Tab 1	**CS/SB 306** by **CF, Harrell**; (Compare to H 00327) Placement of Surrendered Newborn Infants

Tab 2	**SB 526** by **Pizzo (CO-INTRODUCERS) Rouson, Book**; (Identical to H 00289) Title Fraud Prevention

Tab 3	**SB 528** by **Pizzo (CO-INTRODUCERS) Book**; (Identical to H 00299) Public Records/Title Fraud Prevention Pilot Program

720906	A	S	JU, Pizzo	Delete L.32 - 44:	02/02 02:09 PM

Tab 4	**SB 10** by **Bradley**; (Similar to CS/H 06007) Relief of Julia Perez by the St. Johns County Sheriff's Office

151546	D	S	JU, Bradley	Delete everything after	02/02 02:26 PM

Tab 5	**SB 484** by **Bradley**; (Similar to H 01049) Flood Disclosure in the Sale of Real Property

256786	D	S	JU, Bradley	Delete everything after	02/02 02:10 PM

Tab 6	**SB 468** by **Bradley**; (Identical to H 01393) Court Interpreter Services

Tab 7	**SB 1104** by **Bradley**; (Similar to H 01149) Policy Cancellations and Nonrenewals by Property Insurers

839006	D	S	JU, Bradley	Delete everything after	02/02 02:30 PM

Tab 8	**SB 1682** by **Bradley**; (Similar to CS/H 01461) Public Records/Artificial Intelligence Transparency Violations

Tab 9	**SB 720** by **Hutson**; (Similar to H 01367) Asbestos and Silica Claims

387426	A	S	JU, Hutson	Delete L.37 - 51:	02/02 02:10 PM

Tab 10	**SB 888** by **Perry**; Property Rights

Tab 11	**CS/SB 1066** by **BI, Burton**; (Similar to CS/H 00939) Consumer Protection

341094	D	S	JU, Burton	Delete everything after	02/02 02:11 PM
907326	AA	S	JU, Burton	Delete L.241 - 294:	02/05 10:47 AM

Tab 12	**SB 1252** by **Collins**; (Identical to H 00347) Exemptions from Products Liability Actions

Tab 13	**SB 1316** by **Berman**; (Similar to H 01093) Florida Uniform Fiduciary Income and Principal Act

172844	A	S	JU, Berman	Delete L.362 - 2329:	02/02 02:25 PM

Tab 14	**SB 1530** by **Martin**; (Similar to H 01365) Unauthorized Public Camping and Public Sleeping

327518	D	S	JU, Martin	Delete everything after	02/02 02:12 PM

Tab 15	**SB 1618** by **Martin**; (Compare to CS/H 01281) Interception and Disclosure of Oral Communications

Tab 16	**SB 1616** by **Calatayud**; (Identical to H 01443) Electronic Access to Official Records

Tab 17	**SB 1780** by **Brodeur**; (Compare to CS/H 00757) Defamation, False Light, and Unauthorized Publication of Name or Likenesses

882282	D	S	JU, Brodeur	Delete everything after	02/02 02:12 PM

Tab 18	**SB 1788** by **Grall (CO-INTRODUCERS) Garcia**; (Similar to CS/1ST ENG/H 00001) Age Verification for Social Media Platform Accounts

239384	D	S	JU, Grall	Delete everything after	02/02 02:13 PM

Tab 19	**SB 1790** by **Grall**; (Similar to CS/1ST ENG/H 01377) Public Records/Investigations by the Department of Legal Affairs

Tab 20	**SB 476** by **Grall**; (Compare to CS/H 00651) Civil Liability

324718	D	S	JU, Grall	Delete everything after	02/02 02:13 PM

Tab 21	**SB 1792** by **Grall (CO-INTRODUCERS) Garcia**; (Similar to CS/CS/H 00003) Online Access to Materials Harmful to Minors

940812	D	S	JU, Grall	Delete everything after	02/02 02:14 PM

Tab 22	**SB 1794** by **Grall**; (Similar to CS/CS/H 01491) Public Records/Investigations by the Department of Legal Affairs

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Yarborough, Chair
Senator Burton, Vice Chair

MEETING DATE: Monday, February 5, 2024
TIME: 2:30—6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators Albritton, Book, Boyd, Broxson, DiCeglie, Harrell, Stewart, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 306** Children, Families, and Elder Affairs / Harrell (Compare H 327) **(If Received)**	Placement of Surrendered Newborn Infants; Defining the term “community-based care lead agency”; requiring community-based care lead agencies to establish and maintain a specified registry; prohibiting the community-based care lead agency from transferring certain costs to prospective adoptive parents; requiring licensed child-placing agencies that take custody of surrendered newborn infants to report certain information; providing requirements for the hospital once it takes physical custody of a surrendered newborn infant, etc. CF 12/13/2023 Temporarily Postponed CF 01/30/2024 Fav/CS JU 02/05/2024 If received FP	
2	**SB 526** Pizzo (Identical H 289, Compare H 243, H 299, Linked S 528)	Title Fraud Prevention; Creating a pilot program in Broward County; providing a definition; requiring certain parties to provide specified information to the property appraiser; requiring the property appraiser to make certain notifications to specified parties; providing that certain action or inaction does not give rise to liability; requiring participating property appraisers to submit a report to specified parties containing certain information, etc. JU 02/05/2024 CA RC	
3	**SB 528** Pizzo (Identical H 299, Compare H 289, Linked S 526)	Public Records/Title Fraud Prevention Pilot Program; Providing an exemption from public records requirements for certain information provided to a property appraiser as part of a title fraud prevention pilot program; providing for future legislative review and repeal; providing a statement of public necessity, etc. JU 02/05/2024 CA RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 10** Bradley (Similar CS/H 6007)	Relief of Julia Perez by the St. Johns County Sheriff's Office; Providing for the relief of Julia Perez by the St. Johns County Sheriff's Office; providing for an appropriation to compensate Julia Perez for personal injuries and damages sustained as a result of the negligence of an employee of the St. Johns County Sheriff's Office; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 02/05/2024 CA RC	
5	**SB 484** Bradley (Similar H 1049)	Flood Disclosure in the Sale of Real Property; Requiring a seller of real property to disclose in writing certain flood information to a prospective purchaser before executing a contract for the sale of the property; defining the term "flooding", etc. JU 02/05/2024 BI RC	
6	**SB 468** Bradley (Identical H 1393)	Court Interpreter Services; Authorizing the state courts system to use state revenues, if available, to provide court-appointed interpreting services to nonindigent individuals; repealing the cost recovery requirement for court-appointed interpreting services, etc. JU 02/05/2024 ACJ FP	
7	**SB 1104** Bradley (Similar H 1149)	Policy Cancellations and Nonrenewals by Property Insurers; Prohibiting insurers from canceling and nonrenewing within certain timeframes policies covering commercial properties damaged by hurricanes and wind losses; prohibiting eligible surplus lines insurers from canceling and nonrenewing within certain timeframes policies covering dwellings and residential properties damaged by hurricanes and wind losses; providing that such prohibition applies to flood damages caused by hurricanes, etc. BI 01/22/2024 Favorable JU 02/05/2024 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1682** Bradley (Similar CS/H 1461, Compare CS/H 1459, Linked CS/S 1680)	Public Records/Artificial Intelligence Transparency Violations; Providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain artificial intelligence transparency violations; providing that certain information received by the department remains confidential and exempt upon completion or inactive status of an investigation; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 01/29/2024 Temporarily Postponed JU 02/05/2024 RC	
9	**SB 720** Hutson (Similar H 1367)	Asbestos and Silica Claims; Revising the information required to be included in a sworn information form for asbestos or silica claims filed after a specified date; specifying that such a form is inadmissible in evidence at trial; requiring courts to dismiss certain claims upon a motion by a defendant, etc. JU 02/05/2024 CM RC	
10	**SB 888** Perry	Property Rights; Authorizing property owners or their authorized agents to request assistance from law enforcement in immediately removing unauthorized occupants from a residential dwelling under certain conditions; requiring the sheriff to serve a notice to immediately vacate on the unauthorized occupant; authorizing the owner or agent to request that the sheriff stand by while the owner or agent takes possession of the property; authorizing the sheriff to charge a reasonable hourly rate for a certain purpose, etc. JU 02/05/2024 CJ RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	**CS/SB 1066** Banking and Insurance / Burton (Similar CS/H 939)	Consumer Protection; Prohibiting certain civil actions under the Florida Disposition of Unclaimed Property Act; revising requirements for payment settlement entities, or their electronic payment facilitators or contracted third parties, in submitting information returns to the Department of Revenue; prohibiting agencies from entering into certain contracts or agreements; requiring that the title to a mobile home be retired if the owner of the real property records certain documents in the official records of the clerk of court in the county in which the real property is located; requiring contractors to include a notice in their contracts with residential property owners under certain circumstances, etc. BI 01/16/2024 Fav/CS JU 02/05/2024 RC	
12	**SB 1252** Collins (Identical H 347)	Exemptions from Products Liability Actions; Specifying circumstances under which products liability actions may not be brought against distributors, dealers, or applicators of pesticides, etc. JU 02/05/2024 AG RC	
13	**SB 1316** Berman (Similar H 1093)	Florida Uniform Fiduciary Income and Principal Act; Specifying the duties of a fiduciary; providing that a fiduciary's allocation, determination, or exercise of discretion is presumed to be fair and reasonable to all beneficiaries; authorizing a fiduciary to exercise discretionary power of administration under specified circumstances; prohibiting a court from ordering a fiduciary to change his or her decision unless the decision was an abuse of discretionary power; authorizing a fiduciary to adjust between income and principal if such adjustment assists in administering the trust or estate impartially; authorizing the conversion of an income trust to a unitrust; specifying the authority of a fiduciary with respect to the administration of certain trusts, etc. JU 02/05/2024 BI RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	**SB 1530** Martin (Similar H 1365)	Unauthorized Public Camping and Public Sleeping; Prohibiting counties and municipalities, respectively, from permitting public sleeping or public camping on public property without a permit; providing for enforcement actions; providing an exception for declared emergencies, etc. CA 01/29/2024 Favorable JU 02/05/2024 RC	
15	**SB 1618** Martin (Compare CS/H 1281)	Interception and Disclosure of Oral Communications; Authorizing the interception and recording of an oral communication by the parent or legal guardian of a child under a specified age under certain circumstances; requiring that the recording be provided to a law enforcement agency; prohibiting any further dissemination or sharing of the recording, etc. CJ 01/30/2024 Favorable JU 02/05/2024 RC	
16	**SB 1616** Calatayud (Identical H 1443)	Electronic Access to Official Records; Requiring the clerk of the court to make certain information available in a searchable database on the clerk's official website, etc. JU 02/05/2024 CA AP	
17	**SB 1780** Brodeur (Compare CS/H 757)	Defamation, False Light, and Unauthorized Publication of Name or Likenesses; Providing that provisions concerning journalist's privilege do not apply to defamation claims when the defendant is a professional journalist or media entity; specifying that certain persons may not be considered public figures for purposes of certain actions; creating a presumption that a statement by an anonymous source is presumptively false for purposes of a defamation action; providing that a public figure does not need to show actual malice to prevail in a defamation action in certain circumstances, etc. JU 02/05/2024 ACJ FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
18	**SB 1788** Grall (Similar CS/H 1, Compare CS/CS/H 3, H 207, CS/H 1377, S 454, S 1430, S 1792, Linked S 1790)	Age Verification for Social Media Platform Accounts; Requiring social media platforms to prohibit certain minors from creating new accounts, use reasonable age-verification methods to verify the ages of account holders, to terminate certain accounts and provide additional options for termination of such accounts, and to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing the Department of Legal Affairs to bring actions for violations under the Florida Deceptive and Unfair Trade Practices Act, etc. JU 02/05/2024 FP	
19	**SB 1790** Grall (Similar CS/H 1377, Compare CS/H 1, Linked S 1788)	Public Records/Investigations by the Department of Legal Affairs; Providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 02/05/2024 FP	
20	**SB 476** Grall (Compare CS/H 651)	Civil Liability; Revising the definition of the term “survivors” to include the parents of an unborn child; authorizing parents of an unborn child to recover certain damages, etc. JU 02/05/2024 FP RC	
21	**SB 1792** Grall (Similar CS/CS/H 3, Compare CS/H 1, H 207, CS/CS/H 1491, S 454, S 1430, S 1788, Linked S 1794)	Online Access to Materials Harmful to Minors; Requiring a commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to perform reasonable age verification methods and methods for reporting unauthorized or unlawful access; prohibiting the retention of certain personal identifying information, etc. JU 02/05/2024 FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
22	**SB 1794** Grall (Similar CS/CS/H 1491, Compare CS/CS/H 3, Linked S 1792)	Public Records/Investigations by the Department of Legal Affairs; Providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 02/05/2024 FP	
	Other Related Meeting Documents		

By the Committee on Children, Families, and Elder Affairs; and Senator Harrell

A bill to be entitled

An act relating to placement of surrendered newborn infants; amending s. 63.032, F.S.; defining the term "community-based care lead agency"; amending s. 63.0423, F.S.; requiring community-based care lead agencies to establish and maintain a specified registry; requiring that certain information be removed from the registry under certain circumstances; requiring that certain information be provided to interested prospective adoptive parents; prohibiting the community-based care lead agency from transferring certain costs to prospective adoptive parents; requiring the registry to maintain a list of licensed child-placing agencies; requiring licensed child-placing agencies that take custody of surrendered newborn infants to report certain information; requiring licensed child-placing agencies to place a surrendered infant with certain prospective adoptive parents; providing requirements that apply if an appropriate prospective adoptive parent is not found in the registry; conforming provisions to changes made by the act; amending s. 383.50, F.S.; defining the term "community-based care lead agency"; providing requirements for the hospital once it takes physical custody of a surrendered newborn infant; conforming provisions to changes made by the act; amending s. 39.201, F.S.; conforming provisions to changes made by the act; amending s. 63.062, F.S.; conforming a cross-reference; providing an effective date.

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

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

Section 1. Present subsections (8) through (19) of section 63.032, Florida Statutes, are redesignated as subsections (9) through (20), respectively, and a new subsection (8) is added to that section, to read:

63.032 Definitions.—As used in this chapter, the term:

(8) "Community-based care lead agency" or "lead agency" has the same meaning as in s. 409.986(3).

Section 2. Present subsections (1) through (10) of section 63.0423, Florida Statutes, are redesignated as subsections (2) through (11), respectively, a new subsection (1) is added to that section, and present subsections (2), (4), and (6) of that section are amended, to read:

63.0423 Procedures with respect to surrendered newborn infants; prospective adoptive parents of surrendered newborn infant registry.—

(1)(a) Each community-based care lead agency shall establish and maintain a registry of prospective adoptive parents of surrendered newborn infants with the name, address, telephone number, and e-mail address of the prospective adoptive parent who has received a favorable preliminary home study under s. 63.092 and has indicated the desire to be a prospective adoptive parent of a surrendered newborn infant under s. 383.50. The registry must also include any known licensed child-placing agency representing the prospective adoptive parent. The community-based care lead agency must remove the information of a prospective adoptive parent from the registry when the

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59 favorable preliminary home study for such prospective adoptive
60 parent is no longer valid as provided in s. 63.092(3) or the
61 prospective adoptive parent asks to be removed from the
62 registry.
63 (b) If requested, the community-based care lead agency must
64 provide the following to interested prospective adoptive parents
65 of surrendered newborn infants:
66 1. Information and education on the private adoption
67 process; and
68 2. Referrals to local licensed child-placing agencies that
69 perform surrendered newborn infant adoptions.
70 (c) The community-based care lead agency may not transfer
71 the cost of establishing and maintaining the registry created
72 pursuant to this subsection to a prospective adoptive parent.
73 (d) The community-based care lead agency registry must
74 maintain a rotating list of licensed child-placing agencies that
75 are willing to take physical custody of surrendered newborn
76 infants and perform all duties required under this section.
77 (e) Licensed child-placing agencies that are named by the
78 community-based care lead agency and take custody of surrendered
79 newborn infants under this section must report the following to
80 the community-based care lead agency within 30 days of the final
81 adoption order:
82 1. The length of time between taking physical custody of
83 the surrendered newborn infant and the issuance of a final
84 adoption order.
85 2. Whether the named prospective adoptive parent from the
86 registry adopted the surrendered newborn infant.
87 3. The affidavit of and the order approving expenses and

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88 receipts under s. 63.132.
89 (3) ~~(2)~~ Upon taking physical custody of a newborn infant
90 surrendered pursuant to s. 383.50, the licensed child-placing
91 agency named by the community-based care lead agency shall
92 immediately seek an order from the circuit court for emergency
93 custody of the surrendered infant. The emergency custody order
94 remains ~~shall remain~~ in effect until the court orders
95 preliminary approval of placement of the surrendered infant in a
96 ~~the~~ prospective home, at which time the prospective adoptive
97 parent becomes the guardian of the surrendered infant ~~parents~~
98 ~~become guardians~~ pending termination of parental rights and
99 finalization of adoption or until the court orders otherwise.
100 The guardianship of the prospective adoptive parent is ~~parents~~
101 ~~shall remain~~ subject to the right of the licensed child-placing
102 agency to remove the surrendered infant from the placement
103 during the pendency of the proceedings if such removal is deemed
104 by the licensed child-placing agency to be in the best interests
105 of the child. The licensed child-placing agency shall ~~may~~
106 immediately seek to place the surrendered infant in a
107 prospective adoptive home with the next prospective adoptive
108 parent on the registry of prospective adoptive parents of
109 surrendered newborn infants maintained by the community-based
110 care lead agency under this section. If the registry does not
111 contain the name of an appropriate prospective adoptive parent,
112 the community-based care lead agency must contact another
113 community-based care lead agency and attempt to place the
114 surrendered infant with a prospective adoptive parent from that
115 lead agency's registry.
116 (5) ~~(4)~~ The parent who surrenders the infant in accordance

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with s. 383.50 is presumed to have consented to termination of parental rights, and express consent is not required. Except when there is actual or suspected child abuse or neglect, the community-based care lead agency or licensed child-placing agency may ~~shall~~ not attempt to pursue, search for, or notify that parent as provided in s. 63.088 and chapter 49. For purposes of s. 383.50 and this section, an infant who tests positive for illegal drugs, narcotic prescription drugs, alcohol, or other substances, but shows no other signs of child abuse or neglect, must ~~shall~~ be placed in the custody of a licensed child-placing agency named by the community-based care lead agency. Such a placement does not eliminate the reporting requirement under s. 383.50(7). When the department is contacted regarding an infant properly surrendered under this section and s. 383.50, the department shall provide instruction to contact a community-based care lead ~~licensed child-placing~~ agency and may not take custody of the infant unless reasonable efforts to contact a licensed child-placing agency named by the community-based care lead agency to accept the infant have not been successful.

(7) ~~(6)~~ A claim of parental rights of the surrendered infant must be made to the entity having legal custody of the surrendered infant or to the circuit court before which proceedings involving the surrendered infant are pending. A claim of parental rights of the surrendered infant may not be made after the judgment to terminate parental rights is entered, except as otherwise provided by subsection (10) ~~(9)~~.

Section 3. Subsections (1) and (7) of section 383.50, Florida Statutes, are amended to read:

383.50 Treatment of surrendered newborn infant.—

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

(a) "Community-based care lead agency" has the same meaning as in s. 409.986(3).

(b) "Newborn infant" means a child who a licensed physician reasonably believes is approximately 7 days old or younger at the time the child is left at a hospital, emergency medical services station, or fire station.

(7) Upon admitting a newborn infant under this section, the hospital shall immediately contact the ~~a~~ local community-based care lead ~~licensed child-placing~~ agency or alternatively contact the statewide central abuse hotline for the community-based care lead agency contact information. ~~name of a licensed child-placing agency~~ For purposes of transferring physical custody of the newborn infant, ~~.~~ the hospital shall notify the community-based care lead ~~licensed child-placing~~ agency that a newborn infant has been left with the hospital and approximately when the licensed child-placing agency named by the community-based care lead agency from the registry can take physical custody of the child. In cases where there is actual or suspected child abuse or neglect, the hospital or any of its licensed health care professionals shall report the actual or suspected child abuse or neglect in accordance with ss. 39.201 and 395.1023 in lieu of contacting the local community-based care lead ~~a licensed child-placing~~ agency.

Section 4. Paragraph (e) of subsection (3) of section 39.201, Florida Statutes, is amended to read:

39.201 Required reports of child abuse, abandonment, or neglect, sexual abuse of a child, and juvenile sexual abuse;

175 required reports of death; reports involving a child who has
176 exhibited inappropriate sexual behavior.—
177 (3) ADDITIONAL CIRCUMSTANCES RELATED TO REPORTS.—
178 (e) *Surrendered newborn infants.*—
179 1. The central abuse hotline must receive reports involving
180 surrendered newborn infants as described in s. 383.50.
181 2.a. A report may not be considered a report of child
182 abuse, abandonment, or neglect solely because the infant has
183 been left at a hospital, emergency medical services station, or
184 fire station under s. 383.50.
185 b. If the report involving a surrendered newborn infant
186 does not include indications of child abuse, abandonment, or
187 neglect other than that necessarily entailed in the infant
188 having been left at a hospital, emergency medical services
189 station, or fire station, the central abuse hotline must provide
190 to the person making the report the name of a local community-
191 based care lead ~~an eligible licensed child-placing~~ agency that
192 is required to choose a licensed child-placing agency from the
193 registry to accept physical custody of and to place surrendered
194 newborn infants. ~~The department shall provide names of eligible~~
195 ~~licensed child-placing agencies on a rotating basis.~~
196 3. If the report includes indications of child abuse,
197 abandonment, or neglect beyond that necessarily entailed in the
198 infant having been left at a hospital, emergency medical
199 services station, or fire station, the report must be considered
200 as a report of child abuse, abandonment, or neglect and,
201 notwithstanding chapter 383, is subject to s. 39.395 and all
202 other relevant provisions of this chapter.
203 Section 5. Paragraph (b) of subsection (1) of section

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204 63.062, Florida Statutes, is amended to read:
205 63.062 Persons required to consent to adoption; affidavit
206 of nonpaternity; waiver of venue.—
207 (1) Unless supported by one or more of the grounds
208 enumerated under s. 63.089(3), a petition to terminate parental
209 rights pending adoption may be granted only if written consent
210 has been executed as provided in s. 63.082 after the birth of
211 the minor or notice has been served under s. 63.088 to:
212 (b) The father of the minor, if:
213 1. The minor was conceived or born while the father was
214 married to the mother;
215 2. The minor is his child by adoption;
216 3. The minor has been adjudicated by the court to be his
217 child before the date a petition for termination of parental
218 rights is filed;
219 4. He has filed an affidavit of paternity pursuant to s.
220 382.013(2)(c) or he is listed on the child's birth certificate
221 before the date a petition for termination of parental rights is
222 filed; or
223 5. In the case of an unmarried biological father, he has
224 acknowledged in writing, signed in the presence of a competent
225 witness, that he is the father of the minor, has filed such
226 acknowledgment with the Office of Vital Statistics of the
227 Department of Health within the required timeframes, and has
228 complied with the requirements of subsection (2).
229
230 The status of the father shall be determined at the time of the
231 filing of the petition to terminate parental rights and may not
232 be modified, except as otherwise provided in s. 63.0423(10)(a)

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233 ~~s. 63.0423(9)(a)~~, for purposes of his obligations and rights
234 under this chapter by acts occurring after the filing of the
235 petition to terminate parental rights.
236 Section 6. This act shall take effect July 1, 2024.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 526

INTRODUCER: Senator Pizzo and others

SUBJECT: Title Fraud Prevention

DATE: Febuary 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 526 creates a pilot program for real estate title fraud prevention in Broward County, Florida. Professionals involved in a real estate transaction in that county will be encouraged to notify the property appraiser of a pending sale. If the owner has registered with the clerk's notification program, the property appraiser will notify the owner of the pending sale. The purpose of the notification service is to confirm the seller's identity to ensure the integrity of the real estate transaction.

The bill provides that there is no right or cause of action against, and no civil liability on the part of, real estate brokers, title agents, attorneys, or the property appraiser with respect to the creation, maintenance, and operation of the sales contract notification service or land record notification service, or for providing information to the property appraiser pursuant to the program.

The pilot programs ends, and the statute is repealed, on July 1, 2026. On or prior to the repeal, the Broward County Property Appraiser must prepare and deliver a report on the program to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill is effective July 1, 2024.

II. Present Situation:

The term "title fraud" refers to the fraudulent use of a false real property conveyance in which a fraudster executes and records a deed purporting to convey title to or an interest in real property to himself or herself or a third party without the property owner's knowledge or consent. The

person then sells, mortgages, or leases out the property, and absconds with the proceeds.[1] One common title fraud scheme occurs when an identity thief pretends to be the owner of the real property and signs a real estate listing contract intending to steal the cash from the closing while the actual owner is unaware that their property is for sale.[2]

To address the title fraud problem, the 2023 Legislature created a requirement that every clerk of court, by July 1, 2024, create, maintain, and operate a free recording notification service that is open to all persons wishing to register for the service.[3] Any person may register for the service. The service will send an automated recording notification whenever a document is recorded in the Official Records of the county which names that registered person.

A clerk's recording notification service does not stop title fraud, the title fraud occurs when the fraudulent instrument is recorded. The service, however, quickly notifies a registrant of the title fraud, and thereby gives the victim notice of the necessity of legal action to avoid or mitigate the fraud.

III. Effect of Proposed Changes:

The bill creates the Title Fraud Prevention Through Sales Contract Notification Services Pilot Program in Broward County.

Upon execution of a contract for the sale of a real property parcel, and before closing occurs, real estate brokers, title agents, and attorneys involved in the transfer of real property are encouraged to report to the county property appraiser the seller's name, mailing address, e-mail address, and phone number, as such information appears within the contract.

Upon receipt of the information, if the landowner has registered with the clerk of court for notifications, the property appraiser will notify the landowner that a contract for the sale or purchase of the real estate has been executed. The stated purpose of the notification service is to confirm the seller's identity to ensure the integrity of the real estate transaction. It is possible that a notification may arrive early enough from this process that the planned closing on the property can be stopped.

There is no right or cause of action against, and no civil liability on the part of, real estate brokers, title agents, attorneys, or the property appraiser with respect to the creation, maintenance, and operation of a sales contract notification service or land record notification service, or for providing information to the property appraiser.

By July 1, 2026, the Broward County Property Appraiser must deliver to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report on the pilot program containing the following information:

- The number of real estate brokers, title agents, and attorneys who provided information to the property appraiser under this section.

[1] David Chang, *What Is Home Title Fraud? A Beginner's Guide*, THE ASCENT (updated Feb. 22, 2023), https://www.fool.com/the-ascent/mortgages/home-title-fraud/.
[2] In a sense, this is the "white collar" version of squatting. Like squatting, vacation homes are a favorite target of this scheme.
[3] Section 28.47, F.S., created by chapter 2023-238, Laws of Fla.

- The number of times a seller's contact information was provided to the property appraiser under this section.
- The property appraiser's recommendation as to whether the sales contract notification service is appropriate to recommend throughout the state as an effective tool to combat title fraud.
- Any other information the property appraiser deems necessary.

The bill is effective July 1, 2024. The section created by the bill is repealed on July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill requires the property appraiser of Broward County to create and operate a real property sales notification pilot program. The cost to the property appraiser appears to be minimal.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None apparent.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that the bill stops title fraud at the front end of a real estate transaction, it will reduce costs at the back end to clear title to property.

C. Government Sector Impact:

The Broward County Property Appraiser will likely incur some minimal costs to administer the pilot program and mail notices to property owners.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 696.031 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Pizzo

37-01205-24 2024526__

A bill to be entitled

An act relating to title fraud prevention; creating s. 696.031, F.S.; creating a pilot program in Broward County; providing a definition; requiring certain parties to provide specified information to the property appraiser; requiring the property appraiser to make certain notifications to specified parties; providing that certain action or inaction does not give rise to liability; requiring participating property appraisers to submit a report to specified parties containing certain information; providing for future repeal; providing an effective date.

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

Section 1. Section 696.031, Florida Statutes, is created to read:

696.031 Title fraud prevention through sales contract notification services; pilot program.—

(1) As used in this section, the term "property appraiser" means the property appraiser for Broward County.

(2) Upon execution of a real property contract and before the execution of the real property conveyance instrument, real estate brokers as defined in s. 475.01(1), title agents, and attorneys involved in the transfer of real property are encouraged to furnish to the property appraiser a seller's name, mailing address, e-mail address, and phone number, as such information appears within the contract.

(3) The property appraiser shall notify land record

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

37-01205-24 2024526__

notification service registrants, as defined in s. 28.47(1), that a contract for the sale or purchase of the real estate has been executed. The purpose of the notification service is to confirm the seller's identity to ensure the integrity of the real estate transaction.

(4) There is no right or cause of action against, and no civil liability on the part of, real estate brokers as defined in s. 475.01, title agents, attorneys, or the property appraiser with respect to the creation, maintenance, and operation of a sales contract notification service or land record notification service, or for providing information to the property appraiser under this section.

(5) By July 1, 2026, the property appraiser must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives the following information:

(a) The number of real estate brokers, title agents, and attorneys who provided information to the property appraiser under this section.

(b) The number of times a seller's contact information was provided to the property appraiser under this section.

(c) The property appraiser's recommendation as to whether the sales contract notification service is appropriate to recommend throughout the state as an effective tool to combat title fraud.

(d) Any other information the property appraiser deems necessary.

(6) This section is repealed on July 1, 2026.

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 528

INTRODUCER: Senator Pizzo

SUBJECT: Public Records/Title Fraud Prevention Pilot Program

DATE: Febuary 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 528 exempts from public records copying and inspection requirements the name, mailing address, electronic mail address, and telephone number submitted to a property appraiser pursuant to the Title Fraud Prevention through Sales Contract Notification Services Pilot Program created by SB 526.

The bill provides a statement of public necessity as required by the State Constitution. In compliance with the Open Government Sunset Review Act, the exemption is repealed October 2, 2029, unless saved from repeal.

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

The bill is effective on the same date that SB 526 or other similar legislation takes effect.

II. Present Situation:

SB 526 creates the Title Fraud Prevention through Sales Contract Notification Services Pilot Program in Broward County. The program seeks to prevent real estate title fraud through use of a notification system whereby real estate professionals who have knowledge of an upcoming real estate transaction will notify the Broward County Property Appraiser. If the seller has registered for the clerk's notification service, the property appraiser will send the property owner a notice disclosing that a transaction is pending. An owner receiving notice who does not recognize the transaction, and thus is about to be a property fraud victim can possibly intervene and stop the transaction.

The notice from the real estate professional includes the following information: seller's name, mailing address, e-mail address, and phone number.

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive branch and local government agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

Section 119.011(12), F.S., defines "public records" to include:

> [a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[6]

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person's right to inspect and copy any

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[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[9] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[10]

General exemptions from the public records requirements are contained in the Public Records Act.[11] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[12]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[13] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[14] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[16] (the Act), prescribe a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the

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[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).
[10] *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[11] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[12] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[14] *Id.*
[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[16] Section 119.15, F.S.
[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[18] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

sunset date.[19] In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20] An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

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

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

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[26]

III. Effect of Proposed Changes:

Section 1 creates a public records exemption to provide that the names, mailing addresses, e-mail addresses, and telephone numbers of sellers of real property that are submitted to the Broward County Property Appraiser pursuant to the Title Fraud Prevention Through Sales

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[19] Section 119.15(3), F.S.
[20] Section 119.15(6)(b), F.S.
[21] Section 119.15(6)(b)1., F.S.
[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.

Contract Notification Service Pilot Program created by SB 526, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

This exemption is subject to the Open Government Sunset Review Act and is repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides the public necessity statement, as required by the State Constitution. The public necessity statement finds that it is a public necessity that the names, mailing addresses, e mail addresses, and telephone numbers of sellers of real property which are submitted to a property appraiser pursuant to the Title Fraud Prevention Through Sales Contract Notification Service Pilot Program created in s. 696.031, F.S., be made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution. The provisions of s. 696.031, F.S., are created to protect real property owners from fraud in real estate transactions by informing an owner that a contract for the sale or purchase of his or her real estate has been executed. Information required to be provided to the property appraiser pursuant to s. 696.031, F.S., is of a sensitive, personal nature, and disclosure of such information about a property seller is an invasion of that person's privacy. Making public the private information of a property seller could have a chilling effect on real property sales.

Section 3 provides that the bill is effective on the same date that SB 526 or other similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 526 takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records pertaining to a title fraud prevention program; therefore, the bill requires a two-thirds vote of each chamber for enactment.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to encourage real property professionals to notify the property appraiser of an upcoming real estate closing so that the property appraiser can notify the owner. If the upcoming transaction is fraudulent, the owner may have time to stop it. This purpose may not be met if land owners are deterred from registration because their contact information would be made public, or if real estate professionals are deterred from registering their sales because information would be made public. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None apparent.

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 696.031 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

720906

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Pizzo) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 32 - 44
4 and insert:
5 Art. I of the State Constitution. The provisions of s. 696.031,
6 Florida Statutes, are created to encourage participation in an
7 optional program to protect real property owners from fraud in
8 real estate transactions. The program uses the information
9 collected to inform an owner that a contract for the sale or
10 purchase of his or her real estate has been executed.
11 Information that is provided to the property appraiser pursuant

720906

12 to s. 696.031, Florida Statutes, may be considered by some
13 participants to be of a sensitive and personal nature. The
14 Legislature finds that the potential of such information about a
15 property seller being made public could have a chilling effect
16 on participation in the program and thereby negate the fraud
17 deterrent value of the program. The Legislature also finds that
18 it is a public necessity to protect persons whose name is not
19 submitted to the property appraiser pursuant to this program
20 from becoming the target of a fraudulent real property
21 conveyance by virtue of their lack of participation in the
22 program. Thus, the Legislature finds that this act serves a
23 compelling state interest. The Legislature further finds that
24 the harm that may result from the exemption of the name, mailing
25 address, e-mail address, and phone number of a seller submitted
26 to a property appraiser outweighs any public benefit that may be
27 derived from the disclosure of such information.
28 Section 3. This act shall take effect on the same date that
29 SB 526 or other similar legislation takes effect, if such

By Senator Pizzo

37-01228A-24 2024528__

A bill to be entitled

An act relating to public records; amending s. 696.031, F.S.; providing an exemption from public records requirements for certain information provided to a property appraiser as part of a title fraud prevention pilot program; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsection (6) of section 696.031, Florida Statutes, as created by SB ___ or similar legislation, 2024 Regular Session, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

696.031 Title fraud prevention through sales contract notification services; pilot program.—

(6)(a) The name, mailing address, e-mail address, and phone number of a seller submitted to a property appraiser pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the name, mailing address, e-mail address, and phone number of a seller submitted to a property appraiser

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37-01228A-24 2024528__

pursuant to s. 696.031, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes and s. 24(a), Art. I of the State Constitution. The provisions of s. 696.031, Florida Statutes, are created to protect real property owners from fraud in real estate transactions by informing an owner that a contract for the sale or purchase of his or her real estate has been executed. Information required to be provided to the property appraiser pursuant to s. 696.031, Florida Statutes, is of a sensitive, personal nature, and disclosure of such information about a property seller is an invasion of that person's privacy. Making public the private information of a property seller could have a chilling effect on real property sales.

Section 3. This act shall take effect on the same date that SB ___ or other similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
1/31/24	SM	Favorable
2/5/24	JU	Pre-meeting
	CA	
	RC	

January 31, 2024

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 10** – Senator Bradley
HB 6007 – Representative Yarkosky
Relief of Julia Perez by the St. John's County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $6,300,000. THIS AMOUNT IS THE REMAINING UNPAID BALANCE OF A $6,500,000 SETTLEMENT AGREEMENT REGARDING THE NEGLIGENCE OF A ST. JOHNS COUNTY SHERIFF'S DEPUTY, WHICH RESULTED IN THE INJURY OF JULIA PEREZ.

FINDINGS OF FACT:

The Accident on April 7, 2019

At approximately 5:09 p.m., on the afternoon of April 7, 2019, Ms. Perez, a fifty-one year old woman, and her companion, Thomas Eiland, were driving their two motorcycles east on State Road 16 when they were struck by a vehicle operated by Deputy Brandon Hetzler, an on-duty St. Johns County Sheriff's Deputy.[1] Ms. Perez and Mr. Eiland were wearing helmets at the time of the collision, and witnesses indicated that visibility was good.[2] Although Mr. Eiland was also struck

[1] Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).
[2] *Id*. *See also* Shaw Deposition, 15 (Apr. 11, 2023); Statement by Brittany Lee, 3 (November 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); and Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019).

by Deputy Hetzler, the remainder of this report will pertain to the claimant, Ms. Perez.

