk of the circuit court.

To enter a written or electronic judgment of guilt involving petit theft and all felonies, the judge must, in open court, and in the judge's presence, have the defendant's fingerprints taken either manually or electronically, sign a certificate certifying that the fingerprints on the judgment are the defendant's fingerprints and that they were placed on the certificate in the judge's presence, and for a felony judgment, cause the defendant's social security number to be recorded. It is the opinion of some practitioners that these statutes do not appear to allow for a proceeding to be conducted remotely.

III. Effect of Proposed Changes:

Responsibilities of the Clerk of the Florida Supreme Court (Sections 1 and 2)

The requirement that the clerk keep all books, papers, records, files, and the seal in his or her office and custody is amended. The revised language reflects developments in technology and electronic storage and requires that those items be "maintained" by the clerk and in the clerk's "control" as prescribed by the Supreme Court. The clerk is no longer required to physically keep them in the clerk's office and custody but is permitted to electronically store records at a remote location.

¹⁴ Section 40.23(2), F.S.

¹⁵ Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 9 (January 21, 2021) (on file with the Senate Committee on Judiciary.)

¹⁶ Section 812.014(3)(d), F.S.

¹⁷ Section 921.241, F.S.

Mandatory Monetary Assessments (Section 3)

Section 28.2457(2), F.S., is amended to delete the requirements that the uniform form developed by the circuit court clerks be updated and submitted annually to the Supreme Court for approval and later distribution. Under the bill, the clerks of the circuit courts must collaborate with the state courts through the Florida Courts Technology Commission¹⁸ to prepare a plan to procure or develop a statewide electronic solution that will accurately identify all civil and criminal assessments required by statute. At a minimum, the plan must address operational, technological, and fiscal considerations involved in implementing the electronic solution. The clerks must submit the plan to the President of the Senate and the Speaker of the House of Representatives by January 1, 2022.

Jurisdiction Amount of County Courts (Section 4)

The statute defining the jurisdiction of the county courts is amended to delete the now obsolete provision requiring the Office of the State Courts Administrator to publish a report by February 1, 2021.

A new provision is added requiring the \$50,000 jurisdictional amount for cases that will be filed on or after January 1, 2023, to be adjusted in accordance with changes in the Consumer Price Index. Effective January 1, 2030, and every 10 years after, the \$50,000 limit will be adjusted by the percentage change in the average of the Consumer Price Index for the most recent 12-month period that ends on September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2022. The adjusted jurisdictional limit is required to be rounded to the nearest \$1,000.

Maintenance of Appellate Court Records in the District Courts of Appeal (Sections 5, 6, and 7)

Section 35.15, F.S., as amended, no longer requires that decisions and opinions be kept in the physical office of the clerks, but requires them to be kept under the clerk's "maintenance or control." The decisions and opinions, however, may be taken from the clerk's maintenance or control when ordered by the court. These revisions permit the electronic storage of records at a remote locations and reflects an adaptation to advancements in technology.

Section 35.23, F.S., is amended to provide that a clerk must no longer "keep his or her records" at the headquarters of the district court of appeal, but rather to "have an office" at the headquarters of the court. This revision permits the use of electronic technology to store records at a remote location in accordance with the revision to s. 35.24, F.S., which no longer requires the clerk to keep the books, papers, records, files, and the seal of the court in his or her office. As amended, these items must be maintained by, and in the control of, the clerk.

¹⁸ The Florida Courts Technology Commission was created by the Florida Supreme Court in 2010. The Commission is composed of 25 members who are tasked with the responsibility of "overseeing, managing, and directing the development and use of technology within the judicial branch under the direction of the Court." The Commission must submit an annual report by April 1 each year.
<https://www.flcourts.org/content/download/579375/file/FCTC%20Operational%20Procedures%20-%20Feb%202020.pdf>.

Jury Duty Postponement (Section 8)

The bill creates an additional postponement period of up to 12 months for someone who has been summoned for jury service. If the State Health Officer declares a public health emergency pursuant to s. 381.00315, F.S., or the Governor declares a state of emergency pursuant to s. 252.36(2), F.S., a person who has been summoned may have his or her service postponed from for up to 12 months upon a written or oral request. As with the existing 6 month postponement in statute, the request may specify a date or time period to which the service is to be postponed and may be given consideration when an assignment of jury service is made.

Fingerprinting a Defendant upon Conviction (Sections 9, 10, and 11)

The pandemic has significantly limited the number of in-person criminal court proceedings which is creating a backlog of pending cases. The Florida Supreme Court's COVID-19 workgroup has studied options for resolving criminal cases remotely without the requirement of proceedings conducted in court. The Workgroup determined that the Florida Rules of Criminal Procedure could be adopted to authorize a criminal defendant to expressly request and be given approval by the court to either enter a plea of guilty or nolo contendere in a remote proceeding using audio-visual technology. To make this possible, the Workgroup has recommended that several statutes be amended.¹⁹

Because current law requires that a defendant be fingerprinted in open court in the judge's presence, it appears that current laws must be amended to establish a court's authority to take fingerprints at the time a judgment is entered in a remotely conducted proceeding.²⁰

Section 812.014, F.S., relating to petit theft, s. 921.241, F.S., relating to felony judgments, and s. 921.242, F.S., relating to prostitution offenses, are amended to:

- Authorize the fingerprinting of a defendant, either manually or electronically, when a guilty judgment is entered in a proceeding that is conducted outside of court or outside of the judge's presence.
- Delete the requirement that a judge must certify that a defendant's fingerprints were taken in open court and in the judge's presence.
- Require that the certification be entered by a court officer, employee of the court, or the employee of a criminal justice agency who captured the fingerprints. If taken manually, the person who took the fingerprints must place his or her written signature on the certification. If taken electronically, he or she must place a written or electronic signature on the certification. The fingerprints and certification must be filed in the case.
- Delete the requirement that a defendant's social security number be taken when his or her fingerprints are taken.

The bill takes effect July 1, 2021.

¹⁹ Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 10-12 (January 21, 2021) (on file with the Senate Committee on Judiciary).

²⁰ *Id.* at 11.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.221, 25.301, 28.2457, 34.01, 35.15, 35.23, 35.24, 40.23, 812.014, 921.241, and 921.242.

IX. Additional Information:

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

CS by Judiciary Committee on March 2, 2021:

The committee substitute makes changes to the underlying bill in two areas: mandatory monetary assessments and fingerprinting defendants. The clerks of court must work with the Florida Courts Technology Commission to develop a plan for a technology solution that tracks all civil and criminal monetary assessments. The plan must be submitted to legislative leaders by January 1, 2022. The fingerprinting section now permits fingerprints to be taken manually or electronically, regardless of whether the judgment is a written judgment or electronic judgment. The defendant's fingerprints and the certification of the person who took the fingerprints must be filed in the case in which the judgment is entered.

- B. **Amendments:**

None.

By Senator Brandes

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A bill to be entitled
An act relating to courts; amending s. 25.221, F.S.;
deleting the requirement that the Clerk of the Supreme
Court physically keep books, records, and other
materials in the clerk's office; amending s. 25.301,
F.S.; deleting the requirement that Supreme Court
decisions and orders remain in the clerk's office;
amending s. 28.2457, F.S.; requiring clerks of court
to develop a plan to procure or develop by a specified
date a statewide technological solution for
identifying mandatory monetary assessments in criminal
cases; deleting a provision requiring the clerks to
annually submit a uniform form for identification and
imposition of mandated assessments to the Supreme
Court; amending s. 34.01, F.S.; providing for the
periodic inflationary adjustment of the monetary
jurisdictional limit applicable to all actions at law
in county courts filed on or after a specified date,
beginning in 2030; deleting obsolete language;
amending s. 35.15, F.S.; deleting the requirement that
decisions and orders of district courts of appeal
remain in the office of the clerk of any such court;
amending s. 35.23, F.S.; requiring the clerk of a
district court of appeal to have an office at the
headquarters of the court; deleting a requirement that
the clerk keep records at the headquarters office;
amending s. 35.24, F.S.; deleting the requirement that
the clerk of a district court of appeal physically
keep books, records, and other materials in the

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clerk's office; amending s. 40.23, F.S.; authorizing any person who has been summoned for jury service to postpone such service for an additional timeframe in the event of a declared public health emergency or a state of emergency; specifying requirements for any such request; amending s. 812.014, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt of petit theft; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; amending s. 921.241, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt for a felony; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal justice agency who captures fingerprints to sign a specified certification; conforming a provision to changes made by the act; removing the requirement that a judge obtain a defendant's social security number at the time of fingerprinting; amending s. 921.242, F.S.; removing the requirement that fingerprints be taken in open court and in the judge's presence upon a judgment of guilt for an offense under ch. 796, F.S.; authorizing the electronic capture of fingerprints; requiring the court officer, the employee of the court, or the employee of a criminal

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justice agency who captures fingerprints to sign a specified certification; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 25.221, Florida Statutes, is amended to read:

25.221 Maintenance Custody of books, records, and other materials etc.—All books, papers, records, files, and the seal of the Supreme Court must be maintained by ~~shall be kept in the office of the clerk of said court~~ and be in the clerk's control, as prescribed by the Supreme Court eustody.

Section 2. Section 25.301, Florida Statutes, is amended to read:

25.301 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the Supreme said Court, or any justice thereof, relating in relation to any action or proceeding pending in the said court must ~~shall~~ be filed and ~~remain~~ in the office of the clerk and maintained by the clerk in the manner prescribed by the Supreme Court. Such decisions or opinions may, ~~and shall~~ not be taken out from the clerk's maintenance or control except by order of the court; however, the but said clerk must shall at all times be required to furnish certified copies of such opinions and decisions to any person who makes such a request ~~may desire the same certified copies of such opinions and decisions~~, upon receiving any required fees ~~his or her fees therefor~~.

Section 3. Subsection (2) of section 28.2457, Florida

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Statutes, is amended to read:

28.2457 Mandatory monetary assessments.—

(2) By October 1, 2021, the clerks of court, through their association and with the assistance of the Florida Courts Technology Commission ~~in consultation with the Office of the State Courts Administrator,~~ shall develop a plan to procure or develop a statewide technological solution that will help accurately identify mandatory monetary assessments in criminal cases ~~by October 1, 2012, a uniform form for the identification and imposition of all assessments mandated by statute. The clerks shall submit the form by that date, and by October 1 every year thereafter if necessary to reflect changes in the law, to the Supreme Court for approval. Upon approval of the form by the Supreme Court, all circuit and county courts shall use the form.~~

Section 4. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts.

(b) Of all violations of municipal and county ordinances.

(c) Of all actions at law, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:

1. If filed on or before December 31, 2019, the sum of \$15,000.

2. If filed on or after January 1, 2020, the sum of

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117 \$30,000.

118 3. If filed on or after January 1, 2023, the sum of
119 \$50,000.

120
121 The \$50,000 jurisdictional limit in subparagraph 3. shall be
122 adjusted, effective January 1, 2030, and every 10 years
123 thereafter, by the percentage change in the average of the
124 Consumer Price Index issued by the United States Department of
125 Labor for the most recent 12-month period ending on September
126 30, compared to the base year average, which is the average for
127 the 12-month period ending September 30, 2022. The adjusted
128 jurisdictional limit must be rounded to the nearest \$1,000.

129 (d) Of disputes occurring in the homeowners' associations
130 as described in s. 720.311(2)(a), which shall be concurrent with
131 jurisdiction of the circuit courts.

132
133 ~~By February 1, 2021, the Office of the State Courts~~
134 ~~Administrator shall submit a report to the Governor, the~~
135 ~~President of the Senate, and the Speaker of the House of~~
136 ~~Representatives. The report must make recommendations regarding~~
137 ~~the adjustment of county court jurisdiction, including, but not~~
138 ~~limited to, consideration of the claim value of filings in~~
139 ~~county court and circuit court, case events, timeliness in~~
140 ~~processing cases, and any fiscal impact to the state as a result~~
141 ~~of adjusted jurisdictional limits. The clerks of the circuit~~
142 ~~court and county court shall provide claim value data and~~
143 ~~necessary case event data to the office to be used in~~
144 ~~development of the report. The report must also include a review~~
145 ~~of fees to ensure that the court system is adequately funded and~~

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~~a review of the appellate jurisdiction of the district courts and the circuit courts, including the use of appellate panels by circuit courts.~~

Section 5. Section 35.15, Florida Statutes, is amended to read:

35.15 Decisions to be filed; copies to be furnished.—All decisions and opinions delivered by the district courts of appeal, or any judge thereof, relating in relation to any action or proceeding pending in such said court must shall be filed and ~~remain~~ in the office of the clerk and maintained in the control of the clerk. Such decisions and opinions may, and shall not be taken from the clerk's maintenance or control therefrom except by order of the court; however, the but said clerk must shall at all times be required to furnish certified copies of such opinions and decisions to any person who makes such a request ~~may desire the same certified copies of such opinions and decisions, upon receiving any required fees his or her fees therefor.~~

Section 6. Section 35.23, Florida Statutes, is amended to read:

35.23 Location of clerk's office.—Each clerk shall have an office ~~keep his or her records~~ at the headquarters of the district court of appeal.

Section 7. Section 35.24, Florida Statutes, is amended to read:

35.24 Maintenance Custody of books, records, and other materials etc.—All books, papers, records, files and the seal of each district court of appeal shall be maintained by, and in the control of, kept in the office of the clerk of the said court.

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Section 8. Subsection (2) of section 40.23, Florida Statutes, is amended to read:

40.23 Summoning jurors.—

(2) The jury service of any person who has been summoned may be postponed for a period not to exceed 6 months upon written or oral request. However, if either a public health emergency has been declared by the State Health Officer pursuant to s. 381.00315 or a state of emergency has been declared by the Governor pursuant to s. 252.36(2), the jury service of any person who has been summoned may be postponed for a period not to exceed 12 months upon written or oral request. The request may specify a date or period of time to which service is to be postponed and, if so, shall be given consideration when the assignment of the postponed date of jury service is made.

Section 9. Paragraph (d) of subsection (3) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(3)

(d)1. A judgment of guilty or not guilty of a petit theft must ~~shall~~ be in:

a. A written record that is signed by the judge and recorded by the clerk of the circuit court; or

b. An electronic record that contains the judge's electronic signature as defined in s. 933.40 and is recorded by the clerk of the circuit court.

2. At the time a defendant is found guilty of petit theft, the judge shall cause the following to occur ~~in open court and in the judge's presence~~:

a. For a written judgment of guilty, the fingerprints of

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the defendant against whom such judgment is rendered must ~~shall~~
be electronically or manually captured ~~taken~~ and affixed beneath
the judge's signature on the judgment. If the fingerprints were
captured electronically, the certifying statement provided in s.
921.241(3)(b) must be used. If the fingerprints were captured
manually, the following certification must be appended beneath
such fingerprints ~~shall be appended a certificate to the~~
~~following effect:~~

"I hereby certify that the above and foregoing fingerprints
on this judgment are the fingerprints of the defendant,,
and that they were placed thereon by said defendant in my
presence, ~~in open court,~~ this the day of,
...(year)...."

Such certification must ~~certificate shall~~ be signed by the court
officer, the employee of the court, or the employee of a
criminal justice agency who captured the fingerprints. ~~judge,~~
~~whose signature thereto shall be followed by the word "Judge."~~

b. For an electronic judgment of guilty, the fingerprints
of the defendant must be electronically captured and certified ~~a~~
~~certificate must be issued~~ as provided in s. 921.241(3)(b).