Prior to the accident, Deputy Hetzler was traveling west in the left turn lane of State Road 16 at the intersection of Harvest Lane.[3] As Ms. Perez reached the intersection on State Road 16 and Harvest Lane, Deputy Hetzler entered the intersection and turned left colliding with Ms. Perez.[4]

Deputy Hetzler was enroute to a call for service, however neither his emergency lights nor siren were activated at the time of the collision.[5] Witnesses indicated that State Road 16 eastbound traffic had a steady green signal when the collision occurred.[6] The traffic infraction citation issued to Deputy Hetzler indicates that he failed to yield when making a left turn.[7]

According to the St. Johns County Fire Rescue EMS reports, Ms. Perez was found lying in the roadway after being ejected from her motorcycle. Additionally, she was unconscious and sustained multi-system trauma with enormous blood loss.[8]

Traffic Citation

Deputy Hetzler was cited with a violation of section 316.122, of the Florida Statutes, for failure to yield when making a left turn, a violation of which is a noncriminal infraction, punishable as a moving violation. The amended traffic infraction, dated December 12, 2019, indicates that Deputy Hetzler was issued a fine in the amount of $166.[9]

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[3] *See* Shaw Deposition, 14-16 (Apr. 11, 2023); Statement by Brittany Lee, 4 (Nov. 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019); and Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).

[4] *See* Statement by Brittany Lee, 4 (November 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); and Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).

[5] *See* Hetzler Deposition, 49 (Apr. 14, 2021).

[6] *See* Shaw Deposition, 15 (Apr. 11, 2023). *See also* Statement by Brittany Lee, 3 (Nov. 8, 2019); Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019); Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019); and Traffic Crash Review Board Agency Vehicle Incident/Crash Review Form, St. Johns County Sheriff's Office, Control Number C18-33, Agency Employee Name: Brandon Hetzler (May 23, 2019).

[7] *See* Florida Uniform Traffic Citation Number AB5WDLE, Case Number 19013944TR (December 12, 2019).

[8] *See* Patient Care Report, St. Johns County Fire Rescue, Dispatch CR Number 19-0009430 (Dec. 30, 2019); *see also* Parker Deposition, 18-19.

[9] *See* Florida Uniform Traffic Citation Number AB5WDLE, Case Number 19013944TR (Dec. 12, 2019).

Florida Highway Patrol Accident Investigation
Homicide investigator, Master Corporal W.G. Smith, from the Florida Highway Patrol conducted the accident investigation.[10] Witness interviews confirmed that Ms. Perez had a solid green light.[11] Additionally, witnesses confirmed that Deputy Hetzler turned left in front of the motorcycle of Ms. Perez. The investigation concluded that Deputy Hetzler was exclusively at fault for causing the accident.[12]

Crash Review Board Investigation
The St. Johns County Sheriff's Office conducted a Crash Review Board investigation, and determined that Deputy Hetzler was "at fault," and caused the accident involving Ms. Perez.[13]

Medical Injuries
Ms. Perez suffered extensive injuries including a traumatic brain injury, pulmonary contusion, kidney tubular necrosis, numerous fractures, and hemorrhaging.[14] The claimant's attorney provided financial data and projected Ms. Perez's total past medical charges and liens to be more than $4,000,000.[15]

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[10] *See* Florida Traffic Crash Report, Highway Safety & Motor Vehicles, Traffic Crash Records, HSMV Crash Report Number 87157708, 4 (Apr. 7, 2019).
[11] *Id. See also* Shaw Deposition, 15 (Apr. 11, 2023); Statement by Brittany Lee, 3 (Nov. 8, 2019); and Statement by Bailey Kinlaw, 3 (Nov. 8, 2019); and Interview of Thomas Eiland by Master Corporal W.G. Smith, from the Florida Highway Patrol (Apr. 9, 2019).
[12] *Id*.
[13] *See* Traffic Crash Review Board Agency Vehicle Incident/Crash Review Form, St. Johns County Sheriff's Office, Control Number C18-33, Agency Employee Name: Brandon Hetzler (May 23, 2019).
[14] *See* Julia Perez Chronology, Osborne (June 8, 2023). More specifically, Ms. Perez's injuries included a severe traumatic brain injury, kidney tubular necrosis, multiple pelvic fractures, a right distal humerus fracture, right tibia and fibula fractures, multiple right femur fractures, a left distal radius fracture, left-side rib fractures, a right medial malleolar fracture, fractures to the sternum and manubrium, cervical spine fractures, a pneumothorax, a right sided labia majora laceration, liber lacerations, a hiatal hernia in the abdomen, a large right-sided pelvic sidewall hematoma, and a bladder hematoma.
[15] *See* Summary of Claim (Economic Damages)*; see also* Julia Perez Medical Bill Summary; Julia Perez Summary of Liens and Balances; and Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:37:00-1:42:00. During the claim bill hearing, the claimant's attorney indicated that the majority of Ms. Perez's initial care was paid by her health insurance provider at a negotiated rate; however, the health insurance provider has imposed a lien in the amount of $1,500,000 against any damages Ms. Perez may recover in regard to the April 7, 2019, accident. Additionally, Medicaid covered some of Ms. Perez's medical bills, and Ms. Perez's attorney indicated that Medicaid intends to impose a lien against any damages the claimant may recover for the April 7, 2019, accident, but the reimbursement amount is currently unknown. Ms. Perez also owes approximately $50,000 to medical facilities and providers, approximately $12,000 to a life care company, and approximately $71,962 to a litigation financer.

Expert Testimony

The claimant provided testimony from her neurologist, Dr. Syed Ali Asad, who is board certified in brain injury medicine.[16] Dr. Asad provided information on the severity of Ms. Perez's injuries post-accident, but specifically in regard to her traumatic brain injury. In his testimony, he classified Ms. Perez's brain injury as severe, and stated that in addition to the brain injury, Ms. Perez was also diagnosed with post traumatic headaches, impaired cognition, and adjustment disorder.[17] When asked if the claimant's injuries are permanent, Dr. Asad responded in the affirmative.[18]

The claimant also provided testimony from Dr. Emily M. Keener, who was Ms. Perez's treating orthopedic surgeon.[19] Dr. Keener stated that Ms. Perez had life-threatening injuries that required immediate surgery, and in particular, Dr. Keener conveyed that Ms. Perez's pelvic injury was an injury most patients do not survive.[20] Due to the severity of Ms. Perez's injuries, Dr. Keener believes mobility could be an issue as Ms. Perez ages.[21]

Additionally, the claimant provided testimony from Dr. Mark Frisk, who is a board certified radiologist.[22] Dr. Frisk reviewed Ms. Perez's diagnostic records, and labeled Ms. Perez's injuries as severe, especially her pelvis injury.[23] When asked if he believed that Ms. Perez's injuries would be permanent and continue to get worse as she ages, Dr. Frisk responded in the affirmative.[24]

Current and Future Needs

Currently, Ms. Perez is considered permanently disabled, and according to a comprehensive rehabilitation evaluation provided by the claimant, she will have future medical needs over the course of her 30-year life expectancy.[25] During the

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[16] *See* Asad Deposition, 4 (December 15, 2023).
[17] *Id.* at 13.
[18] *Id.* at 14. Dr. Asad provides that in medicine the term used to convey "permanency" is "chronic."
[19] *See* Keener Deposition, 4 (December 14, 2024).
[20] *Id.* at 5.
[21] *Id.* at 13.
[22] *See* Frisk Deposition, 6 (December 17, 2023).
[23] *Id*. at 11.
[24] *Id.* at 15.
[25] *See* Comprehensive Rehabilitation Evaluation, Lichtblau (March 28, 2023). Dr. Craig H. Lichtblau MD PA, board certified in Physical Medicine & Rehabilitation and board certified in Brain Injury Medicine, provides the medical opinion that Ms. Perez has reached "Maximum Medical Improvement," and she has "43-48% permanent

claim bill hearing held on January 12, 2024, Ms. Perez's attorney presented evidence to indicate that her total future medical expenses will be approximately $2,900,000 to 3,500,000,[26] and her loss of earning capacity is estimated to be $282,110 based on her full Social Security retirement age of 67 and a minimum wage-earning capacity.[27] Additionally, the claimant's two children testified that their mother's quality of life has dramatically decreased since the accident in April of 2019.[28]

LITIGATION HISTORY:

A lawsuit was filed in March of 2020 with a claim of vicarious liability negligence on behalf of Ms. Perez against the Sheriff.[29] The complaint further alleged that the Sheriff's employee, Deputy Hetzler, carelessly and negligently failed to yield to oncoming traffic, violating section 316.122, of the Florida Statutes, causing the collision between his vehicle and the two motorcycles of Ms. Perez and her companion, Mr. Eiland.[30] The complaint provides that due to the collision, Ms. Perez was violently ejected from her motorcycle which caused her to sustain multiple, massive, and life threatening injuries.[31]

Settlement Agreement

Ms. Perez and Robert A. Hardwick, in his official capacity as the Sheriff of St. Johns County, Florida, entered a settlement agreement for $6,500,000. The claimant received $200,000

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partial impairment of the whole person according to AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition.

[26] *See* Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:42:00-1:43:43; *See also* Julia Perez Life Care Plan, Spruance (Jan. 24, 2022). *See* Summary of Claim (Economic Damages), where claimant's attorney indicated that Ms. Perez's future medical needs would range from $3,318,811.56 to $4,077,923.57. During the claim bill hearing, the claimant's attorney indicated that these numbers factor in the potential for dialysis treatment or a kidney transplant; however, Ms. Perez is not currently receiving kidney treatment due to her numbers being in the "borderline" range. Thus, the undersigned used the Life Care Plan by Gil Spruance, dated January 24, 2022, to calculate an approximate range of Ms. Perez's future medical needs. In the event that Ms. Perez's kidney function deteriorates again, her estimated costs could increase.

[27] *See* Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:42:00-1:43:43; *See also* Comprehensive Rehabilitation Evaluation, Lichtblau (Mar. 28, 2023) (providing that the Ms. Perez participated in a "Medical Functional Capacity Assessment" on Mar. 28, 2023, and Dr. Lichtblau's conclusion from that assessment is that Ms. Perez does not have the functional capacity to work four hours per day on an uninterrupted basis at this time). *See also* Summary of Claim (Economic Damages). Prior to the accident on April 7, 2019, Ms. Perez was working part-time as an Uber driver, making around $1,200 per week. Additionally, Ms. Perez previously worked as a school bus driver, a patient transporter for a hospital, and the secretary and treasurer for several churches.

[28] *See* Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 2:22:30-2:32:27.

[29] *See* Complaint filed in the Circuit Court of the 7th Judicial Circuit In and for St. Johns County, Florida, Case No. 2020-CA-387 (Mar. 14, 2020).

[30] *Id*.

[31] *Id*.

from the Sheriff's self-insuring risk pool, and seeks the remaining $6,300,000.[32]

Section 768.28, of the Florida Statutes, limits the amount of damages that a claimant can collect from a local government as a result of its negligence or the negligence of its employees to $200,000 for one individual and $300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature.

The Sheriff supports the relief of Ms. Perez, and the settlement agreement states that during litigation, the Sheriff admitted negligence by his employee and liability for the accident-related injuries leading to certain damages to Ms. Perez.[33] Additionally, on November 21, 2023, a motion was unanimously adopted by the St. Johns County Board of County Commission to authorize up to $6,300,000 to support the St. Johns County Sheriff's Office in the settlement of Circuit Court Case 2020-CA-387.

On December 6, 2023, Ms. Perez signed a "release" to release and discharge Robert A. Hardwick, in his official capacity as the Sheriff of St. Johns County from liability related to the facts in Circuit Court Case 2020-CA-387.[34]

On January 17, 2024, a final order of dismissal was entered in Circuit Court Case 2020-CA-387.[35]

CONCLUSIONS OF LAW:

The claim bill hearing held on January 12, 2024, was a *de novo* proceeding to determine whether St. Johns County Sheriff, Robert A. Harwick, is liable in negligence for damages caused by his employee, Deputy Hetzler, acting within the scope of his employment, to the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

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[32] *See* Settlement Agreement between the claimant and Robert A. Hardwick, in his official capacity as the Sheriff of St. Johns County, Florida (Nov. 30, 2023).
[33] *Id*.
[34] *See* General Release and Medical Liens and Debt Responsibility (Dec. 6, 2023).
[35] *See* Order of Dismissal filed in the Circuit Court of the 7th Judicial Circuit In and for St. Johns County, Florida, Case No. 2020-CA-387 (Jan. 17, 2024).

Under the legal doctrine of *respondeat superior*, the Sheriff of St. Johns County is responsible for the wrongful acts of his employees when the acts are committed within the scope of their employment. Being that Deputy Hetzler was operating a deputy vehicle in the course and scope of his employment at the time of the accident, and because the vehicle was owned by the St. Johns County Sheriff's Office, the Sheriff is responsible for negligence committed by Deputy Hetzler.

Negligence

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.[36]

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff. The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.[37]

In this case, the Sheriff's liability depends on whether Deputy Hetzler negligently operated his deputy vehicle and whether that negligent operation caused Ms. Perez's resulting injuries.

Duty

A legal duty may arise from statutes or regulations; common law interpretations of statutes or regulations; other common law precedent; and the general facts of the case.[38]

In this case, Deputy Hetzler was responsible for exercising the duty of reasonable care to others while driving his deputy vehicle. Although Deputy Hetzler was driving an authorized emergency vehicle[39] en route to a call for service, neither his emergency lights nor siren were activated at the time of the

[36] Williams v. Davis, 974 So.2d 1052, at 1056-1057 (Fla. 2007). *See also* Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.
[37] Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.
[38] McClain v. Florida Power Corp., 593 So.2d 500, 503 n. 2 (Fla. 1992).
[39] *See* s. 316.003(1), F.S.

collision. Therefore, section 316.126(1)(a), of the Florida Statutes,[40] did not apply, and Deputy Hetzler had a reasonable duty to yield the right of way to Ms. Perez, pursuant to s. 316.122, of the Florida Statutes.

Section 316.122, of the Florida Statutes, provides that the driver of a vehicle intending to turn left within an intersection or into an alley, private road, or driveway must yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close to the intersection as to constitute an immediate hazard. A violation of section 316.122, of the Florida Statutes, is a noncriminal traffic infraction, punishable as a moving violation.[41]

Breach
The undersigned finds that Deputy Hetzler breached the duty of care owed to Ms. Perez.

As stated above, Deputy Hetzler was traveling west in the left turn lane of State Road 16 at the intersection of Harvest Lane. He did not have his emergency lights or siren activated. As Ms. Perez reached the intersection on State Road 16 and Harvest Lane traveling east, Deputy Hetzler negligently entered the intersection and turned left colliding with Ms. Perez. Witnesses indicated that State Road 16 eastbound traffic had a steady green signal when the collision occurred.

Causation
Ms. Perez's injuries were the natural and direct consequence of Deputy Hetzler's breach of his duty. Deputy Hetzler was acting within the scope of his employment at the time of the collision. The St. Johns County Sheriff, as the employer, is liable for damages caused by its employee's negligent act.

Damages
A plaintiff's damages are computed by adding these elements together:

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[40] Section 316.126(1)(a), of the Florida Statutes, provides that upon the immediate approach of an authorized emergency vehicle, while en route to meet an existing emergency, the driver of every other vehicle must, when such emergency vehicle is giving audible signals by siren, exhaust whistle, or other adequate device, or visible signals by the use of displayed blue or red lights, yield the right-of-way to the emergency vehicle.
[41] *See* ch. 318, F.S.; *see also* s. 318.14(1), F.S. (providing that any person cited for a violation of ch. 316, F.S., is charged with a noncriminal infraction and must be cited for such an infraction and cited to appear before an official).

Economic Damages
- Past medical expenses
- Future medical expenses

Non-Economic Damages
- Past pain and suffering and loss of enjoyment of life
- Future pain and suffering and loss of enjoyment of life

The claimant's attorney provided financial data that projected Ms. Perez's total past medical charges and liens to be more than $4,000,000,[42] and presented evidence that her total future medical expenses will be approximately $2,900,000 to 3,500,000.[43]

No evidence was presented or available indicating the damages authorized by the settlement agreement are excessive or inappropriate.

ATTORNEY FEES: Attorney fees may not exceed 25 percent of the amount awarded.[44] The claimant's attorney has agreed to limit fees to 25 percent of any amount awarded by the Legislature. Additionally, lobbying fees will be limited to 7 percent of any amount awarded by the Legislature.

RECOMMENDATIONS: Although the settlement agreement indicates the agreed upon amount of $6,500,000, which includes the $200,000, paid by the Sheriff's self-insuring risk pool, SB 10 currently authorizes and directs the St. Johns County Sherriff's Office to appropriate from funds of the county not otherwise encumbered and to pay Ms. Perez $15,000,000, or an alternative amount not to exceed $15,000,000 in the event the parties reach an agreement. Therefore, the undersigned recommends amending the language in the bill to reflect the agreement that was reached by the parties.

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[42] *See* Summary of Claim (Economic Damages); *see also* Julia Perez Medical Bill Summary; Julia Perez Summary of Liens and Balances; and Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:37:00-1:42:00.

[43] *See* Perez Special Masters Claim Bill Hearing (Jan. 12, 2024) at 1:42:00-1:43:43; And *see also* Julia Perez Life Care Plan, Spruance (Jan. 24, 2022). *See* Summary of Claim (Economic Damages), where claimant's attorney indicated that Ms. Perez's future medical needs would range from $3,318,811.56 to $4,077,923.57. During the claim bill hearing, the claimant's attorney indicated that these numbers factor in the potential for dialysis treatment or a kidney transplant, however, Ms. Perez is not currently receiving kidney treatment due to her numbers being in the "borderline" range. Thus, the undersigned used the Life Care Plan by Gil Spruance, dated January 24, 2022, to calculate an approximate range of Ms. Perez's future medical needs. In the event that Ms. Perez's kidney function deteriorates again, her estimated costs could increase.

[44] *See* s. 768.28(8), F.S.

Based on the foregoing, the undersigned recommends that Senate Bill 10 be reported FAVORABLY.

Respectfully submitted,

/s/Carter McMillan
Senate Special Master

cc: Secretary of the Senate

151546

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The St. Johns County Sheriff's Office is authorized and directed to appropriate from funds of the county not otherwise encumbered and pay Julia Perez $6.3 million, to compensate her for the injuries and damages she sustained due to the negligence of an employee of the St. Johns County Sheriff's

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12 Office.
13 Section 3. It is the intent of the Legislature that all
14 lien interests held by the state, if any, resulting from the
15 treatment and care of Julia Perez for the occurrences described
16 in this act are waived. It is the intent of the Legislature that
17 all Medicaid liens arising from the treatment and care of the
18 injuries and damages to Julia Perez described in this act shall
19 be waived.
20 Section 4. The amount awarded under this act is intended to
21 provide the sole compensation for all present and future claims
22 arising out of the factual situation described in this act which
23 resulted in injuries and damages to Julia Perez. The total
24 amount paid for attorney fees relating to this claim may not
25 exceed 25 percent of the total amount awarded under this act.
26 Section 5. This act shall take effect upon becoming a law.
27
28 ========== T I T L E A M E N D M E N T ==========
29 And the title is amended as follows:
30 Delete everything before the enacting clause
31 and insert:
32 A bill to be entitled
33 An act for the relief of Julia Perez by the St. Johns
34 County Sheriff's Office; providing for an
35 appropriation to compensate Julia Perez for personal
36 injuries and damages sustained as a result of the
37 negligence of an employee of the St. Johns County
38 Sheriff's Office; providing legislative intent for the
39 waiver of certain lien interests; providing a
40 limitation on compensation and the payment of attorney

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41 fees; providing an effective date.
42
43 WHEREAS, at 5:09 p.m. on April 7, 2019, Julia Perez was
44 wearing a helmet and lawfully operating a motorcycle within the
45 posted speed limit, traveling east on State Road 16 in the
46 correct travel lane in unincorporated St. Johns County, and
47 WHEREAS, at the same time, an employee of the St. Johns
48 County Sheriff's Office (SJSO), acting in the course and scope
49 of his employment, was operating a marked SJSO patrol vehicle,
50 and traveling west on State Road 16, and
51 WHEREAS, the SJSO employee negligently entered the
52 intersection of State Road 16 and Harvest Lane and attempted a
53 left turn directly in front of the motorcycle operated by Ms.
54 Perez, and
55 WHEREAS, Ms. Perez's motorcycle struck the right side of
56 the SJSO vehicle, causing her to eject from her motorcycle and
57 impact the hood of the patrol car before she came to rest on the
58 pavement of State Road 16, and
59 WHEREAS, the Florida Highway Patrol's traffic crash
60 investigators conducted an extensive crash investigation of the
61 accident, including preparation for a traffic homicide
62 reconstruction due to Ms. Perez's grave condition, and
63 WHEREAS, witnesses on the scene told investigators that, at
64 the time of the crash, eastbound traffic had a steady green
65 signal, giving Ms. Perez the right of way, and
66 WHEREAS, the investigation determined that the actions of
67 Ms. Perez were reasonable and did not contribute to or cause the
68 collision, and
69 WHEREAS, the Florida Highway Patrol investigation found the

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70 SJSO employee to be solely at fault for causing the accident and
71 issued him a traffic citation for failure to yield to oncoming
72 traffic in violation of s. 316.122, Florida Statutes, to which
73 he pled no contest, and
74 WHEREAS, the St. Johns County Sheriff’s Office has admitted
75 its employee was negligent in causing the collision and liable
76 for Ms. Perez’s injuries, and
77 WHEREAS, Ms. Perez suffered catastrophic injuries, was
78 intubated and resuscitated at the crash site by local emergency
79 medical services, and was rushed to the Trauma Center at
80 Memorial Hospital Jacksonville, where she arrived comatose and
81 had to undergo a series of blood transfusions, and
82 WHEREAS, Ms. Perez suffered multiple open and comminuted
83 fractures of the pelvis, arms, and legs, as well as organ
84 lacerations and punctures, including a punctured left lung,
85 resulting in cardiopulmonary arrest due to blood loss, and
86 numerous complications, including a pulmonary embolism, deep
87 vein thrombosis, and episodes of pneumonia; suffered at least
88 one myocardial infarction; and endured multiple systemic
89 infections, bowel obstructions, a fractured arm, and a nicked
90 artery, and
91 WHEREAS, Ms. Perez remained hospitalized and was in a
92 nursing home for almost 8 months following the crash, and
93 WHEREAS, because of blood loss and infection, Ms. Perez
94 suffered renal tubular necrosis and a kidney injury, which
95 necessitated her to receive kidney dialysis for many months and
96 made it possible that she will need further kidney treatment in
97 the future, and
98 WHEREAS, Ms. Perez suffers from substantial pain when

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99 trying to accomplish simple tasks of daily living and
100 experiences interrupted sleep on a nightly basis, chronic
101 migraine headaches, and severe elevated blood pressure, and
102 WHEREAS, Ms. Perez suffers from memory loss, confusion,
103 communication difficulties, fatigue, frustration, and
104 depression, and she is under the treatment of a neurologist, and
105 WHEREAS, Ms. Perez has undergone dozens of surgeries and
106 faces many more, and
107 WHEREAS, Ms. Perez's past medical bills attributable to the
108 crash and related liens amount to more than $3,863,108.09, and
109 WHEREAS, the costs of Ms. Perez's future medical care and
110 related expenses are estimated to be as much as $4,077,923.57
111 over the course of Ms. Perez's life, and
112 WHEREAS, Ms. Perez has been declared to be totally and
113 permanently disabled by her physicians, and her loss of earning
114 capacity is estimated to be $282,110, based on her full Social
115 Security retirement age of 67 and a minimum-wage earning
116 capacity, and
117 WHEREAS, a lawsuit was filed on behalf of Ms. Perez and was
118 set for trial in the Circuit Court of the Seventh Judicial
119 Circuit, in and for St. Johns County, Florida, styled *Julia*
120 *Perez vs. Robert A. Hardwick, in his capacity as Sheriff of St.*
121 *Johns County*, Case No.: 2020-CA-387; however, the parties agreed
122 to a settlement amount of $6.5 million before trial, and
123 WHEREAS, Ms. Perez has been paid the statutory limit of
124 $200,000 by the St. Johns County Sheriff's Office's self-
125 insuring risk pool, leaving a balance of $6.3 million which the
126 St. Johns County Sheriff's Office is willing to pay upon being
127 authorized to do so by the enactment of a claim bill pursuant to

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128 s. 768.28, Florida Statutes, and
129 WHEREAS, the parties agree to support a claim bill that
130 authorizes and directs the St. Johns County Sheriff’s Office to
131 appropriate from funds of the county and pay Julia Perez $6.3
132 million, and
133 WHEREAS, Ms. Perez seeks the total sum of $6.3 million in
134 relief from the Legislature for satisfaction of her injuries and
135 damages, NOW, THEREFORE,

By Senator Bradley

A bill to be entitled

An act for the relief of Julia Perez by the St. Johns County Sheriff's Office; providing for an appropriation to compensate Julia Perez for personal injuries and damages sustained as a result of the negligence of an employee of the St. Johns County Sheriff's Office; providing legislative intent for the waiver of certain lien interests; providing a limitation on compensation and the payment of attorney fees; providing an effective date.

WHEREAS, at 5:09 p.m. on April 7, 2019, Julia Perez, then 51 years of age, and her companion, Tom Eiland, then 59 years of age, were both wearing helmets and lawfully operating separate motorcycles within the posted speed limit, traveling east on State Road 16 in the correct travel lane in unincorporated St. Johns County, and

WHEREAS, at the same time, Deputy Brandon Hetzler, then 28 years of age, a newly sworn employee of the St. Johns County Sheriff's Office (SJSO), acting in the course and scope of his employment, was operating a marked SJSO patrol vehicle and traveling west on State Road 16 in the left turn lane at the intersection of State Road 16 and Harvest Lane, and

WHEREAS, the afternoon sky was clear, the road was dry, and there were no obstructions when Deputy Hetzler suddenly entered the intersection of State Road 16 and Harvest Lane and attempted a left turn directly in front of both motorcycles operated by Ms. Perez and Mr. Eiland, and

WHEREAS, the front right side of Deputy Hetzler's vehicle

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

collided with the front of Ms. Perez's motorcycle, ejecting Ms. Perez from her motorcycle, with her making contact with the hood of the patrol car and being propelled over the roof, striking the trunk before she landed on the pavement of State Road 16, and

WHEREAS, the front right side of Deputy Hetzler's vehicle collided with the left side of Mr. Eiland's motorcycle, ejecting Mr. Eiland from his motorcycle and onto the pavement, and

WHEREAS, the Florida Highway Patrol's traffic crash investigators conducted an extensive investigation of the accident, which included preparation for a traffic homicide reconstruction due to Ms. Perez's grave condition, and

WHEREAS, witnesses on the scene told investigators that at the time of the crash, the eastbound traffic had a steady green signal and that Ms. Perez and Mr. Eiland had the right of way, and

WHEREAS, the investigation revealed that Deputy Hetzler had overheard a service call and was responding to it, but he did not activate his siren or emergency lights, and

WHEREAS, the investigation determined that the actions of Ms. Perez and Mr. Eiland were reasonable and did not contribute to or cause the collisions, and

WHEREAS, the Florida Highway Patrol investigation found Deputy Hetzler to be solely at fault in the accident and issued him a traffic citation for failure to yield to oncoming traffic in violation of s. 316.122, Florida Statutes, and

WHEREAS, SJSO policy 61.16 states, "It shall be the responsibility of each employee to operate agency vehicles efficiently, maintain the vehicle, and drive the vehicle in

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

observance of all rules of the road in order to reduce the likelihood of traffic crashes or injury," and

WHEREAS, SJSO policy 61.16 also states, "All crashes and incidents involving agency vehicle damage shall be reviewed by the Traffic Crash Review Board within thirty days of the crash," and

WHEREAS, the SJSO Traffic Crash Review Board found Deputy Hetzler to be at fault for causing the crash and injuries, and

WHEREAS, Deputy Hetzler's negligence was the sole cause of the collisions, and

WHEREAS, the St. Johns County Sheriff's Office admitted negligence for causing the collision and liability for Ms. Perez's injuries, and

WHEREAS, Ms. Perez suffered multiple open and comminuted fractures of the pelvis, arms, and legs, as well as organ lacerations and punctures, including a punctured left lung, resulting in cardiopulmonary arrest due to blood loss, and

WHEREAS, Ms. Perez was found unresponsive at the scene of the accident and had to be resuscitated on the street by first responders before St. Johns County Fire Rescue arrived to assume rescue efforts, and

WHEREAS, Ms. Perez was intubated in the field and rushed to the Trauma Center at Memorial Hospital Jacksonville, arriving comatose and undergoing a series of blood transfusions, and

WHEREAS, Ms. Perez spent 3 months on a ventilator and feeding tube; battled a pulmonary embolism, a deep vein thrombosis, and episodes of pneumonia; suffered at least one myocardial infarction; and endured multiple systemic infections, and

WHEREAS, Ms. Perez was unconscious for 3 months and bedridden for 7 months, resulting in two painful pressure sores, and

WHEREAS, in July 2019, a nurse reinjured Ms. Perez's fractured arm while turning her to prevent pressure sores, and

WHEREAS, in August 2019, Ms. Perez's bladder was inadvertently nicked during a surgery to insert a plate into her pelvis, causing internal bleeding and necessitating a repair surgery, and

WHEREAS, Ms. Perez remained hospitalized and was in a nursing home for almost 8 months following the crash, and

WHEREAS, being bedridden and immobile have caused Ms. Perez to suffer bowel obstructions, leading to multiple emergency care visits, and

WHEREAS, because of blood loss and infection, Ms. Perez has suffered renal tubular necrosis and permanent kidney injury, and

WHEREAS, Mr. Eiland has transported Ms. Perez to Jacksonville three times per week for kidney dialysis because she is in chronic, end-stage kidney failure, meaning she will likely either be placed on a kidney donor list as a transplant candidate or be on dialysis for the rest of her life, and

WHEREAS, Ms. Perez suffers from incontinence and, due to her dialysis catheter, is unable to shower or bathe, and instead relies on a process of cleaning herself with wet towelettes, which typically takes an hour or longer to complete, and

WHEREAS, Ms. Perez suffers from substantial pain when trying to accomplish simple tasks of daily living and experiences interrupted sleep on a nightly basis, and

WHEREAS, Ms. Perez suffers from chronic migraine headaches

and severely elevated blood pressure, which has resulted in multiple emergency care visits, and

WHEREAS, Ms. Perez has suffered a traumatic brain injury as a result of the crash, causing memory loss, confusion, communication difficulties, fatigue, frustration, and depression, and she is under the treatment of a neurologist, and

WHEREAS, Ms. Perez has undergone dozens of surgeries and is faced with many more, and past medical bills and liens amount to more than $3,863,108.09 for her care and treatment, all due to injuries resulting from the crash, and

WHEREAS, the costs of future medical care, treatment, and equipment is estimated to be between $3,318,811.56 and $4,077,923.57 over the course of her 30-year life expectancy, and

WHEREAS, Ms. Perez is totally disabled, and her loss of earning capacity is conservatively estimated to be $282,110, based on her full Social Security retirement age of 67 and a minimum-wage earning capacity, and

WHEREAS, Ms. Perez seeks the total sum of $15 million in equitable relief from the Legislature for satisfaction of her injuries and damages, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The St. Johns County Sheriff's Office is authorized and directed to appropriate from funds of the county not otherwise encumbered and to pay Julia Perez $15 million, or

an alternative amount not to exceed $15 million in the event the parties reach an agreement, to compensate her for the injuries and damages she sustained due to the negligence of an employee of the St. Johns County Sheriff's Office.

Section 3. It is the intent of the Legislature that all lien interests held by the state, if any, resulting from the treatment and care of Julia Perez for the occurrences described in this act are waived.

Section 4. The amount awarded under this act is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Julia Perez. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the total amount awarded under this act.

Section 5. This act shall take effect upon becoming a law.

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 484

INTRODUCER: Senator Bradley

SUBJECT: Flood Disclosure in the Sale of Real Property

DATE: Feburary 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			BI	
3.			RC	

I. Summary:

SB 484 requires the seller of any real property to make certain disclosures to the buyer regarding flooding and flood risk. To the extent known to the seller, the bill requires a seller of real property to disclose the following information to a prospective purchaser prior to entering into a contract for sale of the real property: whether the property has suffered damage from flooding, whether the property owner has maintained flood insurance, whether any portion of the property is located in a flood zone, whether the seller has ever received federal assistance for flood damage to the property, whether the seller has ever filed a claim with an insurance provider relating to flood damage on the property, and whether a Federal Emergency Management Agency elevation certificate is available for the property.

The bill is effective July 1, 2024.

II. Present Situation:

Disclosure of Known Defects

As to sales of real property, Florida historically followed the legal theory of *Caveat Emptor* ("let the buyer beware"). Under this theory, the seller has no duty to disclose defects in the property and the buyer takes the property "as-is." One court stated that "there is no duty to disclose [a latent defect] when parties are dealing at arms length."[1]

The law changed in 1985 when the Florida Supreme Court ruled that "where the seller of a home knows of facts materially affecting the value of the property which are not readily observable

[1] *Banks v. Salina*, 413 So. 2d 851, 852 (Fla. 4th DCA 1982).

and are not known to the buyer, the seller is under a duty to disclose them to the buyer."[2] This duty applies even where the buyer has agreed to purchase residential property "as-is."[3]

Notably, the case law disclosure requirement only applies to facts that are not "readily observable" to the buyer. In the context of flood disclosures, the appellate courts are split as to whether a tendency to flood is readily observable. In one case, the buyers bought a home in the East Everglades area of Miami-Dade County.[4] When they viewed the home during the dry season, the home was acceptable. The sellers did not disclose that the land on which the home sat, but not the home itself, flooded annually in the rainy season, a fact the seller knew from previous experience. The flooding, according to the court, was so severe that "snakes and even alligators (two at least), have gathered at [the] property (presumably on an elevated portion) to escape the waters."[5] The court found that seasonal flooding of the neighborhood was common knowledge and information that was readily available to the buyers had they exercised "diligent attention."[6] The lawsuit against the seller was dismissed.

In another case, the buyers sued because the seller failed to disclose that the property was in the Coastal Barrier Resource Area (CBRA), and thus ineligible for flood insurance. The trial court found the information regarding the CBRA was publicly available, and dismissed the case. The appellate court, however, ruled for the buyers.[7]

The duty to disclose latent defects will generally not apply to an as-is contract for non-residential property. An appellate court stated Florida courts will continue to apply the doctrine of caveat emptor to an "as-is" contract for non-residential property unless one of the following exceptions apply:

- Where some artifice or trick has been employed to prevent the purchaser from making independent inquiry;
- Where the purchaser does not have equal opportunity to become apprised of the fact; and
- Where a party undertakes to disclose facts and fails to disclose the whole truth.[8]

Specific Disclosure Requirements

Numerous laws have created specific legal disclosure requirements for a seller that are in addition to the disclosure required by case law, including:

- Associations -- A seller of property in a condominium, cooperative, or homeowners association must make extensive specific disclosures of information related to the association.[9]
- Coastal -- A sale of a property located partially or totally seaward of the coastal construction control line requires a written disclosure statement at time of contract. Also, the seller must

[2] *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).
[3] *Rayner v. Wise Realty Co. of Tallahassee*, 504 So. 2d 1361 (Fla. 1st DCA 1987).
[4] *Nelson v. Wiggs*, 699 So. 2d 258 (Fla. 3rd DCA 1997).
[5] *Id.* at 259.
[6] *Id.* at 260.
[7] *Newbern v. Mansbach*, 777 So.2d 1044 (Fla. 1st DCA 2001).
[8] *Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC*, 317 So.3d 121, 124 (Fla. 4th DCA 2021).
[9] See, ss. 718.503 (condominiums), 719.503 (cooperatives), and 720.401 (homeowners association), F.S.

furnish the buyer with a survey or affidavit showing the line, although the buyer may waive this requirement.[10]

- Code enforcement -- If a code enforcement proceeding is pending at the time of sale, the seller must disclose it to the buyer.[11]
- Lead paint -- Federal law requires all sellers or landlords of residential real property built before 1978 to give the buyer or tenant a federally produced form disclosure. The contract or lease must allow for a 10-day inspection period.[12]
- Property tax -- The seller must disclose that a transfer of ownership may lead to an increased property tax assessment related to the Save Our Homes Amendment.[13]
- Radon gas -- A specific disclosure relating to the risks of radon gas must be made in writing in connection with the sale of any building.[14]
- Sewer lines -- The seller must disclose known defects in the property's sanitary sewer lateral line.[15]
- Sinkhole damage -- The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the closing, that a claim has been paid and whether or not the full amount of the proceeds was used to repair the sinkhole damage.[16]
- Subsurface rights -- The seller must provide a prospective purchaser of residential property with a disclosure summary if the seller or an affiliated or related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry.[17]

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[10] Section 161.57, F.S. The written disclosure is this statement: "The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased."

[11] Section 162.06(5), F.S.

[12] 24 CFR Part 35 and 40 CFR Part 745. See also United States Environmental Protection Agency, Lead-Based Paint Disclosure Rule (updated Aug. 7, 2023),https://www.epa.gov/lead/lead-based-paint-disclosure-rule-section-1018-title-x.

[13] Section 689.261, F.S. The written disclosure is this statement: "BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION."

[14] Section 404.056(5), F.S. The disclosure is this statement: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

[15] Section 689.301, F.S.

[16] Section 627.7073(2)(c), F.S.

[17] Section 689.29, F.S. The written disclosure is: "SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, OR REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE."