3. A written or an electronic judgment of guilty of a petit
theft, or a certified copy thereof, is admissible in evidence in
the courts of this state as provided in s. 921.241(4).

Section 10. Section 921.241, Florida Statutes, is amended
to read:

921.241 Felony judgments; fingerprints and social security
number required in record.—

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

(a) "Electronic signature" has the same meaning as in s. 933.40.

(b) "Transaction control number" means the unique identifier comprised of numbers, letters, or other symbols for a digital fingerprint record generated by the device used to electronically capture the fingerprints.

(2) A judgment of guilty or not guilty of a felony must ~~shall~~ be in:

(a) A written record that is signed by the judge and recorded by the clerk of the court; or

(b) An electronic record that contains the judge's electronic signature and is recorded by the clerk of the court.

(3) At the time a defendant is found guilty of a felony, the judge shall cause the following to occur ~~in open court and in the judge's presence~~:

(a) For a written judgment of guilty, the fingerprints of the defendant must ~~shall~~ be electronically or manually captured ~~taken~~ and affixed beneath the judge's signature on the judgment. If the fingerprints were captured electronically, the certifying statement provided in paragraph (b) must be used. If fingerprints were captured manually, the following certification must be appended beneath such fingerprints ~~shall be appended a certificate to the following effect~~:

"I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant, . . . , and that they were placed thereon by said defendant in my presence, ~~in open court~~, this the . . . day of . . . ,

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... (year)"

Such certification must ~~certificate shall~~ be signed by the court officer, the employee of the court, or the employee of a criminal justice agency who captured the fingerprints. ~~judge, whose signature thereto shall be followed by the word "Judge."~~

(b) For an electronic judgment of guilty, the fingerprints of the defendant shall be electronically captured, and the following certification must ~~certificate shall~~ be included in the electronic judgment:

"I hereby certify that the digital fingerprint record associated with Transaction Control Number contains the fingerprints of the defendant,, which were electronically captured from the defendant in my presence, ~~in open court,~~ this the day of, ... (year)"

The court officer, the employee of the court, or the employee of a criminal justice agency who captured the fingerprints ~~judge~~ shall place his or her electronic signature, ~~which shall be followed by the word "Judge,"~~ on the certification ~~certificate~~.

(4) A written or electronic judgment of guilty, or a certified copy thereof, is ~~shall be~~ admissible in evidence in the several courts of this state as prima facie evidence that the:

~~(a)~~ manual or digital fingerprints appearing thereon and certified ~~by the judge~~ as specified in this section ~~aforsaid~~ are the fingerprints of the defendant against whom the judgment of guilty was rendered.

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291 ~~(b) Digital fingerprint record associated with the~~
292 ~~transaction control number specified in the judge's certificate~~
293 ~~contains the fingerprints of the defendant against whom the~~
294 ~~judgment of guilty was rendered.~~

295 ~~(5) At the time the defendant's fingerprints are manually~~
296 ~~taken or electronically captured, the judge shall also cause the~~
297 ~~defendant's social security number to be taken. The defendant's~~
298 ~~social security number shall be specified in each written or~~
299 ~~electronic judgment of guilty of a felony, in open court, in the~~
300 ~~presence of such judge, and at the time the judgment is~~
301 ~~rendered. If the defendant is unable or unwilling to provide his~~
302 ~~or her social security number, the reason for its absence shall~~
303 ~~be specified in the written or electronic judgment.~~

304 Section 11. Section 921.242, Florida Statutes, is amended
305 to read:

306 921.242 Subsequent offenses under chapter 796; method of
307 proof applicable.—

308 (1) A judgment of guilty with respect to any offense
309 governed by ~~the provisions of~~ chapter 796 must ~~shall~~ be in:

310 (a) A written record that is signed by the judge and
311 recorded by the clerk of the circuit court; or

312 (b) An electronic record that contains the judge's
313 electronic signature as defined in s. 933.40 and is recorded by
314 the clerk of the circuit court.

315 (2) At the time a defendant is found guilty, the judge
316 shall cause the following to occur ~~in open court and in the~~
317 ~~judge's presence:~~

318 (a) For a written judgment of guilty, the fingerprints of
319 the defendant against whom such judgment is rendered must ~~shall~~

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be electronically or manually captured ~~taken~~ and affixed beneath the judge's signature on the judgment. If the fingerprints were captured electronically, the certifying statement provided in s. 921.241(3)(b) must be used. If the fingerprints were captured manually, the following certification must be appended beneath such fingerprints ~~shall be appended a certificate to the following effect:~~

"I hereby certify that the above and foregoing fingerprints are of the defendant, ...(name)..., and that they were placed thereon by said defendant in my presence, ~~in open court,~~ this the day of, ...(year)...."

Such certification must ~~certificate shall~~ be signed by the court officer, the employee of the court, or the employee of a criminal justice agency who captured the fingerprints. ~~judge, whose signature thereto shall be followed by the word "Judge."~~

(b) For an electronic judgment of guilty, the fingerprints of the defendant must be electronically captured, and a ~~certificate~~ must be certified ~~issued~~ as provided in s. 921.241(3)(b).

(3) A written or an electronic judgment of guilty, or a certified copy thereof, is ~~shall be~~ admissible in evidence in the several courts of this state as provided in s. 921.241(4).

Section 12. This act shall take effect July 1, 2021.

OFFICE OF THE STATE COURTS ADMINISTRATOR
2021 JUDICIAL IMPACT STATEMENT

BILL NUMBER: SB 748

DATE: March 1, 2021

SPONSOR(S): Senator Brandes

STATUTE(S) AFFECTED: ss. 25.221, 25.301, 28.2457, 34.01, 35.15, 35.23, 35.24, 40.23, 812.014, 921.241, 921.242, F.S.

COMPANION BILL(S): HB 1197 (similar)

AGENCY CONTACT: Sean Burnfin

TELEPHONE: (850) 922-0358

ASSIGNED OSCA STAFF: BS, MH, CK, AB, KS, RS

I. SUMMARY:

The bill makes a variety of changes to statutes impacting the court system. Specifically, the bill:

- Allows appellate court clerks to electronically store court records;
- Repeals an annual requirement that the clerks submit a uniform form for the identification and imposition of all assessments mandated by statute and instead requires the clerks, with the assistance of the Florida Courts Technology Commission, to develop or procure a statewide technological solution to accurately identify mandatory monetary assessments in criminal cases;
- Requires the \$50,000 county court jurisdictional limit to be adjusted, beginning January 1, 2030, and every 10 years thereafter, by the percentage change in the average of the Consumer Price Index issued by the U.S. Department of Labor for the most recent 12-month period ending on September 30, compared to the base year average (which is the average for the 12-month period ending September 30, 2022);
- Allows a person to be excused for jury duty for up to 12 months when a public health emergency or a state of emergency has been declared;
- Facilitates remote criminal proceedings by:
 - Removing the requirement that a defendant's fingerprints be manually or electronically taken in open court and in the judge's presence;
 - Allowing fingerprints to be taken manually or electronically in written guilty judgments; and
 - Requiring the fingerprint certification to be signed by the court officer, the court employee, or the criminal justice agency employee who captured the fingerprints (rather than the judge); and
- Removes the requirement that a judge take a defendant's social security number at the time fingerprints are taken.

II. EFFECT OF PROPOSED CHANGES:

Maintenance of Appellate Court Records

Florida law contains a variety of provisions that specify where appellate court records must be kept. For example:

- Sections 25.221 and 35.24, F.S., require all books, papers, records, files, and the seal of the Supreme Court and the District Courts of Appeal (DCA) to be kept in the respective court's office of the clerk and in the clerk's custody;
- Sections 25.301 and 35.15, F.S., require all decisions and opinions delivered by the Supreme Court and DCAs to be filed and remain in the respective court's office the clerk, and prohibits such records from being taken out except by order of the court (the clerk must furnish certified copies of such opinions and decisions to any person upon receiving his or her fees therefor); and
- Section 35.23, F.S, requires each DCA clerk to keep his or her records at the DCA headquarters.

The above-described statutes have not been updated to reflect the evolution of technology, particularly regarding electronic storage, which allows records to be stored at a remote location.

The bill amends the above-described statutes to allow appellate court records to be maintained (rather than kept or filed) by the Supreme Court and DCA clerks. This will allow appellate court clerks to electronically store court records.

Monetary Assessments

Section 28.2457(2), F.S., directs the clerks of court, through their association and in consultation with the Office of the State Courts Administrator (OSCA), to develop "a uniform form for the identification and imposition of all assessments mandated by statute." To date, the Supreme Court has declined to approve the form matrix due to concerns that it is not a form within the meaning of the statute. However, the chief justice has distributed the document annually to the trial court chief judges as a possible resource.

The bill amends s. 28.2457(2), F.S., to require the clerks, through their association and with the assistance of the Florida Courts Technology Commission, to develop a plan to procure or develop a statewide technological solution that will help accurately identify mandatory monetary assessments in criminal cases. The plan must be developed by October 1, 2021.

Under the current practice, the clerks usually identify mandatory assessments in criminal cases via a written form. The technological solution should lead to more accurate assessments in a more timely manner.

County Court Jurisdiction

Section 34.01, F.S., specifies, in part, that county courts have original jurisdiction of all actions at law (except those within the exclusive jurisdiction of the circuit courts) in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees:

- The sum of \$15,000, if filed on or before December 31, 2019;
- The sum of \$30,000, if filed on or after January 1, 2020; and

- The sum of \$50,000, if filed on or after January 1, 2023.

After January 1, 2023, there are no statutory provisions that increase the county court jurisdictional limit.

The bill amends s. 34.01, F.S., to require the \$50,000 jurisdictional limit be adjusted, effective January 1, 2030, and every 10 years thereafter, by the percentage change in the average of the Consumer Price Index (CPI) issued by the U.S. Department of Labor for the most recent 12-month period ending on September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2022. The adjusted jurisdictional limit must be rounded to the nearest \$1,000.

Jury Service

Section 40.23, F.S., authorizes a person's jury service to be postponed, upon written or oral request, for a period not to exceed six months. The request may specify a date or period of time to which service is to be postponed and, if so, such specification shall be given consideration when the assignment of the postponed date of jury service is made.

In Florida, jury service has largely been postponed since March 2020 due to the COVID-19 pandemic. As jury proceedings resume, persons may be summoned who may not be able to attend on the date summoned due to the pandemic (e.g., the person may have recently returned to work following unemployment due to the pandemic, the person may be caring for someone who is at increased risk of severe illness if exposed to COVID-19, etc.). In such instances, it may be difficult for a potential juror to reschedule his or her service within the six-month period.

The bill amends s. 40.23, F.S., to allow for a postponement of jury service for up to 12 months, upon written or oral request, when a public health emergency has been declared by the state health officer pursuant to s. 381.00315, F.S., or when a state of emergency has been declared by the governor pursuant to s. 252.36, F.S. This will provide potential jurors with additional time and greater flexibility in rescheduling jury service.

Fingerprinting Upon Judgment

Sections 812.014, 921.241, and 921.242, F.S., impose a variety of requirements when a judgment is being entered in misdemeanor petit theft, misdemeanor prostitution, and felony cases. For example, in such cases, a judgment must either be in a written record and signed by the judge or in an electronic record that contains the judge's electronic signature.

In each of these case types, if a defendant is found guilty, the judge must cause certain things to occur in open court and in the judge's presence. For example:

- For written guilty judgments, the defendant's fingerprints must be manually taken, affixed beneath the judge's signature, and certified by the judge;
- For electronic guilty judgments, the defendant's fingerprints must be electronically captured and certified by the judge.

In felony cases, the judge must also take the defendant's social security number at the time fingerprints are taken.

Written or electronic judgments of guilt taken in accordance with the above requirements are admissible as prima facie evidence that the fingerprints manually taken or electronically captured are those of the defendant against whom the judgment of guilty was rendered.

In practice, the above-described requirements are typically implemented by taking the defendant to the side of the courtroom after the court verbally enters the guilty judgment. There, an officer or employee of the court (e.g., a deputy sheriff) takes the fingerprints, which are then provided to the clerk who submits the judgment form with the defendant's fingerprints to the judge for signature.

Due to the COVID-19 pandemic, in-person court proceedings have been significantly limited. During this time, the courts considered ways in which criminal cases could be remotely resolved without the necessity of in-person court proceedings. At this time, case law does not appear to exist that dispositively determines whether the open court and presence fingerprinting requirements can be satisfied through a remote proceeding conducted using audio-visual technology.

The bill amends the above-described statutes to:

- Remove the requirement that a defendant's fingerprints be manually or electronically taken in open court and in the judge's presence;
- Allow fingerprints to be taken manually *or electronically* in written guilty judgments (the bill continues to require fingerprints be electronically captured in electronic guilty judgments); and
- Require the fingerprint certification to be signed by the court officer, the court employee, or the criminal justice agency employee who captured the fingerprints (rather than the judge).

The bill also removes the requirement that a judge take a defendant's social security number at the time fingerprints are taken. According to the Florida Department of Law Enforcement (FDLE), biometric information (fingerprints) is relied on to establish a criminal history - social security numbers are not used. Further, collecting social security numbers presents a risk that such confidential information may be inadvertently released.

III. ANTICIPATED JUDICIAL OR COURT WORKLOAD IMPACT:

The bill's county court jurisdictional limit provisions could arguably increase or decrease the county court jurisdictional limit in future years, depending on how the CPI changes. An increase can reasonably be expected to increase workload in the county courts and decrease workload in the circuit courts. Continued jurisdictional increases in county court may result in impacts to facilities, staffing, docket management, case types, time and resources, hearing and trial time, and information technology/case management systems. An accurate assessment of workload impact associated with further adjustments to the county court jurisdictional limits cannot be made based on the data available at this time.

IV. IMPACT TO COURT RULES/JURY INSTRUCTIONS:

Fla. R. Crim. P. 3.986 (fingerprint form) would need to be changed.

V. ESTIMATED FISCAL IMPACTS ON THE JUDICIARY:

A. Revenues: None

B. Expenditures:

The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase/decrease in judicial workload resulting from the county court jurisdictional limit provisions. See Section III above.

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

THE FLORIDA SENATE

APPEARANCE RECORD

3-2-21

Meeting Date

SB 748

Bill Number (if applicable)

213074

Amendment Barcode (if applicable)

Topic Courts

Name Katie Cunningham

Job Title Deputy State Courts Administrator

Address 500 South Duval Street

Street

Tallahassee

City

Florida

State

32399

Zip

Phone (850) 488 - 3733

Email cunninghamk@flcourts.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing State Courts System

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3-2-21

Meeting Date

SB 748

Bill Number (if applicable)

537682

Topic Courts

Amendment Barcode (if applicable)

Name Katie Cunningham

Job Title Deputy State Courts Administrator

Address 500 South Duval Street

Phone (850) 488 - 3733

Street

Tallahassee

Florida

32399

Email cunninghamk@flcourts.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

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Appearing at request of Chair: ☐ Yes ☒ No

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3-2-21

Meeting Date

SB 748

Bill Number (if applicable)

Topic Courts

Amendment Barcode (if applicable)

Name Katie Cunningham

Job Title Deputy State Courts Administrator

Address 500 South Duval Street

Phone (850) 488 - 3733

Street

Tallahassee

Florida

32399

Email cunninghamk@flcourts.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing State Courts System

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

03.02.21

Meeting Date

748

Bill Number (if applicable)

Topic Courts

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

COMMITTEE: Judiciary
ITEM: SB 748
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 662

INTRODUCER: Judiciary Committee and Senators Brandes and Rouson

SUBJECT: Resentencing

DATE: March 4, 2021

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----------|----------------|-----------|---------------|
| 1. Bond | Cibula | JU | Fav/CS |
| 2. _____ | _____ | ACJ | _____ |
| 3. _____ | _____ | AP | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 662 allows a state attorney to file a petition for a new sentencing hearing if the original sentence no longer advances the interests of justice. If granted, the trial court must resentence the offender, and may take into account prison disciplinary records, rehabilitation, recidivism risk, and other changed circumstances. The revised sentence is likely to be shorter, and may not exceed the current sentence. The state attorney must attempt to notify victims, who may appear at the resentencing. The bill applies to felony offenders serving a criminal sentence currently or in the future.

The bill is effective July 1, 2021.

II. Present Situation:

A criminal offender sentenced to Florida prison has little chance at an early release. Parole does not apply to any offense committed after October 1, 1983. Gain time for good behavior, where allowed, is limited to 15 percent of the term.¹ Executive clemency (pardon or commutation of

¹ Section 944.275(4)(f), F.S. The 85% rule applies to offenders who committed the offense on or after October 1, 1995. No gain time is awarded to persons sentenced to death or to life imprisonment. No gain time is awarded regarding on offense on or after October 1, 2014, for most sex crimes. Section 944.275(4)(e), F.S. Gain time may apply to minimum mandatory sentences.

sentence) is uncommon, and there is a considerable backlog.² Conditional medical release is likewise uncommon.³

There are some limited means of relief, for instance: An offender can always move to set aside the conviction and sentence on the grounds of actual innocence. An offender can file a petition for modification of sentence, but this may only be filed within 60 days after imposition of sentence or affirmance of the conviction on appeal.⁴ The state attorney may petition for a sentencing reduction for persons who provide substantial assistance in the prosecution of others.⁵ Current law allows an offender to petition the sentencing court to correct an erroneous sentence.⁶ A youthful offender may be granted a sentence modification based on successful participation in the youthful offender program.⁷

There is no apparent current authority for anyone to petition the sentencing court to reduce a prison sentence based on current facts such as extraordinary rehabilitation.

III. Effect of Proposed Changes:

The bill allows a state attorney, in his or her discretion, to petition a felony sentencing court for a new sentencing hearing on the grounds that the original sentence no longer advances the interests of justice.

The bill makes legislative findings:

- The intent of the Legislature in this bill is to give prosecutors the discretion to petition a sentencing court to resentence an individual if the individual's sentence no longer advances the interests of justice.
- The purpose of sentencing is to advance public safety through punishment, rehabilitation, and restorative justice.
- When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense and provide uniformity with the sentences of offenders committing the same offense under similar circumstances.
- By providing a means to reevaluate a sentence after some time has passed, the Legislature intends to provide prosecutors and courts with another tool to ensure these purposes are achieved.

The petition for relief may only be filed by the state attorney on the grounds that the original sentence no longer advances the interests of justice (described in the bullets above). If the trial court grants the petition, it must thereafter conduct a re-sentencing hearing. At re-sentencing, the court may consider postconviction factors, such as:

² In FY 2019-20, 4,525 clemency applications were filed and 4,244 were cleared. On July 1, 2020, there were 24,400 pending clemency applications. Florida Commission on Offender Review, 2020 Annual Report, at p. 8. There appears to be a backlog of approximately 6 years.

³ In FY 2019-20, 35 inmates were granted conditional medical release. *Id.* At that time, there were approximately 94,000 inmates. Fla. Dept. of Corrections, Strategic Plan & Annual Report 2020-2021, at p. 12.

⁴ Fla. R. Crim. Pro. 3.800(c)

⁵ Sections 921.186 (any felony), 790.163(2) and 790.164(2) and 790.165(3) and 790.166(5) (weapons of mass destruction), and 893.135(4), F.S. (drug offenses).

⁶ Direct appeals of the sentence, and Fla. R. Crim. Pro. 3.850 or 3.851.

⁷ Section 958.04(2)(b), F.S.

- The offender's disciplinary record while incarcerated;
- The offender's record of rehabilitation while incarcerated;
- Evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the offender's risk for future violence; and
- Evidence that reflects changed circumstances since the offender's original sentencing such that the offender's continued incarceration no longer serves the interests of justice.

An offender cannot be harmed by the petition:

- The sentencing court may not impose a new sentence that exceeds the initial sentence.
- The offender must be given credit for time served.

The state attorney filing a petition pursuant to this bill must make reasonable efforts to inform victims, and survivors of victims, of the petition and the hearing date. Victims and survivors may access victim advocates and other related services. Victims and survivors may address the sentencing court, either personally or through a representative.⁸

The bill specifies that a petition for resentencing does not open up or create any grounds for postconviction relief that is otherwise barred.

The bill applies to offenders currently serving a criminal sentence, and to future offenders.

The effective date of the bill is 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:

The state constitution requires a separation of powers, prohibiting one branch from exercising any powers of the other.⁹ If a court were to find that the judicial act of

⁸ The victim rights appear consistent with the requirements of FLA. CONST. art. I, s. 16(b).

⁹ FLA. CONST. art. II, s. 3

resentencing created by this bill is an executive function, the court may limit the application of this bill.

The state constitution vests in the Executive Branch the power of clemency and allows for creation of a “parole and probation commission” by general law.¹⁰ In a case challenging a clemency decision, the Florida Supreme Court found that the courts have no role in clemency decisions. The court ruled:

[T]he people of this state chose to vest sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace. . . . The principle is well established that, where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner.¹¹

On the other hand, while the parole power is exercised by the executive branch, it is subject to general law as created by the legislature.¹² Additionally, while the relief created by the bill appears to be similar to clemency or parole, the process in this bill differs in that clemency is generally initiated by a request from the offender and parole generally requires the cooperation of the offender, the process in this bill is initiated only by the state attorney. The state attorney currently may petition for a sentence reduction for substantial assistance. Also, the initial act of sentencing is clearly a judicial function, and a court could rule that resentencing based on authority granted by the Legislature, and on criteria set by the Legislature, is likewise a judicial function.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

¹⁰ FLA. CONST. art. IV, s. 8

¹¹ *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977)

¹² *Ruggirello v. Jones*, 202 So. 3d 935, 938 (Fla. 1st DCA 2016) (“parole is part of the legislative scheme for determining the length of an inmate’s sentence, and is subject to detailed legislative guidance.”)

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 921.30, Florida Statutes.

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

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

CS by Judiciary on March 2, 2021:

The amendment adopted by the Judiciary Committee changed terms for consistency, and clarified that the bill applies to offenders currently serving a criminal sentence.

B. Amendments:

None.

By Senator Brandes

24-00832-21

2021662__

A bill to be entitled
An act relating to resentencing; creating s. 921.30,
F.S.; providing legislative intent; authorizing the
state attorney of a judicial circuit in which an
offender was sentenced for a felony offense to
petition the sentencing court to resentence the
offender if the original sentence no longer advances
the interests of justice; authorizing a court to grant
or deny the petition; providing requirements if the
sentencing court grants the petition; authorizing the
court to consider specified postconviction factors;
requiring that credit be given for time served;
providing requirements for state attorneys; requiring
a court to provide an opportunity for victims of the
offender's crimes to present statements; providing
applicability; providing an effective date.

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

Section 1. Section 921.30, Florida Statutes, is created to
read:

921.30 State attorney petition for offender resentencing.—
(1) It is the intent of the Legislature to give prosecutors
the discretion to petition a sentencing court to resentence an
individual if the individual's sentence no longer advances the
interests of justice. The purpose of sentencing is to advance
public safety through punishment, rehabilitation, and
restorative justice. When a sentence includes incarceration,
this purpose is best served by terms that are proportionate to

24-00832-21

2021662__

the seriousness of the offense and provide uniformity with the
sentences of offenders committing the same offense under similar
circumstances. By providing a means to reevaluate a sentence
after some time has passed, the Legislature intends to provide
prosecutors and courts with another tool to ensure these
purposes are achieved.

(2) The state attorney of a judicial circuit in which an
offender was sentenced for a felony offense may petition the
sentencing court to resentence the offender if the original
sentence no longer advances the interests of justice.

(3) The court may grant or deny a petition under this
section. If the sentencing court grants a petition, it must
resentence the defendant in the same manner as if the offender
had not previously been sentenced, and it may not impose a new
sentence greater than the initial sentence.

(4) The court may consider postconviction factors
including, but not limited to, the inmate's disciplinary record
and record of rehabilitation while incarcerated; evidence that
reflects whether age, time served, and diminished physical
condition, if any, have reduced the inmate's risk for future
violence; and evidence that reflects changed circumstances since
the inmate's original sentencing such that the inmate's
continued incarceration no longer serves the interests of
justice. Credit must be given for time served.

(5) The state attorney shall make reasonable efforts to
notify victims and survivors of victims of the petition for
resentencing and the date of the resentencing hearing. The state
attorney shall provide victims and survivors of victims access
to available victim advocates and other related services. The

24-00832-21

2021662__

59 court shall provide an opportunity for victims and survivors of
60 victims of any crimes for which the offender has been convicted
61 to present a statement personally or by representation.

62 (6) A resentencing under this section does not reopen the
63 defendant's conviction to challenges that would otherwise be
64 barred.

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

THE FLORIDA SENATE

APPEARANCE RECORD

3-2-21

Meeting Date

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

662

Bill Number (if applicable)

Topic prison reform

Amendment Barcode (if applicable)

Name Shirley Daniels

Job Title _____

Address PO Box 235
Street

Phone 709-6273
863-424

Lake Hamilton FL 33851
City State Zip

Email Shirley30360@yahoo

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

5/2/21
Meeting Date

662
Bill Number (if applicable)

Topic RESIDENTING

Amendment Barcode (if applicable)

Name A. WELLINGTON BARLOW

Job Title ASST

Address 625 W - UNION ST. SUITE 1

Phone _____

Street JST

City JL State FL Zip 32202

Email ALBARLOW1985@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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

SB 662

Bill Number (if applicable)

Topic

SB 662

Amendment Barcode (if applicable)

Name

Angela Klix

Job Title

Address

212 South Oleander Ave #4

Phone

(386) 204-2438

Street

City

Dayton Beach, FL

State

32118

Zip

Email

klixangel69@gmail.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-2021

Meeting Date

60602

Bill Number (if applicable)

Topic Criminal Justice Reform

Amendment Barcode (if applicable)

Name Carolyn Jones

Job Title _____

Address 6006 Forest Lake Dr
Street

Phone 517.554.9669

Zephyrhills
City

FL
State

33540
Zip

Email Carolyn-Renee@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/21
Meeting Date

662
Bill Number (if applicable)

Topic Bill # 662

Amendment Barcode (if applicable)

Name Anne Williams

Job Title RN BSN

Address 4835 Andrade
Street
Pensacola
City State Zip

Phone 850-712-0100

Email AnneWilliamsRN@
yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing myself + son

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

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3/2/01
Meeting Date

640
Bill Number (if applicable)

Topic 6062

Amendment Barcode (if applicable)

Name Daren L. Robert

Job Title N/A

Address 935 E University Ave
Street
Orange City FL 32763
City State Zip

Phone 727 306-4080

Email 200870pe@gmail

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1662
Bill Number (if applicable)

Topic Prison Reform

Amendment Barcode (if applicable)

Name Vanessa Marshall

Job Title _____

Address _____
Street

Phone 321 377 3606

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Community Member

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/2/2020
Meeting Date

662
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name ANGELA BOUCHER

Job Title _____

Address 2435 W. JONGAILL DR
Street

Phone 860-294-1718

CITRUS SPRINGS FL 34432
City State Zip

Email angelaboucher71@gmail

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

0002
Bill Number (if applicable)

Topic _____

Name Alexandra Barry

Amendment Barcode (if applicable) _____

Job Title _____

Address 5891 Monterra club Dr
Street

Phone 561-568-7694

Lake Worth, FL
City State Zip

Email abarry@siblingsofmurderedsiblings.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

SB 662
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____
Topic Prison reform
Name Anita Wilson
Job Title Retiree
Address 1411 Melon
Street _____
City _____ State _____ Zip _____

Phone 850-321-7607
Email Nekec1957

Speaking: ☒ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/21
Meeting Date

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

662
Bill Number (if applicable)

Topic Resentencing

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

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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Reset Form

3/1/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

662

Bill Number (if applicable)

Topic Resentencing

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.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NAACP Florida State Conference

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE APPEARANCE RECORD

3/2/21

Meeting Date

662

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Kara Gross

Job Title Legislative Director & Senior Policy Counsel

Address 4343 West Flagler Dr.
Street

Phone 786-363-4436

Miami

FL

33134

City

State

Zip

Email kgross@aclufl.org

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

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S-001 (10/14/14)

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THE FLORIDA SENATE
APPEARANCE RECORD

3/2/21

Meeting Date

662

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Carrie Boyd

Job Title Policy Counsel

Address P.O. Box 10788

Phone 850-570-9560

Street

Tallahassee

FL

32311

City

State

Zip

Email carrie.boyd@splcenter.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SPLC Action Fund

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/2/21

Meeting Date

SB662

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Laurette Philipsen

Job Title _____

Address 7240 Westwind Drive

Street

Phone 352-533-7202

Port Richey

FL

34668

Email advocatephilipsen@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Advocates

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. The Chair is asked to limit their remarks so that as many persons as possible can be heard.

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/2/21

Meeting Date

SB 662

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Jorge Chamizo

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FL

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City

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/2/2021
Meeting Date

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

6662
Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Karen Woodall

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Street

Phone 850-321-9386

Tallahassee, FL 32301
City State Zip

Email fcfcfp@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Center for Fiscal & Economic Policy

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-2-2021

Meeting Date

667

Bill Number (if applicable)

Topic

Resentencing

Amendment Barcode (if applicable)

Name

ADAM HATCH

Job Title

BUSINESS OWNER

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352-552-2400

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Ocala

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34479

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State

Zip

Email

AHATCH@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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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)

3-2-2021

Meeting Date

662

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Teresa Haack

Job Title Bookkeeper

Address 4100 NE 33rd Ave

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State

34479

Zip

Email thaack@col.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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

662

Bill Number (if applicable)

Topic RESENTENCING

Amendment Barcode (if applicable)

Name REV DR RUSSELL MEYER

Job Title EXEC DIR

Address 1308 WINDSOR PL

Street

Phone 8134355335

JACKSONVILLE FL 32205

City

State

Zip

Email advocacy@flfaithadvocacy.org

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

Representing FL FAITH ADVOCACY OFFICE

Appearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

3/2/21
Meeting Date

662
Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name Greg Newburn

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 F A M M

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

March 2nd 2021

Meeting Date

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

SB 662

Bill Number (if applicable)

Topic Resentencing

Amendment Barcode (if applicable)

Name David Sarden

Job Title States Man/Senator

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Street

City

State

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Email golferdave1955@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

COMMITTEE: Judiciary
ITEM: SB 662
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 144

INTRODUCER: Senators Brandes and Rodrigues

SUBJECT: Searches of Cellular Phones and Other Electronic Devices

DATE: March 1, 2021

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----------|----------------|-----------|--------------------|
| 1. Cella | Jones | CJ | Favorable |
| 2. Bond | Cibula | JU | Pre-meeting |
| 3. _____ | _____ | RC | _____ |

I. Summary:

SB 144 amends chs. 933 and 934, F.S., relating to search warrants and the security of communications, to address privacy issues related to the use of communication technology and the contents of stored electronic communications.