Correspondingly, statutes provide that certain disclosures are not required, including:

- That an occupant is or has been infected with HIV or AIDS.[18]
- That the property was or may have been the site of a homicide, suicide, or other death.[19]

Inability of Buyers to Access Federal Data on Flood-Prone Homes.

The Federal Emergency Management Agency (FEMA) responds to emergencies caused by natural disasters including flooding. Like all federal agencies, they keep records related to their regulatory function. One form of data held by FEMA is properties categorized as a "severe repetitive loss property." That designation covers homes that have flooded twice, with damage totaling the value of the property, or flooded four times with at least $5,000 of damage each time. There are about 45,000 of these properties in the U.S., as of the end of 2022, with about 3,100 in Florida alone, according to FEMA data. Florida added about 120 of those homes from 2021 to 2022. FEMA's policy is to share past flood history only with a property owner that holds an active flood insurance policy on a property, so prospective buyers may know the details of their property's flood history only after they've closed the deal.[20]

III. Effect of Proposed Changes:

The bill creates a requirement for certain flood-related disclosures in every real estate transaction. To the extent known to the seller, a seller of real property is required to disclose the following information to a prospective purchaser prior to entering into a contract for sale of the real property:

- Whether the property has suffered damage from flooding and the number of times the property has been subject to flooding. The term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:
  - The overflow of inland or tidal waters;
  - The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch; or
  - Excessive rainfall.
- Whether the property owner has maintained flood insurance.
- Whether any portion of the property is located in a designated special flood hazard area or moderate risk flood hazard zone established by the Federal Emergency Management Agency.
- Whether the seller has ever received federal assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency or the United States Small Business Administration.
- Whether the seller has ever filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.
- Whether a Federal Emergency Management Agency elevation certificate is available for the property.

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[18] Section 689.25(1)(a), F.S.
[19] Section 689.25(1)(b), F.S.
[20] Alex Harris, *Thousands of Florida homes flood repeatedly. You're not allowed to know which ones.* MIAMI HERALD (Jan. 14, 2024), https://www.wusf.org/politics-issues/2024-01-14/thousands-of-florida-homes-flood-repeatedly-youre-not-allowed-to-know-which-ones.

The bill is effective July 1, 2024.

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 apparent.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill imposes a minimal paperwork requirement on sellers of real property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 689.302 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 689.302, Florida Statutes, is created to read:

689.302 Disclosure of flood risks to prospective purchaser.—A seller must complete and provide a flood disclosure to a purchaser of residential real property at or before the time the sales contract is executed. The flood disclosure must be made in the following form:

256786

12
13 FLOOD DISCLOSURE
14 Flood Insurance: Homeowners' insurance policies do not
15 include coverage for damage resulting from floods. Buyer is
16 encouraged to discuss the need to purchase separate flood
17 insurance coverage with Buyer's insurance agent.
18 (1) Seller is .... is not .... aware of damage to the
19 property caused by flooding during Seller's ownership of
20 the property.
21 (2) Seller has .... has not .... filed a claim with an
22 insurance provider relating to flood damage on the
23 property, including, but not limited to, a claim with the
24 National Flood Insurance Program.
25 (3) Seller has .... has not .... received federal
26 assistance for flood damage to the property, including, but
27 not limited to, assistance from the Federal Emergency
28 Management Agency.
29 (4) Seller does .... does not .... maintain flood insurance
30 on the property.
31 (5) For the purposes of this disclosure, the term
32 "flooding" means a general or temporary condition of
33 partial or complete inundation of the property caused by
34 any of the following:
35 (a) The overflow of inland or tidal waters.
36 (b) The unusual and rapid accumulation of runoff or surface
37 waters from any established water source, such as a river,
38 stream, or drainage ditch.
39 (c) Sustained periods of standing water resulting from
40 rainfall.

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41
42 Section 2. This act shall take effect October 1, 2024.
43
44 ========== T I T L E A M E N D M E N T ==========
45 And the title is amended as follows:
46 Delete everything before the enacting clause
47 and insert:
48 A bill to be entitled
49 An act relating to flood disclosure in the sale of
50 real property; creating s. 689.302, F.S.; requiring a
51 seller of residential real property to provide
52 specified information to a prospective purchaser at or
53 before the sales contract is executed; specifying how
54 such information must be disclosed; providing an
55 effective date.

By Senator Bradley

6-00659-24 2024484__

A bill to be entitled

An act relating to flood disclosure in the sale of real property; creating s. 689.302, F.S.; requiring a seller of real property to disclose in writing certain flood information to a prospective purchaser before executing a contract for the sale of the property; defining the term "flooding"; providing an effective date.

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

Section 1. Section 689.302, Florida Statutes, is created to read:

689.302 Disclosure of flood risks to prospective purchaser.—A seller of real property, before executing a contract for sale, shall disclose in writing to a prospective purchaser all of the following information known to the seller:

(1) Whether the property has suffered damage from flooding and the number of times the property has been subject to flooding. For the purposes of this subsection, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.

(c) Excessive rainfall.

(2) Whether the property owner has maintained flood

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

6-00659-24 2024484__

insurance.

(3) Whether any portion of the property is located in a designated special flood hazard area or moderate risk flood hazard zone established by the Federal Emergency Management Agency.

(4) Whether the seller has ever received federal assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency or the United States Small Business Administration.

(5) Whether the seller has ever filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.

(6) Whether a Federal Emergency Management Agency elevation certificate is available for the property.

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 468

INTRODUCER: Senator Bradley

SUBJECT: Court Interpreter Services

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Pre-meeting**
2.			ACJ	
3.			FP	

I. Summary:

SB 468 creates an exception to the general rule that state revenues may not be provided to non-indigent people for due process services. Due process services include, but are not limited to, court reporting services, court interpreter and translation services, and expert witness services.

The bill authorizes the State Courts System to spend state revenues to provide court-appointed interpreting services to non-indigent people if:

- Funds are available in the fiscal year appropriation for due process services; and
- Interpreting services are provided as prescribed by the Supreme Court.

The bill also repeals the requirement that the trial court administrator recover the cost of court interpreter services.

The bill takes effect upon becoming a law.

II. Present Situation:

Current Requirements for Providing a Language Interpreter

Florida courts are required to appoint a spoken language interpreter for non-English speaking and limited-English-proficient people in certain cases in order to comply with Title VI of the Civil Rights Act of 1964. Under current law, a spoken language interpreter is appointed in criminal and juvenile delinquency cases for non-English-speaking and limited-English-proficient people.[1] In all other cases, the court appoints an interpreter for non-English-speaking and limited-English-proficient litigants only when the court determines that:

[1] Fla. R. Gen. Prac. & Jud. Admin. 2.560.

- The litigant's inability to comprehend English deprives the litigant of an understanding of the court proceedings;
- A fundamental interest is at stake (such as in a civil commitment, termination of parental rights, paternity, or dependency proceeding); and
- No alternative to the appointment of an interpreter exists.[2]

If a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, an interpreter will be appointed. This standard is not limited to people who speak a language other than English, but also applies to the language and descriptions of any person, including a child or person who is mentally or developmentally disabled, who cannot be reasonably understood, or who cannot understand questioning without the aid of an interpreter.[3]

Current law, however, provides that state-funded court interpreting services may not be provided to someone unless he or she is indigent.[4] Additionally, current law requires the trial court administrator to recover state-funded court interpreting services from litigants who have the present ability to pay. The rate of compensation for interpreting services is the actual cost of the interpreting services plus the cost of the recovery. The amounts recovered are deposited into the Administrative Trust Fund with the state courts system.[5]

U.S. Department of Justice

In 2010, the U. S. Department of Justice, Civil Rights Division, (Department) issued a letter to state court chief justices and state court administrators providing clarity to state courts regarding their obligation to provide language access services to parties or witnesses with limited English proficiency. The Department noted that denying people with limited English proficiency meaningful access to the courts could place state courts in violation of civil rights requirements, particularly Title VI of the Civil Rights Act of 1964. Among the policies noted that impede compliance were:

- Limiting the types of proceedings for which qualified interpreter services are provided by the court.
- Charging interpreter costs to parties.
- Restricting language services to courtrooms.
- Failing to ensure effective communication with court-appointed or supervised personnel.[6]

Representatives of the Department are monitoring Florida's activities for compliance and progress in this area.[7]

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[2] *Id*.
[3] Section 90.606, F.S.
[4] Section 29.0185, F.S.
[5] Section 29.0195, F.S.
[6] *Department of Justice Guidance Letter Regarding the Obligation to Provide Language Access*, (Aug. 17, 2010) https://www.justice.gov/file/1250731/download as provided in the Office of the State Courts Administrator Bill Analysis in note 7.
[7] Office of the State Courts Administrator, *2024 Judicial Impact Statement for SB 468* (Jan. 17, 2024) https://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=35461.

State Court Commission on Trial Court Performance and Accountability

Additionally, the state Commission on Trial Court Performance and Accountability has been evaluating the state trial courts' ability to expand interpreting services without charging court participants and without regard to their financial status. The Commission recommended an initial expansion of court interpreter services, without cost and regardless of someone's indigency status in limited areas. The Florida Supreme Court approved the report.[8]

III. Effect of Proposed Changes:

The bill amends s. 29.0185, F.S., to create an exception to the general prohibition against providing state-funded due process services to non-indigent persons. The bill authorizes the use of state revenues by the State Courts System to provide court-appointed interpreting services to non-indigent people if:

- Funds are available in the fiscal year appropriation for due process services; and
- Interpreting services are provided as prescribed by the Supreme Court.

The bill also amends s. 29.0195, F.S., to repeal the requirement that the trial court administrator recover the costs of court interpreter services.

These changes will help bring Florida law into compliance with the Department of Justice's guidance letter regarding the obligation of state courts to provide language access services under Title VI of the Civil Rights Act of 1964.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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[8] *Id*.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator estimates that there will be additional demand on full-time equivalent or contract interpreters in the judicial circuits to the extent that court interpreting services will be expanded.[9]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 29.0185 and 29.0195.

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.

[9] Office of the State Courts Administrator, *2024 Judicial Impact Statement for SB 468* (Jan. 17, 2024) https://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=35461.

By Senator Bradley

6-00470-24 2024468__

A bill to be entitled

An act relating to court interpreter services; amending s. 29.0185, F.S.; authorizing the state courts system to use state revenues, if available, to provide court-appointed interpreting services to nonindigent individuals; requiring such services to be provided as prescribed by the Supreme Court; amending s. 29.0195, F.S.; repealing the cost recovery requirement for court-appointed interpreting services; providing an exception for translation services; providing an effective date.

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

Section 1. Section 29.0185, Florida Statutes, is amended to read:

29.0185 Provision of state-funded due process services to individuals.—

(1) Due process services may not be provided with state revenues to an individual unless the individual on whose behalf the due process services are being provided is eligible for court-appointed counsel under s. 27.40, based upon a determination of indigency under s. 27.52, regardless of whether such counsel is appointed or the individual on whose behalf the due process services are being provided is eligible for court-appointed counsel under s. 27.40 and has been determined indigent for costs pursuant to s. 27.52.

(2) Notwithstanding subsection (1), state revenues may be used by the state courts system to provide court-appointed

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interpreting services to nonindigent individuals if funds are available in the fiscal year appropriation for due process services and if interpreting services are provided as prescribed by the Supreme Court.

Section 2. Section 29.0195, Florida Statutes, is amended to read:

29.0195 Recovery of expenditures for state-funded services.—

(1) The trial court administrator of each circuit shall recover expenditures for state-funded services when those services have been furnished to a user of the state courts ~~court~~ system who possesses the present ability to pay. The rate of compensation for such services is ~~shall be~~ the actual cost of the services, including the cost of recovery. The trial court administrator shall deposit moneys recovered under this section in the Administrative Trust Fund within the state courts system. The trial court administrator shall recover the costs of court reporter services and transcription; translations ~~court interpreter services, including translation~~; and any other service for which state funds were used to provide a product or service within the circuit.

(2) This section does not authorize cost recovery for court-appointed interpreting services, except translations, or cost recovery from entities described in ss. 29.005-29.007.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1104

INTRODUCER: Senator Bradley

SUBJECT: Policy Cancellations and Nonrenewals by Property Insurers

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Favorable**
2.	Bond	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 1104 amends s. 627.4133, F.S., relating to cancellation and nonrenewal of property insurance policies.

If a commercial property was damaged by any covered peril, the insurer (whether authorized lines or surplus lines) may not cancel or nonrenew the property insurance policy until the earlier of completion of repairs or 1 year after the insurer issues the final claim payment. However:

- If flood is not a covered peril and the property has been damaged by flood, the insurer may not cancel or nonrenew until the earlier of completion of repairs or 1 year after the date of loss.
- The insurer may cancel or nonrenew on 10 days' notice for nonpayment of premium; or on 45 days notice for material misstatement, fraud, unreasonable delay by the insured, or if the insurer has paid policy limits.
- Any nonrenewal after damage requires at least 90 days notice that the policy will be not renewed and that the nonrenewal must not take effect until at least 90 days after completion of repairs.

If a personal residential or commercial residential property has been damaged as a result of hurricane or wind loss (declared emergency), the current law prohibition on cancellation or nonrenewal until 90 days after the property is repaired is expanded from solely applying to authorized insurers to also apply to surplus lines. The 90 days is extended to 1 year where the damage was caused by flood related to a hurricane. Also, the bill clarifies that, for the purpose of determining when a residential property is "repaired," it is repaired when it is insurable by a like-kind insurer (authorized or surplus lines).

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

The bill provides an effective date of July 1, 2024.

II. Present Situation:

Notice of Cancellation or Nonrenewal of Insurance Policies

The requirements for an insurer to provide notice of cancellation or nonrenewal of a policy are set forth in s. 627.4133, F.S. The specific notice depends on the type of insurance provided and the particular circumstances of the subject policy.

For coverage of property, casualty (except for mortgage guaranty), surety, or marine insurance (except for certain motor vehicle insurance), an insurer must inform the first-named policyholder with 45 days' advance written notice of the cancellation or nonrenewal.[1] When cancellation is due to failure to pay a premium, at least 10 days' written notice of cancellation and the reason for the cancellation must be provided to the insured.[2] When cancellation occurs during the first 60 days and is not a result of nonpayment of premium, at least 20 days' written notice and the reason for cancellation must be given to the insured except where there has been a material misstatement, misrepresentation, or failure to comply with the policy's underwriting requirements.[3] After 60 days, no such policy may be cancelled by the insurer unless there has been a material misstatement, a failure to pay the premium, a failure to comply with the policy's underwriting requirements within a specified time, or a substantial change in the risk covered by the policy or when cancellation is given for a class of insureds.[4] If an insurer fails to provide the 45-day or 20-day written notice, the coverage provided remains in effect until 45 days after the notice is given or until the effective date of replacement coverage obtained by the named insured, whichever occurs first.[5]

With respect to personal lines or commercial residential property insurance policies, such as any homeowner, mobile home owner, farm owner, condominium association, condominium unit owner, or apartment building, the insurer must give the first-named insured written notice at least 120 days before the effective date of the cancellation or nonrenewal.[6] Such insureds must receive 10 days' advance notice of cancellation for a failure to pay a premium, or 20 days' notice for a reason other than nonpayment if cancellation occurs within the first 90 days of coverage.[7] An insurer may not cancel the policy after it has been in effect for 60 days unless there has been a material misstatement, nonpayment, a failure to comply with the policy's underwriting requirements within a specified time, a substantial change in the risk covered by the policy or unless the cancellation is for a given class of insureds.[8]

An authorized insurer may not cancel or nonrenew a residential property insurance policy:

- For a period of 90 days after the property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation.

[1] Section 627.4133(1)(a) and (b), F.S.
[2] Section 627.4133(1)(b)1., F.S.
[3] Section 627.4133(1)(b)2., F.S.
[4] Section 627.4133(1)(b), F.S.
[5] Section 627.4133(1)(c), F.S.
[6] Section 627.4133(2)(b), F.S.
[7] Section 627.4133(2)(b)1. and 2., F.S.
[8] Section 627.4133(2)(b)3., F.S.

- Until the earlier of when property has been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by a covered peril, but was not damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency and the filing of an order by the Commissioner of Insurance Regulation.[9]

A structure is deemed repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer.[10] An insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property upon 10 days' notice for nonpayment of premium; or upon 45 days' notice:

- For a material misstatement or fraud related to the claim;
- If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling; or
- If the insurer has paid policy limits.[11]

If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired.[12] This requirement does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repairs are complete for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations.[13] Any cancellation or nonrenewal subject to these limitations that is set to become effective during a hurricane, the effective date is extended until the end of the duration of the hurricane.[14]

Insurers may not cancel or nonrenew a property insurance policy based on the policyholder making a claim based on the result of an act of God, unless the insurer can demonstrate that the insured failed to take action reasonably necessary as requested by the insurer to prevent recurrence of damage to the insured property.[15]

III. Effect of Proposed Changes:

The bill amends s. 627.4133(1), F.S., to provide that an insurer may not cancel or nonrenew a property insurance policy covering a commercial property located in this state:

- For a period of 90 days after the property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency pursuant to s. 252.36, F.S., and the filing of an order by the Commissioner of Insurance Regulation. Damage includes flood damage caused by a hurricane if flood is a covered peril under the commercial property policy or under a separate flood insurance policy. If flood is not a covered peril and the property has been damaged as a result of flood caused by a hurricane, an insurer may not cancel or nonrenew the commercial property

[9] Section 627.4133(2)(e)1., F.S.
[10] Section 627.4133(2)(e)5.a., F.S.
[11] Section 627.4133(2)(e)2., F.S.
[12] Section 627.4133(2)(e)3., F.S.
[13] *Id.*
[14] Section 627.4133(2)(f), F.S.
[15] Section 627.4133(3), F.S.

policy until the earlier of when the property has been repaired or 1 year after the date of loss; or
- Until the earlier of when the commercial property is been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by any covered peril other than a hurricane or wind loss that is the subject of a declaration of emergency.

The bill authorizes an insurer or agent to cancel or nonrenew a policy prior to the repair of the commercial property upon 10 days' notice for nonpayment of premium; or upon 45 days' notice:
- For a material misstatement or fraud related to the claim;
- If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling; or
- If the insurer has paid the policy limits for a loss to each insured structure that was damaged.

If the insurer elects to nonrenew a policy covering a commercial property that has been damaged, the insurer must provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the property has been repaired. This requirement does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repairs are complete for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for these limitations. The bill grants rulemaking authority to the Financial Services Commission necessary to implement these provisions and gives the Commissioner of Insurance Regulation authority to issue orders necessary to implement the provisions.

The bill provides that a commercial property structure is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer. A structure insured by a surplus lines insurer is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer or eligible surplus lines insurer. Such a policy extended or renewed must contain the same policy terms as the policy being extended or renewed.

With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents, the bill amends s. 627.4133(2)(e), F.S., to include flood damage caused by a hurricane if flood is a covered peril under the policy or a separate flood insurance policy. If flood is not a covered peril and the property is damaged as a result of flood caused by a hurricane, the insurer may not cancel or nonrenew the policy until the earlier of when the property has been repaired or 1 year after the date of loss.

The bill amends s. 627.4133(2)(e)2., F.S., to provide that an insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property upon 10 days' notice for nonpayment of premium; or upon 45 days' notice:
- For a material misstatement or fraud related to the claim;
- If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling; or

- If the insurer has paid policy limits for a loss to the insured dwelling under a personal residential policy, or policy limits for a loss to each insured structure that was damaged under a commercial residential policy.

The bill amends s. 627.4133(2)(e)5., F.S., to provide, with respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents, that a structure insured by an authorized insurer is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer. The bill provides that a structure insured by a surplus lines insurer is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer or eligible surplus lines insurer. The bill provides that the term "insurer" means an authorized insurer or an eligible surplus lines insurer. Finally, the bill provides that if a policy is extended or renewed to comply with these provisions, the policy must contain the same policy terms as the policy being extended or renewed.

The bill provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill should benefit commercial property owners affected by hurricanes or windstorm damage by assuring they can maintain insurance coverage while having property damage repaired. Insurers will be affected by ensuring the provisions of the bill are implemented and followed.

C. Government Sector Impact:

The bill does not appear to have a significant fiscal impact on state or local government. The bill gives rulemaking authority to the Financial Services Commission. The Commission may incur some costs if it does adopt any rules pursuant to this authority.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.4133 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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	.	

The Committee on Judiciary (Bradley) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Paragraph (c) is added to subsection (2) of
6 section 626.9201, Florida Statutes, to read:
7 626.9201 Notice of cancellation or nonrenewal.—
8 (2) An insurer issuing a policy providing coverage for
9 property, casualty, surety, or marine insurance must give the
10 named insured written notice of cancellation or termination
11 other than nonrenewal at least 45 days before the effective date

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12 of the cancellation or termination, including in the written
13 notice the reasons for the cancellation or termination, except
14 that:
15 (c) An insurer may not cancel or nonrenew a personal
16 residential or commercial residential property insurance policy
17 covering a dwelling or residential property located in this
18 state:
19 1. For a period of 90 days after the dwelling or
20 residential property has been repaired, if such property has
21 been damaged as a result of a hurricane or wind loss that is the
22 subject of the declaration of emergency pursuant to s. 252.36
23 and the filing of an order by the Commissioner of Insurance
24 Regulation. Damage under this subsection includes flood damage
25 caused by a hurricane if flood is a covered peril under the
26 personal residential or commercial residential property
27 insurance policy. If flood is not a covered peril under the
28 commercial property insurance policy and the property has been
29 damaged as a result of flood caused by a hurricane, an insurer
30 may not cancel or nonrenew the personal residential or
31 commercial residential property insurance policy until the
32 earlier of when the property has been repaired or 18 months
33 after the date of loss.
34 2. However, an insurer or agent may cancel or nonrenew such
35 a policy before the repair of the dwelling or residential
36 property:
37 a. Upon 10 days' notice for nonpayment of premium; or
38 b. Upon 45 days' notice:
39 (I) For a material misstatement or fraud related to the
40 claim;

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41 (II) If the insurer determines that the insured has
42 unreasonably caused a delay in the repair of the dwelling; or
43 (III) If the insurer has paid the policy limits for a loss
44 to the insured dwelling under a personal residential property
45 insurance policy, or policy limits for a loss to each insured
46 structure that was damaged under a commercial residential
47 property insurance policy.
48 3. If the insurer elects to nonrenew a policy covering a
49 property that has been damaged, the insurer must provide at
50 least 90 days' notice to the insured that the insurer intends to
51 nonrenew the policy 90 days after the dwelling or residential
52 property has been repaired. This subsection does not prevent the
53 insurer from canceling or nonrenewing the policy 90 days after
54 the repairs are complete for the same reasons the insurer would
55 otherwise have canceled or nonrenewed the policy but for the
56 limitations of this subsection. The commission may adopt rules,
57 and the Commissioner of Insurance Regulation may issue orders,
58 necessary to implement this subsection.
59 4. For purposes of this subsection:
60 a. A structure is deemed to be repaired when the following
61 persons have inspected and certified or attested to the
62 completion of the repairs:
63 (I) A home inspector licensed under s. 468.8314;
64 (II) A building code inspector certified under s. 468.607;
65 (III) A general, building, or residential contractor
66 licensed under s. 489.111;
67 (IV) A professional engineer licensed under s. 471.015; or
68 (V) A professional architect licensed under s. 481.213.
69 b. If a policy is extended or renewed to comply with this

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70 subsection or with any other provision of the Commissioner of
71 Insurance Regulation's order, the policy must contain similar
72 policy terms as the policy being extended or renewed. However,
73 this subsection does not impact current law with regard to the
74 rates insurers may charge for policies extended or renewed under
75 this subsection.
76 c. Flood damage that is not communicated to the insurer and
77 the agent of the insurer before the expiration of the policy is
78 presumed nonexistent and may not be construed to alter any terms
79 of a policy, create a separate cause of action, or create any
80 additional duty on the part of the insurer or an agent of an
81 insurer to the insured.
82 5. This subsection does not affect the provisions of s.
83 95.11 or s. 627.70132.
84 6. This paragraph is not intended to revise or modify any
85 provision of an emergency order issued by the office before July
86 1, 2024.
87 Section 2. Paragraph (e) of subsection (2) of section
88 627.4133, Florida Statutes, is amended to read:
89 627.4133 Notice of cancellation, nonrenewal, or renewal
90 premium.—
91 (2) With respect to any personal lines or commercial
92 residential property insurance policy, including, but not
93 limited to, any homeowner, mobile home owner, farmowner,
94 condominium association, condominium unit owner, apartment
95 building, or other policy covering a residential structure or
96 its contents:
97 (e)1. An ~~authorized~~ insurer may not cancel or nonrenew a
98 personal residential or commercial residential property

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99 insurance policy covering a dwelling or residential property
100 located in this state:
101 a. For a period of 90 days after the dwelling or
102 residential property has been repaired, if such property has
103 been damaged as a result of a hurricane or wind loss that is the
104 subject of the declaration of emergency pursuant to s. 252.36
105 and the filing of an order by the Commissioner of Insurance
106 Regulation. Damage under this sub-subparagraph includes flood
107 damage caused by a hurricane if flood is a covered peril under
108 the personal residential or commercial residential property
109 insurance policy. If flood is not a covered peril under the
110 personal residential or commercial residential property
111 insurance policy and the property has been damaged as a result
112 of flood caused by a hurricane, an insurer may not cancel or
113 nonrenew the personal residential or commercial residential
114 property insurance policy until the earlier of when the property
115 has been repaired or 18 months after the date of loss.
116 b. Until the earlier of when the dwelling or residential
117 property has been repaired or 1 year after the insurer issues
118 the final claim payment, if such property was damaged by any
119 covered peril and sub-subparagraph a. does not apply.
120 2. However, an insurer or agent may cancel or nonrenew such
121 a policy before ~~prior to~~ the repair of the dwelling or
122 residential property:
123 a. Upon 10 days' notice for nonpayment of premium; or
124 b. Upon 45 days' notice:
125 (I) For a material misstatement or fraud related to the
126 claim;
127 (II) If the insurer determines that the insured has

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128 unreasonably caused a delay in the repair of the dwelling; or
129 (III) If the insurer has paid policy limits for a loss to
130 the insured dwelling under a personal residential policy, or
131 policy limits for a loss to each insured structure that was
132 damaged under a commercial residential policy.
133 3. If the insurer elects to nonrenew a policy covering a
134 property that has been damaged, the insurer must ~~shall~~ provide
135 at least 90 days' notice to the insured that the insurer intends
136 to nonrenew the policy 90 days after the dwelling or residential
137 property has been repaired. ~~Nothing in~~ This paragraph does not
138 ~~shall~~ prevent the insurer from canceling or nonrenewing the
139 policy 90 days after the repairs are complete for the same
140 reasons the insurer would otherwise have canceled or nonrenewed
141 the policy but for the limitations of subparagraph 1. The
142 Financial Services Commission may adopt rules, and the
143 Commissioner of Insurance Regulation may issue orders, necessary
144 to implement this paragraph.
145 4. This paragraph is not intended to revise or modify any
146 provision of an emergency order issued by the office before July
147 1, 2024 ~~This paragraph shall also apply to personal residential~~
148 ~~and commercial residential policies covering property that was~~
149 ~~damaged as the result of Hurricane Ian or Hurricane Nicole~~.
150 5. For purposes of this paragraph:
151 a. A structure is deemed to be repaired when the following
152 persons have inspected and certified or attested to the
153 completion of the repairs:
154 (I) A home inspector licensed under s. 468.8314;
155 (II) A building code inspector certified under s. 468.607;
156 (III) A general, building, or residential contractor

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157 licensed under s. 489.111;
158 (IV) A professional engineer licensed under s. 471.015; or
159 (V) A professional architect licensed under s. 481.213
160 ~~substantially completed and restored to the extent that it is~~
161 ~~insurable by another authorized insurer writing policies in this~~
162 ~~state~~.
163 b. The term "insurer" means an authorized insurer.
164 c. If a policy is extended or renewed to comply with this
165 paragraph or with any other provision of the Commissioner of
166 Insurance Regulation's order, the policy must contain similar
167 policy terms as the policy being extended or renewed. However,
168 this paragraph does not impact current law with regard to the
169 rates insurers may charge for policies extended or renewed under
170 this paragraph.
171 d. Flood damage that is not communicated to the insurer and
172 the agent of the insurer before the expiration of the policy is
173 presumed nonexistent and may not be construed to alter any terms
174 of a policy, create a separate cause of action, or create any
175 additional duty on the part of the insurer or an agent of an
176 insurer to the insured.
177 6. This paragraph does not affect the provisions of s.
178 95.11 or. s. 627.70132.
179 Section 3. This act shall take effect July 1, 2024.
180
181 ========== T I T L E A M E N D M E N T ==========
182 And the title is amended as follows:
183 Delete everything before the enacting clause
184 and insert:
185 A bill to be entitled

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186 An act relating to policy cancellations and
187 nonrenewals by property insurers; amending s.
188 626.9201, F.S.; prohibiting insurers from canceling
189 and nonrenewing, within certain timeframes, policies
190 covering personal residential or commercial
191 residential properties damaged by hurricanes or wind
192 losses; providing exceptions; providing construction;
193 authorizing the Financial Services Commission to adopt
194 rules and the Commissioner of Insurance Regulation to
195 issue orders; requiring that certain policies contain
196 similar terms under certain circumstances; amending s.
197 627.4133, F.S.; prohibiting insurers from canceling
198 and nonrenewing, within certain timeframes, policies
199 covering personal residential or commercial
200 residential properties damaged by hurricanes or wind
201 losses; providing that such prohibition applies to
202 flood damages caused by hurricanes under certain
203 circumstances; revising exceptions; providing
204 construction; requiring that certain policies contain
205 similar terms under certain circumstances; providing
206 an effective date.

By Senator Bradley

6-01583C-24 20241104__

A bill to be entitled

An act relating to policy cancellations and nonrenewals by property insurers; amending s. 627.4133, F.S.; prohibiting insurers from canceling and nonrenewing within certain timeframes policies covering commercial properties damaged by hurricanes and wind losses; providing exceptions; providing construction; authorizing the Financial Services Commission to adopt rules and the Commissioner of Insurance Regulation to issue orders; providing a definition; requiring commercial property policies to contain specified terms under certain circumstances; prohibiting eligible surplus lines insurers from canceling and nonrenewing within certain timeframes policies covering dwellings and residential properties damaged by hurricanes and wind losses; providing that such prohibition applies to flood damages caused by hurricanes; providing exceptions; revising the definition of the term "insurer" to include eligible surplus lines insurers; requiring personal lines and commercial residential property policies to contain specified terms under certain circumstances; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) of section 627.4133, Florida Statutes, is amended, and paragraph (e) is added to subsection (1) of that section, to read:

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

6-01583C-24 20241104__

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(1) Except as provided in subsection (2):

(e)1. An insurer may not cancel or nonrenew a property insurance policy covering a commercial property located in this state:

a. For a period of 90 days after the commercial property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation. Damage under this sub-subparagraph includes flood damage caused by a hurricane if flood is a covered peril under the commercial property policy or under a separate flood insurance policy. If flood is not a covered peril under the commercial property policy or under a separate flood insurance policy and the property has been damaged as a result of flood caused by a hurricane, an insurer may not cancel or nonrenew the commercial property policy until the earlier of when the property has been repaired or 1 year after the date of loss.

b. Until the earlier of when the commercial property has been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by any covered peril and sub-subparagraph a. does not apply.

2. However, an insurer or agent may cancel or nonrenew such a policy prior to the repair of the commercial property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the

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

claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling; or

(III) If the insurer has paid the policy limits for a loss to each insured structure that was damaged.

3. If the insurer elects to nonrenew a policy covering a commercial property that has been damaged, the insurer shall provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the commercial property has been repaired. This paragraph does not prevent the insurer from canceling or nonrenewing the policy 90 days after the repairs are complete for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations of subparagraph 1. The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

4. For purposes of this paragraph:

a. A structure that is currently insured by an authorized insurer is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in this state. A structure that is currently insured by a surplus lines insurer is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer or eligible surplus lines insurer writing policies in this state.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. If a policy is extended or renewed to comply with this paragraph or with any other provision of the Commissioner of

Insurance Regulation's order, it must contain the same policy terms as the policy being extended or renewed.

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(e)1. An ~~authorized~~ insurer may not cancel or nonrenew a personal residential or commercial residential property insurance policy covering a dwelling or residential property located in this state:

a. For a period of 90 days after the dwelling or residential property has been repaired, if such property has been damaged as a result of a hurricane or wind loss that is the subject of the declaration of emergency pursuant to s. 252.36 and the filing of an order by the Commissioner of Insurance Regulation. Damage under this sub-subparagraph includes flood damage caused by a hurricane if flood is a covered peril under the personal residential or commercial residential property insurance policy or under a separate flood insurance policy. If flood is not a covered peril under the personal residential or commercial residential property policy or under a separate flood insurance policy and the property has been damaged as a result of flood caused by a hurricane, an insurer may not cancel or nonrenew the personal residential or commercial residential property policy until the earlier of when the property has been repaired or 1 year after the date of loss.

b. Until the earlier of when the dwelling or residential

property has been repaired or 1 year after the insurer issues the final claim payment, if such property was damaged by any covered peril and sub-subparagraph a. does not apply.

2. However, an insurer or agent may cancel or nonrenew such a policy prior to the repair of the dwelling or residential property:

a. Upon 10 days' notice for nonpayment of premium; or

b. Upon 45 days' notice:

(I) For a material misstatement or fraud related to the claim;

(II) If the insurer determines that the insured has unreasonably caused a delay in the repair of the dwelling; or

(III) If the insurer has paid policy limits for a loss to the insured dwelling under a personal residential policy, or policy limits for a loss to each insured structure that was damaged under a commercial residential policy.

3. If the insurer elects to nonrenew a policy covering a property that has been damaged, the insurer shall provide at least 90 days' notice to the insured that the insurer intends to nonrenew the policy 90 days after the dwelling or residential property has been repaired. ~~Nothing in~~ This paragraph does not ~~shall~~ prevent the insurer from canceling or nonrenewing the policy 90 days after the repairs are complete for the same reasons the insurer would otherwise have canceled or nonrenewed the policy but for the limitations of subparagraph 1. The Financial Services Commission may adopt rules, and the Commissioner of Insurance Regulation may issue orders, necessary to implement this paragraph.

4. This paragraph shall also apply to personal residential

and commercial residential policies covering property that was damaged as the result of Hurricane Ian or Hurricane Nicole.

5. For purposes of this paragraph:

a. A structure that is currently insured by an authorized insurer is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer writing policies in this state. A structure that is currently insured by a surplus lines insurer is deemed to be repaired when substantially completed and restored to the extent that it is insurable by another authorized insurer or eligible surplus lines insurer writing policies in this state.

b. The term "insurer" means an authorized insurer or an eligible surplus lines insurer.

c. If a policy is extended or renewed to comply with this paragraph or with any other provision of the Commissioner of Insurance Regulation's order, it must contain the same policy terms as the policy being extended or renewed.

Section 2. This act shall take effect July 1, 2024.

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 1682

INTRODUCER: Senator Bradley

SUBJECT: Public Records/Artificial Intelligence Transparency Violations

DATE: January 26, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			RC	

I. Summary:

SB 1682 exempts from public records copying and inspection requirements certain information received by the Department of Legal Affairs in connection with its enforcement obligations under SB 1680 or similar legislation during the 2024 Regular Session.

Specifically, the bill exempts, from the public records requirements in s. 119.07(1), F.S. and art. I, s. 24(a) of the State Constitution, all information received by the department, either pursuant to a notification of violation of the new statute created by SB 1680,[1] or pursuant to an investigation by the department or a law enforcement agency of a violation of the new statute, until such time as the investigation is completed or ceases to be active.

The bill provides that during an active investigation, certain information made confidential and exempt by the bill may be disclosed by the department. It also provides that upon completion of an investigation, or once an investigation ceases to be active, certain information received by the department must remain confidential and exempt from the public disclosure requirements, including the "proprietary information," as defined in the bill, of the business operations of an entity or person.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on the same date that SB 1680 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

[1] Section 501.174, F.S.

II. Present Situation:

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[2] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[3]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.[4] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[5] Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[6]

Section 119.011(12), F.S., defines "public records" to include:

> [a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[7]

---

[2] FLA. CONST. art. I, s. 24(a).
[3] *Id*. *See also*, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).
[4] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).
[5] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[6] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[14] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[15] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[16]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[17] (the Act), prescribe a legislative review process for newly created or substantially amended[18] public records or open meetings exemptions, with specified exceptions.[19] The Act requires the repeal of

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[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).
[11] *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[14] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[15] *Id.*
[16] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[17] Section 119.15, F.S.
[18] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[19] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[20]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[21] An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[22]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[23] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[24]

The Act also requires specified questions to be considered during the review process.[25] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.[26] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[27]

Public Records Exemptions for Active Criminal Intelligence Information and Criminal Investigative Information

Provisions in s. 119.071(2)(c), F.S., exempt from public disclosure active criminal intelligence information and criminal investigative information.

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

[26] *See generally* s. 119.15, F.S.
[27] Section 119.15(7), F.S.

"Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.[28] Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.[29]

"Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.[30] Criminal intelligence information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.[31]

Additionally, criminal intelligence and criminal investigative information are considered "active" while such information is directly related to pending prosecutions or appeals,[32] but not if relating to cases which are barred from prosecution under an applicable statute of limitation.[33]

Six categories of criminal intelligence and criminal investigative information are expressly excluded from the exemption.[34] These categories are:[35]

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime, except as otherwise provided.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided, and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the enumerated provision[36] until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments, except[37] as provided.

[28] Section 119.011(3)(a), F.S.
[29] Section 119.011(3)(d)1., F.S.
[30] Section 119.011(3)(b), F.S.
[31] Section 119.011(3)(d)2., F.S.
[32] *Id.*
[33] *See, e.g.,* s. 775.15, F.S.
[34] *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683, 686 (S.D. Fla. 1990).
[35] Section 119.011(3)(c), F.S.
[36] Section 119.07(1), F.S.
[37] Section 905.26, F.S.

Under the Public Records Act, public records of a governmental entity do not transform into protected criminal investigative information merely because they have been transferred to a law enforcement agency.[38]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 501.174, F.S., as created by SB 1680 or similar legislation during the 2024 Regular Session, to include a new subsection (9) exempting all information received by the Department of Legal Affairs, either pursuant to a notification of violation of s. 501.174, F.S., or pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.174, F.S., from the public disclosure requirements[39] until such time as the investigation is completed or ceases to be active. This exemption must be construed in conformity with s. 119.071(2)(c), F.S.

The bill provides that during an active investigation, information made confidential and exempt pursuant to the bill may be disclosed by the department:

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast, if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or an improper use or disposal of customer records, except that information made confidential and exempt by the following paragraph may not be released pursuant to this paragraph.
- To another governmental entity in the furtherance of its official duties and responsibilities.

The bill also provides that upon completion of an investigation, or once an investigation ceases to be active, the following information received by the department must remain confidential and exempt from the public disclosure requirements:

- All information to which another public records exemption applies.
- Personal information.
- A computer forensic report.
- Information that would otherwise reveal weaknesses in the data security of the business operations of the entity or person.
- Information that would disclose the proprietary information of the business operations of the entity or person.

For purposes of s. 501.174, F.S., the term "proprietary information" means information that:

- Is owned or controlled by the entity or person.
- Is intended to be private and is treated by the entity or person as private because disclosure would harm the entity or person.
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

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[38] *State Attorney's Office of Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205, 212 (Fla. 4th DCA 2018).

[39] *See* s. 119.07(1), F.S.; FLA. CONST. art I, s. 24(a).

- Includes:
  - Trade secrets as defined in state law.[40]
  - Competitive interests, the disclosure of which would impair the competitive advantage of the business operations of the entity or person who is the subject of the information.

The bill provides that the exemption is subject to the Open Government Sunset Review Act[41] and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill provides that it is a public necessity that all information received by the department pursuant to a notification of a violation of s. 501.174, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, be made confidential and exempt from the public disclosure requirements for the following reasons:

- A notification of a violation of s. 501.174, F.S., may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer the statute. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.
- Release of information to which another public records exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.
- An investigation of a violation of s. 501.174, F.S., is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.
- Notices received by the department and information received during an investigation of a violation of s. 501.174, F.S., are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the entity or person. Release of such information could give business competitors an unfair advantage.
- Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of the business operations of the entity or person. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the business operations of the entity or person and be used to harm the entity or person and clients.
- The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.174, F.S., could impair the effective and efficient administration of the

[40] Section 688.002, F.S.
[41] *See* s. 119.15, F.S.

investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3 of the bill provides that it takes effect on the same date that SB 1680 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for all information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.174, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as the investigation is completed or ceases to be active; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to regulate entities and persons using artificial intelligence. This bill exempts only information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.174, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as related investigations are completed or cease to be active, from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may have a minimal negative fiscal impact on the Department of Legal Affairs personnel, because staff responsible for complying with public record requests may require training related to the new public record exemption. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.174 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Bradley

6-01188-24 20241682__

A bill to be entitled

An act relating to public records; amending s. 501.174, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain artificial intelligence transparency violations; providing construction; providing exceptions; providing that certain information received by the department remains confidential and exempt upon completion or inactive status of an investigation; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) of section 501.174, Florida Statutes, as created by SB ____ or similar legislation, 2024 Regular Session, is renumbered as subsection (10), and a new subsection (9) is added to that section to read:

501.174 Artificial intelligence transparency.—

(9)(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation

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

6-01188-24 20241682__

is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person who the department believes to be a victim of a data breach or an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of the business operations of the entity or person.

5. Information that would disclose the proprietary

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

information of the business operations of the entity or person.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the entity or person.

2. Is intended to be private and is treated by the entity or person as private because disclosure would harm the entity or person.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the business operations of the entity or person who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.174, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and

s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.174, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer s. 501.174, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information to which another public records exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.

(3) An investigation of a violation of s. 501.174, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.174, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing

117 public access to proprietary information, including a trade
118 secret, through a public records request could destroy the value
119 of the proprietary information and cause a financial loss to the
120 entity or person. Release of such information could give
121 business competitors an unfair advantage.
122 (5) Information received by the department may contain a
123 computer forensic report or information that could reveal
124 weaknesses in the data security of the business operations of
125 the entity or person. The release of this information could
126 result in the identification of vulnerabilities in the
127 cybersecurity system of the business operations of the entity or
128 person and be used to harm the entity or person and clients.
129 (6) The harm that may result from the release of
130 information received by the department pursuant to a
131 notification or investigation by the department or a law
132 enforcement agency of a violation of s. 501.174, Florida
133 Statutes, could impair the effective and efficient
134 administration of the investigation and thus, outweighs the
135 public benefit that may be derived from the disclosure of the
136 information.
137 Section 3. This act shall take effect on the same date that
138 SB ____ or similar legislation takes effect, if such legislation
139 is adopted in the same legislative session or an extension
140 thereof and becomes a law.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 720

INTRODUCER: Senator Hutson

SUBJECT: Asbestos and Silica Claims

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			CM	
3.			RC	

I. Summary:

SB 720 increases the information required to be included in the initial pleading filed by a plaintiff alleging injury from exposure to asbestos or silica. Current law requires specific information regarding the claim and the claimant, the bill adds the requirement to disclose more. The bill adds: the exposed person's smoking history, the name and address of persons knowledgeable about the exposure, the specific product that led to the exposure, and the occupation and employer of any person by which the exposed person alleges the exposure occurred where the exposure was other than direct or bystander exposure. The evidence supporting each claim against each defendant must be specified. The bill makes clear that failure to link a defendant to a specific exposure, or to furnish the required information, is grounds for dismissal of the defendant or the case, as appropriate.

The bill is effective July 1, 2023.

II. Present Situation:

In 2005, the Legislature enacted the "Asbestos and Silica Compensation Fairness Act."[1] The purposes of the act are to:

- Give priority to true victims of asbestos and silica claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;
- Fully preserve the rights of claimants who were exposed to asbestos or silica to pursue compensation if they become impaired in the future as a result of the exposure;
- Enhance the ability of the judicial system to supervise and control asbestos and silica litigation; and

[1] Section 774.201, F.S.

- Conserve the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while securing the right to similar compensation for those who may suffer physical impairment in the future.[2]

The act accomplishes its purposes by prohibiting speculative claims and focusing on persons who can demonstrate an actual physical impairment caused by asbestos.[3] One means of doing so is through requirements that the plaintiff provide detailed information regarding the claim at the outset of the litigation.

In order to file a case governed by the act, the plaintiff must supply a number of facts regarding the exposure to the asbestos and the resultant injuries. The complaint must include a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related physical impairment.[4] In addition to the written report, the plaintiff must include with the complaint a sworn information form containing:

- The claimant's name, address, date of birth, and marital status;
- If the claimant alleges exposure to asbestos or silica through the testimony of another person or alleges other than direct or bystander exposure to a product, the name, address, date of birth, and marital status for each person by which the claimant alleges exposure, hereinafter the "index person," and the claimant's relationship to each such person;
- The specific location of each alleged exposure;
- The beginning and ending dates of each alleged exposure as to each asbestos product or silica product for each location at which exposure allegedly took place for the plaintiff and each index person;
- The occupation and name of the employer of the exposed person at the time of each alleged exposure;
- The specific condition related to asbestos or silica claimed to exist; and
- Any supporting documentation of the condition claimed to exist.

The statute does not specify what a trial court should do if the plaintiff fails to comply with the pleading requirements. Thus, the general Florida Civil Rules of Procedure govern the court's response to a failure to comply with the statutory pleading requirements. In general, case law interpreting the rules of procedure requires a trial court to give the Plaintiff at least one chance to amend the complaint before dismissing the lawsuit.

III. Effect of Proposed Changes:

SB 720 changes the term "claimant" to the more accurate "exposed person" and changes the pleading requirements for a claim alleging injury from exposure to asbestos or silica to add:

- A requirement that the sworn information form specify the evidence that supports each claim against each defendant.
- A requirement to disclose the exposed person's smoking history.

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[2] Section 774.202, F.S.
[3] Section 774.204(1), F.S.
[4] Section 774.205(2), F.S. The proof must meet the requirements of s. 774.204(2), (3), (5), or (6), F.S. The details of such proof are not relevant to this analysis.

- A requirement to disclose the name and address of each person who is knowledgeable about the exposed person's exposure to asbestos or silica.
- A requirement to list the specific product of a defendant that produced the product.
- A requirement to list the occupation and employer of the index person related to the exposure.

The bill provides that the sworn information form is inadmissible at the trial.

A court must dismiss a defendant from the case if that defendant's product or premises is not specifically identified in the sworn information form. A court must dismiss the case as to a specific defendant, or in its entirety for the benefit of all defendants, if the claimant fails to comply with the pleading requirements of the section. Before filing a motion to dismiss, a defendant must confer with, or reasonably attempt to confer with, the plaintiff regarding dismissal or to have the plaintiff amend the sworn information form to comply with the requirements of s. 774.205, F.S. A defendant's motion to dismiss must certify that the defendant conferred with, or made a reasonable attempt to confer with, the plaintiff.

The dismissal of a claim for the failure to provide the information required on the sworn information form is without prejudice, meaning that the claim may be refiled with a properly completed sworn information form.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill discourages the current practice of naming defendants in an asbestos or silica lawsuit who have no link to the exposure that caused the injury. The bill may thereby lower or eliminate some attorney's fees and costs currently being spent on defending claims that are without merit.

C. Government Sector Impact:

The bill may reduce court expenditures to the extent that fewer parties are involved in asbestos litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 774.205 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 37 - 51
and insert:
3.~~(c)~~ The specific location of each alleged exposure for each defendant.~~;~~
4.~~(d)~~ The beginning and ending dates of each alleged exposure as to each asbestos product or silica product for each location at which exposure allegedly took place for the exposed person ~~plaintiff~~ and each index person.~~;~~
5.~~(e)~~ The occupation and ~~name of the~~ employer of the

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12 exposed person and each index person at the time of each alleged
13 exposure.~~;~~
14 6.~~(f)~~ The specific condition related to asbestos or silica
15 claimed to exist.~~; and~~
16 7.~~(g)~~ Any supporting documentation of the condition claimed
17 to exist.
18 (b) The sworn information form is inadmissible in evidence
19 at trial and may not be relied upon by a witness, including an
20 expert witness, at trial.
21
22 ========== T I T L E A M E N D M E N T ==========
23 And the title is amended as follows:
24 Delete line 7
25 and insert:
26 evidence, and may not be relied upon by a witness, at
27 trial; requiring courts to dismiss certain

By Senator Hutson

7-01355-24 2024720__

A bill to be entitled

An act relating to asbestos and silica claims; amending s. 774.205, F.S.; revising the information required to be included in a sworn information form for asbestos or silica claims filed after a specified date; specifying that such a form is inadmissible in evidence at trial; requiring courts to dismiss certain claims upon a motion by a defendant; requiring motions to dismiss to include certain certifications; providing an effective date.

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

Section 1. Subsection (3) of section 774.205, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

774.205 Claimant proceedings.—

(3) All asbestos claims and silica claims filed in this state on or after July 1, 2024, ~~the effective date of this act~~ must include, in addition to the written report described in subsection (2) and the information required by s. 774.207(2), a sworn information form.

(a) The sworn information form must specify the evidence that provides the basis for each claim against each defendant and must contain all of ~~containing~~ the following information:

1.~~(a)~~ The exposed person's ~~claimant's~~ name, address, date of birth, ~~and~~ marital status, and smoking history, and the name and address of each person who is knowledgeable regarding the exposed person's exposure to asbestos or silica.~~;~~

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

7-01355-24 2024720__

2.~~(b)~~ If the exposed person ~~claimant~~ alleges exposure to asbestos or silica through the testimony of another person or alleges other than direct or bystander exposure to a product, the name, address, date of birth, and marital status for each person by which the exposed person ~~claimant~~ alleges exposure, hereinafter the "index person," and the exposed person's ~~claimant's~~ relationship to each such person.~~;~~

3.~~(c)~~ The specific product and specific location of each alleged exposure for each defendant.~~;~~

4.~~(d)~~ The beginning and ending dates of each alleged exposure as to each asbestos product or silica product for each location at which exposure allegedly took place for the exposed person ~~plaintiff~~ and each index person.~~;~~

5.~~(e)~~ The occupation and ~~name of the~~ employer of the exposed person and each index person at the time of each alleged exposure.~~;~~

6.~~(f)~~ The specific condition related to asbestos or silica claimed to exist.~~; and~~

7.~~(g)~~ Any supporting documentation of the condition claimed to exist.

(b) The sworn information form is inadmissible in evidence at trial.

(4)(a) A court, upon motion by a defendant, shall dismiss a claimant's asbestos or silica claim without prejudice as to:

1. Any defendant whose product or premises is not specifically identified in the sworn information form submitted pursuant to subsection (3); and

2. The moving defendant or all defendants, as applicable, if the claimant fails to comply with this section.

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59 (b) The motion to dismiss must include a certification that
60 the movant, in good faith, has conferred or attempted to confer
61 with the claimant's counsel or the self-represented claimant, as
62 applicable, to have the challenged claim dismissed or to have
63 the challenged sworn information form appropriately corrected
64 without court action.
65 Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 888

INTRODUCER: Senator Perry

SUBJECT: Property Rights

DATE: Febuary 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			CJ	
3.			RC	

I. Summary:

SB 888 creates a new procedure for a property owner to request that a sheriff's officer remove an unauthorized person from residential real property. It provides that an owner of residential property may request that the sheriff immediately remove an unauthorized person from the owner's property. An unauthorized person is someone not authorized to occupy the property who is not a tenant nor an immediate family member.

An owner starts the process by first asking the unauthorized person to leave. The owner must then contact the sheriff and file a complaint under penalty of perjury listing the relevant facts that show eligibility for relief. The form is in the bill. If the complaint shows that the owner is eligible for relief and the sheriff can verify ownership of the property, the sheriff must remove the unauthorized person. The property owner must pay the sheriff the civil eviction fee plus an hourly rate if a deputy must stand by and keep the peace while the unauthorized person is removed.

A person wrongfully removed pursuant to this procedure has a cause of action against the owner for three times the fair market rent, damages, costs, and attorney fees.

The bill is effective July 1, 2024.

II. Present Situation:

The Founders of this country recognized that the protection of private property is indispensable to the promotion of individual freedom.[1] John Adams said that "[p]roperty must be secured, or liberty cannot exist."[2] The right to exclude others is "one of the most treasured" rights of

[1] *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071, 210 L. Ed. 2d 369 (2021).
[2] *Id.*, citing *Discourses on Davila*, in 6 Works of John Adams 280 (C. Adams ed. 1851).

property ownership.[3] The right to exclude is "universally held to be a fundamental element of the property right," and is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."[4]

A squatter is a person who unlawfully occupies real property and refuses to leave when asked. By refusing to leave, the squatter violates the landowner's right to exclude and the landowner's freedom to enjoy the property as he or she wants.

Legal Remedies to Remove a Squatter

The existing legal remedies to remove a squatter are:

Criminal Trespass

Section 810.08, F.S., provides that a person commits the criminal offense of trespass in a structure or conveyance if the person:

> without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so.[5]

Where a criminal trespass is occurring, a law enforcement officer arrests the trespasser and immediately restores the real property owner to possession of the real property, without cost.

However, where the criminal trespass offense is not readily observable because the trespasser claims ownership or lease rights, a law enforcement officer may decline to arrest or remove the person from the property and view the dispute as a "civil matter." In that situation, the law enforcement officer will not force the unwanted person to surrender possession of the property without a court order.

Unlawful Detainer

"Unlawful detention" means possessing real property, even if the possession is temporary or applies only to a portion of the real property, without the consent of a person entitled to possession of the real property or after the withdrawal of consent by such person.[6]

Where an unlawful detention occurs, the person entitled to possession may bring a civil action for unlawful detainer. An unlawful detainer action is filed in county court[7] and is entitled to the summary procedure of s. 51.011, F.S. for expedited review by the court.[8] If the person to be

[3] *Cedar Point Nursery*, citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).
[4] *Cedar Point Nursery* at 2072; citing *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 179–180 (1979).
[5] Section 810.08(1), F.S.
[6] Section 82.01(4), F.S.
[7] Section 34.011(2), F.S.
[8] Section 82.03(4), F.S. Under the summary procedure of. s. 51.011, F.S., all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. No other pleadings are permitted, and all

served is not found at the usual place of residence, the process server may serve a summons by posting a copy in a conspicuous place on the property.[9]

If the owner or rightful resident prevails in the action, the clerk of court will issue a writ of possession to the sheriff describing the premises and commanding the Sheriff to put him or her in possession of the property.[10] In addition to the delay caused by the time it takes to obtain and serve a writ of possession, the property owner or rightful resident must pay a number of fees and costs.

Landlord-Tenant Eviction

Some landowners looking to remove a squatter treat the person like a tenant and use the landlord-tenant eviction process. Eviction of a tenant can be for violation of lease terms, expiration of the lease, or nonpayment of rent. First, the landlord must deliver or post a notice to vacate by a date certain (3 days for non-payment of rent, 7 days for any other cause). If the tenant does not vacate (or cure the problem), the landlord may file a civil action for eviction.

An eviction action is filed in county court[11] and is entitled to the summary procedure of s. 51.011, F.S. for expedited review by the court. At this point forward, the court procedure for eviction is the same as an action for unlawful detainer (see previous section).

Transient Occupant Law

In 2015, the Legislature addressed squatters by creating a nonjudicial civil remedy for removal by law enforcement officers of a transient occupant to address squatters.[12] It was amended in 2018.[13] A transient occupant is "a person whose residency in real property intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature." The statute lists the following factors for consideration of whether an occupancy was intended as transient:

- The person does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy of the property.
- The person does not have any property utility subscriptions.
- The person cannot produce documentation, correspondence, or identification cards sent or issued by a government agency, including, but not limited to, the Department of Highway Safety and Motor Vehicles or the supervisor of elections, which show that the person used the property address as an address of record with the agency within the previous 12 months.
- The person pays minimal or no rent for his or her stay at the property.
- The person does not have a designated space of his or her own, such as a room, at the property.
- The person has minimal, if any, personal belongings at the property.

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defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

[9] Section 82.05, F.S.

[10] Section 82.091, F.S.

[11] Section 34.011(2), F.S.

[12] Chapter 2015-89, Laws of Fla.; codified as s. 82.035, F.S.

[13] Chapters 2018-83 and 2018-94, Laws of Fla.

- The person has an apparent permanent residence elsewhere.[14]

If the property owner is able to convince the law enforcement officer that an occupant of the property qualifies as a transient occupant, and if the owner has asked the transient occupant to leave, the law enforcement officer may direct the transient occupant to immediately leave.[15]

The property owner initiates the process by contacting a law enforcement agency. The property owner must file an affidavit that sets forth the facts and addresses each of the factors listed above.[16] No fees are required.

A person wrongfully removed pursuant to this statute has a cause of action for wrongful removal against the person who requested the removal, and may recover injunctive relief and compensatory damages. However, a wrongfully removed person does not have a cause of action against the law enforcement officer or the agency employing the law enforcement officer absent a showing of bad faith by the law enforcement officer.[17] The statute includes process and procedure regarding the personal property of the transient occupant.[18]

Ineffectiveness of Existing Remedies

Existing legal remedies to remove a squatter are considered ineffective by some members of the public.[19] Squatters go so far as to publish how to avoid law enforcement officers and how to destroy a home while squatting.[20] Some landowners have resorted to dangerous self-help eviction.[21] Squatters have caused significant damage to properties.[22]

III. Effect of Proposed Changes:

The bill creates a limited alternative remedy to remove unauthorized persons from residential real property. The remedy is a nonjudicial process. The bill makes the finding that the right to exclude others from entering, and the right to direct others to immediately vacate, residential real property are the most important real property rights. The bill further finds that existing remedies regarding unauthorized persons who unlawfully remain on residential real property fail to adequately protect the rights of the property owner and fail to adequately discourage theft and

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[14] Section 82.035(1)(a), F.S.
[15] Section 82.035(3), F.S.
[16] *Id.*
[17] Section 82.035(3)(b), F.S.
[18] Section 82.035(5), F.S.
[19] Andrew Mark Miller, *Squatters torment homeowners across US with no resolution in sight: 'It's a problem,'* FOX NEWS (Mar. 21, 2023), https://www.foxnews.com/us/squatters-torment-homeowners-across-u-s-with-no-resolution-sight-problem.
[20] Your Homeless Friend Kai, *How to squat. How to live rent free*, YOUTUBE, https://www.youtube.com/watch?v=6qZxirdaBFs [warning - foul language] (last visited Jan. 31, 2024).
[21] Outside the Box with Flash, *How I removed squatters in less than a day* YOUTUBE https://www.youtube.com/watch?v=uhz5r1JKwjs (last visited Jan. 31, 2024); Emma Colton, *Armed Florida man confronts squatter who took over house while he was overseas: police*, FOX NEWS (Jan 15, 2023), https://www.foxnews.com/us/armed-florida-man-confronts-squatter-who-took-over-house-while-he-was-overseas-police
[22] Kassy Dillon, *Army reservist battles squatter living in home after she was called up for active duty*, FOX NEWS (Sept. 17, 2023), https://www.foxnews.com/media/army-reservist-battles-squatter-renting-home-called-active-duty; Andrew Mark Miller, *Squatters torment homeowners across US with no resolution in sight: 'It's a problem,'* FOX NEWS (Mar. 21, 2023), https://www.foxnews.com/us/squatters-torment-homeowners-across-u-s-with-no-resolution-sight-problem.

vandalism. The intent of the bill is to quickly restore possession of residential real property to the lawful owner of the property when the property is being unlawfully occupied by a trespasser or squatter, and to thereby preserve property rights while limiting the opportunity for theft and vandalism.

A property owner or his or her authorized agent may request the sheriff of the county in which the property is located to immediately remove a person or persons unlawfully occupying a residential dwelling if all of the following are met:

- The person requesting relief is the property owner or authorized agent of the property owner;
- The real property that is being occupied includes a residential dwelling;
- An unauthorized person or persons have unlawfully entered and remain or continue to reside on the property owner's property;
- The real property was not open to members of the public at the time the unauthorized person or persons entered;
- The unauthorized person or persons have been directed to leave the real property but an unauthorized person or persons remain on the property;
- The unauthorized person or persons are not current or former tenants pursuant to a written or oral rental agreement authorized by the property owner;
- The unauthorized person or persons are not immediate family members of the property owner; and
- There is no other litigation related to the real property which is pending between the property owner and any known unauthorized person.

The bill creates a complaint form for use in requesting relief. Upon receipt of the complaint, the bill requires the sheriff to verify that the person submitting the complaint is the record owner of the real property or the authorized agent of the owner and appears otherwise entitled to relief under this section.

If verified, the sheriff must serve a notice to immediately vacate on the unlawful occupants and must put the owner in possession of the real property. Service may be accomplished by hand delivery of the notice to an occupant or by posting the notice on the front door or entrance of the dwelling. The sheriff shall also attempt to verify the identities of all persons occupying the dwelling and note the identities on the return of service. If appropriate, the sheriff may arrest any person found in the dwelling for trespass, outstanding warrants, or any other legal cause.

The sheriff is entitled to the same fee for service of the notice to immediately vacate as if the sheriff were serving a writ of possession under s. 30.231, F.S. Currently, that fee is $90. After the sheriff serves the notice to immediately vacate, the property owner or authorized agent may request that the sheriff stand by to keep the peace while the property owner or agent of the owner changes the locks and removes the personal property of the unlawful occupants from the premises to or near the property line. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace is responsible for paying the reasonable hourly rate set by the sheriff. This rate varies by county. The sheriff is not liable to the unlawful occupant or any other party for loss, destruction, or damage. The property owner or his or her authorized agent is not liable to an unlawful occupant

or any other party for the loss, destruction, or damage to the personal property unless the removal was wrongful.

A person may bring a civil cause of action for wrongful removal under this section. A person harmed by a wrongful removal under this bill may be restored to possession of the real property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees. The court must advance the cause on the calendar.

The bill provides that it does not limit the rights of a property owner or limit the authority of a law enforcement officer to arrest an unlawful occupant for trespassing, vandalism, theft, or other crimes.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expedited removal of unlawful occupants of residential property will be far less costly to property owners in terms of time and legal fees than other potentially applicable judicial procedures. Additionally, the expedited procedures may reduce the opportunity for unlawful occupants to damage the property.

C. Government Sector Impact:

The bill will likely result in a small increase in sheriff workloads.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 82.036 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Perry

9-00993-24 2024888__

A bill to be entitled

An act relating to property rights; creating s. 82.036, F.S.; providing legislative findings; authorizing property owners or their authorized agents to request assistance from law enforcement in immediately removing unauthorized occupants from a residential dwelling under certain conditions; requiring such owners or agents to submit a completed complaint form to the sheriff of the county in which the property is located; specifying requirements for the complaint form; requiring the sheriff to verify the identity of the person submitting the complaint form; requiring the sheriff to serve a notice to immediately vacate on the unauthorized occupant; authorizing a sheriff to arrest an unauthorized occupant for legal cause; authorizing the sheriff to collect the same fee as for service of a writ of possession; authorizing the owner or agent to request that the sheriff stand by while the owner or agent takes possession of the property; authorizing the sheriff to charge a reasonable hourly rate for a certain purpose; providing civil remedies; providing construction; providing an effective date.

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

Section 1. Section 82.036, Florida Statutes, is created to read:

82.036 Limited alternative remedy to remove unauthorized

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

9-00993-24 2024888__

persons from residential real property.—

(1) The Legislature finds that the right to exclude others from entering, and the right to direct others to immediately vacate, residential real property are the most important real property rights. The Legislature further finds that existing remedies regarding unauthorized persons who unlawfully remain on residential real property fail to adequately protect the rights of the property owner and fail to adequately discourage theft and vandalism. The intent of this section is to quickly restore possession of residential real property to the lawful owner of the property when the property is being unlawfully occupied by a trespasser or squatter, and to thereby preserve property rights while limiting the opportunity for theft and vandalism.

(2) A property owner or his or her authorized agent may request from the sheriff of the county in which the property is located the immediate removal of a person or persons unlawfully occupying a residential dwelling pursuant to this section if all of the following are met:

(a) The person is the property owner or authorized agent of the property owner;

(b) The real property that is being occupied includes a residential dwelling;

(c) An unauthorized person or persons have unlawfully entered and remain or continue to reside on the property owner's property;

(d) The real property was not open to members of the public at the time the unauthorized person or persons entered;

(e) The unauthorized person or persons have been directed to leave the real property but an unauthorized person or persons

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59 remain on the property;
60 (f) The unauthorized person or persons are not current or
61 former tenants pursuant to a written or oral rental agreement
62 authorized by the property owner;
63 (g) The unauthorized person or persons are not immediate
64 family members of the property owner; and
65 (h) There is no other litigation related to the real
66 property which is pending between the property owner and any
67 known unauthorized person.
68 (3) To request the immediate removal of an unlawful
69 occupant of a residential dwelling, the property owner or his or
70 her authorized agent must submit a complaint by presenting a
71 completed, verified Complaint to Remove Persons Unlawfully
72 Occupying Residential Real Property to the sheriff of the county
73 in which the real property is located. The submitted complaint
74 must be in substantially the following form:
75
76 COMPLAINT TO REMOVE PERSONS UNLAWFULLY OCCUPYING RESIDENTIAL
77 REAL PROPERTY
78
79 I, the owner or authorized agent of the owner of the real
80 property located at ... ..., declare under the penalty of
81 perjury that (initial each box):
82 1. .... I am the owner of the real property or the
83 authorized agent of the owner of the real property.
84 2. .... The real property is a residential dwelling.
85 3. .... An unauthorized person or persons have entered and
86 are remaining or residing unlawfully on the real property.
87 4. .... The real property was not open to members of the

88 public at the time the unauthorized person or persons entered.
89 5. .... I have directed the unauthorized person or persons
90 to leave the real property, but they have not done so.
91 6. .... The person or persons are not current or former
92 tenants pursuant to a written or oral lease authorized by the
93 property owner, and any lease that may be produced by an
94 occupant is fraudulent.
95 7. .... The unauthorized person or persons sought to be
96 removed are not an owner or co-owner of the property and have
97 not been listed on the title to the property unless the person
98 or persons have engaged in title fraud.
99 8. .... The unauthorized person or persons are not
100 immediate family members of the property owner.
101 9. .... There is no litigation related to the real property
102 pending between the property owner and any person sought to be
103 removed.
104 10. .... I understand that a person or persons removed from
105 the property pursuant to this procedure may bring a cause of
106 action against me for any false statements made in this
107 complaint, or for wrongfully using this procedure, and that as a
108 result of such action I may be held liable for actual damages,
109 penalties, costs, and reasonable attorney fees.
110 11. .... I am requesting the sheriff to immediately remove
111 the unauthorized person or persons from the residential
112 property.
113 12. .... A copy of my valid government-issued
114 identification is attached, and if I am an agent of the property
115 owner, documents evidencing my authority to act on the property
116 owner's behalf are attached.

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.

...(Signature of Property Owner or Agent of Owner)...

(4) Upon receipt of the complaint, the sheriff shall verify that the person submitting the complaint is the record owner of the real property or the authorized agent of the owner and appears otherwise entitled to relief under this section. If verified, the sheriff shall, without delay, serve a notice to immediately vacate on the unlawful occupants and shall put the owner in possession of the real property. Service may be accomplished by hand delivery of the notice to an occupant or by posting the notice on the front door or entrance of the dwelling. The sheriff shall also attempt to verify the identities of all persons occupying the dwelling and note the identities on the return of service. If appropriate, the sheriff may arrest any person found in the dwelling for trespass, outstanding warrants, or any other legal cause.

(5) The sheriff is entitled to the same fee for service of the notice to immediately vacate as if the sheriff were serving a writ of possession under s. 30.231. After the sheriff serves the notice to immediately vacate, the property owner or authorized agent may request that the sheriff stand by to keep the peace while the property owner or agent of the owner changes the locks and removes the personal property of the unlawful

occupants from the premises to or near the property line. When such a request is made, the sheriff may charge a reasonable hourly rate, and the person requesting the sheriff to stand by to keep the peace shall be responsible for paying the reasonable hourly rate set by the sheriff. The sheriff is not liable to the unlawful occupant or any other party for loss, destruction, or damage. The property owner or his or her authorized agent is not liable to an unlawful occupant or any other party for the loss, destruction, or damage to the personal property unless the removal was wrongful.

(6) A person may bring a civil cause of action for wrongful removal under this section. A person harmed by a wrongful removal under this section may be restored to possession of the real property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees. The court shall advance the cause on the calendar.

(7) This section does not limit the rights of a property owner or limit the authority of a law enforcement officer to arrest an unlawful occupant for trespassing, vandalism, theft, or other crimes.

Section 2. This act shall take effect July 1, 2024.

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 1066

INTRODUCER: Banking and Insurance and Senator Burton

SUBJECT: Consumer Protection

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Fav/CS**
2.	Collazo	Cibula	JU	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1066 amends various statutes in the area of consumer protection. Specifically, the bill:

- Prohibits bringing a Qui Tam action where the action is based upon allegations or transactions arising from, or intended to enforce, the provisions of the Florida Disposition of Unclaimed Property Act.
- Requires third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions.
- Provides that a state agency may not enter into an agreement with any entity whose function is to advise regarding the censorship or blacklisting of news sources based upon subjective criteria or political biases, under the stated function of "fact checking" or otherwise removing "misinformation."
- Provides for the retirement of the title to a mobile home by the Department of Highway Safety and Motor Vehicles (DHSMV), if the owner of the real property records a mortgage against the owner's mobile home and real property in the official records of the clerk of court in the county in which the real property is located.
- Provides that if a contractor executes a contract to replace or repair the roof of a residential property during a declaration of a state of emergency, he or she must disclose in the contract that there is a 10-day right of cancellation.
- Expands the definition of "depository institution" for purposes of the Florida Commercial Financing Disclosure Law, to include institutions chartered by another state, territory, or the federal government and authorized to do business in Florida, and whose deposits or share

accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.
- Provides that any certified public accountant who prepares the mandatory annual audit for an insurer must be licensed in Florida and have completed at least 4 hours of insurance-related continuing education as a condition of license renewal; the continuing education must be approved by the Department of Business and Professional Regulation, based on the recommendations of the Department of Financial Services.
- Applies provisions limiting public adjuster compensation to insurance policies for coverages provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners' association.
- Provides that each public adjuster contract relating to a property and casualty claim must contain the license number of the public adjusting firm.
- Provides that the disclosure requirements of contracts for short-term health insurance must be in writing and signed by the purchaser at the time of purchase; the disclosures must include the duration, any essential benefit not included, content of coverage, and exclusions within the contract.
- Provides that a claim from a condominium unit owner resulting from a loss assessment must be given to the insurer within 90 days after the date on which the condominium association or its governing board votes to levy the assessment to cover a shortfall in reserves due to a covered loss; such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment.
- Adopts the 2018 edition of the National Fire Protection Association Code for Fireworks Display.
- Provides a criminal penalty for fraud related to grants or contracts with the state or any agency of the state.
- Provides a criminal penalty for the act of knowingly making statements or communications, or disseminating such statements or communications, that have the intent of falsely representing that such communication originated from a bank or lending institution.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2024.

II. Present Situation:

The Florida False Claims Act

Qui Tam Actions and the Relator

The Florida False Claims Act[1] authorizes two entities, either a private individual or the state,[2] to sue someone who allegedly files a false claim seeking payment, or approval for payment, from the state. The person who brings a false claims suit is referred to as the "relator." The action filed

[1] Sections 68.081-68.092, F.S.
[2] For purposes of this act, the Department of Legal Affairs is authorized to bring an action, and in some limited circumstances, the Division of Financial Services may bring an action. See s. 68.083(1), (2), and (4), F.S.

by the relator on behalf of the state is referred to as a "qui tam" proceeding.[3] Relators are entitled to a significant share of the settlement or proceeds when a recovery is made against a defendant. The relator does not need to demonstrate that he or she has been harmed by the violator's actions to adequately state a cause of action. Quite often, the relator is aware of the false claim because he or she was employed by the defendant or has knowledge of industry standards that were violated.

At the core of the Florida False Claims Act is the relator's right to earn a substantial portion of the recovery against a defendant. This provides a relator tremendous financial incentive to report misconduct. It also provides the state an opportunity to be made whole when damaged by fraudulent actions it did not know were occurring. An individual who successfully brings an action is entitled to receive a portion of the proceeds or settlement of the claim.[4]

Florida Disposition of Unclaimed Property Act

Chapter 717, F.S., details how to determine whether property held by a person belonging to another is unclaimed and how to dispose of it. Any intangible property or income held in the possession of a "holder"[5] for the benefit of another is presumed unclaimed if the owner fails to claim such property for more than 5 years after the property becomes payable or distributable.[6]

Once the 5-year period elapses, the holder may file a petition with the Department of Financial Services (DFS) and request that the DFS accept custody of the property.[7] Upon delivery of property to the DFS, the state assumes custody and responsibility for the safekeeping of the property. So long as the person who delivers the property to the DFS has done so in good faith, he or she is relieved of any liability to manage the property.[8]

Form 1099-K Reporting Requirement

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third party merchants.[9] The return is Form 1099-K, and it must be filed for each calendar year on or before the last day of February of the year following the transactions.[10]

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[3] "Qui tam" is an abbreviated phrase from the larger Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*." According to Black's Law Dictionary, it means "who as well for the king as for himself sues in this matter." A qui tam action is a statutory action that permits a private individual to sue for a penalty, which will be divided between the government or some other public institution and the person who initiates the suit. BLACK'S LAW DICTIONARY (11th ed. 2019).
[4] Section 68.085(1)(a), F.S.
[5] Section 717.101(12), F.S., defines "holder" as a person, wherever organized or domiciled, who is:
- In possession of property belonging to another;
- A trustee in case of a trust; or
- Indebted to another on an obligation.