The bill amends ch. 933, F.S., by:

- Codifying the state constitutional provision that extends the security against unreasonable searches or seizures to the interception of private communications by any means; and
- Expanding the grounds for issuance of a search warrant to include that the content within certain communication devices constitutes evidence relevant to proving a felony.

The bill amends ch. 934, F.S., by:

- Providing legislative intent;
- Defining the terms “historical location data,” “microphone-enabled household device,” “mobile tracking device,” “real-time location tracking,” and “portable electronic communication device”;
- Amending the definition of oral communication to include the use of a microphone-enabled household device;
- Amending the definition of electronic communication, adding the terms “communication tower” and “satellite” to the ways in which the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature can be transmitted; removing the exception of “any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object” from the definition;
- Requiring a search warrant for the interception of wire, oral, or electronic communications, the use of a tracking device, or historical location data;
- Setting forth time constraints for use of a tracking device, and when notice must be provided to the person tracked;

- Allowing for a delayed application for a search warrant when emergency tracking is necessary due to emergency circumstances; and
- Clarifying that certain conduct relating to access to stored communications is not a criminal offense.

The bill is effective July 1, 2021.

II. Present Situation:

The Fourth Amendment of the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy, such as one's home.² A warrantless search is generally per se unreasonable,³ unless an exception to the warrant requirement applies.⁴

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.⁵ The Florida Constitution also explicitly protects against the "unreasonable interception of private communications by any means."⁶

Both the Florida and federal constitutions require a search warrant to be supported by probable cause,⁷ as established by oath or affirmation, and to particularly describe the place to be searched and the persons or things to be seized.⁸

Advancing technology has presented law enforcement with new means of investigation and surveillance, and correspondingly has presented the courts with new questions about the Fourth Amendment implications of this technology.⁹

¹ U.S. CONST. AMEND. IV.

² *Katz v. United States*, 389 U.S. 347 (1967).

³ *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir. 2012).

⁴ Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.

⁵ FLA. CONST. art. I, s. 12.

⁶ "No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of evidence to be obtained." *Id.*

⁷ Probable cause is defined "in terms of facts and circumstances 'sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense'" *Gerstein v. Pugh*, 420 U.S. 103, 111-112 (1975), quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

⁸ FLA. CONST. art. I, s. 12 and *supra*, note 1.

⁹ See *United States v. Jones*, 565 U.S. 400 (2012), where, in a 5-4 decision the Court found (in a narrow holding eschewing the "reasonable expectation of privacy" analysis most often used by the Court) that attaching a GPS real-time tracker on the suspect's vehicle for the purpose of tracking his whereabouts was a "trespass" upon his "effects" by the Government and therefore a warrant is required; *Smallwood v. State*, 113 So.3d 724, 741 (Fla. 2013), in which the Court, in what it called a

Chapter 933, F.S., Search Warrants

Chapter 933, F.S., contains grounds related to when and why a search warrant may be issued to a law enforcement officer by a judge authorizing the search and seizure of evidence, and the procedures for executing the search warrant.¹⁰

The issuance of a search warrant is based upon probable cause. An application under oath to a judge for a search warrant must “set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.”¹¹ The application must particularly describe the place to be searched and the person and thing to be seized.¹² If the judge finds that probable cause exists for the issuance of the search warrant, the judge must issue the search warrant.¹³

The grounds for the issuance of a search warrant include:

- When the property has been stolen or embezzled in violation of law;
- When any property has been used:
 - As a means to commit any crime;
 - In connection with gambling, gambling implements and appliances; or
 - In violation of s. 847.011, F.S., or other laws in reference to obscene prints and literature;
- When any property constitutes evidence relevant to proving that a felony has been committed;
- When any property is being held or possessed:
 - In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;
 - In violation of the fish and game laws;
 - In violation of the laws relative to food and drug; or
 - In violation of the laws relative to citrus disease pursuant to s. 581.184, F.S.; or
- When the laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are violated in any particular building or place.¹⁴

A search warrant may also be issued for the search for and seizure of “any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.”¹⁵ Section 933.18, F.S., limits the grounds for the issuance of a search warrant for a private

decision “narrowly limited to the legal question and facts with which we were presented,” decided that for a search incident to arrest of the contents of a suspect’s cell phone, a warrant is required if there are no search incident to arrest justifications (officer protection or evidence preservation) for searching the contents; *Tracey v. State*, 152 So.3d 504 (Fla. 2014), a case involving real-time cell site location information, where the Court determined that the use of Tracey’s cell site location information to track him in real-time was a search for which probable cause was required; *Carpenter v. United States*, 138 S.Ct. 2206 (2018), found that obtaining a court order, rather than a warrant requiring a showing of probable cause, to access historical cell-site records implicates the Fourth Amendment therefore the Government will generally need a warrant.

¹⁰ Sections 933.01- 933.19, F.S.

¹¹ Section 933.06, F.S.

¹² Section 933.04, F.S.

¹³ Section 933.07, F.S.

¹⁴ Section 933.02(1)-(5), F.S.

¹⁵ Section 933.02, F.S.

dwelling to particular circumstances. No search warrant may be issued for a private dwelling under ch. 933, F.S., or any other law of the state unless:

- It is being used for the unlawful sale, possession, or manufacture of intoxicating liquor;
- Stolen or embezzled property is contained therein;
- It is being used to carry on gambling;
- It is being used to perpetrate frauds and swindles;
- The law relating to narcotics or drug abuse is being violated therein;
- A weapon, instrumentality, or means by which a felony has been committed, or evidence relevant to proving said felony has been committed, is contained therein;
- One or more of the following child abuse offenses is being committed there:
 - Interference with custody, in violation of s. 787.03, F.S.;
 - Commission of an unnatural and lascivious act with a child, in violation of s. 800.02, F.S.; or
 - Exposure of sexual organs to a child, in violation of s. 800.03, F.S.
- It is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, boardinghouse, or lodginghouse;
- It is being used for the unlawful sale, possession, or purchase of wildlife, saltwater products, or freshwater fish being unlawfully kept therein;
- The laws in relation to cruelty to animals, as provided in ch. 828, F.S., have been or are being violated therein; or
- An instrumentality or means by which sexual cyberharassment has been committed in violation of s. 784.049, F.S., or evidence relevant to proving that sexual cyberharassment has been committed in violation of s. 784.049, F.S., is contained therein.¹⁶

After a law enforcement officer executes a search warrant, he or she must then bring the property seized and any person arrested in connection with the property before the judge or another court having jurisdiction of the offense.¹⁷ A copy of the search warrant and an inventory of any property seized during the execution of the warrant must either be delivered to the person whose property is the subject of the search warrant, or may be left upon the premises if no one is there.¹⁸ The search warrant and a sworn copy of any required inventory must be returned to the judge.¹⁹

Chapter 934, F.S., Security of Communications; Surveillance – Interception of Wire, Oral, or Electronic Communications

Sections 934.03-934.09, F.S., govern the interception of wire, oral, or electronic communications. “Intercept” is defined as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.²⁰ These sections of law are patterned after federal law, and address the relationships

¹⁶ Section 933.18, F.S.

¹⁷ Section 933.07(1), F.S.

¹⁸ Section 933.11, F.S.

¹⁹ Section 933.12, F.S.

²⁰ Section 934.02(3), F.S.

between citizens, communications service providers, and investigative and law enforcement officers with respect to the obtainment and use of wire, oral, or electronic communications.²¹

Intentionally intercepting another person's wire, oral, or electronic communication is generally prohibited under s. 934.03, F.S. However, under circumstances where a communications service provider is served with a court order, the service provider is allowed to provide information, facilities, or technical assistance to a person who is authorized to intercept wire, oral, or electronic communications.²² If a person's wire or oral communications are intercepted under circumstances not permitted in ss. 934.03-934.09, F.S., none of the content or evidence derived from the content may be used as evidence.²³

The Governor, Attorney General, statewide prosecutor, or any state attorney can authorize a law enforcement agency to apply to a judge for a court order permitting the interception of wire, oral, or electronic communications.²⁴ Intercepting the communication is authorized when the interception may provide or has provided evidence of the commission of the crimes enumerated in s. 934.07(1), F.S.²⁵

Section 934.09, F.S., contains the procedures related to the interception of wire, oral, or electronic communications. The procedures include what the application for a court order for the interception must contain, the time limitations for the interception, extensions of time, notice to the person whose communication has been intercepted, and special procedures in emergency situations.

To issue an order authorizing the interception, a court must determine that there is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as listed in s. 934.07, F.S., and that there is probable cause for belief that particular communications concerning that offense will be obtained through such interception.²⁶

²¹ Electronic Communications Privacy Act of 1986 (ECPA), 18 U.S.C. s. 2510-22. The ECPA updated the Federal Wiretap Act of 1968, which addressed interception of conversations using "hard" telephone lines, but did not apply to interception of computer and other digital and electronic communications. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, *Justice Information Sharing, Privacy & Civil Liberties* (April 23, 2019), available at <https://it.ojp.gov/PrivacyLiberty/authorities/statutes/1285> (last viewed Jan. 21, 2021).

²² Section 934.03(2)(a)2., F.S.

²³ The content of the wire or oral communications or evidence derived from the content may not be admitted as evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof. Section 934.06, F.S.

²⁴ Section 934.07(1), F.S.

²⁵ The crimes listed in s. 934.07(1)(a), F.S., are murder, kidnapping, aircraft piracy, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any felony violation of ss. 790.161-790.166, F.S. (offenses for destructive devices); inclusive; any violation of s. 787.06, F.S. (human trafficking); any violation of ch. 893, F.S. (drug abuse prevention and control); any violation of the provisions of the Florida Anti-Fencing Act; any violation of ch. 895, F.S., (offenses concerning racketeering and illegal debts); any violation of ch. 896, F.S. (offenses related to financial transactions); any violation of ch. 815, F.S. (computer-related crimes); any violation of ch. 847, F.S. (offenses related to obscenity); any violation of s. 827.071, F.S. (sexual performance by a child); any violation of s. 944.40, F.S. (offenses related to escape); or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes listed.

Section 934.07(1)(b), F.S., authorizes the FDLE to seek a court order to intercept wire, oral, or electronic communications when the interception may provide or has provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy or solicitation to commit any such violation.

²⁶ Section 934.09(3), F.S.

Section 934.10, F.S., contains the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S.

Advancing Technology - Location Tracking

Cell phones, smartphones, laptops, and tablets are all mobile devices that can be located whenever they are turned on.²⁷ There are essentially three methods of locating a mobile device:

- *Network-based location*, which occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device²⁸ can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location*, which uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods*, which facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.²⁹

Mobile Tracking Devices

Mobile tracking devices can also be used to track a person's location. This broad category of devices includes radio frequency (RF)-enabled tracking devices (commonly referred to as "beepers"), satellite-based tracking devices, and cell-site tracking devices. Satellite-based tracking devices are commonly referred to as "GPS devices."³⁰

Florida law defines a "tracking device" as an electronic or mechanical device which permits the tracking of movement of a person or object.³¹ Section 934.42, F.S., requires a law enforcement officer to apply to a judge for a court order approving the "installation and use of a mobile tracking device."³² If the court grants the order, the officer installs and uses the device.³³ The application for such an order must include:

- A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation;
- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency;
- A statement of the offense to which the information likely to be obtained relates; and
- A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.³⁴

²⁷ *Locational Privacy, Cell Phone Tracking Methods*, Electronic Privacy Information Center, available at <https://epic.org/privacy/location> (last viewed Jan. 21, 2021).

²⁸ A service provider is the company that provides the Internet to the mobile device. *Id.*

²⁹ *Id.*

³⁰ Ian Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Berkley J. of Crim. Law, Vol. 16, Issue 2, p. 442, n. 1 (Fall 2011), available at https://www.bjcl.org/assets/files/16_2-herbert_formatted.pdf (last viewed Jan. 21, 2021).

³¹ Section 934.42(6), F.S.

³² Section 934.42(1)-(2), F.S.

³³ Section 934.42(3), F.S.

³⁴ Section 934.42(2), F.S.

The court then must review the application. If it finds that the above-described requirements are met, the court will order the authorization of the installation and use of a mobile tracking device. The court is not allowed to require greater specificity or additional information than the information listed above.³⁵

The installation and the monitoring of a mobile tracking device is governed by the standards established by the United States Supreme Court.³⁶

Cellular-Site Location Data

In the United States, it has been reported that there are 327.6 million cell phones in use, which is more than the current U.S. population (315 million people).³⁷ “As the cell phone travels, it connects to various cell phone towers, which means an electronic record of its location is created[.]”³⁸ The cell phone’s location record is held by the telecommunications company that services the device.³⁹

Cellular-site location information (CSLI) is information generated when a cell phone connects and identifies its location to a nearby cell tower that, in turn, processes the phone call or text message made by the cell phone. “CSLI can be ‘historic,’ in which case the record is of a cell phone’s past movements, or it can be ‘real-time’ or prospective, in which case the information reveals the phone’s current location.”⁴⁰ Historic CSLI enables law enforcement to piece together past events by connecting a suspect to the location of a past crime.⁴¹ Real-time location information helps law enforcement trace the current whereabouts of a suspect.⁴²

GPS Location Data

A cell phone’s GPS capabilities allow it to be tracked to within 5 to 10 feet.⁴³ GPS provides users with positioning, navigation, and timing services based on data available from satellites orbiting the earth.⁴⁴ If a mobile device is equipped with GPS technology, significantly more precise location information is then sent from the handset to the carrier.⁴⁵

³⁵ Section 934.42(3) and (4), F.S.

³⁶ Section 934.42(5), F.S.

³⁷ Mana Azarmi, *Location Data: The More They Know*, Center for Democracy and Technology, (November 27, 2017), available at <https://cdt.org/blog/location-data-the-more-they-know/> (last viewed Jan. 21, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Cell Phone Location Tracking*, National Association of Criminal Defense Lawyers, (June 7, 2016) available at https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-06-07_Cell-Tracking-Primer_Final.pdf (last viewed Jan. 21, 2021).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *GPS Location Privacy*, GPS.gov, (December 11, 2020) available at <https://www.gps.gov/policy/privacy> (last viewed Jan. 21, 2021).

⁴⁵ Patrick Bertagna, *How does a GPS tracking system work?*, October 26, 2010, EE Times available at https://www.eetimes.com/document.asp?doc_id=1278363&page_number=2 (last viewed Jan. 21, 2021).

Microphone-Enabled Household Devices

Another emerging technology raising privacy concerns is the smart speaker. Smart speakers, like the Google Nest⁴⁶ or Amazon Alexa,⁴⁷ are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible.⁴⁸

Although the term “always on” is often used to describe smart speakers, this is not entirely accurate. Speech activated devices use the power of energy efficient processors to remain in an inert state of passive processing, or “listening,” for the “wake words.” The device buffers and re-records locally, without transmitting or storing any information, until it detects the word or phrase that triggers the device to begin actively recording and transmitting audio outside of the device to the service provider.⁴⁹

Chapter 934, F.S., Security of Communications Definitions

Several definitions in ch. 934, F.S., are pertinent to the bill:

- “Contents,” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.⁵⁰
- “Electronic communication” means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.⁵¹
- “Electronic communication service” means any service which provides to users thereof the ability to send or receive wire or electronic communications.⁵²
- “Electronic communications system” means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.⁵³
- “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than any telephone or telegraph instrument, equipment, or facility, or any component thereof:

⁴⁶ *Google Nest*, Google Store, available at https://store.google.com/category/connected_home (last viewed Jan. 21, 2021).

⁴⁷ *Amazon Alexa*, available at <https://developer.amazon.com/en-US/alexa> (last viewed January 21, 2021).

⁴⁸ Allen St. John, *Smart Speakers that Listen When They Shouldn't*, Consumer Reports, August 29, 2019, available at <https://www.consumerreports.org/smart-speakers/smart-speakers-that-listen-when-they-shouldnt/> (last viewed Jan. 21, 2021).

⁴⁹ *Id.* See also Stacey Gray, *Always On: Privacy Implications Of Microphone-Enabled Devices*, The Future of Privacy Forum, (April 2016), available at https://fpf.org/wp-content/uploads/2016/04/FPF_Always_On_WP.pdf (last viewed Jan. 21, 2021).

⁵⁰ Section 934.02(7), F.S.

⁵¹ Section 934.02(12), F.S.

⁵² Section 934.02(15), F.S.

⁵³ Section 934.02(14), F.S.

- Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
- Being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.⁵⁴
- “Electronic storage” means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.⁵⁵
- “Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.⁵⁶
- “Investigative or law enforcement officer” means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the state or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.⁵⁷
- “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.⁵⁸
- “Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communications system.⁵⁹
- “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.⁶⁰

Prohibited Access to Stored Communications

Under certain circumstances, Florida law prohibits accessing stored communications. It is unlawful for a person to:

- Intentionally access a facility through which an electronic communication service is provided; or

⁵⁴ Section 934.02(4), F.S.

⁵⁵ Section 934.02(17), F.S.

⁵⁶ Section 934.02(3), F.S.

⁵⁷ Section 934.02(6), F.S.

⁵⁸ Section 934.02(2), F.S.

⁵⁹ Section 934.02(19), F.S.

⁶⁰ Section 934.02(1), F.S.

- Intentionally exceed an authorization to access; and
- Obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system.⁶¹

The penalties for this offense vary based on the specific intent and the number of offenses.⁶² It is a first degree misdemeanor⁶³ if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.⁶⁴ Any subsequent offense with this intent is a third degree felony.⁶⁵ If the person did not have the above-described intent then the above-described offense is a second degree misdemeanor.⁶⁶

III. Effect of Proposed Changes:

Chapter 933, F.S., Search Warrants (Sections 1 and 2)

The bill amends s. 933.02, F.S., to incorporate content held within a cellular phone, portable electronic communication device, or microphone-enabled household device as among the grounds upon which a search warrant may be issued by a judge, if the content constitutes evidence relevant to proving that a felony has been committed.

Section 933.04, F.S., is amended to add the constitutional provision found in Article I, section 12 of the Constitution of Florida that protects private communications from unreasonable interception just as persons, houses, and effects are protected from unreasonable searches and seizures.

Chapter 934, F.S., Legislative Findings (Section 3)

The bill amends s. 934.01, F.S., by adding the term “electronic” to the current terminology of “wire and oral” communications in the legislative findings.

The bill also creates new legislative findings:

- Recognizing a subjective and objectively reasonable expectation of privacy in real-time cell-site location data, real-time precise GPS location data, and historical precise GPS location data. As such, the law enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the device owner should be allowed only when authorized by a warrant issued by a court and should remain under the control and supervision of the authorizing court.
- Recognizing that the use of portable electronic devices is growing at a rapidly increasing rate. These devices can store, and encourage the storage of, an almost limitless amount of personal and private information. Further recognizing that these devices are commonly used

⁶¹ Section 934.21(1), F.S.

⁶² See s. 934.21(2), F.S.

⁶³ A first degree misdemeanor is punishable by up to one year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁶⁴ Section 934.21(2), F.S.

⁶⁵ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

⁶⁶ A second degree misdemeanor is punishable by up to 60 days in county jail, a fine of up to \$500, or both. Sections 775.082 and 775.083, F.S.

to access personal and business information and other data stored in computers and servers that can be located anywhere in the world. Recognizing a person who uses a portable electronic device has a reasonable and justifiable expectation of privacy in the information contained in the portable electronic device.

- Recognizing that microphone-enabled household devices often contain microphones that listen for and respond to environmental triggers. Further recognizing that these devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in a device itself or in a remote computing service. Finding that an individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Chapter 934, F.S., Security of Communications Definitions (Section 4)

The bill amends s. 934.02, F.S., by amending current definitions, and creating new definitions:

- The current definition of “oral communication” is amended to include the use of a microphone-enabled household device.
- The definition of “electronic communication” is amended by:
 - Adding the terms “communication tower” and “satellite” to the ways in which the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature can be transmitted; and
 - Removing the exception of “any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object” from the definition;
- The definition of “microphone-enabled household device” is created and is defined as a device, sensor, or other physical object within a residence:
 - Capable of connecting to the Internet, directly or indirectly, or to another connected device;
 - Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
 - Which communicates with, by any means, another device, entity, or individual; and
 - Which contains a microphone designed to listen for and respond to environmental cues.
- The definition of “portable electronic communication device” is created and is defined as an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Interception of Wire, Oral, or Electronic Communications (Sections 5 – 9)

Section 5: The bill amends s. 934.03(2)(a), F.S., to require a search warrant, rather than a court order, for a law enforcement officer authorized by law to intercept wire, oral, or electronic communications to obtain information, facilities, or technical assistance from a wire, oral, or electronic communication service provider.

Section 6: Section 934.06, F.S., currently prohibits the use of intercepted wire or oral communication as evidence if the disclosure of that information would violate a provision of ch. 934, F.S. The bill adds the content of a cellular phone, microphone-enabled household device, or portable electronic communication device to this prohibition, and requires a search

warrant to obtain that content. The bill also specifically provides that the communication may be used as evidence if the communication is lawfully obtained under circumstances where a search warrant is not required.

Section 7: The bill amends s. 934.07(1) and (2), F.S., to require a search warrant, rather than a court order, for the interception of wire, oral, or electronic communications.

Section 8: The bill amends the procedures found in s. 934.09, F.S., for intercepting the contents of wire, oral, or electronic communications to require that a judge issue a search warrant, rather than a court order.

Section 9: The bill retains current law relating to the civil remedies available to a person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09, F.S., while replacing the terms court order, subpoena, and legislative authorization with the term search warrant.

Penalties for Accessing Stored Communications (Section 10)

The bill amends s. 934.21, F.S., to specify that the penalty for accessing a facility through which an electronic communication service is provided without authorization to obtain, alter, or prevent authorized access to a wire or electronic communication does not apply to conduct authorized:

- By the provider⁶⁷ or user⁶⁸ of wire, oral, or electronic communications services through cellular phones, portable electronic communication devices, or microphone-enabled household devices;
- In ss. 934.09, 934.23, or 934.24, F.S.;
- Under ch. 933, F.S.;⁶⁹ or
- For legitimate business purposes that do not identify the user.

Location Tracking (Section 11)

The bill creates new definitions related to location tracking in s. 934.42, F.S. The bill provides that:

- “Historical location data” means historical precise GPS location data in the possession of a provider.
- “Mobile tracking device” means an electronic or mechanical device that tracks the movement of a person or an object.
- “Real-time location tracking” means the:
 - Installation and use of a mobile tracking device on the object to be tracked;
 - Acquisition of real-time cell-site location data; or
 - Acquisition of real-time precise GPS location data.

The bill also amends s. 934.42, F.S., to require a search warrant rather than a court order for an investigative or law enforcement officer to engage in real-time location tracking or to acquire

⁶⁷ Section 934.21(3)(a), F.S.

⁶⁸ Section 934.21(3)(b), F.S.

⁶⁹ Chapter 933, F.S., authorizes search and inspection warrants.

historical location data in the possession of a provider. This means that an investigative or law enforcement officer must meet the higher standard of having probable cause for purposes of a search warrant rather than the lower standard of having a reasonable, articulable suspicion.

The bill requires that the application for a search warrant set forth a reasonable length of time that the mobile tracking device may be used or the location data may be obtained in real-time. This time period may not exceed 45 days from the date the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. When seeking historical location data the applicant must specify a date range for the data sought.

If the court issues a search warrant, the search warrant must also require the investigative or law enforcement officer to complete any authorized installation within a specified time-frame no longer than 10 days. A search warrant that permits the use of a mobile tracking device must be returned to the issuing judge within 10 days of the time period specified in the search warrant ending. Additionally, a search warrant authorizing the collection of historical GPS data must be returned to the issuing judge within 10 days after receiving the records.

Also, within 10 days after the use of the tracking device has ended or the historical location has been received from the service provider, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person who was tracked, whose property was tracked, or whose historical location data was received.⁷⁰ Upon a showing of good cause for postponement, the court may grant a postponement of this notice in 90 day increments.

The bill requires that, in addition to the United States Supreme Court standards, standards established by Florida courts apply to the installation, use, or monitoring of any mobile tracking device as authorized by s. 934.42, F.S.

The bill retains current provisions for real-time tracking without a search warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;
- Requires the real-time tracking before a warrant authorizing such tracking can, with due diligence, be obtained; and if
- There are grounds upon which a warrant could be issued to authorize the real-time tracking.⁷¹

Within 48 hours after the tracking has occurred or begins to occur, a search warrant approving the real-time tracking must be issued in accordance with s. 934.42, F.S. When an application for a search warrant is denied, when the information sought has been obtained, or when 48 hours have lapsed since the tracking began, whichever is earlier, the tracking must be terminated immediately.

⁷⁰ Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or data obtained; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address.

⁷¹ This exception is similar to that found in s. 934.09(7), F.S., related to intercepting wire, oral, or electronic communication.

The bill reenacts ss. 934.22, 934.27, 934.23, 934.24, 934.25, and 934.28, F.S., for the purpose of incorporating the amendments made by the bill.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement reports that it does not anticipate a fiscal impact related to SB 144.⁷²

VI. Technical Deficiencies:

None.

⁷² FDLE, *Senate Bill 144 Analysis* (December 22, 2020) (on file with the Senate Committee on Criminal Justice).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 933.02, 933.04, 934.01, 934.02, 934.03, 934.06, 934.07, 934.09, 934.10, 934.21, and 934.42.

The bill reenacts the following sections of the Florida Statutes: 934.22, 934.23, 934.24, 934.25, 934.27, and 934.28.

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

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

None.

B. Amendments:

None.

By Senator Brandes

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A bill to be entitled

An act relating to searches of cellular phones and other electronic devices; amending s. 933.02, F.S.; expanding the grounds for issuance of a search warrant to include content held within a cellular phone, portable electronic communication device, or microphone-enabled household device when such content constitutes evidence relevant to proving that a felony has been committed; amending s. 933.04, F.S.; adopting the constitutional protection against unreasonable interception of private communications by any means for purposes of obtaining a search warrant; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the terms "oral communication" and "electronic communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.03, F.S.; authorizing specified persons to provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such person has been provided with a search warrant issued by a judge of competent jurisdiction; prohibiting specified persons from disclosing the existence of any interception of a wire, oral, or electronic communication with respect to which the person has been served with a search warrant, rather than a court order; amending s. 934.06, F.S.; prohibiting the use of certain

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communication content in any trial, hearing, or other proceeding which was obtained without a specified warrant; providing an exception; amending s. 934.07, F.S.; authorizing a judge to issue a search warrant, rather than grant a court order, in conformity with specified provisions; authorizing the Department of Law Enforcement to request a law enforcement agency that provided certain information to join the department in seeking a new search warrant; amending s. 934.09, F.S.; requiring that each application for a search warrant, rather than an order, authorizing or approving the interception of wire, oral, or electronic communications be made in writing and state the applicant's authority; revising the required information that each application for a search warrant must include; authorizing a judge to authorize a search warrant ex parte, rather than an ex parte order, based on the application under certain circumstances; specifying requirements for search warrants, rather than orders, issued under certain circumstances; authorizing an aggrieved person to move to suppress the contents of certain wire, oral, or electronic communications before, as well as during, a trial, hearing, or proceeding; providing for inadmissibility of certain evidence if a certain motion is granted; authorizing a judge of competent jurisdiction to authorize interception within this state under specified circumstances; amending s. 934.10, F.S., and reenacting subsection (1), relating

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59 to civil remedies; providing that a good faith
60 reliance on a search warrant, rather than a court
61 order, subpoena, or legislative authorization, issued
62 under certain provisions constitutes a complete
63 defense against specified actions; amending s. 934.21,
64 F.S.; revising the exceptions to conduct that
65 constitutes unlawful access to stored communications;
66 conforming a provision to changes made by the act;
67 amending s. 934.42, F.S.; defining the terms
68 "historical location data," "mobile tracking device,"
69 and "real-time location tracking"; authorizing an
70 investigative or law enforcement officer to apply to a
71 judge of competent jurisdiction for a search warrant,
72 rather than an order, authorizing real-time location
73 tracking or acquisition of historical location data;
74 requiring an application for a search warrant to
75 include a statement setting forth a reasonable period
76 of time the mobile tracking device may be used or the
77 location data may be obtained in real time, not to
78 exceed a specified limit; authorizing a court to
79 grant, for good cause, extensions that do not
80 individually exceed a specified limit; requiring an
81 applicant seeking historical location data to specify
82 a date range for the data sought; deleting a provision
83 requiring a certification to be included in the
84 application; requiring the court, if it finds probable
85 cause and that the application contains the required
86 statements, to grant a search warrant ex parte rather
87 than entering an ex parte order; specifying that the

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88 search warrant may authorize real-time location
89 tracking or acquisition of historical location data;
90 providing that the search warrant may authorize the
91 tracking as specified; requiring the search warrant to
92 command the investigative or law enforcement officer
93 to complete any initiation of the location tracking or
94 execution of the search warrant for historical
95 location data authorized by the search warrant within
96 a certain timeframe; providing requirements for the
97 return of the search warrant to the judge and for
98 service of a copy of the search warrant on the person
99 who was tracked or whose property was tracked;
100 providing requirements for returning and serving a
101 search warrant authorizing the acquisition of
102 historical location data; authorizing a court, for
103 good cause, to postpone the notice requirement for a
104 specified time period; requiring that the standards
105 established by Florida courts for the installation,
106 use, or monitoring of mobile tracking devices and the
107 acquisition of location data apply to the
108 installation, use, or monitoring of any device and the
109 acquisition of location data as authorized by certain
110 provisions; deleting the definition of "tracking
111 device"; authorizing any investigative or law
112 enforcement officer who is specially designated by
113 certain persons and who makes specified determinations
114 to engage in real-time location tracking if a search
115 warrant is obtained, as specified, after the tracking
116 has occurred or begins to occur; specifying when real-

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time location tracking must terminate; reenacting s. 934.22(2)(b), F.S., relating to voluntary disclosure of customer communications or records, to incorporate the amendments made to ss. 934.03 and 934.07, F.S., in references thereto; reenacting s. 934.27(1) and (4), F.S., relating to relief, damages, and defenses for certain civil actions, to incorporate the amendments made to ss. 934.09 and 934.21, F.S., in references thereto; reenacting ss. 934.23(6), 934.24(6) and (7), 934.25(5), and 934.28, F.S., relating to required disclosures of customer communications or records, a subscriber or customer filing a motion for certain relief and customer notification, delayed notice, and the exclusivity of remedies and sanctions for certain violations, respectively, to incorporate the amendment made to s. 934.21, F.S., in references thereto; providing an effective date.