[6] Section 717.102(1), F.S.
[7] Section 717.117(5), F.S.
[8] Section 717.1201(5), F.S.
[9] 26 U.S.C. s. 6050W.
[10] Internal Revenue Service (IRS), *About Form 1099-K, Payment Card and Third Party Network Transactions*, https://www.irs.gov/forms-pubs/about-form-1099-k (last visited January 29, 2024); IRS, *Form 1099-K frequently asked questions: Reporting*, https://www.irs.gov/newsroom/form-1099-k-frequently-asked-questions-reporting (last visited January 29, 2024).

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third party payment system (like PayPal, Venmo, or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of $20,000 and comprising more than 200 transactions.[11] These sales should be included in the payee's gross income on their tax returns for the year.

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires them to file Form 1099-K. Examples include Alabama,[12] Tennessee,[13] North Carolina,[14] and New York.[15] Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the Florida Department of Revenue electronically within 30 days of filing the federal return.[16] The copy can be either the exact information filed on the full federal return, or a copy of the information limited to participating payees with addresses in Florida.[17]

Procurement of Commodities and Services

Chapter 287, F.S., regulates state agency procurement of personal property and services. The term "agency" is defined broadly to mean any unit of the executive branch of state government.[18] Every procurement for contractual services in excess of the threshold amount in category two, $35,000, with certain exceptions, must be evidenced by a written agreement embodying all provisions and conditions of the procurement of such services.[19] The written agreement must be signed by the agency head or designee and the contractor before the rendering of any contractual service in excess of $35,000.[20]

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[11] IRS, *Understanding your Form 1099-K*, https://www.irs.gov/businesses/understanding-your-form-1099-k (last visited January 29, 2024).
[12] Alabama Department of Revenue, *New 1099-K Filing Requirement*, https://www.revenue.alabama.gov/new-1099-k-filing-requirement/ (last visited January 29, 2024).
[13] Tennessee Department of Revenue, *Sales and Use Tax Notice* (Jan. 2016), available at https://www.tn.gov/content/dam/tn/revenue/documents/notices/sales/sales16-01.pdf.
[14] North Carolina Department of Revenue, *Guidance on Information Reporting*, https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-(1099k) (last visited January 29, 2024).
[15] New York State Department of Taxation and Finance, *Reporting Requirements*, https://www.tax.ny.gov/bus/multi/reporting_requiremts.htm (last visited January 29, 2024).
[16] Section 212.134, F.S.
[17] Section 212.134(1), F.S.
[18] Section 287.012(1), F.S. The term "agency" is defined as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges." *Id.*
[19] *See* s. 287.058(1), F.S. (excepting the providing of health and mental health services or drugs in the examination, diagnosis, or treatment of sick or injured state employees or the providing of other benefits as required by ch. 440, F.S., which is the Workers' Compensation Law); *see also* s. 287.017(2), F.S. (providing a threshold amount of $35,000 for category two).
[20] Section 287.058(2), F.S. There is an exception in the case of a valid emergency as certified by the agency head. *Id.*

Real Property Transactions – Mobile Homes

Section 319.261, F.S., was created during the 2003 Regular Session to provide a mechanism by which the owner of a mobile home, which is permanently affixed to real property that is also owned by that same person, may permanently retire the title to the mobile home.

The Department of Highway Safety and Motor Vehicles (DHSMV) is authorized to retire the title to the mobile home if the owner records the following documents with the clerk of court in the county in which the real property is located:

- The original title to the mobile home, or for a new home the manufacturers' certificate of origin, which includes a description of the mobile home, including model year, make, width, length, vehicle identification number, and a statement by any recorded lien holder on the title that the security interest in the home has been released, or that such security interest will be released upon retirement of the title;
- The legal description of the real property, and in the case of a leasehold interest, a copy of the lease agreement; and
- A sworn statement by the owner that he or she is the owner of the mobile home and that the home is permanently affixed to the real property in accordance with state law.[21]

The clerk of the court is responsible for recording the documents and providing to the owner of the real property a copy of the recorded title or manufacturers' certificate of origin and a copy of all the documents recorded.[22] The owner or lien-holder must then submit these documents with the appropriate application to DHSMV in order to retire the title.[23]

Prohibited Property Insurance Practices by Contractors

Contractors are prohibited from making written or electronic communications that encourage or induce a consumer to contact a contractor or public adjuster for the purpose of making a property insurance claim for roof damage, unless such solicitation provides notice in a prescribed format that:

- The consumer is responsible for the payment of any deductible.
- It is insurance fraud punishable as a third-degree felony for a contractor to knowingly or willfully, and with intent to injure, defraud, or deceive, pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to a property covered by a property insurance policy.
- It is insurance fraud punishable as a third-degree felony to file intentionally an insurance claim containing false, fraudulent, or misleading information.[24]

Contractors, and persons acting on behalf of contractors, are prohibited from engaging in the following practices:

- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim.

[21] Section 319.261(2), F.S.
[22] Section 319.261(3), F.S.
[23] Section 319.261(4), F.S.
[24] Section 489.147(2), F.S.

- Offering or receiving consideration for referrals when property insurance proceeds are payable.
- Interpreting policy provisions or advising an insured regarding coverages or duties under the insured's property insurance policy or adjusting a property insurance claim on behalf of the insured, unless the contractor holds a license as a public adjuster.
- Providing an authorization agreement to the insured without providing a good faith estimate.[25]

The above acts are subject to discipline by the Department of Business and Professional Regulation and a $10,000 fine per violation.[26] State law provides that the residential property owner may void the contract with the contractor within 10 days of its execution, if the contractor fails to provide notice to the residential property owner of these prohibited practices.[27]

Florida Commercial Financing Disclosure Law

The Florida Commercial Financing Disclosure Law (Law) requires a provider that consummates a commercial financing transaction of $500,000 or less to give the business certain written disclosures regarding the total cost of the transaction, and the manner, frequency, and amount of each payment.[28] The Law provides that a provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the transaction is not a loan or a transaction for the use, forbearance, or detention of money.[29] "Provider" means:

> a person who consummates more than five commercial financing transactions with a business located in this state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange a commercial financing transaction between the depository institution and a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing transaction on behalf of a depository institution may not be construed to mean that the provider engaged in lending or financing or originated that loan or financing.[30]

"Depository institution" means a Florida state-chartered bank, savings bank, credit union, or trust company, or a federal savings or thrift association, bank, credit union, savings bank, or thrift.[31]

The Law does not apply to:

- A provider that is a federally insured depository institution, or an affiliate or holding company of such institution; or a subsidiary or service corporation that is owned and controlled by a federally insured depository institution or under common ownership with such institution.

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[25] *Id.*
[26] Section 489.147(3), F.S.
[27] Section 489.147(5), F.S.
[28] Section 559.9613, F.S.; *see also* s. 559.9612(7), F.S. (providing that the Law does not apply to commercial financing transactions of more than $500,000).
[29] Section 559.9611(1), F.S.
[30] Section 559.9611(10), F.S.
[31] Section 559.9611(9), F.S.

- A provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.
- A commercial financing product transaction that is:
  - Secured by real property;
  - A lease; or
  - A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral if the value is in fact so used.
- A commercial financing transaction in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least $50,000; or a commercial financing transaction offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufactures, licenses, or distributes.
- A provider that is licensed as a money transmitter under chapter 560, F.S., or licensed as a money transmitter by any other state, district, territory, or commonwealth of the U.S.
- A provider that consummates no more than five commercial financing transactions in this state in a 12-month period.
- A commercial financing transaction of more than $500,000.[32]

Disclosures

The provider must disclose in writing the following at or before consummation of a commercial financing product transaction:

- The total amount of funds provided to the business under the terms of the commercial financing transaction agreement.
- The total amount of funds disbursed to the business under the terms of the commercial financing transaction agreement, if less than the total amount of funds provided, as a result of any fees deducted or withheld at disbursement and any amount paid to a third party on behalf of the business.
- The total amount to be paid to the provider pursuant to terms of the commercial financing transaction agreement.
- The total dollar cost of the commercial financing transaction under the terms of the agreement, derived by subtracting the total amount of funds provided from the total of payments.
- The manner, frequency, and amount of each payment.
- A statement of whether there are any costs or discounts associated with prepayment of the commercial financing transaction including a reference to the provision in the agreement that creates the contractual rights of the parties related to prepayment.[33]

Prohibited Acts

The Law prohibits a broker from engaging in any of the following acts:

[32] Section 559.9612, F.S.
[33] Section 559.9613(2), F.S.

- Assessing, collecting, or soliciting an advance fee from a business to provide services to a broker. However, this prohibition would not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for commercial financial products, such as a credit check or an appraisal of security, if certain conditions are met.
- Making or using any false or misleading representation or omitting any material fact in the offer or sale of the services of a broker, or engaging in any act that would operate as fraud or deception upon any person in connection with the offer or sale of the services of the broker, notwithstanding the absence of reliance by the business.
- Making or using any false or deceptive representation in its business dealings.
- Offering the services of a broker by any advertisement without disclosing the actual address and telephone number of the business of the broker.[34]

Enforcement

The Law provides that violations are punishable by a fine of $500 per incident, not to exceed $20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation.[35] Any person who violates any provision of the Law after receiving written notice of a prior violation from the Attorney General may be subject to a fine of $1,000 per incident, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation.[36] The Attorney General has exclusive authority to impose fines for noncompliance with the disclosure requirements and prohibited acts.[37]

Insurer Reporting of Property Insurance Data

All insurers with a Florida certificate of authority to transact insurance business must file quarterly and annual reports with the Office of Insurance Regulation (OIR) containing various financial data, including audited financial statements, actuarial opinions, and certain claims dates.[38] Each year, insurers must file an annual statement covering the preceding calendar year on or before March 1. Quarterly statements covering each period ending on March 31, June 30, and September 30 must be filed within 45 days after each such date.[39]

In addition to each authorized insurer having to file with the OIR statements of its financial condition, transactions, and affairs, each authorized insurer must also hire a certified public accountant to prepare an audit.[40] The board of the insurer is required to establish an audit committee of three or more directors of the insurer or an affiliated company. The audit committee is responsible for discussing audit findings and interacting with the certified public accountant regarding his or her findings. The audit committee must be comprised solely of members who are free from any relationship that, in the opinion of its board of directors, would interfere with the exercise of independent judgment as a committee member. The audit

[34] Section 559.9614, F.S.
[35] Section 559.9615(2)(a), F.S.
[36] Section 559.9615(2)(b), F.S.
[37] Section 559.9615(1), F.S.
[38] Section 624.424, F.S.
[39] Section 624.424(1)(a), F.S.
[40] Section 624.424(8), F.S.

committee must report to the board any findings of adverse financial conditions or significant deficiencies in internal controls that have been noted by the accountant. The insurer may request the OIR to waive this requirement of the audit committee membership based upon unusual hardship to the insurer.[41]

Public Adjusters

A public adjuster is any person, except a duly licensed attorney-at-law as exempted under state law,[42] who:

- For money, commission, or any other things of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant;
- For money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for, or effecting the settlement of, a claim or claims for loss or damage covered by an insurance contract; or
- Advertises for employment as an adjuster of such claims.[43]

The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of the public adjuster, as insured, or a third-party claimant.[44]

The substantive provisions within the definition of "public adjuster," found in certain subsections of the statute,[45] apply only to residential property insurance policies and condominium unit owner policies.[46] The definition excludes several categories of persons who do not fall within the definition, such as licensed health care providers or employees thereof who prepare or file health insurance claim forms on behalf of a patient.[47]

One subsection of the statute[48] limits the compensation a public adjuster may charge. These limits are:

- If a public adjuster enters into a contract with an insured or claimant to reopen a claim, or file a supplemental claim, that seeks additional payments for a claim that has been previously paid, the public adjuster may not charge based on a previous claim payment for the same cause of loss. The charge must be based only on the claim payments or settlements obtained through the work after entering into the contract. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment.[49]
- A public adjuster may not charge in excess of:
    - Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims based on events that

[41] Section 624.424(8)(c), F.S.
[42] Section 626.860, F.S.
[43] Section 626.854(1), F.S.
[44] *Id.*
[45] Section 626.854(5)-(18), F.S.
[46] Section 626.854(19), F.S.
[47] Section 626.854(2)(a), F.S.
[48] Section 626.854(11), F.S.
[49] Section 626.854(11)(a), F.S.

are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in the following bullet points apply.[50]
  - Twenty percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.[51]
  - One percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or agreement to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days after the date of loss or within 10 days after the date on which the contract is executed, whichever is later.[52]
  - Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or agreement to pay occurs before the date on which the contract is executed.[53]
- For purposes of calculating permissible compensation, compensation may not be based on the deductible portion of a claim.[54]
- Compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."[55]
- The rate of compensation may not be increased based solely on the fact that the claim is litigated.[56]
- Any maneuver, shift, or device through which the limits on compensation set forth in the subsection are exceeded is a violation of the chapter[57] and is punishable as provided under state law.[58]

Contracts and Disclosures

All contracts for public adjuster services and proof-of-loss statements must be in at least 12-point font, be titled "Public Adjuster Contract," and prominently display a particular statement provided in the statute.[59] Public adjuster contracts relating to property and casualty claims must include the public adjuster's and insured's phone number, e-mail addresses, and other information.[60] The contract language must state the percentage of compensation in a minimum of

[50] Section 626.854(11)(b)1., F.S.
[51] Section 626.854(11)(b)2., F.S.
[52] Section 626.854(11)(b)3., F.S.
[53] Section 626.854(11)(b)4., F.S.
[54] Section 626.854(11)(c), F.S.
[55] Section 626.854(11)(d), F.S.
[56] Section 626.854(11)(e), F.S.
[57] Section 626.854(11)(f), F.S.
[58] *See* s. 626.8698, F.S. (providing disciplinary guidelines for public adjusters and public adjuster apprentices).
[59] Section 626.8796(1), F.S.
[60] Section 626.8796(2), F.S. The statement provides: "Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or

18-point bold type before the space reserved for the insured's signature.[61] The insured is required to initial each page that does not have his or her signature.[62] An unaltered copy of the contract must be remitted to the insured at the time of execution and to the insurer within seven days after execution, and an unaltered copy may be provided to the insurer's representative.[63]

Health Insurance Policies – Short Term Health Insurance

Section 627.6426, F.S., provides for short-term health insurance contracts. "Short term health insurance" is health insurance coverage provided by an issuer with an expiration date that is less than 12 months after the original effective date of the contract and, taking into account renewals or extensions, has a duration not to exceed 36 months.[64] Such contracts must include the following disclosure:

> This coverage is not required to comply with certain federal market requirements for health insurance, principally those contained in the Patient Protection and Affordable Care Act. Be sure to check your policy carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your policy might also have lifetime and/or annual dollar limits on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage.[65]

Notice of Property Insurance Claim

Section 627.70132, F.S., requires insureds to notify an insurer of a claim or reopened claim,[66] within 1 year after the date of loss.[67] Notice of a supplemental claim[68] must be given to the insurer within 18 months of the date of loss or such claim is barred. The time period is tolled for filing a property insurance claim during any term of deployment to a combat zone or combat support posting which materially affects the ability of a servicemember to file a claim,

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estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] Section 627.6426(1), F.S.

[65] Section 627.6426(2), F.S.

[66] Section 627.70132(1)(a), F.S., defines "reopened claim" as a claim that an insurer has previously closed, but that has been reopened upon an insured's request for additional costs for loss or damage previously disclosed to the insurer.

[67] Section 627.70132(3), F.S., provides that the date of loss for claims resulting from specified and other weather-related events, such as hurricanes and tornadoes, is the date that the hurricane made landfall or the other weather-related event is verified by the National Oceanic and Atmospheric Administration.

[68] Section 627.70132(1)(b), F.S., defines "supplemental claim" as a claim for additional loss or damage from the same peril which the insured has previously adjusted or for which costs have been incurred while completing repairs or replacement pursuant to an open claim for which timely notice was previously provided to the insurer.

supplemental claim, or reopened claim.[69] Section 627.706(5), F.S., requires insureds to notify an insurer of a claim, supplemental claim, or reopened sinkhole claim within 2 years after the insured knew or reasonably should have known about the loss.

Minimum Fireworks Safety Standards

Chapter 791, F.S., sets forth the framework for the regulation of fireworks in Florida under the State Fire Marshal's office within the DFS. While chapter 791, F.S., applies uniformly throughout the state, enforcement of these statutes resides with local law enforcement agencies.[70] The statutes prohibit the retail sale and use of fireworks[71] by the public. However, provisions of chapter 791, F.S., exempt certain wholesale sales and commercial uses of fireworks from this general ban.[72]

Section 791.02, F.S., allows counties and cities to adopt reasonable rules and regulations for the granting of permits for the supervised public display of fireworks within their boundaries. Display operators must apply for a permit at least 15 days in advance and obtain approval from municipal chiefs of police and fire departments. The outdoor display of fireworks is governed by the National Fire Protection Association (NFPA 1123) Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute, which establishes minimum safety standards for outdoor public displays.[73] However, the most recent Florida Fire Prevention Code references the 2018 edition of the NFPA 1123 Code.[74]

Grant and Contract Fraud

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.[75] In the context of contracts, fraud is an act that causes an error bearing on a material part of a contract that is "created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other."[76]

No specific statute exists creating a crime of grant or contract fraud. However, individuals perpetrating fraud could possibly face prosecution for violations of section 817.034(4)(a), F.S. (Organized Scheme to Defraud); section 812.014(2)(a), F.S. (Theft); or section 838.022, F.S. (Official Misconduct), among other possible crimes, depending on the facts of each case.

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[69] Section 627.70132(2), F.S.
[70] Section 791.001, F.S.
[71] Florida Statutes provide specific definitions of what are and are not fireworks. *See* s. 791.01(4), F.S.
[72] *See* s. 791.04, F.S.
[73] Section 791.012, F.S.
[74] FLORIDA FIRE PREVENTION CODE S. 65.2.1 (8th ed. 2023), available at https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code.
[75] BLACK'S LAW DICTIONARY (11th ed. 2019).
[76] The Law Dictionary, *Fraud Definition & Legal Meaning*, https://thelawdictionary.org/fraud/ (last visited Jan. 29, 2024).

Deceptive Advertising

Several existing statutes address false, misleading, and deceptive advertising. Section 817.40, F.S., contains the definitions for use in construing the statutes involving false, misleading, and deceptive advertising and sales. Misleading advertising is prohibited by s. 817.41, F.S. Advertising "containing any assertion, representation, or statement that commodities, mortgages, promissory notes, securities, or other things of value offered for sale are covered by insurance guaranties where such insurance is nonexistent or does not in fact insure against the risks covered" is prohibited by section 817.411, F.S. Additionally, subsection 817.44(1), F.S., provides that:

> [i]t is unlawful to offer for sale or to issue invitations for offers for the sale of any property, real or personal, tangible or intangible, or any services, professional or otherwise, by placing or causing to be placed before the general public, by any means whatever, an advertisement describing such property or services as part of a plan or scheme with the intent not to sell such property or services so advertised, or with the intent not to sell such property or services at the price at which it was represented in the advertisement to be available for purchase by any member of the general public.

Penalties for violations of these statutes are provided in s. 817.45, F.S. For a first violation, a violator is guilty of a misdemeanor of the first degree.[77] For a second or subsequent violation, the violator is guilty of a misdemeanor of the first degree, but may be subject to a fine not to exceed $10,000.

III. Effect of Proposed Changes:

The Florida False Claims Act

Section 1 amends s. 68.087, F.S., to prohibit bringing a Qui Tam action under the statute governing civil actions for false claims,[78] based upon allegations or transactions arising from, or to otherwise enforce, the provisions of the Florida Disposition of Unclaimed Property Act.

Form 1099-K Reporting Requirement

Section 2 amends s. 212.134, F.S., to provide that:

- "Participating payee" has the same meaning as in s. 6050W of the Internal Revenue Code.
- "Return" or "information return" means IRS Form 1099-K required under s. 6050W of the Internal Revenue Code.
- "Third party network transaction" has the same meaning as in s. 6050W of the Internal Revenue Code.
- "Third party settlement organization" has the same meaning as in s. 6050W of the Internal Revenue Code.

[77] Punishment may include a term of imprisonment not exceeding 1 year, a fine not to exceed $1,000, and court costs. Sections 775.082(4)(a) and 775.083(1)(d), F.S.
[78] Section 68.083(2), F.S.

The bill also requires third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions. The mechanism must clearly indicate the participating payee's requirement to indicate the appropriate transaction type. The participating payee is responsible for indicating the appropriate transaction type. All third party settlement organizations must maintain records that clearly identify whether a transaction, as designated by the participating payee, is a transaction for goods and services or is personal. The information in the return submitted to the Department of Revenue for such entities must be limited to transactions for goods and services.

Procurement of Commodities and Services

Section 3 creates s. 286.312, F.S., to provide that an agency may not enter into a contract or other agreement with an entity whose function is to advise the censorship or blacklisting of news sources based on subjective criteria or political biases under the stated goal of fact-checking or removing misinformation.

Real Property Transactions – Mobile Homes

Section 4 amends s. 319.261, F.S., to provide for the retirement of the title to a mobile home by the Department of Highway Safety and Motor Vehicles if the owner of the real property records a mortgage against the owner's mobile home and real property in the official records of the clerk of court in the county in which the real property is located.

Prohibited Property Insurance Practices by Contractors

Section 5 amends s. 489.147, F.S., to provide that a contractor may not enter into a contract to replace a roof on residential property during a declaration of a state of emergency, unless the contract includes the following notice in bold type of not less than 18 points immediately before the space reserved for the signature of the residential property owner:

> You, the residential property owner, may cancel this contract without penalty or obligation up until the 10 day after the execution of the contract or until the official start date, whichever comes first, because this contract was entered into during a declaration of a state of emergency by the Governor. It is the responsibility of your contractor to include an official start date clause in your contract. This clause must state the official start date and the work that will be commenced on that date. If there is no official start date clause in the contract, the contract may be voided within 10 days following the execution of the contract.

The residential property owner must send the notice of cancellation to the contractor by certified mail, return receipt requested, or by another form of mailing that provides proof thereof, to the address specified in the contract.

Florida Commercial Financing Disclosure Law

Section 6 amends s. 559.9611, F.S., to expand the definition of "depository institution" to include institutions chartered by another state, territory, or the federal government authorized to do business in Florida and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Presently, the definition is limited to state-chartered institutions. The Florida Commercial Financing Disclosure Law requires "providers" to make certain disclosures of the terms of a commercial financing transaction. The definition of "provider" includes a person who enters into a written agreement with a "depository institution" to arrange a commercial financing transaction. Expanding the definition of "depository institution" expands the applicability of the disclosure requirements.

Insurer Reporting of Property Insurance Data

Section 7 amends s. 624.424, F.S., to provide that the certified public accountant that prepares the mandatory annual audit must be Florida licensed and must have completed at least 4 hours of continuing education that is insurance-related as a condition of license renewal. The continuing education must be approved by the Department of Business and Professional Regulation, based on the recommendations of the Department of Financial Services. This requirement becomes effective once the courses have been created and approved.

Public Adjusters

Section 8 amends s. 626.854, F.S., to apply provisions providing limits on public adjuster compensation to insurance policies for coverages provided by condominium association, cooperative association, apartment building, and similar policies, including policies covering the common elements of a homeowners' association.

Section 9 amends s. 626.8796(2), F.S., to provide that each public adjuster contract relating to a property and casualty claim must contain the license number of the public adjusting firm.

Health Insurance Policies – Short Term Health Insurance

Section 10 amends s. 627.6426, F.S., to provide that the disclosure requirements of contracts for short-term health insurance must be in writing and signed by the purchaser at the time of purchase. The disclosures must include the duration of the contract, including any waiting period; any essential benefit that the contract does not provide; the content of coverage; and any exclusion of preexisting conditions. The disclosures must be printed in at least 12-point type and in a color that is readable. A copy of the signed disclosures must be maintained by the issuer for a period of 5 years after the date of purchase.

Notice of Property Insurance Claim

Section 11 amends s. 627.70132, F.S., to provide that a notice of claim from a condominium unit owner resulting from a loss assessment for loss assessment coverage under state law[79] must be given to the insurer within 90 days after the date on which the condominium association or its

[79] Section 627.714, F.S.

governing board votes to levy an assessment to cover a shortfall in reserves due to a covered loss. Such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment.

If the condominium association votes to levy an assessment more than 9 months after the underlying loss – for example, a hurricane or tornado – that gives rise to the assessment, the bill will expand the time frame for filing a loss assessment claim with an insurer, which is one year after such weather-related event. If, however, the vote was taken within the first nine months following the storm, the unit owner would need to file the notice prior to the expiration on the one-year period under current law.

Minimum Fireworks Safety Standards

Section 12 amends s. 791.012, F.S., to replace the reference to the 1995 edition of the National Fire Protection Association Code for Fireworks Display with a reference to the 2018 edition.

Grant and Contract Fraud

Section 13 creates s. 817.153, F.S., to provide new criminal penalties for fraud related to grants or contracts with the state or any agency of the state. The penalties apply to all grant agreements, state contracts, or other agreements with the state, regardless of whether the funds being provided are state funds or federal pass-through funds.

The bill provides that for purposes of the new statute:

- "Claim" means an application, request, or demand for money or property under a state grant agreement, state contract, or other agreement with the state for money or property, whether or not the U.S. or a specified state agency has title to the money or property, presented or caused to be presented to any officer, employee, or agent of a state agency, as well as any request for a drawdown or other payment that is made to a computerized payment administration system.
- "Other agreement" includes a loan, subsidy, and payment for a specified use; an award; and subaward, regardless of whether one or more persons entering into the agreement is a contractor or subcontractor.

Under the bill, a person commits grant or contract fraud if he or she:

- Knowingly presents or causes to be presented a claim related to a grant agreement, contract, or other agreement with the state, or any agency thereof, which the person knows or should know is false or fraudulent.
- Knowingly makes, uses, or causes to be made or used any false statement, omission, or misrepresentation of a material fact in any application, proposal, bid, progress report, budget, financial statement, audit, or other document that is required to be submitted in order to directly or indirectly receive or retain funds provided in whole or in part pursuant to a state grant agreement, state contract, or other agreement with the state.
- Knowingly makes, uses, or causes to be made or used false records or statements material to false or fraudulent claims under a grant agreement, state contract, or other agreement with the state.

- Knowingly conceals, avoids, or decreases an obligation to pay or transmit funds or property with respect to a state grant agreement, state contract, or other agreement with the state, or knowingly makes, uses, or causes to be made or used a false record or statement material to such an obligation.

Proof of specific intent to defraud is not required. Innocent mistake is a defense to actions brought under the new statute.

Penalties for a violation are based on the value of the property involved as follows:
- Less than $20,000, the offender commits a felony of the third degree.[80]
- At least $20,000, but less than $100,000, the offender commits a felony of the second degree.[81]
- At least $100,000, the offender commits a felony of the first degree.[82]

Deceptive Advertising

Section 14 creates s. 817.4112, F.S., to provide that a person or business may not knowingly make statements or disseminate any advertisement or communication that has the intent of falsely representing that such advertisement or communication originated from a bank or lending institution.

Section 15 amends s. 817.45, F.S., to provide a penalty for the new crime created in Section 14 of the bill. A person violating the new crime is guilty of a first degree misdemeanor[83] for a first offence. A second or subsequent conviction is also a first degree misdemeanor but the fine may be up to $10,000.

Effective Date

Section 16 provides the bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[80] Punishment may include a term of imprisonment not exceeding 5 years, a fine not to exceed $5,000 and court costs, and enhanced penalties under the habitual offender statute. Sections 775.082(3)(e), 775.083(1)(c), and 775.084, F.S.
[81] Punishment may include a term of imprisonment not exceeding 15 years, a fine not to exceed $10,000 and court costs, and enhanced penalties under the habitual offender statute. Sections 775.082(3)(d), 775.083(1)b), and 775.084, F.S.
[82] Punishment may include a term of imprisonment not exceeding 30 years, a fine not to exceed to $10,000 and court costs, and enhanced penalties under the habitual offender statute. Sections 775.082(3)(b)1., 775.083(1)(b), and 775.084, F.S.
[83] Punishment may include a term of imprisonment not exceeding 1 year, a fine not to exceed $1,000, and court costs. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

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:

According to the Department of Financial Services:[84]

- Mortgage lenders, banks, and credit unions will benefit from the bill's amendments to s. 319.261, F.S. The bill will expand their ability to provide mortgages to homeowners. Mobile home makers, land developers, and assemblers will have expanded market access because consumers will have more financing options.
- Because of the bill's amendments to s. 626.854, F.S., some public adjusters may see a reduction to their fees for claims adjusted on behalf of condominium association policies if they are currently basing their fees off the deductible for a condo association policy or charging more than the applicable fee limits set in subsection 626.854(11), F.S.
- Because of the bill's amendments to s. 627.6426, F.S., short-term limited duration health insurers may experience a decrease in sales of these policies with the additional information provided to consumers. On the other hand, consumers will experience fewer surprise bills for treatments they thought were covered, but were not.
- Because of the bill's amendments to s. 627.711, F.S., there will be fewer expenditures for insurance.

C. Government Sector Impact:

The bill creates two new first degree misdemeanors. The new misdemeanors may increase state court revenues and expenditures, if prosecuted. In addition, the bill may have an indeterminate negative jail bed impact.

[84] Department of Financial Services, *2024 Legislative Bill Analysis for SB 1066*, Jan. 29, 2024 (on file with the Senate Committee on Judiciary).

VI. Technical Deficiencies:

The notice provided in Section 5 of the bill for roof contracts entered into during a declared state of emergency appears to have an internal inconsistency. On lines 157 and 158, the notice references the right to cancel the contract "up until the 10 [sic] day after the execution of the contract". On lines 167 and 168, the notice references that the contract "may be voided within 10 days after the execution of the contract." One phrase provides for "up until the 10 [sic] day" and the other provides for "within 10 days." It appears they should both use the phrase "within" the 10 days. Also, the term "10 day" on lines 157 and 158 should read "10th day".

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 68.087, 212.34, 319.261, 489.147, 559.9611, 624.424, 626.854, 626.8796, 627.6426, 627.70132, 791.012, and 817.45.

This bill creates the following sections of the Florida Statutes: 286.312, 817.153, and 817.4112.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Banking and Insurance Committee on January 16, 2024:
The committee substitute makes the following changes:

- Amends s. 212.134, F.S., to require third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions;
- Removes the provision prohibiting state agencies from contracting with entities whose function is "fact checking" and places them in a newly created statute instead;
- Revises the proposed definition of "depository institution" for purposes of the Florida Commercial Financing Disclosure Law to remove certain terms and adds the requirement "authorized to transact business in this state and whose deposits or share accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund";
- Revises the proposed continuing education requirement for CPAs by adding "Upon creation of the continuing education" to give the Department of Business and Professional Regulation time to create the courses;
- Revises the provision regarding the time for a condominium unit owner to file a notice of a property insurance claim resulting from a loss assessment; and
- Removes Section 12 from the bill that added commercial residential or commercial (business) insurance policies to the requirement that the insurer must clearly notify the applicant or policyholder of the availability of certain premium discounts.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Burton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present paragraphs (a), (b), and (c) of subsection (1) and present subsection (4) of section 45.032, Florida Statutes, are redesignated as paragraphs (b), (c), and (d) of subsection (1) and subsection (5), respectively, a new paragraph (a) is added to subsection (1) and a new subsection (4) is added to that section, and paragraphs (a) and (b) of subsection (3) of that section are amended, to read:

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12 45.032 Disbursement of surplus funds after judicial sale.—
13 (1) For purposes of ss. 45.031-45.035, the term:
14 (a) “Nonprofit organization” means a charitable
15 organization that:
16 1. Is exempt from federal income tax pursuant to s.
17 501(c)(3) of the Internal Revenue Code; and
18 2. Is a Florida entity formed under chapter 605, chapter
19 607, or chapter 617 and whose principal office is located in
20 this state.
21 (3) During the period that the clerk holds the surplus
22 pending a court order:
23 (a) If the owner of record claims the surplus before the
24 date that the clerk reports it as unclaimed and there is no
25 subordinate lienholder, the court must ~~shall~~ order the clerk to
26 deduct any applicable service charges from the surplus and pay
27 the remainder to the owner of record. Any person representing an
28 owner of record in claiming the surplus shall disclose to the
29 court the total amount of compensation and other fees to be paid
30 to himself or herself and may not charge the owner of record
31 more than 5 percent of the surplus or $1,000, whichever is
32 greater. The clerk may establish a reasonable requirement that
33 the owner of record prove his or her identity before receiving
34 the disbursement. The clerk may assist an owner of record in
35 making a claim. An owner of record may use the following form in
36 making a claim:
37
38 (Caption of Action)
39
40 OWNER’S CLAIM FOR

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41 MORTGAGE FORECLOSURE SURPLUS
42
43 State of ....
44 County of ....
45 Under penalty of perjury, I (we) hereby certify that:
46 1. I was (we were) the owner of the following described
47 real property in .... County, Florida, prior to the foreclosure
48 sale and as of the date of the filing of the lis pendens:
49
50 ...(Legal description of real property)...
51
52 2. I (we) do not owe any money on any mortgage on the
53 property that was foreclosed other than the one that was paid
54 off by the foreclosure.
55 3. I (we) do not owe any money that is the subject of an
56 unpaid judgment, tax warrant, condominium lien, cooperative
57 lien, or homeowners' association.
58 4. I am (we are) not currently in bankruptcy.
59 5. I (we) have not sold or assigned my (our) right to the
60 mortgage surplus.
61 6. My (our) new address is: .....
62 7. If there is more than one owner entitled to the surplus,
63 we have agreed that the surplus should be paid .... jointly, or
64 to: ...., at the following address: .....
65 8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO
66 HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE
67 TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY
68 MONEY TO WHICH I (WE) MAY BE ENTITLED.
69 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER

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70 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE
71 PROSECUTED CRIMINALLY FOR PERJURY.
72
73 ...(Signatures)...
74
75 Sworn to (or affirmed) and subscribed before me this ....
76 day of ...., ...(year)..., by ...(name of person making
77 statement)....
78 ...(Signature of Notary Public - State of Florida)...
79 ...(Print, Type, or Stamp Commissioned Name of Notary
80 Public)...
81
82 Personally Known .... OR Produced Identification ....
83 Type of Identification Produced.....
84 (b) If any person other than the owner of record claims an
85 interest in the proceeds prior to the date that the clerk
86 reports the surplus as unclaimed or if the owner of record files
87 a claim for the surplus but acknowledges that one or more other
88 persons may be entitled to part or all of the surplus, the court
89 shall set an evidentiary hearing to determine entitlement to the
90 surplus. At the evidentiary hearing, an equity assignee has the
91 burden of proving that he or she is entitled to some or all of
92 the surplus funds. The court may grant summary judgment to a
93 subordinate lienholder prior to or at the evidentiary hearing.
94 The court shall consider the factors in s. 45.033 when hearing a
95 claim that any person other than a subordinate lienholder or the
96 owner of record is entitled to the surplus funds <u>and shall hold</u>
97 <u>any such claim that fails to qualify under s. 45.033 invalid</u>.
98 <u>(4) Any nonprofit organization has unconditional standing</u>

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99 to appear in any matter to oppose agreements that do not comply
100 with this section or s. 45.033. If it is the prevailing party,
101 the nonprofit organization is entitled to fees and costs,
102 payable from the surplus, equal to the lesser of 5 percent of
103 the surplus, or the fee stated in the opposed agreement.
104 Section 2. Paragraphs (a), (b), and (d) of subsection (3)
105 and subsections (5) and (6) of section 45.033, Florida Statutes,
106 are amended, to read:
107 45.033 Sale or assignment of rights to surplus funds in a
108 property subject to foreclosure.—
109 (3) A voluntary transfer or assignment shall be a transfer
110 or assignment qualified under this subsection, thereby entitling
111 the transferee or assignee to the surplus funds or a portion or
112 percentage of the surplus funds, if:
113 (a) The transfer or assignment is in writing and the
114 instrument:
115 1. Is executed after the foreclosure sale ~~If executed prior~~
116 ~~to the foreclosure sale, includes a financial disclosure that~~
117 ~~specifies the assessed value of the property, a statement that~~
118 ~~the assessed value may be lower than the actual value of the~~
119 ~~property, the approximate amount of any debt encumbering the~~
120 ~~property, and the approximate amount of any equity in the~~
121 ~~property. If the instrument was executed after the foreclosure~~
122 ~~sale, the instrument must also specify the foreclosure sale~~
123 ~~price and the amount of the surplus~~.
124 2. Includes a statement that the owner does not need an
125 attorney or other representative to recover surplus funds in a
126 foreclosure.
127 3. Specifies all forms of consideration paid for the rights