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

Section 1. Section 933.02, Florida Statutes, is amended to read:

933.02 Grounds for issuance of search warrant.—Upon proper affidavits being made, a search warrant may be issued under ~~the provisions of~~ this chapter upon any of the following grounds:

(1) When the property shall have been stolen or embezzled in violation of law.†

(2) When any property shall have been used:

(a) As a means to commit any crime;

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(b) In connection with gambling, gambling implements and appliances; or

(c) In violation of s. 847.011 or other laws in reference to obscene prints and literature.~~+~~

(3) When any property, or when content held within a cellular phone, a portable electronic communication device as defined in s. 934.02(28), or a microphone-enabled household device as defined in s. 934.02(27), constitutes evidence relevant to proving that a felony has been committed.~~+~~

(4) When any property is being held or possessed:

(a) In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;

(b) In violation of the fish and game laws;

(c) In violation of the laws relative to food and drug; or

(d) In violation of the laws relative to citrus disease pursuant to s. 581.184.~~;~~ ~~or~~

(5) When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place.

This section also applies to any papers or documents used as a means of or in aid of the commission of any offense against the laws of the state.

Section 2. Section 933.04, Florida Statutes, is amended to read:

933.04 Affidavits.—The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches and against the unreasonable interception of private communications by any means may ~~shall~~ not be violated

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and ~~a~~ ~~no~~ search warrant may not ~~shall~~ be issued except upon probable cause, supported by oath or affirmation particularly describing the place to be searched and the person and thing to be seized.

Section 3. Section 934.01, Florida Statutes, is amended to read:

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire, and oral, and electronic communications, to protect the integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire, and oral, and electronic communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire, and oral, and electronic communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

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204 (4) To safeguard the privacy of innocent persons, the
205 interception of wire, ~~or~~ oral, or electronic communications when
206 none of the parties to the communication has consented to the
207 interception should be allowed only when authorized by a court
208 of competent jurisdiction and should remain under the control
209 and supervision of the authorizing court. Interception of wire,
210 ~~and~~ oral, and electronic communications should further be
211 limited to certain major types of offenses and specific
212 categories of crime with assurance that the interception is
213 justified and that the information obtained thereby will not be
214 misused.

215 (5) To safeguard the privacy of innocent persons, the
216 Legislature recognizes the subjective expectation of privacy in
217 real-time cell-site location data, real-time precise global
218 positioning system location data, and historical precise global
219 positioning system location data which society is now prepared
220 to accept is objectively reasonable. As such, the law
221 enforcement collection of the precise location of a person,
222 cellular phone, or portable electronic communication device
223 without the consent of the person or owner of the cellular phone
224 or portable electronic communication device should be allowed
225 only when authorized by a search warrant issued by a court of
226 competent jurisdiction and should remain under the control and
227 supervision of the authorizing court.

228 (6) The Legislature recognizes that the use of portable
229 electronic communication devices is growing at a rapidly
230 increasing rate. These devices can store, and encourage the
231 storing of, an almost limitless amount of personal and private
232 information. Often linked to the Internet, these devices are

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commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing rapidly. These devices often contain microphones that listen for and respond to environmental cues. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility to daily household information in the device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in their own homes.

Section 4. Subsections (2) and (12) of section 934.02, Florida Statutes, are amended, and subsections (27) and (28) are added to that section, to read:

934.02 Definitions.—As used in this chapter:

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, including the use of a microphone-enabled household device, and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(12) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence

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of any nature transmitted in whole or in part by a wire, a
radio, a communication tower, a satellite, an electromagnetic, a
photoelectronic, or a photooptical system that affects
intrastate, interstate, or foreign commerce, but does not
include:

(a) Any wire or oral communication;

(b) Any communication made through a tone-only paging
device;

~~(c) Any communication from an electronic or mechanical
device which permits the tracking of the movement of a person or
an object; or~~

(c)-(d) Electronic funds transfer information stored by a
financial institution in a communications system used for the
electronic storage and transfer of funds.

(27) "Microphone-enabled household device" means a device,
sensor, or other physical object within a residence which:

(a) Is capable of connecting to the Internet, directly or
indirectly, or to another connected device;

(b) Is capable of creating, receiving, accessing,
processing, or storing electronic data or communications;

(c) Communicates with, by any means, another device,
entity, or individual; and

(d) Contains a microphone designed to listen for and
respond to environmental cues.

(28) "Portable electronic communication device" means an
object that may be easily transported or conveyed by a person;
is capable of creating, receiving, accessing, processing, or
storing electronic data or communications; and communicates
with, by any means, another device, entity, or individual.

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Section 5. Subsection (2) of section 934.03, Florida Statutes, is amended to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)(a)1. It is lawful under this section and ss. 934.04-934.09 for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public may not use ~~shall not utilize~~ service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

a. ~~A court order directing such assistance signed by the authorizing judge; or~~

~~b. A certification in writing by a person specified in s. 934.09(7) that~~ a search ~~no~~ warrant or court order is not

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required by law, that all statutory requirements have been met,
and that the specified assistance is required, setting forth the
period of time during which the provision of the information,
facilities, or technical assistance is authorized and specifying
the information, facilities, or technical assistance required;
or

b. A search warrant issued by a judge of competent
jurisdiction as required by law.

3. A provider of wire, oral, or electronic communication
service, or an officer, employee, or agent thereof, or landlord,
custodian, or other person may not disclose the existence of any
interception or the device used to accomplish the interception
with respect to which the person has been served with a search
warrant ~~furnished an order under this section and ss. 934.04-
934.09~~, except as may otherwise be required by legal process and
then only after prior notice to the Governor, the Attorney
General, the statewide prosecutor, or a state attorney, as may
be appropriate. Any such disclosure renders such person liable
for the civil damages provided under s. 934.10, and such person
may be prosecuted under s. 934.43. An action may not be brought
against any provider of wire, oral, or electronic communication
service, or an officer, employee, or agent thereof, or landlord,
custodian, or other person for providing information,
facilities, or assistance in accordance with the terms of a
search warrant ~~court order under this section and ss. 934.04-
934.09~~.

(b) It is lawful under this section and ss. 934.04-934.09
for an officer, employee, or agent of the Federal Communications
Commission, in the normal course of his or her employment and in

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349 discharge of the monitoring responsibilities exercised by the
350 commission in the enforcement of 47 U.S.C. chapter 5, to
351 intercept a wire, oral, or electronic communication transmitted
352 by radio or to disclose or use the information thereby obtained.

353 (c) It is lawful under this section and ss. 934.04-934.09
354 for an investigative or law enforcement officer or a person
355 acting under the direction of an investigative or law
356 enforcement officer to intercept a wire, oral, or electronic
357 communication when such person is a party to the communication
358 or one of the parties to the communication has given prior
359 consent to such interception and the purpose of such
360 interception is to obtain evidence of a criminal act.

361 (d) It is lawful under this section and ss. 934.04-934.09
362 for a person to intercept a wire, oral, or electronic
363 communication when all of the parties to the communication have
364 given prior consent to such interception.

365 (e) It is unlawful to intercept any wire, oral, or
366 electronic communication for the purpose of committing any
367 criminal act.

368 (f) It is lawful under this section and ss. 934.04-934.09
369 for an employee of a telephone company to intercept a wire
370 communication for the sole purpose of tracing the origin of such
371 communication when the interception is requested by the
372 recipient of the communication and the recipient alleges that
373 the communication is obscene, harassing, or threatening in
374 nature. The individual conducting the interception shall notify
375 local police authorities within 48 hours after the time of the
376 interception.

377 (g) It is lawful under this section and ss. 934.04-934.09

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for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.102, a public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated pursuant to s. 39.201 to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It is lawful ~~shall not be unlawful~~ under this section and ss. 934.04-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so

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that such electronic communication is readily accessible to the general public.

2. To intercept any radio communication which is transmitted:

a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communications system.

3. To engage in any conduct which:

a. Is prohibited by s. 633 of the Communications Act of 1934; or

b. Is excepted from the application of s. 705(a) of the Communications Act of 1934 by s. 705(b) of that act.

4. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of such interference.

5. To intercept, if such person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of

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such system.

6. To intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when such interception is not for the purposes of direct or indirect commercial advantage or private financial gain.

7. To intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if such interception is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(i) It is lawful ~~shall not be unlawful~~ under this section and ss. 934.04-934.09:

1. To use a pen register or a trap and trace device as authorized under ss. 934.31-934.34 or under federal law; or

2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(j) It is lawful ~~not unlawful~~ under this section and ss.

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934.04-934.09 for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser which are transmitted to, through, or from a protected computer if:

1. The owner or operator of the protected computer authorizes the interception of the communications of the computer trespasser;

2. The person acting under color of law is lawfully engaged in an investigation;

3. The person acting under color of law has reasonable grounds to believe that the contents of the communications of the computer trespasser will be relevant to the investigation; and

4. The interception does not acquire communications other than those transmitted to, through, or from the computer trespasser.

(k) It is lawful under this section and ss. 934.04-934.09 for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

Section 6. Section 934.06, Florida Statutes, is amended to read:

934.06 Prohibition of use as evidence of intercepted wire or oral communications; content of cellular phone, microphone-enabled household device, or portable electronic communication

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device; ~~exceptions~~ exception.—Whenever any wire or oral communication has been intercepted, or when the content of a cellular phone, microphone-enabled household device, or portable electronic communication device is obtained without a search warrant supported by probable cause, no part of the contents of such communication or content and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of ~~the provisions of this chapter,~~ or in cases where the content of a cellular phone, microphone-enabled household device, or portable electronic communication device is lawfully obtained under circumstances where a search warrant is not required.

Section 7. Subsections (1) and (2) of section 934.07, Florida Statutes, are amended to read:

934.07 Authorization for interception of wire, oral, or electronic communications.—

(1) The Governor, the Attorney General, the statewide prosecutor, or any state attorney may authorize an application to a judge of competent jurisdiction for, and such judge may issue a search warrant as required by law ~~grant in conformity with ss. 934.03–934.09 an order~~ authorizing or approving the interception of, wire, oral, or electronic communications by:

(a) The Department of Law Enforcement or any law

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enforcement agency as defined in s. 934.02 having responsibility for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of the offense of murder, kidnapping, aircraft piracy, arson, gambling, robbery, burglary, theft, dealing in stolen property, criminal usury, bribery, or extortion; any felony violation of ss. 790.161-790.166, inclusive; any violation of s. 787.06; any violation of chapter 893; any violation of ~~the provisions of~~ the Florida Anti-Fencing Act; any violation of chapter 895; any violation of chapter 896; any violation of chapter 815; any violation of chapter 847; any violation of s. 827.071; any violation of s. 944.40; or any conspiracy or solicitation to commit any violation of the laws of this state relating to the crimes specifically enumerated in this paragraph.

(b) The Department of Law Enforcement, together with other assisting personnel as authorized and requested by the department under s. 934.09(5), for the investigation of the offense as to which the application is made when such interception may provide or has provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism or evidence of any conspiracy or solicitation to commit any such violation.

(2)(a) If, during the course of an interception of communications by a law enforcement agency as authorized under paragraph (1)(a), the law enforcement agency finds that the intercepted communications may provide or have provided evidence of the commission of any offense that may be an act of terrorism or in furtherance of an act of terrorism, or evidence of any

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conspiracy or solicitation to commit any such violation, the law enforcement agency shall promptly notify the Department of Law Enforcement and apprise the department of the contents of the intercepted communications. The agency notifying the department may continue its previously authorized interception with appropriate minimization, as applicable, and may otherwise assist the department as provided in this section.

(b) Upon its receipt of information of the contents of an intercepted communications from a law enforcement agency, the Department of Law Enforcement shall promptly review the information to determine whether the information relates to an actual or anticipated act of terrorism as defined in this section. If, after reviewing the contents of the intercepted communications, there is probable cause that the contents of the intercepted communications meet the criteria of paragraph (1)(b), the Department of Law Enforcement may make application for the interception of wire, oral, or electronic communications consistent with paragraph (1)(b). The department may make an independent new application for interception based on the contents of the intercepted communications. Alternatively, the department may request the law enforcement agency that provided the information to join with the department in seeking a new search warrant as required by law or an amendment of the original interception search warrant ~~order~~, or may seek additional authority to continue intercepting communications under the direction of the department. In carrying out its duties under this section, the department may use the provisions for an emergency interception provided in s. 934.09(7) if applicable under statutory criteria.

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581 Section 8. Section 934.09, Florida Statutes, is amended to
582 read:

583 934.09 Procedure for interception of wire, oral, or
584 electronic communications.—

585 (1) Each application for a search warrant ~~an order~~
586 authorizing or approving the interception of a wire, oral, or
587 electronic communication under ss. 934.03-934.09 shall be made
588 in writing upon oath or affirmation to a judge of competent
589 jurisdiction and shall state the applicant's authority to make
590 such application. Each application shall include the following
591 information:

592 (a) The identity of the investigative or law enforcement
593 officer making the application and the officer authorizing the
594 application.

595 (b) A full and complete statement of the facts and
596 circumstances relied upon by the applicant to justify his or her
597 belief that a search warrant ~~an order~~ should be issued,
598 including:

599 1. Details as to the particular offense that has been, is
600 being, or is about to be committed.

601 2. Except as provided in subsection (11), a particular
602 description of the nature and location of the facilities from
603 which, or the place where, the communications are to be
604 intercepted.

605 3. A particular description of the type of communications
606 sought to be intercepted.

607 4. The identity of the person, if known, committing the
608 offense and whose communications are to be intercepted.

609 (c) A full and complete statement as to whether or not

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610 other investigative procedures have been tried and failed or why
611 they reasonably appear to be unlikely to succeed if tried or to
612 be too dangerous.

613 (d) A statement of the period of time for which the
614 interception is required to be maintained and, if the nature of
615 the investigation is such that the authorization for
616 interception should not automatically terminate when the
617 described type of communication has been first obtained, a
618 particular description of facts establishing probable cause to
619 believe that additional communications of the same type will
620 occur thereafter.

621 (e) A full and complete statement of the facts concerning
622 all previous applications known to the individual authorizing
623 and making the application, made to any judge for authorization
624 to intercept, or for approval of interceptions of, wire, oral,
625 or electronic communications involving any of the same persons,
626 facilities, or places specified in the application, and the
627 action taken by the judge on each such application.

628 (f) When the application is for the extension of a search
629 warrant ~~an order~~, a statement setting forth the results thus far
630 obtained from the interception or a reasonable explanation of
631 the failure to obtain such results.

632 (2) The judge may require the applicant to furnish
633 additional testimony or documentary evidence in support of the
634 application.

635 (3) Upon such application, the judge may authorize a search
636 warrant ~~enter an~~ ex parte ~~order~~, as requested or as modified,
637 authorizing or approving interception of wire, oral, or
638 electronic communications within the territorial jurisdiction of

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the court in which the judge is sitting, and outside such jurisdiction but within the State of Florida in the case of a mobile interception device authorized by the judge within such jurisdiction, if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense as provided in s. 934.07.

(b) There is probable cause for belief that particular communications concerning that offense will be obtained through such interception.

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.

(d) Except as provided in subsection (11), there is probable cause for belief that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by such person.

(4) Each search warrant ~~order~~ authorizing or approving the interception of any wire, oral, or electronic communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted.

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.

(c) A particular description of the type of communication

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sought to be intercepted and a statement of the particular offense to which it relates.

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application.

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

A search warrant ~~An order~~ authorizing the interception of a wire, oral, or electronic communication shall, upon the request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such service provider, landlord, custodian, or person is according the person whose communications are to be intercepted. The obligation of a provider of wire, oral, or electronic communication service under such a search warrant ~~an order~~ may include, but is not limited to, conducting an in-progress trace during an interception, or providing other assistance to support the investigation as may be specified in the search warrant ~~order~~. Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant for reasonable expenses incurred in providing such facilities or assistance.

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697 (5) A search warrant ~~No order~~ entered under this section
698 may not authorize or approve the interception of any wire, oral,
699 or electronic communication for any period longer than is
700 necessary to achieve the objective of the authorization or in
701 any event longer than 30 days. Such 30-day period begins on the
702 day on which the agent or officer of the law enforcement agency
703 first begins to conduct an interception under the search warrant
704 ~~order~~ or 10 days after the search warrant is approved ~~order is~~
705 ~~entered~~, whichever occurs earlier. Extensions of a search
706 warrant ~~an order~~ may be granted but only upon application for an
707 extension made in accordance with subsection (1) and upon the
708 court making the findings required by subsection (3). The period
709 of extension shall be no longer than the authorizing judge deems
710 necessary to achieve the purposes for which it was granted and
711 in no event for longer than 30 days. Every search warrant ~~order~~
712 and extension thereof shall contain a provision that the
713 authorization to intercept shall be executed as soon as
714 practicable, shall be conducted in such a way as to minimize the
715 interception of communications not otherwise subject to
716 interception under ss. 934.03-934.09, and must terminate upon
717 attainment of the authorized objective or in any event in 30
718 days. If the intercepted communication is in code or foreign
719 language and an expert in that foreign language or code is not
720 reasonably available during the interception period,
721 minimization may be accomplished as soon as practicable after
722 such interception. An interception under ss. 934.03-934.09 may
723 be conducted in whole or in part by government personnel or by
724 an individual operating under a contract with the government,
725 acting under the supervision of an agent or officer of the law

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enforcement agency authorized to conduct the interception.

(6) Whenever a search warrant ~~an order~~ authorizing interception is granted ~~entered~~ pursuant to ss. 934.03-934.09, the search warrant ~~order~~ may require reports to be made to the judge who issued the search warrant ~~order~~ showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require.

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting under this chapter, who reasonably determines that:

(a) An emergency exists that:

1. Involves immediate danger of death or serious physical injury to any person, the danger of escape of a prisoner, or conspiratorial activities threatening the security interest of the nation or state; and

2. Requires that a wire, oral, or electronic communication be intercepted before a search warrant ~~an order~~ authorizing such interception can, with due diligence, be obtained; and

(b) There are grounds upon which a search warrant ~~an order~~ could be entered under this chapter to authorize such interception,

may intercept such wire, oral, or electronic communication if an application for a search warrant ~~an order~~ approving the interception is made in accordance with this section within 48 hours after the interception has occurred or begins to occur. In

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the absence of a search warrant ~~an order~~, such interception shall immediately terminate when the communication sought is obtained or when the application for the search warrant ~~order~~ is denied, whichever is earlier. If such application for approval is denied, or in any other case in which the interception is terminated without a search warrant ~~an order~~ having been issued, the contents of any wire, oral, or electronic communication intercepted shall be treated as having been obtained in violation of s. 934.03(4), and an inventory shall be served as provided for in paragraph (8)(e) on the person named in the application.

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by ss. 934.03-934.09 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be kept in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the search warrant ~~order~~, or extensions thereof, such recordings shall be made available to the judge approving the search warrant ~~issuing such order~~ and sealed under his or her directions. Custody of the recordings shall be wherever the judge orders. They may ~~shall~~ not be destroyed except upon an order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years. Duplicate recordings may be made for use or disclosure pursuant to ~~the provisions of~~ s. 934.08(1) and (2) for investigations, or for purposes of discovery as required by law.

(b) The presence of the seal provided for by this

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subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under s. 934.08(3), as required by federal law.

(c) Applications made and search warrants ~~orders~~ granted under ss. 934.03-934.09 shall be sealed by the judge. Custody of the applications and search warrants ~~orders~~ shall be wherever the judge directs. As required by ~~federal~~ law, such applications and search warrants ~~orders~~ shall be disclosed only for purposes of discovery or upon a showing of good cause before a judge of competent jurisdiction and may ~~shall~~ not be destroyed except on order of the issuing or denying judge, or that judge's successor in office, and in any event shall be kept for 10 years.

(d) Any violation of ~~the provisions of~~ this subsection may be punished as contempt of the issuing or denying judge.

(e) Within a reasonable time but not later than 90 days after the termination of the period of a search warrant ~~an order~~ or extensions thereof, the issuing or denying judge shall cause to be served on the persons named in the search warrant ~~order~~ or the application, and such other parties to intercepted communications as the judge may determine in his or her discretion to be in the interest of justice, an inventory which shall include notice of:

1. The fact of the approval of the search warrant ~~entry of the order~~ or the application.

2. The date of the approval of the search warrant ~~entry~~ and the period of authorized, approved, or disapproved interception, or the denial of the application.

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813 3. The fact that during the period wire, oral, or
814 electronic communications were or were not intercepted.

815
816 The judge, upon the filing of a motion, may make available to
817 such person or the person's counsel for inspection such portions
818 of the intercepted communications, applications, and search
819 warrants ~~orders~~ as the judge determines to be in the interest of
820 justice. On an ex parte showing of good cause to a judge of
821 competent jurisdiction, the serving of the inventory required by
822 this paragraph may be postponed.

823 (9) ~~As required by federal law,~~ The contents of any
824 intercepted wire, oral, or electronic communication or evidence
825 derived therefrom may ~~shall~~ not be received in evidence or
826 otherwise disclosed in any trial, hearing, or other proceeding
827 unless each party, not less than 10 days before the trial,
828 hearing, or proceeding, has been furnished with a copy of the
829 search warrant ~~court order~~ and accompanying application under
830 which the interception was authorized or approved. This 10-day
831 period may be waived by the judge if he or she finds that it was
832 not possible to furnish the party with the above information 10
833 days before the trial, hearing, or proceeding and that the party
834 will not be prejudiced by the delay in receiving such
835 information.

836 (10) (a) An ~~Any~~ aggrieved person before or in any trial,
837 hearing, or proceeding in or before any court, department,
838 officer, agency, regulatory body, or other authority may move to
839 suppress the contents of any intercepted wire, oral, or
840 electronic communication, or evidence derived therefrom, on the
841 grounds that:

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842 1. The communication was unlawfully intercepted;

843 2. The search warrant ~~order of authorization or approval~~
844 under which it was intercepted is insufficient on its face; or

845 3. The interception was not made in conformity with the
846 search warrant ~~order of authorization or approval~~.

847 (b) Except as otherwise provided in the applicable Florida
848 Rules of Criminal Procedure, in a criminal matter:

849 1. Such motion shall be made before the trial, hearing, or
850 proceeding unless there was no opportunity to make such motion
851 or the person was not aware of the grounds of the motion.

852 2. If the motion is granted, the contents of the
853 intercepted wire or oral communication, or evidence derived
854 therefrom, shall be treated as having been obtained in violation
855 of ss. 934.03-934.09 and are not admissible as evidence.

856 3. The judge, upon the filing of such motion by the
857 aggrieved person, may make available to the aggrieved person or
858 his or her counsel for inspection such portions of the
859 intercepted communication or evidence derived therefrom as the
860 judge determines to be in the interest of justice.

861 (c) ~~(b)~~ In addition to any other right to appeal, the state
862 shall have the right to appeal from an order granting a motion
863 to suppress made under paragraph (a) or the denial of an
864 application for a search warrant ~~an order of approval~~ if the
865 attorney shall certify to the judge or other official granting
866 such motion or denying such application that the appeal is not
867 taken for purposes of delay. Such appeal shall be taken within
868 30 days after the date the order was entered and shall be
869 diligently prosecuted.

870 (d) ~~(c)~~ The remedies and sanctions described in ss. 934.03-

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934.10 with respect to the interception of electronic communications are the only judicial remedies and sanctions for violations of those sections involving such communications.

(11) The requirements of subparagraph (1)(b)2. and paragraph (3)(d) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

(a) In the case of an application with respect to the interception of an oral communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted.

3. The judge finds that such specification is not practical.

(b) In the case of an application with respect to a wire or electronic communication:

1. The application is by an agent or officer of a law enforcement agency and is approved by the Governor, the Attorney General, the statewide prosecutor, or a state attorney.

2. The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing that there is probable cause to believe that the person's actions could have the effect of thwarting interception from a specified facility or that the person whose communications are to be intercepted

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has removed, or is likely to remove, himself or herself to another judicial circuit within the state.

3. The judge finds that such showing has been adequately made.

4. The search warrant ~~order~~ authorizing or approving the interception is limited to interception only for such time as it is reasonable to presume that the person identified in the application is or was reasonably proximate to the instrument through which such communication will be or was transmitted.

~~Consistent with this paragraph, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the order is being sought.~~

(12) If an interception of a communication is to be carried out pursuant to subsection (11), such interception may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception search warrant ~~order~~. A provider of wire or electronic communications service that has received a search warrant ~~an order~~ as provided under paragraph (11)(b) may petition the court to modify or quash the search warrant ~~order~~ on the ground that the interception cannot be performed in a

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timely or reasonable fashion. The court, upon notice to the state, shall decide such a petition expeditiously.

(13) Consistent with this section, a judge of competent jurisdiction may authorize interception within this state, whether the interception is within or outside the court's jurisdiction, if the application for the interception makes a showing that some activity or conspiracy believed to be related to, or in furtherance of, the criminal predicate for the requested interception has occurred or will likely occur, or the communication to be intercepted or expected to be intercepted is occurring or will likely occur, in whole or in part, within the jurisdiction of the court where the search warrant is being sought.

Section 9. Subsection (2) of section 934.10, Florida Statutes, is amended, and subsection (1) of that section is reenacted, to read:

934.10 Civil remedies.—

(1) Any person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of ss. 934.03-934.09 shall have a civil cause of action against any person or entity who intercepts, discloses, or uses, or procures any other person or entity to intercept, disclose, or use, such communications and shall be entitled to recover from any such person or entity which engaged in that violation such relief as may be appropriate, including:

(a) Preliminary or equitable or declaratory relief as may be appropriate;

(b) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or

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958 \$1,000, whichever is higher;

959 (c) Punitive damages; and

960 (d) A reasonable attorney's fee and other litigation costs
961 reasonably incurred.

962 (2) A good faith reliance on any of the following
963 constitutes a complete defense to any civil, criminal, or
964 administrative action arising out of such conduct under the laws
965 of this state:

966 (a) A search warrant ~~court order, subpoena, or legislative~~
967 ~~authorization~~ as provided for in ss. 934.03-934.09;or

968 (b) A request of an investigative or law enforcement
969 officer under s. 934.09(7);or

970 (c) A good faith determination that Florida or federal law,
971 other than 18 U.S.C. s. 2511(2)(d), authorized ~~permitted~~ the
972 conduct complained of

973
974 ~~shall constitute a complete defense to any civil or criminal, or~~
975 ~~administrative action arising out of such conduct under the laws~~
976 ~~of this state.~~

977 Section 10. Section 934.21, Florida Statutes, is amended to
978 read:

979 934.21 Unlawful access to stored communications;
980 penalties.—

981 (1) Except as provided in subsection (3), whoever:

982 (a) Intentionally accesses without authorization a facility
983 through which an electronic communication service is provided,
984 or

985 (b) Intentionally exceeds an authorization to access such
986 facility,

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and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (2).

(2) The punishment for an offense under subsection (1) is as follows:

(a) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, the person ~~is~~:

1. In the case of a first offense under this subsection, commits ~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this subsection, commits ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) In any other case, the person commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Subsection (1) does not apply with respect to conduct authorized:

(a) By the person or entity providing a wire, an oral, or an electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic communication devices;

(b) By a user of a wire, an oral, or an electronic communications service, including through cellular phones, microphone-enabled household devices, or portable electronic

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communication devices, with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09, s. 934.23, or s. 934.24;

(d) In chapter 933; or

(e) For accessing for a legitimate business purpose information that is not personally identifiable or that has been collected in a way that prevents identification of the user of the device.

Section 11. Section 934.42, Florida Statutes, is amended to read:

934.42 Mobile tracking device and location tracking authorization.—

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

(a) "Historical location data" means historical precise global positioning system location data in the possession of a provider.

(b) "Mobile tracking device" means an electronic or a mechanical device that tracks the movement of a person or an object.

(c) "Real-time location tracking" means the:

1. Installation and use of a mobile tracking device on the object to be tracked;

2. Acquisition of real-time cell-site location data; or

3. Acquisition of real-time precise global positioning system location data.

(2) ~~(1)~~ An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a search warrant ~~an order~~ authorizing or approving real-time location tracking or the acquisition of historical location data in the

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possession of the provider ~~the installation and use of a mobile tracking device.~~

(3)~~(2)~~ An application under subsection (2) ~~(1)~~ of this section must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable period of time during which the mobile tracking device may be used or the location data may be obtained in real time, not to exceed 45 days from the date on which the search warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period of time, not to exceed 45 days each. When seeking historical location data, the applicant must specify a date range for the data sought ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.~~

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement as to whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

(4)~~(3)~~ Upon application made as provided under subsection (3) ~~(2)~~, the court, if it finds probable cause ~~that the certification and finds that the~~ statements required by subsection (3) ~~(2)~~ have been made in the application, must grant a search warrant ~~shall enter an ex parte order~~ authorizing real-time location tracking or the acquisition of historical location

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1074 ~~data the installation and use of a mobile tracking device.~~ Such
1075 search warrant order may authorize the location tracking use of
1076 ~~the device~~ within the jurisdiction of the court and outside that
1077 jurisdiction but within the State of Florida if the location
1078 tracking device is initiated ~~installed~~ within the jurisdiction
1079 of the court. The search warrant must command the investigative
1080 or law enforcement officer to complete any initiation of the
1081 location tracking or execution of the search warrant for
1082 historical location data authorized by the search warrant within
1083 a specified period of time not to exceed 10 calendar days.

1084 (5) ~~(4)~~ A court may not require greater specificity or
1085 additional information beyond that which is required by law and
1086 this section as a requisite for issuing a search warrant ~~an~~
1087 ~~order~~.