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128 to the property or the assignment of the rights to any surplus
129 funds.
130 (b) The transferee or assignee is a nonprofit organization
131 ~~transfer or assignment is filed with the court on or before 60~~
132 ~~days after the filing of the certificate of disbursements~~.
133 (d) The total compensation paid or payable, or earned or
134 expected to be earned, by the transferee or assignee does not
135 exceed 5 percent of the surplus or $1,000, whichever is greater
136 ~~12 percent of the surplus~~.
137 (5) ~~If the court finds that~~ A voluntary transfer or
138 assignment that does not qualify under subsection (3) is invalid
139 and void ~~but that the transfer or assignment was procured in~~
140 ~~good faith and with no intent to defraud the transferor or~~
141 ~~assignor, the court may order the clerk to pay the claim of the~~
142 ~~transferee or assignee after payment of timely filed claims of~~
143 ~~subordinate lienholders~~.
144 ~~(6) If a voluntary transfer or assignment of the surplus is~~
145 ~~set aside, the owner of record shall be entitled to payment of~~
146 ~~the surplus after payment of timely filed claims of subordinate~~
147 ~~lienholders, but the transferee or assignee may seek in a~~
148 ~~separate proceeding repayment of any consideration paid for the~~
149 ~~transfer or assignment.~~
150 Section 3. Subsection (6) of section 197.582, Florida
151 Statutes, is amended, and a new subsection (10) is added to that
152 section, to read:
153 197.582 Disbursement of proceeds of sale.—
154 (6) Within 90 days after the claim period expires, the
155 clerk must file an interpleader action in the circuit court if a
156 claim is made by the property owner, an alleged assignee or

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157 transferee of the property owner, or any party purporting to
158 represent the property owner. If any other person described in
159 s. 197.502(7) files a claim, and no claim is filed by the
160 property owner, the clerk may either file an interpleader action
161 in circuit court, if potentially conflicting claims to the funds
162 exist, or pay the surplus funds according to the clerk's
163 determination of the priority of claims using the information
164 provided by the claimants under subsection (3). Fees and costs
165 incurred by the clerk in determining whether an interpleader
166 action should be filed shall be paid from the surplus funds. If
167 the clerk files an interpleader action, the court must ~~shall~~
168 determine the distribution of funds based upon the priority of
169 liens filed. The clerk may move the court to award reasonable
170 fees and costs from the interpleaded funds. An action to require
171 payment of surplus funds is not ripe until the claim and review
172 periods expire. The failure of a person described in s.
173 197.502(4), other than the property owner, to file a claim for
174 surplus funds within the 120 days constitutes a waiver of all
175 interest in the surplus funds, and all claims for them are
176 forever barred.
177 (10)(a) A property owner may not transfer or assign its
178 interest in surplus funds to any party, except a nonprofit
179 organization that is exempt from federal income tax pursuant to
180 s. 501(c)(3) of the Internal Revenue Code, and is a Florida
181 entity formed under chapter 605, chapter 607, or chapter 617 and
182 whose principal office is located in this state. Any assignment
183 or transfer that does not conform with this paragraph is deemed
184 invalid.
185 (b) Any person representing a property owner in claiming

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186 the surplus funds shall disclose to the court the total amount
187 of compensation and other fees to be paid to himself or herself
188 and may not charge the property owner more than 5 percent of the
189 surplus or $1,000, whichever is greater.
190 (c) Any nonprofit organization shall have unconditional
191 standing to appear in any matter to oppose agreements that do
192 not comply with this section. If it is the prevailing party, the
193 nonprofit organization is entitled to fees and costs, payable
194 from the surplus, equal to the lesser of 5 percent of the
195 surplus, or the fee stated in the opposed agreement.
196 Section 4. Section 212.134, Florida Statutes, is amended to
197 read:
198 212.134 Information returns relating to payment-card and
199 third-party network transactions.—
200 (1) For purposes of this section, the term:
201 (a) "Participating payee" has the same meaning as in s.
202 6050W of the Internal Revenue Code.
203 (b) "Return" or "information return" means IRS Form 1099-K
204 required under s. 6050W of the Internal Revenue Code.
205 (c) "Third party network transaction" has the same meaning
206 as in s. 6050W of the Internal Revenue Code.
207 (d) "Third party settlement organization" has the same
208 meaning as in s. 6050W of the Internal Revenue Code.
209 (2) For each year in which a payment settlement entity, an
210 electronic payment facilitator, or other third party contracted
211 with the payment settlement entity to make payments to settle
212 reportable payment transactions on behalf of the payment
213 settlement entity must file a return pursuant to s. 6050W of the
214 Internal Revenue Code, for participating payees with an address

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215 in this state, the entity, the facilitator, or the third party
216 must submit the information in the return to the department by
217 the 30th day after filing the federal return. The format of the
218 information returns required must be either a copy of such
219 information returns or a copy of such information returns
220 related to participating payees with an address in the state.
221 For purposes of this subsection, the term "payment settlement
222 entity" has the same meaning as provided in s. 6050W of the
223 Internal Revenue Code.
224 (3) ~~(2)~~ All reports of returns submitted to the department
225 under this section must be in an electronic format.
226 (4) ~~(3)~~ Any payment settlement entity, facilitator, or third
227 party failing to file the information return required, filing an
228 incomplete information return, or not filing an information
229 return within the time prescribed is subject to a penalty of
230 $1,000 for each failure, if the failure is for not more than 30
231 days, with an additional $1,000 for each month or fraction of a
232 month during which each failure continues. The total amount of
233 penalty imposed on a reporting entity may not exceed $10,000
234 annually.
235 (5) ~~(4)~~ The executive director or his or her designee may
236 waive the penalty if he or she determines that the failure to
237 timely file an information return was due to reasonable cause
238 and not due to willful negligence, willful neglect, or fraud.
239 (6) All third party settlement organizations that conduct
240 transactions involving a participating payee with an address in
241 this state shall create a mechanism for participating payees to
242 identify whether a participating payee's transaction is for
243 goods and services or is personal. The mechanism must clearly

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244 indicate the participating payee's requirement to indicate the
245 appropriate transaction type. The participating payee is
246 responsible for indicating the appropriate transaction type. All
247 third party settlement organizations shall maintain records that
248 clearly identify whether a transaction, as designated by the
249 participating payee, is a transaction for goods and services or
250 is personal. The information in the return submitted to the
251 department under subsection (2) for such entities must be
252 limited to transactions for goods and services.
253 (7) Notwithstanding this section, subsection (6) does not
254 apply to a third party settlement organization if a contractual
255 agreement or arrangement to provide a third party payment
256 network to a participating payee requires the third party
257 settlement organization solely to settle third party network
258 transactions for the provision of goods and services.
259 Section 5. Section 286.312, Florida Statutes, is created to
260 read:
261 286.312 Prohibited use of state funds; censorship or
262 blacklisting of news sources.—An agency may not enter into a
263 contract or other agreement with an entity whose function is to
264 advise the censorship or blacklisting of news sources based on
265 subjective criteria or political biases under the stated goal of
266 fact-checking or removing misinformation.
267 Section 6. Subsection (2) of section 319.261, Florida
268 Statutes, is amended to read:
269 319.261 Real property transactions; retiring title to
270 mobile home.—
271 (2) The department must retire the title to the mobile home
272 ~~may be retired by the department~~ if the owner of the real

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273 property records the following documents in the official records
274 of the clerk of court in the county in which the real property
275 is located:
276 (a)1. The original title to the mobile home which includes
277 ~~shall include~~ a description of the mobile home, including model
278 year, make, width, length, and vehicle identification number,
279 and a statement by any recorded lienholder on the title that the
280 security interest in the home has been released, or that such
281 security interest will be released upon retirement of the title
282 as set forth in this section.
283 2.~~(b)~~ The legal description of the real property, and in
284 the case of a leasehold interest, a copy of the lease agreement.
285 3.~~(c)~~ A sworn statement by the owner of the real property,
286 as shown on the real property deed or lease, that he or she is
287 the owner of the mobile home and that the home is permanently
288 affixed to the real property in accordance with state law; or~~.~~
289 (b) A mortgage that encumbers the interest of the owner of
290 the mobile home and the real property and contains a description
291 of the mobile home, including model, year, make, width, length,
292 and vehicle identification number, and the mobile home is
293 classified as real property under s. 320.15(1) and has been
294 issued an "RP" sticker in accordance with s. 320.0815(2).
295 Section 7. Section 489.147, Florida Statutes, is amended to
296 read:
297 489.147 Prohibited property insurance practices; contract
298 requirements.—
299 (1) As used in this section, the term:
300 (a) "Prohibited advertisement" means any written or
301 electronic communication by a contractor which encourages,

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302 instructs, or induces a consumer to contact a contractor or
303 public adjuster for the purpose of making an insurance claim for
304 roof damage, if such communication does not state in a font size
305 of at least 12 points and at least half as large as the largest
306 font size used in the communication that:
307 1. The consumer is responsible for payment of any insurance
308 deductible;
309 2. It is insurance fraud punishable as a felony of the
310 third degree for a contractor to knowingly or willfully, and
311 with intent to injure, defraud, or deceive, pay, waive, or
312 rebate all or part of an insurance deductible applicable to
313 payment to the contractor for repairs to a property covered by a
314 property insurance policy; and
315 3. It is insurance fraud punishable as a felony of the
316 third degree to intentionally file an insurance claim containing
317 any false, incomplete, or misleading information.
318
319 The term includes, but is not limited to, door hangers, business
320 cards, magnets, flyers, pamphlets, and e-mails.
321 (b) “Soliciting” means contacting:
322 1. In person;
323 2. By electronic means, including, but not limited to, e-
324 mail, telephone, and any other real-time communication directed
325 to a specific person; or
326 3. By delivery to a specific person.
327 (2) A contractor may not directly or indirectly engage in
328 any of the following practices:
329 (a) Soliciting a residential property owner by means of a
330 prohibited advertisement.

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331 (b) Offering to a residential property owner a rebate,
332 gift, gift card, cash, coupon, waiver of any insurance
333 deductible, or any other thing of value in exchange for:
334 1. Allowing the contractor to conduct an inspection of the
335 residential property owner’s roof; or
336 2. Making an insurance claim for damage to the residential
337 property owner’s roof.
338 (c) Offering, delivering, receiving, or accepting any
339 compensation, inducement, or reward, for the referral of any
340 services for which property insurance proceeds are payable.
341 Payment by the residential property owner or insurance company
342 to a contractor for roofing services rendered does not
343 constitute compensation for a referral.
344 (d) Interpreting policy provisions or advising an insured
345 regarding coverages or duties under the insured’s property
346 insurance policy or adjusting a property insurance claim on
347 behalf of the insured, unless the contractor holds a license as
348 a public adjuster pursuant to part VI of chapter 626.
349 (e) Providing an insured with an agreement authorizing
350 repairs without providing a good faith estimate of the itemized
351 and detailed cost of services and materials for repairs
352 undertaken pursuant to a property insurance claim. A contractor
353 does not violate this paragraph if, as a result of the process
354 of the insurer adjusting a claim, the actual cost of repairs
355 differs from the initial estimate.
356 (3) A contractor who violates this section is subject to
357 disciplinary proceedings as set forth in s. 489.129. A
358 contractor may receive up to a $10,000 fine for each violation
359 of this section.

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360 (4) For the purposes of this section:
361 (a) The acts of any person on behalf of a contractor,
362 including, but not limited to, the acts of a compensated
363 employee or a nonemployee who is compensated for soliciting,
364 shall be considered the actions of the contractor.
365 (b) An unlicensed person who engages in an act prohibited
366 by this section is guilty of unlicensed contracting and is
367 subject to the penalties set forth in s. 489.13. Notwithstanding
368 s. 489.13(3), an unlicensed person who violates this section may
369 be fined up to $10,000 for each violation.
370 (5) A contractor may not execute a contract with a
371 residential property owner to repair or replace a roof without
372 including a notice that the contractor may not engage in the
373 practices set forth in paragraph (2)(b). If the contractor fails
374 to include such notice, the residential property owner may void
375 the contract within 10 days after executing it.
376 (6)(a) An insured or a claimant may cancel a contract to
377 replace or repair a roof without penalty or obligation until 10
378 days following the execution of the contract or until the
379 official start date, whichever comes first, if the contract was
380 entered into based on events that are the subject of a
381 declaration of a state of emergency by the Governor. For the
382 purposes of this subsection, the term “official start date” is
383 the date on which the work on the roof commences.
384 (b) A contractor who executes a contract to replace or
385 repair a roof of a residential property during a declaration of
386 a state of emergency must include in the contract the following
387 language, in bold type of not less than 18 points, immediately
388 before the space reserved for the signature of the residential

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389 property owner:
390
391 You, the residential property owner, may cancel this
392 contract without penalty or obligation until 10 days
393 following the execution of the contract or until the
394 official start date, whichever comes first, because
395 this contract was entered into during a declaration of
396 a state of emergency by the Governor. It is the
397 responsibility of your contractor to include an
398 official start date clause in your contact. This
399 clause must state the official start date and the work
400 that will be commenced on that date. If there is no
401 official start date clause in the contract, the
402 contract may be voided within 10 days following the
403 execution of the contract.
404
405 (c) If the insured or claimant desires to cancel the
406 contract under this subsection, such person must send a notice
407 of cancellation by certified mail, return receipt requested, or
408 other form of mailing that provides proof thereof, at the
409 address specified in the contract.
410 Section 8. Subsection (9) of section 559.9611, Florida
411 Statutes, is amended to read:
412 559.9611 Definitions.—As used in this part, the term:
413 (9) “Depository institution” means a bank, a credit union,
414 a savings bank, a savings and loan association, a savings or
415 thrift association, or an industrial loan company doing business
416 under the authority of a charter issued by the United States,
417 this state, or any other state, district, territory, or

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418 commonwealth of the United States which is authorized to
419 transact business in this state and whose deposits or share
420 accounts are insured by the Federal Deposit Insurance
421 Corporation or the National Credit Union Share Insurance Fund
422 ~~Florida state-chartered bank, savings bank, credit union, or~~
423 ~~trust company, or a federal savings or thrift association, bank,~~
424 ~~credit union, savings bank, or thrift~~.
425 Section 9. Paragraph (d) of subsection (8) of section
426 624.424, Florida Statutes, is amended to read:
427 624.424 Annual statement and other information.—
428 (8)
429 (d) Upon creation of continuing education required under
430 this paragraph, the certified public accountant who prepares the
431 audit must be licensed to practice pursuant to chapter 473 and
432 must have completed at least 4 hours of insurance-related
433 continuing education during each 2-year continuing education
434 cycle. An insurer may not use the same accountant or partner of
435 an accounting firm responsible for preparing the report required
436 by this subsection for more than 5 consecutive years. Following
437 this period, the insurer may not use such accountant or partner
438 for a period of 5 years, but may use another accountant or
439 partner of the same firm. An insurer may request the office to
440 waive this prohibition based upon an unusual hardship to the
441 insurer and a determination that the accountant is exercising
442 independent judgment that is not unduly influenced by the
443 insurer considering such factors as the number of partners,
444 expertise of the partners or the number of insurance clients of
445 the accounting firm; the premium volume of the insurer; and the
446 number of jurisdictions in which the insurer transacts business.

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447 Section 10. Subsection (19) of section 626.854, Florida
448 Statutes, is amended, and subsections (5) through (18) of that
449 section are republished, to read:
450 626.854 “Public adjuster” defined; prohibitions.—The
451 Legislature finds that it is necessary for the protection of the
452 public to regulate public insurance adjusters and to prevent the
453 unauthorized practice of law.
454 (5) A public adjuster may not directly or indirectly
455 through any other person or entity solicit an insured or
456 claimant by any means except on Monday through Saturday of each
457 week and only between the hours of 8 a.m. and 8 p.m. on those
458 days.
459 (6) When entering a contract for adjuster services after
460 July 1, 2023, a public adjuster:
461 (a) May not collect a fee for services on payments made to
462 a named insured unless they have a written contract with the
463 named insured, or the named insured’s legal representative.
464 (b) May not contract for services to be provided by a third
465 party on behalf of the named insured or in pursuit of settlement
466 of the named insured’s claim, if the cost of those services is
467 to be borne by the named insured, unless the named insured
468 agrees in writing to procure these services and such agreement
469 is entered into subsequent to the date of the contract for
470 public adjusting services.
471 (c) If a public adjuster contracts with a third-party
472 service provider to assist with the settlement of the named
473 insured’s claim, without first obtaining the insured’s written
474 consent, payment of the third party’s fees must be made by the
475 public adjuster and may not be charged back to the named

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476 insured.
477 (d) If a public adjuster represents anyone other than the
478 named insured in a claim, the public adjuster fees shall be paid
479 by the third party and may not be charged back to the named
480 insured.
481 (7) An insured or claimant may cancel a public adjuster's
482 contract to adjust a claim without penalty or obligation within
483 10 days after the date on which the contract is executed. If the
484 contract was entered into based on events that are the subject
485 of a declaration of a state of emergency by the Governor, an
486 insured or claimant may cancel the public adjuster's contract to
487 adjust a claim without penalty or obligation within 30 days
488 after the date of loss or 10 days after the date on which the
489 contract is executed, whichever is longer. The public adjuster's
490 contract must contain the following language in minimum 18-point
491 bold type immediately before the space reserved in the contract
492 for the signature of the insured or claimant:
493
494 "You, the insured, may cancel this contract for any
495 reason without penalty or obligation to you within 10
496 days after the date of this contract. If this contract
497 was entered into based on events that are the subject
498 of a declaration of a state of emergency by the
499 Governor, you may cancel this contract for any reason
500 without penalty or obligation to you within 30 days
501 after the date of loss or 10 days after the date on
502 which the contract is executed, whichever is longer.
503 You may also cancel the contract without penalty or
504 obligation to you if I, as your public adjuster, fail

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505 to provide you and your insurer a copy of a written
506 estimate within 60 days of the execution of the
507 contract, unless the failure to provide the estimate
508 within 60 days is caused by factors beyond my control,
509 in accordance with s. 627.70131(5)(a)2., Florida
510 Statutes. The 60-day cancellation period for failure
511 to provide a written estimate shall cease on the date
512 I have provided you with the written estimate.”
513
514 The notice of cancellation shall be provided to ...(name of
515 public adjuster)..., submitted in writing and sent by certified
516 mail, return receipt requested, or other form of mailing that
517 provides proof thereof, at the address specified in the
518 contract.
519 (8) It is an unfair and deceptive insurance trade practice
520 pursuant to s. 626.9541 for a public adjuster or any other
521 person to circulate or disseminate any advertisement,
522 announcement, or statement containing any assertion,
523 representation, or statement with respect to the business of
524 insurance which is untrue, deceptive, or misleading.
525 (a) The following statements, made in any public adjuster’s
526 advertisement or solicitation, are considered deceptive or
527 misleading:
528 1. A statement or representation that invites an insured
529 policyholder to submit a claim when the policyholder does not
530 have covered damage to insured property.
531 2. A statement or representation that invites an insured
532 policyholder to submit a claim by offering monetary or other
533 valuable inducement.

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534 3. A statement or representation that invites an insured
535 policyholder to submit a claim by stating that there is "no
536 risk" to the policyholder by submitting such claim.
537 4. A statement or representation, or use of a logo or
538 shield, that implies or could mistakenly be construed to imply
539 that the solicitation was issued or distributed by a
540 governmental agency or is sanctioned or endorsed by a
541 governmental agency.
542 (b) For purposes of this paragraph, the term "written
543 advertisement" includes only newspapers, magazines, flyers, and
544 bulk mailers. The following disclaimer, which is not required to
545 be printed on standard size business cards, must be added in
546 bold print and capital letters in typeface no smaller than the
547 typeface of the body of the text to all written advertisements
548 by a public adjuster:
549
550 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
551 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
552 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU
553 MAY DISREGARD THIS ADVERTISEMENT."
554
555 (9) A public adjuster, a public adjuster apprentice, or any
556 person or entity acting on behalf of a public adjuster or public
557 adjuster apprentice may not give or offer to give a monetary
558 loan or advance to a client or prospective client.
559 (10) A public adjuster, public adjuster apprentice, or any
560 individual or entity acting on behalf of a public adjuster or
561 public adjuster apprentice may not give or offer to give,
562 directly or indirectly, any article of merchandise having a

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563 value in excess of $25 to any individual for the purpose of
564 advertising or as an inducement to entering into a contract with
565 a public adjuster.
566 (11)(a) If a public adjuster enters into a contract with an
567 insured or claimant to reopen a claim or file a supplemental
568 claim that seeks additional payments for a claim that has been
569 previously paid in part or in full or settled by the insurer,
570 the public adjuster may not charge, agree to, or accept from any
571 source compensation, payment, commission, fee, or any other
572 thing of value based on a previous settlement or previous claim
573 payments by the insurer for the same cause of loss. The charge,
574 compensation, payment, commission, fee, or any other thing of
575 value must be based only on the claim payments or settlements
576 paid to the insured, exclusive of attorney fees and costs,
577 obtained through the work of the public adjuster after entering
578 into the contract with the insured or claimant. Compensation for
579 the reopened or supplemental claim may not exceed 20 percent of
580 the reopened or supplemental claim payment. In no event shall
581 the contracts described in this paragraph exceed the limitations
582 in paragraph (b).
583 (b) A public adjuster may not charge, agree to, or accept
584 from any source compensation, payment, commission, fee, or any
585 other thing of value in excess of:
586 1. Ten percent of the amount of insurance claim payments or
587 settlements, exclusive of attorney fees and costs, paid to the
588 insured by the insurer for claims based on events that are the
589 subject of a declaration of a state of emergency by the
590 Governor. This provision applies to claims made during the year
591 after the declaration of emergency. After that year, the

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592 limitations in subparagraph 2. apply.
593 2. Twenty percent of the amount of insurance claim payments
594 or settlements, exclusive of attorney fees and costs, paid to
595 the insured by the insurer for claims that are not based on
596 events that are the subject of a declaration of a state of
597 emergency by the Governor.
598 3. One percent of the amount of insurance claim payments or
599 settlements, paid to the insured by the insurer for any coverage
600 part of the policy where the claim payment or written agreement
601 by the insurer to pay is equal to or greater than the policy
602 limit for that part of the policy, if the payment or written
603 commitment to pay is provided within 14 days after the date of
604 loss or within 10 days after the date on which the public
605 adjusting contract is executed, whichever is later.
606 4. Zero percent of the amount of insurance claim payments
607 or settlements, paid to the insured by the insurer for any
608 coverage part of the policy where the claim payment or written
609 agreement by the insurer to pay occurs before the date on which
610 the public adjusting contract is executed.
611 (c) Insurance claim payments made by the insurer do not
612 include policy deductibles, and public adjuster compensation may
613 not be based on the deductible portion of a claim.
614 (d) Public adjuster compensation may not be based on
615 amounts attributable to additional living expenses, unless such
616 compensation is affirmatively agreed to in a separate agreement
617 that includes a disclosure in substantially the following form:
618
619 "I agree to retain and compensate the public adjuster
620 for adjusting my additional living expenses and

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621 securing payment from my insurer for amounts
622 attributable to additional living expenses payable
623 under the policy issued on my (home/mobile
624 home/condominium unit).”
625
626 (e) Public adjuster rate of compensation may not be
627 increased based solely on the fact that the claim is litigated.
628 (f) Any maneuver, shift, or device through which the limits
629 on compensation set forth in this subsection are exceeded is a
630 violation of this chapter punishable as provided under s.
631 626.8698.
632 (12)(a) Each public adjuster must provide to the claimant
633 or insured a written estimate of the loss to assist in the
634 submission of a proof of loss or any other claim for payment of
635 insurance proceeds within 60 days after the date of the
636 contract. The written estimate must include an itemized, per-
637 unit estimate of the repairs, including itemized information on
638 equipment, materials, labor, and supplies, in accordance with
639 accepted industry standards. The public adjuster shall retain
640 such written estimate for at least 5 years and shall make the
641 estimate available to the claimant or insured, the insurer, and
642 the department upon request.
643 (b) An insured may cancel the contract with no additional
644 penalties or fees charged by the public adjuster if such an
645 estimate is not provided within 60 days after executing the
646 contract, subject to the cancellation notice requirement in this
647 section, unless the failure to provide the estimate within 60
648 days is caused by factors beyond the control of the public
649 adjuster. The cancellation period shall cease on the date the

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650 public adjuster provides the written estimate to the insured.
651 (13) A public adjuster, public adjuster apprentice, or any
652 person acting on behalf of a public adjuster or apprentice may
653 not accept referrals of business from any person with whom the
654 public adjuster conducts business if there is any form or manner
655 of agreement to compensate the person, directly or indirectly,
656 for referring business to the public adjuster. A public adjuster
657 may not compensate any person, except for another public
658 adjuster, directly or indirectly, for the principal purpose of
659 referring business to the public adjuster.
660 (14) A company employee adjuster, independent adjuster,
661 attorney, investigator, or other persons acting on behalf of an
662 insurer that needs access to an insured or claimant or to the
663 insured property that is the subject of a claim must provide at
664 least 48 hours' notice to the insured or claimant, public
665 adjuster, or legal representative before scheduling a meeting
666 with the claimant or an onsite inspection of the insured
667 property. The insured or claimant may deny access to the
668 property if the notice has not been provided. The insured or
669 claimant may waive the 48-hour notice.
670 (15) The public adjuster must ensure that prompt notice is
671 given of the claim to the insurer, the public adjuster's
672 contract is provided to the insurer, the property is available
673 for inspection of the loss or damage by the insurer, and the
674 insurer is given an opportunity to interview the insured
675 directly about the loss and claim. The insurer must be allowed
676 to obtain necessary information to investigate and respond to
677 the claim.
678 (a) The insurer may not exclude the public adjuster from

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679 its in-person meetings with the insured. The insurer shall meet
680 or communicate with the public adjuster in an effort to reach
681 agreement as to the scope of the covered loss under the
682 insurance policy. The public adjuster shall meet or communicate
683 with the insurer in an effort to reach agreement as to the scope
684 of the covered loss under the insurance policy. This section
685 does not impair the terms and conditions of the insurance policy
686 in effect at the time the claim is filed.
687 (b) A public adjuster may not restrict or prevent an
688 insurer, company employee adjuster, independent adjuster,
689 attorney, investigator, or other person acting on behalf of the
690 insurer from having reasonable access at reasonable times to any
691 insured or claimant or to the insured property that is the
692 subject of a claim.
693 (c) A public adjuster may not act or fail to reasonably act
694 in any manner that obstructs or prevents an insurer or insurer’s
695 adjuster from timely conducting an inspection of any part of the
696 insured property for which there is a claim for loss or damage.
697 The public adjuster representing the insureds may be present for
698 the insurer’s inspection, but if the unavailability of the
699 public adjuster otherwise delays the insurer’s timely inspection
700 of the property, the public adjuster or the insureds must allow
701 the insurer to have access to the property without the
702 participation or presence of the public adjuster or insureds in
703 order to facilitate the insurer’s prompt inspection of the loss
704 or damage.
705 (16) A licensed contractor under part I of chapter 489, or
706 a subcontractor of such licensee, may not advertise, solicit,
707 offer to handle, handle, or perform public adjuster services as

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708 provided in subsection (1) unless licensed and compliant as a
709 public adjuster under this chapter. The prohibition against
710 solicitation does not preclude a contractor from suggesting or
711 otherwise recommending to a consumer that the consumer consider
712 contacting his or her insurer to determine if the proposed
713 repair is covered under the consumer’s insurance policy, except
714 as it relates to solicitation prohibited in s. 489.147. In
715 addition, the contractor may discuss or explain a bid for
716 construction or repair of covered property with the residential
717 property owner who has suffered loss or damage covered by a
718 property insurance policy, or the insurer of such property, if
719 the contractor is doing so for the usual and customary fees
720 applicable to the work to be performed as stated in the contract
721 between the contractor and the insured.
722 (17) A public adjuster shall not acquire any interest in
723 salvaged property, except with the written consent and
724 permission of the insured through a signed affidavit.
725 (18) A public adjuster, a public adjuster apprentice, or a
726 person acting on behalf of an adjuster or apprentice may not
727 enter into a contract or accept a power of attorney that vests
728 in the public adjuster, the public adjuster apprentice, or the
729 person acting on behalf of the adjuster or apprentice the
730 effective authority to choose the persons or entities that will
731 perform repair work in a property insurance claim or provide
732 goods or services that will require the insured or third-party
733 claimant to expend funds in excess of those payable to the
734 public adjuster under the terms of the contract for adjusting
735 services.
736 (19) Subsections (5)-(18) apply only to residential

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737 property insurance policies and condominium unit owner policies
738 as described in s. 718.111(11), except that subsection (11) also
739 applies to coverages provided by condominium association,
740 cooperative association, apartment building, and similar
741 policies, including policies covering the common elements of a
742 homeowners' association.
743 Section 11. Subsection (2) of section 626.8796, Florida
744 Statutes, is amended to read:
745 626.8796 Public adjuster contracts; disclosure statement;
746 fraud statement.—
747 (2) A public adjuster contract relating to a property and
748 casualty claim must contain the full name, permanent business
749 address, phone number, e-mail address, and license number of the
750 public adjuster; the full name and license number of the public
751 adjusting firm; and the insured's full name, street address,
752 phone number, and e-mail address, together with a brief
753 description of the loss. The contract must state the percentage
754 of compensation for the public adjuster's services in minimum
755 18-point bold type before the space reserved in the contract for
756 the signature of the insured; the type of claim, including an
757 emergency claim, nonemergency claim, or supplemental claim; the
758 initials of the named insured on each page that does not contain
759 the insured's signature; the signatures of the public adjuster
760 and all named insureds; and the signature date. If all of the
761 named insureds' signatures are not available, the public
762 adjuster must submit an affidavit signed by the available named
763 insureds attesting that they have authority to enter into the
764 contract and settle all claim issues on behalf of the named
765 insureds. An unaltered copy of the executed contract must be

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766 remitted to the insured at the time of execution and to the
767 insurer, or the insurer’s representative within 7 days after
768 execution. A public adjusting firm that adjusts claims primarily
769 for commercial entities with operations in more than one state
770 and that does not directly or indirectly perform adjusting
771 services for insurers or individual homeowners is deemed to
772 comply with the requirements of this subsection if, at the time
773 a proof of loss is submitted, the public adjusting firm remits
774 to the insurer an affidavit signed by the public adjuster or
775 public adjuster apprentice that identifies:
776 (a) The full name, permanent business address, phone
777 number, e-mail address, and license number of the public
778 adjuster or public adjuster apprentice.
779 (b) The full name of the public adjusting firm.
780 (c) The insured’s full name, street address, phone number,
781 and e-mail address, together with a brief description of the
782 loss.
783 (d) An attestation that the compensation for public
784 adjusting services will not exceed the limitations provided by
785 law.
786 (e) The type of claim, including an emergency claim,
787 nonemergency claim, or supplemental claim.
788 Section 12. Subsection (2) of section 627.43141, Florida
789 Statues, is amended to read:
790 627.43141 Notice of change in policy terms.—
791 (2) A renewal policy may contain a change in policy terms.
792 If such change occurs, the insurer shall give the named insured
793 advance written notice summarizing the change, which may be
794 enclosed along with the written notice of renewal premium

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795 required under ss. 627.4133 and 627.728 or sent separately
796 within the timeframe required under the Florida Insurance Code
797 for the provision of a notice of nonrenewal to the named insured
798 for that line of insurance. The insurer must also provide a
799 sample copy of the notice to the named insured's insurance agent
800 before or at the same time that notice is provided to the named
801 insured. Such notice shall be entitled "Notice of Change in
802 Policy Terms." Beginning January 1, 2025, the "Notice of Change
803 in Policy Terms" shall be in bold type of not less than 14
804 points and included as a single page or consecutive pages, as
805 necessary, within the written notice.
806 Section 13. Section 627.6426, Florida Statutes, is amended
807 to read:
808 627.6426 Short-term health insurance.—
809 (1) For purposes of this part, the term "short-term health
810 insurance" means health insurance coverage provided by an issuer
811 with an expiration date specified in the contract that is less
812 than 12 months after the original effective date of the contract
813 and, taking into account renewals or extensions, has a duration
814 not to exceed 36 months in total.
815 (2) All contracts for short-term health insurance entered
816 into by an issuer and an individual seeking coverage must ~~shall~~
817 include the following written disclosures signed by the
818 purchaser at the time of purchase ~~disclosure~~:
819 (a) The following statement:
820
821 ~~"~~This coverage is not required to comply with certain
822 federal market requirements for health insurance,
823 principally those contained in the Patient Protection

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824 and Affordable Care Act. Be sure to check your policy
825 carefully to make sure you are aware of any exclusions
826 or limitations regarding coverage of preexisting
827 conditions or health benefits (such as
828 hospitalization, emergency services, maternity care,
829 preventive care, prescription drugs, and mental health
830 and substance use disorder services). Your policy
831 might also have lifetime and/or annual dollar limits
832 on health benefits. If this coverage expires or you
833 lose eligibility for this coverage, you might have to
834 wait until an open enrollment period to get other
835 health insurance coverage.”
836
837 (b) The following information:
838 1. The duration of the contract, including any waiting
839 period.
840 2. Any essential health benefit under 42 U.S.C. s. 18022(b)
841 that the contract does not provide.
842 3. The content of coverage.
843 4. Any exclusion of preexisting conditions.
844 (3) The disclosures must be printed in no less than 12-
845 point type and in a color that is easily readable. A copy of the
846 signed disclosures must be maintained by the issuer for a period
847 of 5 years after the date of purchase.
848 (4) Disclosures provided by electronic means must meet the
849 requirements of subsection (2).
850 Section 14. Present subsection (4) of section 627.70132,
851 Florida Statutes, is redesignated as subsection (5), and a new
852 subsection (4) is added to that section, to read:

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853 627.70132 Notice of property insurance claim.—
854 (4) A notice of claim for loss assessment coverage under s.
855 627.714 must be given to the insurer within 90 days after the
856 date on which the condominium association or its governing board
857 votes to levy an assessment to cover a shortfall in reserves due
858 to a covered loss. Such vote by the association or its governing
859 board must have occurred within 33 months after the date of the
860 loss that created the need for the assessment.
861 Section 15. Section 791.012, Florida Statutes, is amended
862 to read:
863 791.012 Minimum fireworks safety standards.—The outdoor
864 display of fireworks in this state shall be governed by the
865 National Fire Protection Association (NFPA) 1123, Code for
866 Fireworks Display, 2018 ~~1995~~ Edition~~, approved by the American~~
867 ~~National Standards Institute~~. Any state, county, or municipal
868 law, rule, or ordinance may provide for more stringent
869 regulations for the outdoor display of fireworks, but in no
870 event may any such law, rule, or ordinance provide for less
871 stringent regulations for the outdoor display of fireworks. The
872 division shall promulgate rules to carry out the provisions of
873 this section. The Code for Fireworks Display shall not govern
874 the display of any fireworks on private, residential property
875 and shall not govern the display of those items included under
876 s. 791.01(4)(b) and (c) and authorized for sale thereunder.
877 Section 16. This act shall take effect July 1, 2024.
878
879 ========== T I T L E A M E N D M E N T ==========
880 And the title is amended as follows:
881 Delete everything before the enacting clause

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882 and insert:
883 A bill to be entitled
884 An act relating to consumer protection; amending
885 45.032, F.S.; defining the term “nonprofit
886 organization”; requiring certain persons to disclose
887 to the court certain fees to be paid to himself or
888 herself; prohibiting such persons from charging the
889 owner of record more than a specified amount;
890 requiring the court to hold certain claims invalid;
891 providing that any nonprofit organization has
892 unconditional standing in certain matters; providing
893 that a nonprofit organization is entitled to certain
894 fees and costs under certain circumstances; making a
895 technical change; amending s. 45.033, F.S.; revising
896 the circumstances in which a transferee or assignee is
897 entitled to surplus funds or a portion or percentage
898 of surplus funds; providing that certain voluntary
899 transfers or assignments are invalid and void;
900 amending s. 197.582, F.S.; requiring the clerk, within
901 a specified timeframe, to file an interpleader action
902 under certain circumstances; revising the
903 circumstances when the clerk may file an interpleader
904 action; prohibiting a property owner from transferring
905 or assigning its interest in surplus funds to any
906 party; providing an exception; providing that certain
907 transfers or assignments are invalid; requiring
908 certain persons to disclose to the court certain fees
909 to be paid to himself or herself; prohibiting such
910 persons from charging the owner of record more than a

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911 specified amount; providing that a nonprofit
912 organization has unconditional standing in certain
913 matters; providing that a nonprofit organization is
914 entitled to certain fees and costs under certain
915 circumstances; making a technical change; amending s.
916 212.134, F.S.; defining terms; revising requirements
917 for payment settlement entities, or their electronic
918 payment facilitators or contracted third parties, in
919 submitting information returns to the Department of
920 Revenue; specifying requirements for third party
921 settlement organizations that conduct certain
922 transactions; providing applicability; creating s.
923 286.312, F.S.; prohibiting agencies from entering into
924 certain contracts or agreements; amending s. 319.261,
925 F.S.; requiring the department to retire the title to
926 a mobile home under certain circumstances; making
927 technical changes; amending s. 489.147, F.S.;
928 authorizing an insured or claimant to cancel a
929 contract to replace or repair a rook without penalty
930 or obligation under certain circumstances; defining
931 the term “official start date”; requiring certain
932 contractors to include certain language in contracts
933 executed at a specified time; requiring an insured or
934 claimant to send a notice of cancellation under
935 certain circumstances; amending s. 559.9611, F.S.;
936 revising the definition of the term “depository
937 institution”; amending s. 624.424, F.S.; providing
938 requirements for certain insurers’ accountants;
939 amending s. 626.854, F.S.; revising applicability of

341094

940 provisions relating to public adjusters; amending s.
941 626.8796, F.S.; revising the content of certain public
942 adjuster contracts; amending s. 627.43141, F.S.;
943 specifying requirements, after a specified date, for
944 certain notices regarding a change in policy terms;
945 amending s. 627.6426, F.S.; revising the disclosure
946 requirements of contracts for short-term health
947 insurance; amending s. 627.70132, F.S.; requiring a
948 condominium association to give a notice of claim for
949 loss assessment coverage to its insurer by a certain
950 date; amending s. 791.012, F.S.; updating the source
951 of the code for outdoor display of fireworks;
952 providing an effective date.

907326

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Burton) recommended the following:

Senate Amendment to Amendment (341094) (with title amendment)

Delete lines 241 - 294
and insert:
this state shall create a mechanism for senders of payments to identify whether a payment to a payee is for goods and services or is personal. The mechanism must clearly indicate the sender's requirement to indicate the appropriate transaction type. The sender of the payment is responsible for indicating the appropriate transaction type. All third party settlement

907326

12 organizations shall maintain records that clearly identify
13 whether a transaction, as designated by the sender of the
14 payment, is a transaction for goods and services or is personal.
15 The information in the return submitted to the department under
16 subsection (2) for such entities must be limited to transactions
17 for goods and services.
18 (7) Notwithstanding this section, subsection (6) does not
19 apply to a third party settlement organization if a contractual
20 agreement or arrangement to provide a third party payment
21 network to a participating payee requires the third party
22 settlement organization solely to settle third party network
23 transactions for the provision of goods and services.
24 Section 5. Section 286.312, Florida Statutes, is created to
25 read:
26 286.312 Prohibited use of state funds; censorship or
27 blacklisting of news sources.—An agency may not enter into a
28 contract or other agreement with an entity whose function is to
29 advise the censorship or blacklisting of news sources based on
30 subjective criteria or political biases under the stated goal of
31 fact-checking or removing misinformation.
32
33 ========== T I T L E A M E N D M E N T ==========
34 And the title is amended as follows:
35 Delete lines 924 - 927
36 and insert:
37 certain contracts or agreements; amending s. 489.147,
38 F.S.;

By the Committee on Banking and Insurance; and Senator Burton

A bill to be entitled

An act relating to consumer protection; amending s. 68.087, F.S.; prohibiting certain civil actions under the Florida Disposition of Unclaimed Property Act; amending s. 212.34, F.S.; defining terms; revising requirements for payment settlement entities, or their electronic payment facilitators or contracted third parties, in submitting information returns to the Department of Revenue; specifying requirements for third party settlement organizations that conduct certain transactions; creating s. 286.312, F.S.; prohibiting agencies from entering into certain contracts or agreements; amending s. 319.261, F.S.; requiring that the title to a mobile home be retired if the owner of the real property records certain documents in the official records of the clerk of court in the county in which the real property is located; making technical changes; amending s. 489.147, F.S.; requiring contractors to include a notice in their contracts with residential property owners under certain circumstances; providing requirements for notices of contract cancellation; amending s. 559.9611, F.S.; revising the definition of the term "depository institution"; amending s. 624.424, F.S.; providing requirements for certain insurers' accountants; amending s. 626.854, F.S.; revising applicability of provisions relating to public adjusters; amending s. 626.8796, F.S.; revising the content of certain public adjuster contracts;

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amending s. 627.6426, F.S.; revising the disclosure requirements of contracts for short-term health insurance; amending s. 627.70132, F.S.; requiring a condominium association to give a notice of claim for loss assessment coverage to its insurer by a certain date; amending s. 791.012, F.S.; updating the source of the code for outdoor display of fireworks; creating s. 817.153, F.S.; defining the terms "claim" and "other agreement"; prohibiting grant or contract fraud; providing criminal penalties; creating s. 817.4112, F.S.; prohibiting falsely representing that an advertisement or communication originated from a bank or lending institution; amending s. 817.45, F.S.; providing criminal penalties for violations of specified provisions; providing an effective date.

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

Section 1. Present subsections (3) through (6) of section 68.087, Florida Statutes, are redesignated as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

68.087 Exemptions to civil actions.—

(3) In no event may a person bring an action under s. 68.083(2) based upon allegations or transactions arising from, or to otherwise enforce, the provisions of the Florida Disposition of Unclaimed Property Act under chapter 717.

Section 2. Section 212.134, Florida Statutes, is amended to read:

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59 212.134 Information returns relating to payment-card and
60 third-party network transactions.—
61 (1) For purposes of this section, the term:
62 (a) "Participating payee" has the same meaning as in s.
63 6050W of the Internal Revenue Code.
64 (b) "Return" or "information return" means IRS Form 1099-K
65 required under s. 6050W of the Internal Revenue Code.
66 (c) "Third party network transaction" has the same meaning
67 as in s. 6050W of the Internal Revenue Code.
68 (d) "Third party settlement organization" has the same
69 meaning as in s. 6050W of the Internal Revenue Code.
70 (2) For each year in which a payment settlement entity, an
71 electronic payment facilitator, or other third party contracted
72 with the payment settlement entity to make payments to settle
73 reportable payment transactions on behalf of the payment
74 settlement entity must file a return pursuant to s. 6050W of the
75 Internal Revenue Code, for participating payees with an address
76 in this state, the entity, the facilitator, or the third party
77 must submit the information in the return to the department by
78 the 30th day after filing the federal return. The format of the
79 information returns required must be either a copy of such
80 information returns or a copy of such information returns
81 related to participating payees with an address in the state.
82 For purposes of this subsection, the term "payment settlement
83 entity" has the same meaning as provided in s. 6050W of the
84 Internal Revenue Code.
85 (3) ~~(2)~~ All reports of returns submitted to the department
86 under this section must be in an electronic format.
87 (4) ~~(3)~~ Any payment settlement entity, facilitator, or third

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88 party failing to file the information return required, filing an
89 incomplete information return, or not filing an information
90 return within the time prescribed is subject to a penalty of
91 $1,000 for each failure, if the failure is for not more than 30
92 days, with an additional $1,000 for each month or fraction of a
93 month during which each failure continues. The total amount of
94 penalty imposed on a reporting entity may not exceed $10,000
95 annually.
96 (5) ~~(4)~~ The executive director or his or her designee may
97 waive the penalty if he or she determines that the failure to
98 timely file an information return was due to reasonable cause
99 and not due to willful negligence, willful neglect, or fraud.
100 (6) All third party settlement organizations that conduct
101 transactions involving a participating payee with an address in
102 this state shall create a mechanism for participating payees to
103 identify whether a participating payee's transaction is for
104 goods and services or is personal. The mechanism must clearly
105 indicate the participating payee's requirement to indicate the
106 appropriate transaction type. The participating payee is
107 responsible for indicating the appropriate transaction type. All
108 third party settlement organizations shall maintain records that
109 clearly identify whether a transaction, as designated by the
110 participating payee, is a transaction for goods and services or
111 is personal. The information in the return submitted to the
112 department under subsection (2) for such entities must be
113 limited to transactions for goods and services.
114 Section 3. Section 286.312, Florida Statutes, is created to
115 read:
116 286.312 Prohibited use of state funds; censorship or

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117 blacklisting of news sources.—An agency may not enter into a
118 contract or other agreement with an entity whose function is to
119 advise the censorship or blacklisting of news sources based on
120 subjective criteria or political biases under the stated goal of
121 fact-checking or removing misinformation.
122 Section 4. Subsection (2) of section 319.261, Florida
123 Statutes, is amended to read:
124 319.261 Real property transactions; retiring title to
125 mobile home.—
126 (2) The title to the mobile home must ~~may~~ be retired by the
127 department if the owner of the real property records the
128 following documents in the official records of the clerk of
129 court in the county in which the real property is located:
130 (a)1. The original title to the mobile home which includes
131 ~~shall include~~ a description of the mobile home, including model
132 year, make, width, length, and vehicle identification number,
133 and a statement by any recorded lienholder on the title that the
134 security interest in the home has been released~~,~~ or that such
135 security interest will be released upon retirement of the title
136 as set forth in this section;~~.~~
137 2.~~(b)~~ The legal description of the real property, and in
138 the case of a leasehold interest, a copy of the lease agreement;
139 and~~.~~
140 3.~~(c)~~ A sworn statement by the owner of the real property,
141 as shown on the real property deed or lease, that he or she is
142 the owner of the mobile home and that the home is permanently
143 affixed to the real property in accordance with state law; or
144 (b) A mortgage against the owner's mobile home and real
145 property.

146 Section 5. Subsection (6) is added to section 489.147,
147 Florida Statutes, to read:
148 489.147 Prohibited property insurance practices.—
149 (6)(a) During a declared state of emergency, a contractor
150 executing a contract to replace or repair a roof of a
151 residential property must include in the contract the following
152 language in bold type of not less than 18 points immediately
153 before the space reserved for the signature of the residential
154 property owner:
155
156 "You, the residential property owner, may cancel this
157 contract without penalty or obligation up until the 10
158 day after the execution of the contract or until the
159 official start date, whichever comes first, because
160 this contract was entered into during a declaration of
161 a state of emergency by the Governor. It is the
162 responsibility of your contractor to include an
163 official start date clause in your contract. This
164 clause must state the official start date and the work
165 that will be commenced on that date. If there is no
166 official start date clause in the contract, the
167 contract may be voided within 10 days after the
168 execution of the contract."
169
170 (b) The residential property owner must send the notice of
171 cancellation by certified mail, return receipt requested, or by
172 another form of mailing that provides proof thereof, to the
173 address specified in the contract.
174 Section 6. Subsection (9) of section 559.9611, Florida

175 Statutes, is amended to read:
176 559.9611 Definitions.—As used in this part, the term:
177 (9) "Depository institution" means a bank, a credit union,
178 a savings bank, a savings and loan association, a savings or
179 thrift association, or an industrial loan company doing business
180 under the authority of a charter issued by the United States,
181 this state, or any other state, district, territory, or
182 commonwealth of the United States which is authorized to
183 transact business in this state and whose deposits or share
184 accounts are insured by the Federal Deposit Insurance
185 Corporation or the National Credit Union Share Insurance Fund
186 ~~Florida state chartered bank, savings bank, credit union, or~~
187 ~~trust company, or a federal savings or thrift association, bank,~~
188 ~~credit union, savings bank, or thrift~~.
189 Section 7. Paragraph (d) of subsection (8) of section
190 624.424, Florida Statutes, is amended to read:
191 624.424 Annual statement and other information.—
192 (8)
193 (d) Upon creation of the continuing education required
194 under this paragraph, the certified public accountant who
195 prepares the audit must be licensed to practice pursuant to
196 chapter 473 and must have completed at least 4 hours of
197 continuing education that is insurance related as a condition of
198 license renewal. The continuing education must be approved by
199 the Department of Business and Professional Regulation, based on
200 the recommendations of the Department of Financial Services. An
201 insurer may not use the same accountant or partner of an
202 accounting firm responsible for preparing the report required by
203 this subsection for more than 5 consecutive years. Following

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204 this period, the insurer may not use such accountant or partner
205 for a period of 5 years, but may use another accountant or
206 partner of the same firm. An insurer may request the office to
207 waive this prohibition based upon an unusual hardship to the
208 insurer and a determination that the accountant is exercising
209 independent judgment that is not unduly influenced by the
210 insurer considering such factors as the number of partners,
211 expertise of the partners or the number of insurance clients of
212 the accounting firm; the premium volume of the insurer; and the
213 number of jurisdictions in which the insurer transacts business.
214 Section 8. Subsection (19) of section 626.854, Florida
215 Statutes, is amended, and subsections (5) through (18) of that
216 section are republished, to read:
217 626.854 "Public adjuster" defined; prohibitions.—The
218 Legislature finds that it is necessary for the protection of the
219 public to regulate public insurance adjusters and to prevent the
220 unauthorized practice of law.
221 (5) A public adjuster may not directly or indirectly
222 through any other person or entity solicit an insured or
223 claimant by any means except on Monday through Saturday of each
224 week and only between the hours of 8 a.m. and 8 p.m. on those
225 days.
226 (6) When entering a contract for adjuster services after
227 July 1, 2023, a public adjuster:
228 (a) May not collect a fee for services on payments made to
229 a named insured unless they have a written contract with the
230 named insured, or the named insured's legal representative.
231 (b) May not contract for services to be provided by a third
232 party on behalf of the named insured or in pursuit of settlement

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233 of the named insured's claim, if the cost of those services is
234 to be borne by the named insured, unless the named insured
235 agrees in writing to procure these services and such agreement
236 is entered into subsequent to the date of the contract for
237 public adjusting services.
238 (c) If a public adjuster contracts with a third-party
239 service provider to assist with the settlement of the named
240 insured's claim, without first obtaining the insured's written
241 consent, payment of the third party's fees must be made by the
242 public adjuster and may not be charged back to the named
243 insured.
244 (d) If a public adjuster represents anyone other than the
245 named insured in a claim, the public adjuster fees shall be paid
246 by the third party and may not be charged back to the named
247 insured.
248 (7) An insured or claimant may cancel a public adjuster's
249 contract to adjust a claim without penalty or obligation within
250 10 days after the date on which the contract is executed. If the
251 contract was entered into based on events that are the subject
252 of a declaration of a state of emergency by the Governor, an
253 insured or claimant may cancel the public adjuster's contract to
254 adjust a claim without penalty or obligation within 30 days
255 after the date of loss or 10 days after the date on which the
256 contract is executed, whichever is longer. The public adjuster's
257 contract must contain the following language in minimum 18-point
258 bold type immediately before the space reserved in the contract
259 for the signature of the insured or claimant:
260
261 "You, the insured, may cancel this contract for any

262 reason without penalty or obligation to you within 10
263 days after the date of this contract. If this contract
264 was entered into based on events that are the subject
265 of a declaration of a state of emergency by the
266 Governor, you may cancel this contract for any reason
267 without penalty or obligation to you within 30 days
268 after the date of loss or 10 days after the date on
269 which the contract is executed, whichever is longer.
270 You may also cancel the contract without penalty or
271 obligation to you if I, as your public adjuster, fail
272 to provide you and your insurer a copy of a written
273 estimate within 60 days of the execution of the
274 contract, unless the failure to provide the estimate
275 within 60 days is caused by factors beyond my control,
276 in accordance with s. 627.70131(5)(a)2., Florida
277 Statutes. The 60-day cancellation period for failure
278 to provide a written estimate shall cease on the date
279 I have provided you with the written estimate."
280
281 The notice of cancellation shall be provided to ...(name of
282 public adjuster)..., submitted in writing and sent by certified
283 mail, return receipt requested, or other form of mailing that
284 provides proof thereof, at the address specified in the
285 contract.
286 (8) It is an unfair and deceptive insurance trade practice
287 pursuant to s. 626.9541 for a public adjuster or any other
288 person to circulate or disseminate any advertisement,
289 announcement, or statement containing any assertion,
290 representation, or statement with respect to the business of

291 insurance which is untrue, deceptive, or misleading.
292 (a) The following statements, made in any public adjuster's
293 advertisement or solicitation, are considered deceptive or
294 misleading:
295 1. A statement or representation that invites an insured
296 policyholder to submit a claim when the policyholder does not
297 have covered damage to insured property.
298 2. A statement or representation that invites an insured
299 policyholder to submit a claim by offering monetary or other
300 valuable inducement.
301 3. A statement or representation that invites an insured
302 policyholder to submit a claim by stating that there is "no
303 risk" to the policyholder by submitting such claim.
304 4. A statement or representation, or use of a logo or
305 shield, that implies or could mistakenly be construed to imply
306 that the solicitation was issued or distributed by a
307 governmental agency or is sanctioned or endorsed by a
308 governmental agency.
309 (b) For purposes of this paragraph, the term "written
310 advertisement" includes only newspapers, magazines, flyers, and
311 bulk mailers. The following disclaimer, which is not required to
312 be printed on standard size business cards, must be added in
313 bold print and capital letters in typeface no smaller than the
314 typeface of the body of the text to all written advertisements
315 by a public adjuster:
316
317 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD
318 A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU
319 ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU

320 MAY DISREGARD THIS ADVERTISEMENT."
321
322 (9) A public adjuster, a public adjuster apprentice, or any
323 person or entity acting on behalf of a public adjuster or public
324 adjuster apprentice may not give or offer to give a monetary
325 loan or advance to a client or prospective client.
326 (10) A public adjuster, public adjuster apprentice, or any
327 individual or entity acting on behalf of a public adjuster or
328 public adjuster apprentice may not give or offer to give,
329 directly or indirectly, any article of merchandise having a
330 value in excess of $25 to any individual for the purpose of
331 advertising or as an inducement to entering into a contract with
332 a public adjuster.
333 (11)(a) If a public adjuster enters into a contract with an
334 insured or claimant to reopen a claim or file a supplemental
335 claim that seeks additional payments for a claim that has been
336 previously paid in part or in full or settled by the insurer,
337 the public adjuster may not charge, agree to, or accept from any
338 source compensation, payment, commission, fee, or any other
339 thing of value based on a previous settlement or previous claim
340 payments by the insurer for the same cause of loss. The charge,
341 compensation, payment, commission, fee, or any other thing of
342 value must be based only on the claim payments or settlements
343 paid to the insured, exclusive of attorney fees and costs,
344 obtained through the work of the public adjuster after entering
345 into the contract with the insured or claimant. Compensation for
346 the reopened or supplemental claim may not exceed 20 percent of
347 the reopened or supplemental claim payment. In no event shall
348 the contracts described in this paragraph exceed the limitations

349 in paragraph (b).
350 (b) A public adjuster may not charge, agree to, or accept
351 from any source compensation, payment, commission, fee, or any
352 other thing of value in excess of:
353 1. Ten percent of the amount of insurance claim payments or
354 settlements, exclusive of attorney fees and costs, paid to the
355 insured by the insurer for claims based on events that are the
356 subject of a declaration of a state of emergency by the
357 Governor. This provision applies to claims made during the year
358 after the declaration of emergency. After that year, the
359 limitations in subparagraph 2. apply.
360 2. Twenty percent of the amount of insurance claim payments
361 or settlements, exclusive of attorney fees and costs, paid to
362 the insured by the insurer for claims that are not based on
363 events that are the subject of a declaration of a state of
364 emergency by the Governor.
365 3. One percent of the amount of insurance claim payments or
366 settlements, paid to the insured by the insurer for any coverage
367 part of the policy where the claim payment or written agreement
368 by the insurer to pay is equal to or greater than the policy
369 limit for that part of the policy, if the payment or written
370 commitment to pay is provided within 14 days after the date of
371 loss or within 10 days after the date on which the public
372 adjusting contract is executed, whichever is later.
373 4. Zero percent of the amount of insurance claim payments
374 or settlements, paid to the insured by the insurer for any
375 coverage part of the policy where the claim payment or written
376 agreement by the insurer to pay occurs before the date on which
377 the public adjusting contract is executed.

378 (c) Insurance claim payments made by the insurer do not
379 include policy deductibles, and public adjuster compensation may
380 not be based on the deductible portion of a claim.
381 (d) Public adjuster compensation may not be based on
382 amounts attributable to additional living expenses, unless such
383 compensation is affirmatively agreed to in a separate agreement
384 that includes a disclosure in substantially the following form:
385
386 "I agree to retain and compensate the public adjuster
387 for adjusting my additional living expenses and
388 securing payment from my insurer for amounts
389 attributable to additional living expenses payable
390 under the policy issued on my (home/mobile
391 home/condominium unit)."
392
393 (e) Public adjuster rate of compensation may not be
394 increased based solely on the fact that the claim is litigated.
395 (f) Any maneuver, shift, or device through which the limits
396 on compensation set forth in this subsection are exceeded is a
397 violation of this chapter punishable as provided under s.
398 626.8698.
399 (12)(a) Each public adjuster must provide to the claimant
400 or insured a written estimate of the loss to assist in the
401 submission of a proof of loss or any other claim for payment of
402 insurance proceeds within 60 days after the date of the
403 contract. The written estimate must include an itemized, per-
404 unit estimate of the repairs, including itemized information on
405 equipment, materials, labor, and supplies, in accordance with
406 accepted industry standards. The public adjuster shall retain

407 such written estimate for at least 5 years and shall make the
408 estimate available to the claimant or insured, the insurer, and
409 the department upon request.
410 (b) An insured may cancel the contract with no additional
411 penalties or fees charged by the public adjuster if such an
412 estimate is not provided within 60 days after executing the
413 contract, subject to the cancellation notice requirement in this
414 section, unless the failure to provide the estimate within 60
415 days is caused by factors beyond the control of the public
416 adjuster. The cancellation period shall cease on the date the
417 public adjuster provides the written estimate to the insured.
418 (13) A public adjuster, public adjuster apprentice, or any
419 person acting on behalf of a public adjuster or apprentice may
420 not accept referrals of business from any person with whom the
421 public adjuster conducts business if there is any form or manner
422 of agreement to compensate the person, directly or indirectly,
423 for referring business to the public adjuster. A public adjuster
424 may not compensate any person, except for another public
425 adjuster, directly or indirectly, for the principal purpose of
426 referring business to the public adjuster.
427 (14) A company employee adjuster, independent adjuster,
428 attorney, investigator, or other persons acting on behalf of an
429 insurer that needs access to an insured or claimant or to the
430 insured property that is the subject of a claim must provide at
431 least 48 hours' notice to the insured or claimant, public
432 adjuster, or legal representative before scheduling a meeting
433 with the claimant or an onsite inspection of the insured
434 property. The insured or claimant may deny access to the
435 property if the notice has not been provided. The insured or

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436 claimant may waive the 48-hour notice.
437 (15) The public adjuster must ensure that prompt notice is
438 given of the claim to the insurer, the public adjuster's
439 contract is provided to the insurer, the property is available
440 for inspection of the loss or damage by the insurer, and the
441 insurer is given an opportunity to interview the insured
442 directly about the loss and claim. The insurer must be allowed
443 to obtain necessary information to investigate and respond to
444 the claim.
445 (a) The insurer may not exclude the public adjuster from
446 its in-person meetings with the insured. The insurer shall meet
447 or communicate with the public adjuster in an effort to reach
448 agreement as to the scope of the covered loss under the
449 insurance policy. The public adjuster shall meet or communicate
450 with the insurer in an effort to reach agreement as to the scope
451 of the covered loss under the insurance policy. This section
452 does not impair the terms and conditions of the insurance policy
453 in effect at the time the claim is filed.
454 (b) A public adjuster may not restrict or prevent an
455 insurer, company employee adjuster, independent adjuster,
456 attorney, investigator, or other person acting on behalf of the
457 insurer from having reasonable access at reasonable times to any
458 insured or claimant or to the insured property that is the
459 subject of a claim.
460 (c) A public adjuster may not act or fail to reasonably act
461 in any manner that obstructs or prevents an insurer or insurer's
462 adjuster from timely conducting an inspection of any part of the
463 insured property for which there is a claim for loss or damage.
464 The public adjuster representing the insureds may be present for

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465 the insurer's inspection, but if the unavailability of the
466 public adjuster otherwise delays the insurer's timely inspection
467 of the property, the public adjuster or the insureds must allow
468 the insurer to have access to the property without the
469 participation or presence of the public adjuster or insureds in
470 order to facilitate the insurer's prompt inspection of the loss
471 or damage.
472 (16) A licensed contractor under part I of chapter 489, or
473 a subcontractor of such licensee, may not advertise, solicit,
474 offer to handle, handle, or perform public adjuster services as
475 provided in subsection (1) unless licensed and compliant as a
476 public adjuster under this chapter. The prohibition against
477 solicitation does not preclude a contractor from suggesting or
478 otherwise recommending to a consumer that the consumer consider
479 contacting his or her insurer to determine if the proposed
480 repair is covered under the consumer's insurance policy, except
481 as it relates to solicitation prohibited in s. 489.147. In
482 addition, the contractor may discuss or explain a bid for
483 construction or repair of covered property with the residential
484 property owner who has suffered loss or damage covered by a
485 property insurance policy, or the insurer of such property, if
486 the contractor is doing so for the usual and customary fees
487 applicable to the work to be performed as stated in the contract
488 between the contractor and the insured.
489 (17) A public adjuster shall not acquire any interest in
490 salvaged property, except with the written consent and
491 permission of the insured through a signed affidavit.
492 (18) A public adjuster, a public adjuster apprentice, or a
493 person acting on behalf of an adjuster or apprentice may not

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494 enter into a contract or accept a power of attorney that vests
495 in the public adjuster, the public adjuster apprentice, or the
496 person acting on behalf of the adjuster or apprentice the
497 effective authority to choose the persons or entities that will
498 perform repair work in a property insurance claim or provide
499 goods or services that will require the insured or third-party
500 claimant to expend funds in excess of those payable to the
501 public adjuster under the terms of the contract for adjusting
502 services.
503 (19) Subsections (5)-(18) apply only to residential
504 property insurance policies and condominium unit owner policies
505 as described in s. 718.111(11), except that subsection (11) also
506 applies to coverages provided by condominium association,
507 cooperative association, apartment building, and similar
508 policies, including policies covering the common elements of a
509 homeowners' association.
510 Section 9. Subsection (2) of section 626.8796, Florida
511 Statutes, is amended to read:
512 626.8796 Public adjuster contracts; disclosure statement;
513 fraud statement.—
514 (2) A public adjuster contract relating to a property and
515 casualty claim must contain the full name, permanent business
516 address, phone number, e-mail address, and license number of the
517 public adjuster; the full name and license number of the public
518 adjusting firm; and the insured's full name, street address,
519 phone number, and e-mail address, together with a brief
520 description of the loss. The contract must state the percentage
521 of compensation for the public adjuster's services in minimum
522 18-point bold type before the space reserved in the contract for

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523 the signature of the insured; the type of claim, including an
524 emergency claim, nonemergency claim, or supplemental claim; the
525 initials of the named insured on each page that does not contain
526 the insured's signature; the signatures of the public adjuster
527 and all named insureds; and the signature date. If all of the
528 named insureds' signatures are not available, the public
529 adjuster must submit an affidavit signed by the available named
530 insureds attesting that they have authority to enter into the
531 contract and settle all claim issues on behalf of the named
532 insureds. An unaltered copy of the executed contract must be
533 remitted to the insured at the time of execution and to the
534 insurer, or the insurer's representative within 7 days after
535 execution. A public adjusting firm that adjusts claims primarily
536 for commercial entities with operations in more than one state
537 and that does not directly or indirectly perform adjusting
538 services for insurers or individual homeowners is deemed to
539 comply with the requirements of this subsection if, at the time
540 a proof of loss is submitted, the public adjusting firm remits
541 to the insurer an affidavit signed by the public adjuster or
542 public adjuster apprentice that identifies:
543 (a) The full name, permanent business address, phone
544 number, e-mail address, and license number of the public
545 adjuster or public adjuster apprentice.
546 (b) The full name of the public adjusting firm.
547 (c) The insured's full name, street address, phone number,
548 and e-mail address, together with a brief description of the
549 loss.
550 (d) An attestation that the compensation for public
551 adjusting services will not exceed the limitations provided by

552 law.
553 (e) The type of claim, including an emergency claim,
554 nonemergency claim, or supplemental claim.
555 Section 10. Section 627.6426, Florida Statutes, is amended
556 to read:
557 627.6426 Short-term health insurance.—
558 (1) For purposes of this part, the term "short-term health
559 insurance" means health insurance coverage provided by an issuer
560 with an expiration date specified in the contract that is less
561 than 12 months after the original effective date of the contract
562 and, taking into account renewals or extensions, has a duration
563 not to exceed 36 months in total.
564 (2) All contracts for short-term health insurance entered
565 into by an issuer and an individual seeking coverage must ~~shall~~
566 include the following written disclosures signed by the
567 purchaser at the time of purchase ~~disclosure~~:
568 (a) The following statement:
569
570 "This coverage is not required to comply with certain
571 federal market requirements for health insurance,
572 principally those contained in the Patient Protection
573 and Affordable Care Act. Be sure to check your policy
574 carefully to make sure you are aware of any exclusions
575 or limitations regarding coverage of preexisting
576 conditions or health benefits (such as
577 hospitalization, emergency services, maternity care,
578 preventive care, prescription drugs, and mental health
579 and substance use disorder services). Your policy
580 might also have lifetime and/or annual dollar limits

on health benefits. If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage."

(b) The following information:

1. The duration of the contract, including any waiting period.

2. Any essential health benefit under 42 U.S.C. s. 18022(b) that the contract does not provide.

3. The content of coverage.

4. Any exclusion of preexisting conditions.

(3) The disclosures must be printed in no less than 12-point type and in a color that is easily readable. A copy of the signed disclosures must be maintained by the issuer for a period of 5 years after the date of purchase.

(4) Disclosures provided by electronic means must meet the requirements of subsection (2).

Section 11. Present subsection (4) of section 627.70132, Florida Statutes, is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

627.70132 Notice of property insurance claim.—

(4) A notice of claim for loss assessment coverage under s. 627.714 must be given to the insurer within 90 days after the date on which the condominium association or its governing board votes to levy an assessment to cover a shortfall in reserves due to a covered loss. Such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment.

Section 12. Section 791.012, Florida Statutes, is amended to read:

791.012 Minimum fireworks safety standards.—The outdoor display of fireworks in this state shall be governed by the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 2018 ~~1995~~ Edition~~, approved by the American National Standards Institute~~. Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations for the outdoor display of fireworks, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks. The division shall promulgate rules to carry out the provisions of this section. The Code for Fireworks Display shall not govern the display of any fireworks on private, residential property and shall not govern the display of those items included under s. 791.01(4)(b) and (c) and authorized for sale thereunder.

Section 13. Section 817.153, Florida Statutes, is created to read:

817.153 Grant and contract fraud.—

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

(a) "Claim" means an application, request, or demand for money or property under a state grant agreement, state contract, or other agreement with the state for money or property, whether or not the United States or a specified state agency has title to the money or property, presented or caused to be presented to any officer, employee, or agent of a state agency, as well as any request for a drawdown or other payment that is made to a computerized payment administration system.

(b) "Other agreement" includes a loan, subsidy, and payment

639 for a specified use; an award; and subaward, regardless of
640 whether one or more persons entering into the agreement is a
641 contractor or subcontractor.
642 (2) A person commits grant or contract fraud if he or she:
643 (a) Knowingly presents or causes to be presented a claim
644 related to a grant agreement, contract, or other agreement with
645 the state, or any agency thereof, that a person knows or should
646 know is false or fraudulent.
647 (b) Knowingly makes, uses, or causes to be made or used any
648 false statement, omission, or misrepresentation of a material
649 fact in any application, proposal, bid, progress report, budget,
650 financial statement, audit, or other document that is required
651 to be submitted in order to directly or indirectly receive or
652 retain funds provided in whole or in part pursuant to a state
653 grant agreement, state contract, or other agreement with the
654 state.
655 (c) Knowingly makes, uses, or causes to be made or used
656 false records or statements material to false or fraudulent
657 claims under a grant agreement, state contract, or other
658 agreement with the state.
659 (d) Knowingly conceals, avoids, or decreases an obligation
660 to pay or transmit funds or property with respect to a state
661 grant agreement, state contract, or other agreement with the
662 state, or knowingly makes, uses, or causes to be made or used a
663 false record or statement material to such an obligation.
664
665 Proof of specific intent to defraud is not required. Innocent
666 mistake is a defense to an action under this section.
667 (3) If the value of the property involved in a violation of

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668 this section is:
669 (a) Less than $20,000, the offender commits a felony of the
670 third degree, punishable as provided in s. 775.082, s. 775.083,
671 or s. 775.084.
672 (b) At least $20,000, but less than $100,000, the offender
673 commits a felony of the second degree, punishable as provided in
674 s. 775.082, s. 775.083, or s. 775.084.
675 (c) At least $100,000, the offender commits a felony of the
676 first degree, punishable as provided in s. 775.082, s. 775.083,
677 or s. 775.084.
678 (4) This section applies to all grant agreements, state
679 contracts, or other agreements with the state, regardless of
680 whether the funds being provided pursuant to those grant
681 agreements, state contracts, or other agreements with the state
682 are state funds or federal pass-through funds.
683 Section 14. Section 817.4112, Florida Statutes, is created
684 to read:
685 817.4112 Falsely representing origin of advertisement or
686 communication.—A person or business entity may not knowingly
687 make statements, or disseminate, in oral, written, electronic,
688 or printed form or otherwise, any advertisement or communication
689 that has the intent or purpose of falsely representing that such
690 advertisement or communication originated from a bank or lending
691 institution.
692 Section 15. Section 817.45, Florida Statutes, is amended to
693 read:
694 817.45 Penalty.—Any person convicted of violating any of
695 the provisions of s. 817.41, s. 817.411, s. 817.4112, or s.
696 817.44 is guilty of a misdemeanor of the first degree,

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697 punishable as provided in s. 775.082 or s. 775.083. Upon a
698 second or subsequent conviction for violation of s. 817.41, s.
699 817.411, s. 817.4112, or s. 817.44, such person is guilty of a
700 misdemeanor of the first degree, punishable as provided in s.
701 775.082 or by a fine not exceeding $10,000, or by both.
702 Section 16. This act shall take effect July 1, 2024.

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Department of Financial Services (DFS)
2024 Legislative Bill Analysis

BILL INFORMATION

Bill Number:	SB 1066
Bill Title:	Consumer Protection
Bill Sponsor:	Burton
Effective Date:	July 1, 2024

ANALYSIS INFORMATION

Agency Contact:	Chase Mitchell, Director of Legislative Affairs and Policy, (850) 413-2866
Program Analyst:	Morgan Husbands, Deputy Director of Policy
Analysis Date:	January 29, 2024

POLICY ANALYSIS

I. SUMMARY ANALYSIS

The bill adds the Unclaimed Property Act to the list of civil actions exempt from the qui tam provision in chapter 68. The bill would require third party settlement organizations that conduct transactions involving a payee to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions. The bill would prohibit agencies from entering contracts with entities that provide services related to fact-checking or removing misinformation. The bill would allow a mobile home to be defined as real property through a recorded mortgage once the home is affixed to land and connected to public utilities. The bill would provide consumers with a ten day window from the execution of the contract or the commencement of work to cancel their roofing contract during a state of emergency. The bill would update the definition of depository institutions to include entities outside of the State of Florida. The bill would create continuing education requirements for CPAs who are auditing insurers. The bill would revise applicability of provisions related to public adjusters. The bill would revise the content of public adjuster contracts. The bill would revise the disclosure requirements of short-term health insurance contracts. The bill would provide that the loss assessment claims are considered to have occurred on a specific date. The bill would update an outdated reference to the National Fire Protection Association Edition for the displaying of fireworks. The bill creates criminal penalties associated with grant and contract fraud and establishes thresholds associated with the penalties. The bill would prohibit any person or entity from falsely representing themselves as a bank or lending institution through communications or advertisements. The bill creates penalties if any person or entity falsely represents themselves as a bank or lending institution through communications or advertisements.

II. PRESENT SITUATION

Unclaimed Property in Qui Tam

Florida's unclaimed property law is set forth Chapter 717, Florida Statutes, ("Florida Disposition of Unclaimed Property Act"), and Chapter 69G-20, Florida Administrative Code. Together these statutes and rules provide a comprehensive body of law regarding the identification, enforcement and disposition of unclaimed property. Use of the whistleblower/qui tam provisions in § 68.083(2) of the Florida False Claims Act to dictate the enforcement of Florida's Unclaimed Property Act distorts statute and is not consistent with the law.

Form 1099-K Reporting Requirement

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information

about payments made by credit card or third party merchants. The return is Form 1099-K, and is required to be filed for each calendar year on or before the last day of February of the year following the transactions.

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third party payment system (like PayPal, Venmo, or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of $20,000 over more than 200 transactions. These sales should be included in the payee's gross income on their tax returns for the year.

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires the Form 1099-K to be filed. Examples include Alabama, Tennessee, North Carolina, and New York. Since 2020, entities required to file Form 1099-K with the federal government must also file a copy with the Florida Department of Revenue electronically within 30 days of filing the federal return. The copy can be either the exact information filed on the full federal return, or a copy of the information limited to participating payees with an address in Florida.

Censorship

There have been lawsuits related to entities who utilize censorship and blacklisting in an effort to fact-check or censor information. The State of Texas filed a lawsuit in federal court that alleged the U.S. Department of State (the Department) funded technology that could render disfavored outlets unprofitable. The lawsuit says that the Department accomplished this through two organizations that received grants/contracts from the Department's Global engagement Center, which is authorized to counter foreign "propaganda and disinformation". The organizations are the Global Disinformation Index, who received a $100,000 grant in 2021 and Newsguard, who received a $25,000 grant in 2020. The Global Disinformation Index produces an exclusive list of news publications that are ranked for "high risk for disinformation," according to its website. Advertising companies license the list and use it to avoid placing ads on sites that are deemed risky. Newsguard is similar in that it develops tools aimed at countering misinformation, according to its website. The lawsuit claims that this "blacklisting" is reducing revenues for certain sources along with their visibility on social media and ranking results from browser searches.