1088 (6) Within 10 days after the timeframe specified in
1089 paragraph (3)(b) has ended, the investigative or law enforcement
1090 officer executing a search warrant must return the search
1091 warrant to the issuing judge. When the search warrant is
1092 authorizing the acquisition of historical location data, the
1093 investigative or law enforcement officer executing the search
1094 warrant must return the search warrant to the issuing judge
1095 within 10 days after receipt of the records. The investigative
1096 or law enforcement officer may do so by reliable electronic
1097 means.

1098 (7) Within 10 days after the timeframe specified in
1099 paragraph (3)(b) has ended, the investigative or law enforcement
1100 officer executing a search warrant must serve a copy of the
1101 search warrant on the person who, or whose property, was
1102 tracked. When the search warrant is authorizing the acquisition

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of historical location data, the investigative or law enforcement officer executing the search warrant must serve a copy of the search warrant on the person whose data was obtained within 10 days after receipt of the records. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or whose data was obtained or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon a showing of good cause to a court of competent jurisdiction, the court may grant one or more postponements of this notice for a period of 90 days each.

(8) ~~(5)~~ The standards established by Florida courts and the United States Supreme Court for the installation, use, or and monitoring of mobile tracking devices and the acquisition of location data shall apply to the installation, use, or monitoring and use of any device and the acquisition of location data as authorized by this section.

~~(6) As used in this section, a "tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object.~~

(9) (a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting pursuant to this chapter who reasonably determines that:

1. An emergency exists which:

a. Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and

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1132 b. Requires real-time location tracking before a search
1133 warrant authorizing such tracking can, with due diligence, be
1134 obtained; and

1135 2. There are grounds upon which a search warrant could be
1136 issued under this chapter to authorize such tracking,
1137
1138 may engage in real-time location tracking if, within 48 hours
1139 after the tracking has occurred or begins to occur, a search
1140 warrant approving the tracking is issued in accordance with this
1141 section.

1142 (b) In the absence of an authorizing search warrant, such
1143 tracking must immediately terminate when the information sought
1144 is obtained, when the application for the search warrant is
1145 denied, or when 48 hours have lapsed since the tracking began,
1146 whichever is earlier.

1147 Section 12. For the purpose of incorporating the amendments
1148 made by this act to sections 934.03 and 934.07, Florida
1149 Statutes, in references thereto, paragraph (b) of subsection (2)
1150 of section 934.22, Florida Statutes, is reenacted to read:

1151 934.22 Voluntary disclosure of customer communications or
1152 records.—

1153 (2) A provider described in subsection (1) may divulge the
1154 contents of a communication:

1155 (b) As otherwise authorized in s. 934.03(2)(a), s. 934.07,
1156 or s. 934.23.

1157 Section 13. For the purpose of incorporating the amendments
1158 made by this act to sections 934.09 and 934.21, Florida
1159 Statutes, in references thereto, subsections (1) and (4) of
1160 section 934.27, Florida Statutes, are reenacted to read:

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934.27 Civil action: relief; damages; defenses.—

(1) Except as provided in s. 934.23(5), any provider of electronic communication service, or subscriber or customer thereof, aggrieved by any violation of ss. 934.21-934.28 in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as is appropriate.

(4) A good faith reliance on any of the following is a complete defense to any civil or criminal action brought under ss. 934.21-934.28:

(a) A court warrant or order, a subpoena, or a statutory authorization, including, but not limited to, a request of an investigative or law enforcement officer to preserve records or other evidence, as provided in s. 934.23(7).

(b) A request of an investigative or law enforcement officer under s. 934.09(7).

(c) A good faith determination that s. 934.03(3) permitted the conduct complained of.

Section 14. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, subsection (6) of section 934.23, Florida Statutes, is reenacted to read:

934.23 Required disclosure of customer communications or records.—

(6) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance

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with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28.

Section 15. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in references thereto, subsections (6) and (7) of section 934.24, Florida Statutes, are reenacted to read:

934.24 Backup preservation; customer notification; challenges by customer.—

(6) Within 14 days after notice by the investigative or law enforcement officer to the subscriber or customer under subsection (2), the subscriber or customer may file a motion to quash the subpoena or vacate the court order seeking contents of electronic communications, with copies served upon the investigative or law enforcement officer and with written notice of such challenge to the service provider. A motion to vacate a court order must be filed in the court which issued the order. A motion to quash a subpoena must be filed in the circuit court in the circuit from which the subpoena issued. Such motion or application must contain an affidavit or sworn statement:

(a) Stating that the applicant is a subscriber or customer of the service from which the contents of electronic communications maintained for her or him have been sought, and

(b) Stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of ss. 934.21-934.28 in some other respect.

(7) Except as otherwise obtained under paragraph (3)(a), service must be made under this section upon an investigative or law enforcement officer by delivering or mailing by registered

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or certified mail a copy of the papers to the person, office, or department specified in the notice which the subscriber or customer has received pursuant to ss. 934.21-934.28. For the purposes of this subsection, the term "delivering" shall be construed in accordance with the definition of "delivery" as provided in Rule 1.080, Florida Rules of Civil Procedure.

Section 16. For the purpose of incorporating the amendment made by this act to section 934.21, Florida Statutes, in a reference thereto, subsection (5) of section 934.25, Florida Statutes, is reenacted to read:

934.25 Delayed notice.—

(5) Upon the expiration of the period of delay of notification under subsection (1) or subsection (4), the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

(a) States with reasonable specificity the nature of the law enforcement inquiry, and

(b) Informs the subscriber or customer:

1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.

2. That notification of such subscriber or customer was delayed.

3. What investigative or law enforcement officer or what court made the certification or determination pursuant to which

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1248 that delay was made.

1249 4. Which provision of ss. 934.21-934.28 allowed such delay.

1250 Section 17. For the purpose of incorporating the amendment
1251 made by this act to section 934.21, Florida Statutes, in a
1252 reference thereto, section 934.28, Florida Statutes, is
1253 reenacted to read:

1254 934.28 Exclusivity of remedies and sanctions.—The remedies
1255 and sanctions described in ss. 934.21-934.27 are the only
1256 judicial remedies and sanctions for violation of those sections.

1257 Section 18. This act shall take effect July 1, 2021.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 144
FINAL ACTION:
MEETING DATE: Tuesday, March 2, 2021
TIME: 1:30—3:30 p.m.
PLACE: 412 Knott Building

[illegible]

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered

RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call

WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 3/2/2021 1:36:01 PM

Ends: 3/2/2021 3:28:44 PM Length: 01:52:44

1:36:05 PM Meeting called to order by Chair Gibson
1:36:28 PM Roll call taken
1:36:51 PM Chair takes up Tab 2 -CS/SB 602 by Chair Burgess
1:37:59 PM Senator Burgess explains the bill
1:38:19 PM Senator Rouson with questions
1:38:53 PM Response from Senator Burgess
1:39:10 PM Public testimony on CS/SB 602
1:40:13 PM No Debate on the bill
1:41:01 PM Senator Burgess closes on the bill
1:41:34 PM Roll call on CS/SB 602
1:41:55 PM Bill passes
1:42:13 PM Tab 3 - SB 728 Senator Broxson
1:42:56 PM Senator Broxson explains the bill
1:43:14 PM Public testimony
1:43:20 PM Public testimony
1:43:22 PM Joy Ryan, Florida Insurance Council - waives in support
1:43:56 PM Senator Broxson waives close on the bill
1:44:11 PM Roll call vote on bill
1:44:19 PM SB 728 passes
1:44:26 PM Tab 4 - SB 702 by Senator Thurston
1:44:55 PM Senator Thurston explains the amendment
1:45:13 PM Amendment adopted
1:45:37 PM Public Testimony
1:45:52 PM Public Testimony
1:45:57 PM Martha Edenfield, Real Property, Probate and Trust waives in support
1:46:23 PM Senator Broxson waives close on the bill
1:46:39 PM Roll call vote
1:46:48 PM SB 702 passes
1:47:01 PM Tab 5 - SB 82 by Senator Baxley
1:47:31 PM Senator explains the bill
1:47:41 PM Senator Rouson with a question
1:47:54 PM Response from Senator Baxley
1:48:07 PM Chair Gibson with a question
1:48:25 PM Response from Senator Baxley
1:48:41 PM Follow up from Chair Gibson
1:49:02 PM Response from Senator Baxley
1:50:06 PM Chair Gibson in debate on the bill
1:51:55 PM Senator Baxley closes on the bill
1:52:14 PM Roll call vote on the bill
1:52:28 PM SB 82 passes
1:52:47 PM Tab 6 CS/SB 920 by Senator Bradley
1:53:17 PM Senator Bradley explains the bill

1:53:53 PM Public testimony
1:54:20 PM Waives in support
1:54:55 PM Question from Senator Thurston
1:55:10 PM Response from Senator Bradley
1:55:25 PM Follow up question from Senator Thurston
1:55:54 PM Response from Senator Bradley
1:56:12 PM Remark by Senator Rouson
1:56:49 PM Chair Gibson with a question
1:57:06 PM Response from Senator Bradley
1:57:31 PM Response from Senator Bradley
1:57:32 PM Senator Bradley waives close
1:57:54 PM Roll call vote on bill
1:58:05 PM CS/SB 920 passes
1:58:33 PM SB 752 by Senator Gruters explains the bill
1:59:00 PM Question from Senator Rouson
1:59:17 PM Response from Senator Gruters
1:59:39 PM No public testimony
2:00:39 PM No public testimony
2:00:41 PM Senator Gruters waives close
2:00:49 PM Roll Call vote on the bill
2:00:59 PM
2:01:00 PM SB 752 passes
2:01:00 PM
2:01:18 PM Tab 7 - SB 1060 by Senator Bradley
2:01:47 PM
2:01:49 PM Senator Bradley explains the bill
2:02:00 PM
2:02:01 PM Senator Rouson with questions on the bill
2:02:49 PM Response from Senator Bradley
2:03:11 PM One amendment
2:03:11 PM
2:03:53 PM Senator Bradley explains the amendment
2:04:10 PM Senator Thurston with a question on the bill
2:05:03 PM Response from Senator Bradley
2:05:16 PM Question from Senator Rouson on the bill
2:06:01 PM Response from Senator Bradley
2:06:14 PM Public Testimony
2:06:41 PM Ray Colburn, FL Fire Chiefs Association waives in support
2:07:07 PM Vicki Long, Florida Association of the American Institute of Architects waives in support
2:07:17 PM Allen Douglas, Florida Engineering Society / American Council of Engineering
Companies of Florida waives in support
2:07:39 PM Remarks from Senator Rouson
2:08:12 PM
2:08:13 PM
2:08:35 PM Remarks from Senator Baxley
2:09:37 PM
2:10:06 PM Chair Gibson in debate on the bill
2:11:46 PM Senator Bradley closes on the bill
2:13:21 PM Roll call vote on the bill
2:13:38 PM CS/SB 1060 passes
2:14:10 PM Chair Gibson calls temporary recess until 2:40
2:14:37 PM Recording Paused

2:41:07 PM Recording Resumed
2:41:07 PM Chair Gibson calls the meeting back to order after recess
2:41:50 PM SB 582 by Senator Rodrigues
2:42:12 PM
2:42:13 PM Senator Rodrigues explains the bill
2:43:17 PM Senator Polsky with questions
2:44:21 PM Response from Senator Rodrigues
2:44:37 PM Follow up from Senator Polsky
2:45:19 PM Response from Senator Rodrigues
2:45:33 PM Public testimony
2:46:24 PM Rev. Dr. Russell Myer, FL Faith Advocacy Office waives against
2:46:36 PM Karen Woodall, Florida Center for Fiscal & Economic Policy against
2:46:46 PM Jon Maurer, Equality Florida speaking against
2:48:22 PM Trish Neely, League Women Voters Florida speaking against
2:49:50 PM Barbara DeVane, FL Now against
2:50:50 PM Kara Gross, ACLU of Florida waives against
2:51:05 PM Michael Barrett, Florida Conference of Catholic Bishops waives in support
2:51:19 PM Carrie Boyd, SPLC Action Fund waives against
2:51:29 PM Laura Hernandez, Florida Alliance of Planned Parenthood waives against
2:51:41 PM Devon Graham, American Atheists waives against
2:51:58 PM David Serdar speaking information
2:53:03 PM Question by Senator Baxley
2:54:04 PM Senator Baxley in debate in support
2:54:43 PM Senator Boyd in debate in support of the bill
2:55:26 PM Senator Polsky in debate on the bill
2:57:20 PM Amendment Barcode 911724 by Senator Brandes explains the amendment
2:58:30 PM Senator Brandes waives closure on the amendment
2:59:30 PM Amendment passes by voice vote
2:59:42 PM No public testimony
3:00:06 PM Chair Gibson in debate on the bill as amended
3:02:34 PM Senator Rodrigues responds in closing on the bill
3:04:18 PM Senator Rodrigues closes on the bill
3:05:18 PM Roll call vote on the bill
3:05:27 PM SB 582 passes
3:05:50 PM Senator Brandes asked to be shown voting in favor of tabs 1-7
3:06:33 PM SB 748 by Senator Brandes, he explains the bill
3:07:07 PM Amendment Barcode 537682
3:07:50 PM Katie Cunningham, State courts System waives in support
3:08:00 PM
3:08:01 PM Amendment adopted
3:08:09 PM Amendment Barcode 213074
3:08:25 PM Katie Cunningham, FL State Courts waives in support
3:08:45 PM Amendment passes
3:08:51 PM Senator Thurston in debate on the bill
3:09:13 PM
3:09:43 PM Senator Broxson with questions in debate on the bill
3:10:39 PM Response from Senator Brandes
3:10:56 PM Follow up by Senator Broxson
3:11:34 PM Response from Senator Brandes
3:12:36 PM Public Testimony
3:13:03 PM William Large, Florida Justice Reform Institute waives in support
3:13:14 PM Katie Cunningham, State Courts Systems waives in support

3:13:27 PM Senator Brandes waives close
3:13:40 PM Roll call vote on the bill
3:13:50 PM SB 748 passes
3:13:50 PM
3:13:50 PM
3:14:18 PM SB 662 by Senator Brandes explains the bill
3:14:43 PM Amendment 608624, technical amendment
3:15:08 PM Amendment adopted
3:15:17 PM Questions from Senator Rouson
3:15:35 PM Response from Senator Brandes
3:16:13 PM Questions from Senator Boyd
3:17:05 PM Response from Senator Brandes
3:17:23 PM Public testimony
3:18:04 PM Amy McCourt speaking for the bill
3:18:37 PM Shirley Daniels speaking for the bill
3:19:39 PM A. Wellington Barlow speaking for the bill
3:20:40 PM Angela Klix speaking for the bill
3:21:17 PM Carolyn Jones speaking for the bill
3:22:31 PM
3:23:40 PM Anne Williams speaking for the bill
3:24:44 PM Senator Brandes asked that a time certain vote be called at 3:28
3:25:19 PM Karen Robert speaking for the bill
3:25:57 PM Senator Brandes closes on the bill
3:26:36 PM Roll call vote on the bill
3:27:36 PM SB 662 passes
3:27:43 PM Chair Brandes TP's SB 144
3:27:47 PM Senator Gibson would like to change vote on SB 582 from no to yes
3:28:05 PM Comments from Chair Brandes
3:28:24 PM Senator Rouson moves to adjourn
3:28:43 PM Meeting adjourn