Mobile Home Conversion to Real Property

Many mobile homeowners own their land, but are in personal property chattel loans. Consumers are discouraged from obtaining a mortgage on their mobile home because of complex processes. The process currently requires post-close actions, surrender of vehicle titles, statement of ownership, filing an affidavit of affixture or filing a certificate of title in order to convert to real property. Because of the existing statutory complexities of converting mobile homes to real property, consumers elect higher interest chattel loans. The mortgage process and the surrendering of a vehicle include similar steps that causes a duplication of work and costs the homeowner more money.

Roofing Contracts

Currently, there is no mechanism during a state of emergency for a residential property owner to cancel a roofing contract. Post hurricane, homeowners are more vulnerable to fraud and schemes due to many different factors. Because of large influxes of damage at the same time, there are bad actors who come in to take advantage of homeowners when they are the most vulnerable after their home is damaged or completely destroyed. Post-storm, some homeowners lack internet and phone reception for weeks at a time. Often times, emotions are running high as homeowners are undergoing stressful processes. There is no way for a homeowner to void a contract right now if they mistakenly signed a contract with a bad actor during the state of emergency.

Depository Institutions

In current statute, the definition of "depository institution" only includes Florida institutions and not the appropriate entities outside of the State of Florida.

CPA's Auditing Insurers

Currently, there are 80 hours of continuing education every two years for CPA's to renew their license. There are four categories in which all acceptable subject matter for credit is classified: accounting and auditing, technical business, behavioral and ethics. There are no courses related to accounting for insurance company auditors.

Public Adjuster Fees for Commercial Residential Policies

The Department of Financial Services has received complaints of public adjusters charging fees on the deductible portion of a residential condominium association claim, which resulted from events related to an emergency order. The result of this action was a public adjuster fee in excess of 10% of the settlement amount for damages being applied to the insured loss. The public adjusters in these cases contend that the scope of subsection 626.854(19), Florida Statutes, only encompasses residential property insurance and condominium unit owners' policies, and they may therefore charge fees for the deductible portion of the claim settlement for commercial residential property policies.

Public Adjuster Contracts

Although there is a requirement for the name of the public adjusting firm to appear on a contract relating to a property and casualty claim, there is no requirement for the firm's license number to be included.

Short-term Heath Insurance

Short-term limited duration (STLD) policies were historically sold to individuals who needed temporary coverage in-between jobs or prior to the purchase of an individual major medical policy. These policies were limited to a maximum of six months duration. Short-term policies do not meet the minimum essential coverage requirements of the federal Affordable Care Act (ACA). Federal regulations for STLD plans were revised effective October 2, 2018, to allow for the policies to be available up to three years by providing coverage in one-year renewable increments. The Florida Legislature passed sections 627.6426 and 627.6525, Florida Statutes, to codify the time periods allowed in federal regulations, as well as requiring a disclosure statement.

Individual health coverage, both on and off the Marketplace, can only be purchased during the annual open enrollment period (OEP) (usually from November 1 to January 15). Individuals are unable to purchase a policy outside of the OEP unless they qualify for a Special Enrollment Period as outlined in the Center for Medicare and Medicaid (CMS) regulations. The Department of Financial Services receives inquiries from consumers who either needed coverage for a condition outside of the OEP or were looking for a less expensive alternative. Many times, the consumers do not realize the limitations of the policies and that pre-existing conditions are excluded for a stated amount of time. The insurer can rescind a policy if a claim occurs, and it is determined that the individual did not disclose certain health conditions on the application.

Since STLD policies do not have to meet ACA minimum essential coverage requirements, individuals may discover they do not have coverage for services such as maternity, prescription drugs, or mental or behavioral health disorders. Even if the policy provides benefits for a particular service, the policy can contain restrictions for the amount covered or the duration of coverage, leaving individuals with large unpaid medical bills.

Unfortunately, some marketers and agents selling STLD plans use deceptive sales techniques. Individuals are led to believe they are purchasing major medical coverage that complies with ACA requirements for benefits and/or the waiver of pre-existing condition waiting periods. These practices can leave individuals with unpaid medical bills and no way to obtain a major medical policy because the loss of a STLD does not trigger an OEP.

Loss Assessment

Some property insurers are denying loss assessment claims for condominium unit owners when the condominium association takes more than 18 months to assess the unit owners for cost of repairs for hurricane related damages the condo association is responsible for. These insurers argue since the date of the hurricane that caused the damage leading to the assessment is more than 18 months old (beyond the time limit defined in section

627.70132, Florida Statutes), it is considered to not be a peril that is "covered by the policy". This is causing numerous consumers to be denied coverage when they in fact would have had coverage outside of this time limitation. The unit owners have no control over the timing of the assessment as the claim settlements and subsequent repairs may exceed the time frames outlined in section 627.70132, Florida Statutes.

Firework Safety Standards
Currently, the Firework Safety Standards references an outdated edition for the requirements and code of firework displays. The National Fire Protection Association updates the code, but the statute still references the 1995 edition.

Grant and Contract Fraud
Currently, there is no criminal penalty associated with grant and contract fraud against the state. Because there is no criminal penalty, a person who steals from the state would not be prosecuted properly based on the crime committed. Tiffany Carr committed grant and contract fraud against the state. It was revealed Carr was able to cash in more than $7,000,000 of fraudulent paid time off in less than four years. Since the criminal penalty for grant and contract fraud does not exist, law enforcement had to charge Carr with other criminal penalties. Because of this, the case was prolonged and it became more difficult to charge Carr with the appropriate crimes.

Deceptive Advertising
Currently, there is nothing in statute to prevent a person or entity from falsely representing themselves as a bank or lending institution. There have been false representations where consumers have received letters in the mail from what they thought was their "bank", but instead was an entity falsely representing a bank with letterhead impersonating the bank.

III. EFFECT OF PROPOSED CHANGES

Section 1: The section adds the Unclaimed Property Act to the list of civil actions exempt from actions under s. 68.083(2).

Section 2: amends s. 212.134, F.S., to require third party settlement organizations that conduct transactions involving a payee in Florida to create a mechanism for the payee to identify whether a transaction is for goods and services or personal transactions. The bill requires that such payment settlement organizations must include information regarding whether the transaction was for goods and services or for a personal transaction when submitting to the Department of Revenue the information contained in each return filed by such payment settlement organizations regarding participating payees with an address in this state with the Internal Revenue Service pursuant to s. 6050W of the Internal Revenue Code.

Section 3: creates s. 286.312, F.S., to provide that an agency may not enter into a contract or other agreement with an entity whose function is to advise the censorship or blacklisting of news sources based on subjective criteria or political biases under the stated goal of fact-checking or removing misinformation.

Section 4: The section allows a recorded mortgage to be sufficient evidence to define a mobile home as real property. The mobile home would be required to be affixed to the land and connected to public utilities. The section would allow for mortgage lenders, banks, and credit unions to have the opportunity to provide mortgages to mobile homeowners.

Section 5: The section provides a ten day roofing contract cancellation window during a state of emergency issued by the Governor from the date the contract is executed or the "official start date", whichever comes first. The contract would be between a homeowner and a contractor to replace or repair a roof on a residential property. The contract will include a disclosure located above the signature line to notify the consumer of the cancellation window. The disclosure will also detail the official start date and the work that will be commenced on that date. The section requires contractors

to provide this notice with an official state date detailing the work commenced and if that requirement is not met, the homeowner may void their contract from the original ten days following the execution of the contract. The section puts the requirement on the homeowner to send the notice of cancellation to the contractor and provides the required method of delivery.

Section 6: The section updates the definition of depository institutions to include entities outside the State of Florida, including any other state, district, or territory outside of the United States.

Section 7: The section creates continuing education requirements for CPA's who are auditing insurers. The continuing education would only be required for a CPA that conducts insurance audits and is licensed through chapter 473. The CPA would be required to have completed at minimum four hours of continuing education that is insurance-related in nature. The insurance-related courses are developed and approved by the Department of Business and Professional Regulation. The Department of Financial Services will collaborate with the Department of Business and Professional Regulation on developing and approving insurance-related courses.

Section 8: The section amends subsection 626.854(19), Florida Statutes, providing that subsection (11) also applies to coverages provided by condominium association, cooperative association, apartment buildings ad similar policies, including policies covering the common elements of a homeowners' association, resulting in the statutory fee limits for the commercial residential policies to be the same as those charged to the residential and condominium unit policyholders. Additionally, no fees for the deductible portion of the claim can be charged to the commercial residential policyholders.

Section 9: The section amends subsection 627.8796(2) requiring all public adjuster contracts to contain the license number of the public adjusting firm.

Section 10: The section amends subsection 627.6426(2), Florida Statutes, adding requirements for individual health insurance issuers of short-term limited duration policies to provide written disclosures and obtain the signature of the purchaser at the time of purchase. In addition to the current required statement, insurers must provide a disclosure that displays the following minimum information: the duration of the contract, including waiting period, any essential health benefit under 42 U.S.C. s. 18022(b) that the contract does not provide, the content of coverage, and any exclusion of pre-existing conditions.

Subsection (3) requires for the disclosure to be printed in no less than 12-point type and in a color that is readable. A copy of the signed disclosures must be maintained by the issuer for a period of 5 years after the date of purchase. Subsection (4) states that disclosures provided by electronic means must meet the requirements of section 627.6426(2), Florida Statutes.

Section 11: amends s. 627.70132, F.S., to provide that a notice of claim from a condominium unit owner resulting from a loss assessment for loss assessment coverage under s. 627.714, F.S., must be given to the insurer within 90 days after the date on which the condominium association or its governing board votes to levy an assessment to cover a shortfall in reserves due to a covered loss. Such vote by the association or its governing board must have occurred within 33 months after the date of the loss that created the need for the assessment. If the condominium association votes to levy an assessment more than 9 months after the underlying loss – for example a hurricane or tornado – that gives rise to the assessment, the bill will expand the time frame for filings a loss assessment claim with an insurer, which is one year after such weather-related event. If, however, the vote was taken within the first nine months following the storm, the unit owner would need to file the notice prior to the expiration on the one-year period under current law.

Section 12: The section updates a reference to the National Fire Protection Association Edition for the display of fireworks from the 1995 edition to the 2018 edition.

Section 13: The section creates criminal penalties associated with grant and contract fraud. The section creates criteria to charge a person committing grant or contract fraud. It creates penalties associated with the crime based on the value of property stolen. The section applies to all grant agreements, state contracts, and other agreements with the state no matter where the funds are being provided from.

Section 14: The section prohibits any person or entity from making communications, advertisements or solicitations that falsely represent themselves or their entity with a bank or lending institution. The section encompasses communications and advertisements and statements that are oral, written, electronic and printed.

Section 15: The section creates a penalty for the crime in section 15. If any person or entity makes a communications, advertisements or solicitations that falsely represents themselves or their entity as a bank or lending institution, they have committed a misdemeanor of the first degree.

IV. DOES THE BILL DIRECT OR ALLOW THE DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? **Y☐ N☒**

If yes, explain:	
Is the change consistent with the agency's core mission?	**Y☐ N☐**
Rule(s) impacted (provide references to F.A.C.):	

V. DOES THE BILL REQUIRE REPORTS OR STUDIES? **Y☐ N☒**

If yes, provide a description:	
Date Due:	
Bill Section Number(s):	

VI. DOES THE BILL REQUIRE APPOINTMENTS OR MODIFY EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC.? **Y☐ N☒**

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

I. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	
Expenditures:	

II. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☒

Revenues:	
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

III. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	Due to s. 319.261, mortgage lenders, banks, and credit unions would benefit financially because it would expand their ability to provide mortgages to homeowners. Mobile home makers as well as land developers and assemblers will all have expanded market access as consumers have more choice in their financing. Due to s. 626.854, some public adjusters may see a reduction to their fees for claims adjusted on behalf of condominium association policies if they are currently basing their fees off the deductible for a condo association policy or charging more than the applicable fee limits set in subsection 626.854(11), Florida Statutes. Due to s. 627.6426, short-term limited duration health insurers may experience a decrease in sales of these policies with the additional information provided to consumers.
Expenditures:	Due to s. 627.6426, consumers will experience fewer surprise bills for treatments they thought were covered, but were not. Due to s. 627.711, there would be less expenditures for insurance.
Other:	

IV. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	
Bill Section Number:	

TECHNOLOGY IMPACT

I. DOES THE BILL IMPACT THE DEPARTMENT'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.	

FEDERAL IMPACT

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

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	A. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations? No B. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitutions (e.g. separation of powers, access to the courts, equal protection, free speech, establishment clause, impairment of contracts)? No C. Is the proposed legislation likely to generate litigation and, if so, from what interest groups or parties? No D. Rules: None

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 1252

INTRODUCER: Senator Collins

SUBJECT: Exemptions from Products Liability Actions

DATE: Febuary 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			AG	
3.			RC	

I. Summary:

SB 1252 provides that a distributor, dealer, or applicator of pesticides may not be sued in a product liability action unless such persons are at fault for harm resulting from a defective pesticide product. The type of conduct that would make a distributor, dealer, or applicator of pesticides at fault for a defective pesticide product is limited to:

- Exercising substantial control over the aspect of the design, testing, manufacture, or labeling that led to the personal injury;
- Altering or modifying the product and the alteration or modification was a substantial factor in causing the injury;
- Acting inconsistently with the manufacturer's product label and such action caused the injury.

However, a distributor, dealer, or applicator will remain subject to liability without fault for products whose manufacture is not subject to the jurisdiction of the courts of this state. Manufacturers will also remain liable for any defects in a pesticide product.

A product liability action is a type of strict liability action in which every party in the chain of distribution of a product can be held liable for harm caused by defects in the product regardless of the party's fault.

The bill is effective July 1, 2024.

II. Present Situation:

Florida Pesticide Law

The sale and use of pesticides is governed by the Florida Pesticide Law.[1] The purpose of the law is to regulate the distribution, sale, and use of pesticides and to protect people and the environment from the adverse effects of pesticides. Pesticides are "inherently dangerous" and safety gains related to pesticides are achieved not through modifying a pesticide's design, but by improving the warnings and instructions contained on its label.[2] The law does not apply to mosquito control or to pest control services.[3]

Product Liability Law

Product liability refers to a civil tort action against a manufacturer or retailer of goods that cause damages. Product liability law is primarily set forth in the common law, not statutory law. There are two forms of product liability--negligence and strict liability.

Product liability negligence is the failure to use reasonable care, which is the care that a reasonably careful designer, manufacturer, seller, importer, distributor, or supplier would use under like circumstances. Negligence is doing something that a reasonably careful designer, manufacturer, seller, importer, distributor, or supplier would not do under like circumstances or failing to do something that a reasonably careful designer, manufacturer, seller, importer, distributor, or supplier would do under like circumstances.[4] Reasonable care requires that a designer, manufacturer, seller, importer, distributor, or supplier give appropriate warnings about particular risks of the product which the designer, manufacturer, seller, importer, distributor, or supplier knew or should have known are involved in the reasonably foreseeable use of the product.[5]

"A strict product liability action requires the plaintiff to prove that (1) a product (2) produced by a manufacturer (3) was defective or created an unreasonably dangerous condition (4) that proximately caused (5) injury."[6] A product is defective because of a manufacturing defect if it is in a condition unreasonably dangerous to the user or to a person in the vicinity of the product and the product is expected to and does reach the user or consumer without substantial change affecting that condition. A product is unreasonably dangerous because of a manufacturing defect if it is different from its intended design and fails to perform as safely as the intended design would have performed.

A product is defective because of a design defect if it is in a condition unreasonably dangerous to the user or to a person in the vicinity of the product and the product is expected to and does reach the user without substantial change affecting that condition. A product is unreasonably

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[1] Part I of ch. 487, F.S.
[2] *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 450 (2005).
[3] Section 487.012, F.S.
[4] Fla.Std. Jury Instruction 403.9.
[5] Fla.Std. Jury Instruction 403.10.
[6] *Hernandez v. Altec Env't Prod., LLC*, 903 F. Supp. 2d 1350, 1357 (S.D. Fla. 2012); *Tran v. Toyota Motor Corp.*, 420 F.3d 1310, 1312 (11th Cir. 2005); *McCorvey v. Baxter Healthcare Corp.*, 298 F.3d 1253, 1257 (11th Cir. 2002).

dangerous because of its design if the product fails to perform as safely as an ordinary consumer would expect when used as intended or when used in a manner reasonably foreseeable by the manufacturer, or if the risk of danger in the design outweighs the benefits.[7] A product is defective when the foreseeable risks of harm from the product could have been reduced or avoided by providing reasonable instructions or warnings, and the failure to provide those instructions or warnings makes the product unreasonably dangerous.[8]

In most instances the manufacturer of the item that caused the injury is liable for its negligent design and/or negligent manufacturing. However, the wholesaler and/or retailer may also be found liable, and thus is commonly named as a defendant in the action. "One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to [strict] liability for harm to persons or property caused by the defect."[9] The wholesaler or retailer need not have taken any action that would be considered negligent, the mere act of selling the product leads to strict liability.

Jurisdiction

When a court has jurisdiction over a person or entity, the court has authority to enter orders and judgments that are binding and enforceable. Clearly, a Florida court has jurisdiction over Florida citizens and Florida-based entities. Florida law asserts jurisdiction over a broad range of individuals and entities, providing that commission of any of these acts relevant to the bill submits a person to the jurisdiction of the state:

- Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
- Committing a tortious act within this state.
- Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either: a. The defendant was engaged in solicitation or service activities within this state; or b. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.[10]

The state's assertion of jurisdiction exposes defendants to the state's coercive power, and is therefore limited by the Fourteenth Amendment's Due Process Clause.[11] Court opinions have differentiated between general or all-purpose jurisdiction, and specific or case-linked jurisdiction.[12] A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the

[7] Fla.Std. Jury Instruction 403.7.
[8] Fla.Std. Jury Instruction 403.8.
[9] Restatement (Third) of Torts: Prod. Liab. § 1 (1998). See also *West v. Caterpillar Tractor Co.*, 336 So.2d 80, 84 (Fla. 1976).
[10] Section 48.193(1)(a), F.S.
[11] *Goodyear Dunlop Tires Operations, S. A. v. Brown*, 564 U.S. 915 (2011); *International Shoe Co. v. Washington*, 326 U. S. 310, 316 (1945) ("assertion of jurisdiction over out-of-state corporation must comply with traditional notions of fair play and substantial justice").
[12] *Goodyear*; *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U. S. 408, 414, nn. 8, 9 (1984).

state are so "continuous and systematic" as to render them essentially at home in the forum state.[13] Specific jurisdiction, on the other hand, depends on an "affiliatio[n] between the forum and the underlying controversy," principally, activity or an occurrence that takes place in the forum state and is therefore subject to the state's regulation.[14] In contrast to general, all-purpose jurisdiction, specific jurisdiction is confined to adjudication of "issues deriving from, or connected with, the very controversy that establishes jurisdiction."[15]

III. Effect of Proposed Changes:

The bill provides that a products liability action, including a failure to warn, may not be brought or maintained against any distributor[16], dealer[17], or applicator[18] of pesticides unless:

- The distributor, dealer, or applicator exercised substantial control over the aspect of the design, testing, manufacture, or labeling of the product that caused the alleged harm for which recovery of damages is sought;
- The distributor, dealer, or applicator altered or modified the product, and the alteration or modification was a substantial factor in causing the alleged harm for which recovery of damages is sought;
- The distributor, dealer, or applicator handled, used, or applied the product in a manner inconsistent with the product label and that such action or failure to warn caused the alleged harm for which recovery of damages is sought; or
- The manufacturer of the product that caused the alleged harm for which recovery of damages is sought is not subject to the jurisdiction of this state.

In effect, the bill provides that, as to pesticides, a wholesaler or retailer cannot be sued under a strict liability theory of product liability law, but only under a negligence theory. However, this does not apply, and a wholesaler or retailer may be liable in strict liability, if the manufacturer is not subject to the jurisdiction of this state.

The bill is effective July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[13] See *International Shoe*, 326 U. S., at 317.
[14] *Goodyear*; von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 HARV. L. REV. 1121, 1136 (1966) see Brilmayer et al., *A General Look at General Jurisdiction*, 66 TEXAS L. REV. 721, 782 (1988).
[15] *Goodyear*
[16] A "distributor" is defined by s. 487.021(24), F.S., as "any person who offers for sale, holds for sale, sells, barters, or supplies pesticides in this state." Section 487.021(24), F.S.
[17] A "dealer" is defined by s. 487.021(17), F.S., as "any person, other than the manufacturer or distributor, who offers for sale, sells, barters, or otherwise supplies pesticides to the ultimate user or consumer."
[18] The term "applicator" in ch. 487, F.S., is widely used but not specifically defined. It appears to apply to a number of persons licensed to apply pesticides, specifically one of the following as the context requires: "certified applicator," s. 487.021(14), F.S.; "commercial applicator," s. 487.021(16); "licensed applicator," s. 487.021(41), F.S.; "private applicator," s. 487.021(52), F.S.; "public applicator," s. 487.021(55), F.S.; or "product specific applicator," s. 487.021(56), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may lower liability costs and expenses of retailers and wholesalers of pesticides who do not modify the products prior to retail sale, and may correspondingly increase liability costs and expenses of the manufacturers of pesticides. This may impact injured parties to the extent that responsibility for payment of damages may be limited to parties who, in some circumstances, may be less able to satisfy a judgment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 487.081 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Collins

14-01059-24 20241252__

A bill to be entitled

An act relating to exemptions from products liability actions; amending s. 487.081, F.S.; specifying circumstances under which products liability actions may not be brought against distributors, dealers, or applicators of pesticides; providing an effective date.

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

Section 1. Subsection (7) is added to section 487.081, Florida Statutes, to read:

487.081 Exemptions.—

(7) A products liability action, including a failure to warn, may not be brought or maintained against any distributor, dealer, or applicator unless:

(a) The distributor, dealer, or applicator exercised substantial control over the aspect of the design, testing, manufacture, or labeling of the product that caused the alleged harm for which recovery of damages is sought;

(b) The distributor, dealer, or applicator altered or modified the product, and the alteration or modification was a substantial factor in causing the alleged harm for which recovery of damages is sought;

(c) The distributor, dealer, or applicator handled, used, or applied the product in a manner inconsistent with the product label and that such action or failure to warn caused the alleged harm for which recovery of damages is sought; or

(d) The manufacturer of the product that caused the alleged

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

14-01059-24 20241252__

harm for which recovery of damages is sought is not subject to the jurisdiction of this state.

Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1316

INTRODUCER: Senator Berman

SUBJECT: Florida Uniform Fiduciary Income and Principal Act

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Pre-meeting**
2.			BI	
3.			RC	

I. Summary:

SB 1316 replaces the current Florida Uniform and Principal Income Act with the Florida Uniform Fiduciary Income and Principal Act. The provisions in this bill, which are found in ch. 738, F.S., govern the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for the allocation. The new act, or FUFIPA, would, in addition to modernizing trust law generally:

- Allow for total-return investing under the "modern portfolio theory."
- Provide for the conversion of an existing trust into a unitrust.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

The bill takes effect January 1, 2025.

II. Present Situation:

Background

Trusts

A trust is a relationship in which one party, the settlor,[1] gives another party, the trustee, the right to hold title to the settlor's assets for the benefit of a third party, the beneficiary. A trust may be created and take effect during a settlor's lifetime, which is known as a living trust, or may be created by a will and take effect when the settlor dies, which is known as a testamentary trust.[2]

A trust may be revocable, so that the terms may be changed at any time before the settlor dies, or irrevocable, so that the terms cannot be modified after the trust is created unless the beneficiaries

[1] "Settlor" means a person, including a testator, who creates or contributes property to a trust. Section 736.0103(18), F.S.
[2] *See* "inter vivos trust" and "testamentary trust," Black's Law Dictionary (11th ed. 2019).

consent to the modifications.[3] Most trusts are generally governed by the Florida Trust Code, codified in chapter 736, F.S. However, additional provisions of Florida law may apply if the trust has special attributes.

Uniform Fiduciary Income and Principal Act

Traditionally, many trust beneficiaries were entitled to receive either income earned by trust investments, referred to as an income beneficiary or a share of trust principal when an income interest ended, which is referred to as a remainder beneficiary.[4] In this scenario, the trustee's allocation of receipts and disbursements to income or principal had a direct effect on a beneficiary's financial interests, and thus the financial interests of an income beneficiary were often at odds with those of the remainder beneficiary.[5]

In 1931, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission, or ULC,[6] adopted the first Uniform Principal and Income Act which was referred to as the UPIA. In pertinent part, UPIA governed the allocation of trust and estate receipts and disbursements between income and principal where the terms of the trust or will did not provide for the allocation or give the fiduciary a discretionary power of administration. Forty-seven states, including Florida, subsequently adopted some form of UPIA. Florida's version, adopted in 2002 and known as the Florida Uniform Principal and Income Act or FUPIA, is codified in ch. 738, F.S.

However, in recent decades, the distinction between income and principal has lost some significance, for two reasons. First, the "modern portfolio theory" allows trustees to invest for the maximum total return, whether the return is in the form of income or principal growth.[7] This has led to the rise in popularity of the "unitrust," which trust allows the income beneficiary to receive income from the trust at a set percentage of the trust's fair market value while the remainder beneficiary receives a fair disbursement after the income interest ends, thereby reducing the likelihood that the financial interests of the income beneficiary and the remainder beneficiary will be at odds.[8] In other words, under a unitrust, both the income beneficiary and remainder beneficiary benefit from an increase in the value of a trust's assets.[9] Second, modern

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[3] Greg Depersio, Investopedia (Apr. 30, 2023), Revocable Trust v. Irrevocable Trust: What's the Difference, https://www.investopedia.com/ask/answers/071615/what-difference-between-revocable-trust-and-living-trust.asp (last visited Jan. 31, 2024).

[4] For example, a trust may require that all trust income be distributed to the settlor's surviving spouse, but that trust principal be held and accumulated for the settlor's surviving children, to be paid after the surviving spouse's death. Uniform Law Commission, *The Uniform Fiduciary Income and Principal Act: A Summary*, https://www.uniformlaws.org/viewdocument/enactment-kit-74?CommunityKey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c&tab=librarydocuments (last visited Jan. 25, 2024).

[5] *Id*.

[6] The NCCUSL is an association of commissioners appointed by each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands, that discusses and debates which areas of the law require uniformity among the states and territories and drafts uniform acts accordingly. Legal Information Institute, *National Conference of Commissioners on Uniform State Laws*, https://www.law.cornell.edu/wex/national_conference_of_commissioners_on_uniform_state_laws_(nccusl) (last visited Jan. 25, 2024).

[7] Uniform Law Commission, *supra* note 4.

[8] *Id.;* Rod Fluck, *What is a Unitrust and Why is it Used*, http://buteralaw.com/newsletters/estate/what-is-a-unitrust-and-why-is-it-used/ (last visited Jan. 25, 2024).

[9] Fluck, *supra* note 8.

trusts are often drafted with more flexible terms, thereby giving trustees discretion to accumulate income or invade principal when advantageous to further the trust's overall purposes.[10]

In 2018, the ULC adopted the Uniform Fiduciary Income and Principal Act (UFIPA) to account for these developments, provide additional flexibility in tailoring individual trusts to meet a settlor's specific needs, provide for the conversion of older trusts into unitrusts, and provide a governing law section to help avoid jurisdictional disputes.[11] Seven states have since enacted some form of UFIPA.[12]

In response to UFIPA's adoption, the Real Property, Probate and Trust Law Section of The Florida Bar asked its Principal and Income Committee to review UFIPA and consider whether Florida should adopt the new model law. The Committee ultimately proposed a revision to FUPIA, known as the Florida Uniform Fiduciary Income and Principal Act (FUFIPA), that would incorporate UFIPA language wherever possible while preserving certain public policy choices found in existing Florida law that continue to make sense for the state.

III. Effect of Proposed Changes:

SB 1316 codifies FUFIPA into ch. 738, F.S., replacing FUPIA as the law governing the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for such an allocation. FUFIPA would, in addition to modernizing Florida trust law generally:

- Allow for total-return investing under the "modern portfolio theory."
- Further develop the unitrust concept to promote uniformity among the states.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

Definitions

The bill revises s. 738.102, F.S., to modify existing definitions and provide new definitions to incorporate UFIPA terminology and concepts. Under the bill, the definitions of "accounting period," "income," "mandatory income interest," and "person" remain unchanged, while definitions for new terms, including "court," "estate," "personal representative," and "record," were added without impacting current policy. However, the bill modifies the following definitions in a substantive way:

- "Beneficiary" is redefined to distinguish between current income beneficiaries and current remainder beneficiaries, as well as to encompass persons holding life estates or term interests.
- "Fiduciary" is broadened to apply not only to the personal representative and trustee, as under current law, but also to those with a power to direct, those under a fiduciary's delegation, and those holding property for a successor beneficiary who may be impacted by principal or income allocations.

[10] Uniform Law Commission, *supra* note 4.
[11] *Id*.
[12] Uniform Law Commission, *supra* note 4.

- "Income interest" is redefined as a right of a current income beneficiary and includes a current beneficiary's use of property held by a fiduciary.
- "Net income" is broadened to include application to a unitrust and an adjustment from principal to income.
- "Principal" is modified from meaning that which is distributed to a remainder beneficiary to that which is held for distribution to, for production of income for, or for use by, a current or successor beneficiary.
- "Terms of the trust" is broadened to extend to wills, life estates, and term interests, and thus more closely follows the definition of the term in the Florida Trust Code.

Additionally, the bill adds the following new definitions, which modify Florida law in a substantive way:

- "Distribution," means a payment or transfer by a fiduciary to a beneficiary in the beneficiary's capacity as a beneficiary, without consideration other than the beneficiary's right to receive the payment or transfer under the terms of the trust, will, life estate, or term interest.
- "Independent person," means a person that is not:
  - For a trust, a qualified beneficiary; a settlor; an individual whose legal obligation to support a beneficiary may be satisfied by a trust distribution; or any trustee whom an interested distributee may remove and replace with a related or subordinate party.
  - For an estate, a beneficiary; a spouse, parent, brother, sister, or issue of specified persons; a corporation, partnership, limited liability company, or other entity in which specified persons have voting control; or an employee of a specified person.
- "Personal representative," means an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person's status.
- "Record," means information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
- "Settlor," means a person, including a testator, that creates or contributes property to a trust.
- "Special tax benefit," means the annual gift tax exclusion,[13] qualified subchapter S status,[14] federal marital tax deduction,[15] and generation-skipping transfer tax exemption.[16]
- "Successive interest," means the interest of a successor beneficiary.

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[13] The Internal Revenue Service allows individuals to give away up to a specific amount of assets each year tax-free under the annual gift tax exclusion. Jean Gordon Carter and Janice L. Davies, Gift Tax, *the Annual Exclusion and Estate Planning*, https://www.actec.org/resource-center/video/gift-tax-the-annual-exclusion-and-estate-planning/ (last visited Jan. 25, 2024).

[14] A trust with qualified subchapter S status is eligible to own stock in an S corporation. A settlor can use this type of trust to make a gift of all or a part of the S corporation stock and retain voting power while the beneficiary receives the income and the tax burden. Rebecca C. Bowen, *Trusts as Eligible Shareholders of an S Corporation*, https://www.t-mlaw.com/commentary/trusts-as-eligible-shareholders-of-an-s-corporation/ (last visited Jan. 25, 2024).

[15] The Internal Revenue Service allows a spouse to leave property of unlimited value to his or her surviving spouse tax-free. Such assets may be distributed by a direct transfer from the decedent to the surviving spouse or by an indirect transfer to a qualifying trust for the surviving spouse's benefit. Peter B. von Stein, *Basic Estate Tax Planning for Married Couples: Opportunities for Use of Estate Tax Exemptions*, https://www.wardandsmith.com/articles/basic-estate-tax-planning-married-couples-use-estate-tax-exemptions (last visited Jan. 25, 2024).

[16] The generation-skipping transfer tax is a federal tax on a gift or an inheritance that prevents the donor from avoiding estate taxes by skipping over children in favor of grandchildren. However, the Internal Revenue Service allows a person to give up to a certain amount to a qualified recipient to avoid this tax. Troy Segal, *What is the Generation-Skipping Transfer Tax*, Investopedia (Feb. 7, 2023), https://www.investopedia.com/terms/g/generation-skipping-transfer-tax.asp (last visited Jan. 25, 2024).

- "Successor beneficiary," means a person entitled to receive income or principal or to use property when an income interest or other current interest ends.
- "Trust," means an express trust, whether private or charitable, with additions to the trust, wherever and however created, and a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
- "Trustee," means a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary.
- "Will," means any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual's property, effective at the individual's death, and includes a codicil or other amendment to a testamentary instrument.

Scope

The bill amends s. 738.103, F.S., to provide FUFIPA's scope. Specifically, the bill states that, except as otherwise provided by the terms of a trust or FUFIPA, FUFIPA applies to a trust or estate and to a life estate or other term interest in which someone's interest will be succeeded by another's interest under s. 738.508, F.S.

Governing Law

The bill adds a new governing law provision to renumbered s. 738.104, F.S. Specifically, the bill provides that, if the principal place of administration of a trust or estate or the situs of property not held in trust or an estate is Florida, the trustee is governed by FUFIPA, except as otherwise provided in the terms of the trust or elsewhere in that chapter.

General Principles of Fiduciary Duties

The bill renumbers from s. 738.103, F.S., to s. 738.201, F.S., a provision setting forth a trustee's fiduciary duties, including the duty to administer a trust or estate impartially based on what is fair and reasonable to all beneficiaries. Current law also establishes the general principles for allocating receipts and disbursements to or between principal and income, specifying that, generally speaking, receipts and disbursements be allocated to principal, and establishes a presumption that a determination made in accordance with ch. 738 is fair and reasonable.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:
- Incorporates the revised definition of "terms of the trust."
- Adds an express requirement that a fiduciary act in good faith.
- Requires a fiduciary to add undistributed income to principal within a specified time period.
- Incorporates the factors currently set out in s. 738.104(2), F.S., applicable in exercising the adjustment power, and making such factors applicable to all fiduciary decisions under FUFIPA.

The factors incorporated from s. 738.104(2), F.S., remain largely the same as in current law, except that the bill substitutes the objective "terms of the trust" factor for the subjective "intent of the grantor" factor, in keeping with changes made by UFIPA.

Judicial Review

The bill renumbers from s. 738.105, F.S., to s. 738.202, F.S., a provision governing judicial review of a trustee's exercise of or failure to exercise any discretionary power under FUFIPA, as it relates to a decision to transfer principal to income, or vice versa. Under current law, a court may not determine that a trustee abused its discretion merely because the court would have exercised the discretion differently, but, once an abuse of discretion is found, the court must take certain actions to restore the beneficiaries to the positions they would have been in had the trustee not abused its discretion.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:

- Updates the term "trustee" in this provision to "fiduciary," thus broadening this section's scope.
- Defines "fiduciary decisions" to expressly include the fiduciary's allocation between income and principal and the exercise or failure to exercise any power under FUFIPA.
- Expressly adds to the remedies available when a fiduciary abuses his or her discretion "all remedies authorized by law," including remedies and damages for breach of trust as set out in the Florida Trust Code in ss. 736.1001 and 736.1002, F.S.
- Removes an unnecessary provision prohibiting the court from substituting its discretion for that of the fiduciary.

Fiduciary's Adjustment Powers

The bill renumbers from s. 738.104, F.S., to s. 738.203, F.S., a provision authorizing a trustee to adjust between income and principal if specified conditions are met, including the consideration of enumerated factors, and a determination that an adjustment is necessary to administer the trust impartially, based on what is fair and reasonable. Under current law, a trustee is prohibited from exercising the adjustment power under certain circumstances where adverse tax consequences would result but may release all or part of the power for any time period. Further, current law expressly negates any inference of impropriety simply because a trustee declines to exercise the power.

The bill makes several changes to current law. Specifically, the bill:

- Expands the scope of this section from trustees to all fiduciaries.
- Relocates the conditions limiting when a fiduciary may adjust between principal and income to a different section, making such conditions applicable to all fiduciary decisions.
- Replaces the standard of "impossibility" with a standard of "assistance," thereby authorizing a fiduciary to exercise the adjustment power if the fiduciary determines that doing so will assist the fiduciary in administering the trust or estate impartially.
- Authorizes the appointment of a co-fiduciary to exercise the adjustment power under specified circumstances.
- Includes a presumption that a release or delegation of the adjustment power is permanent under specified circumstances, such as when a co-fiduciary is appointed.
- Clarifies that the exercise of the adjustment power may apply to the immediately preceding period, current period, and one or more subsequent periods.

- Adds new accountability procedures, including a requirement that the exercise of the adjustment power be included in the annual accounting report or communicated at least annually to the trust's qualified beneficiaries.

Unitrusts

The bill replaces s. 738.1041, F.S., which specifically authorizes the express creation of a unitrust, provides that the unitrust amount is considered to be the trust's net income for purposes of allowing or requiring income distributions, and provides for the conversion of an income trust to a unitrust, or vice versa, with ss. 738.301-738.310, F.S.

The bill makes several changes to current law. Specifically, the bill:
- Separates provisions relating to unitrusts into distinct sections, making them more visible.
- Specifies that these sections apply to estates only where a trust is a beneficiary of an estate.
- Adds definitions applicable to a unitrust, including "applicable value," "express unitrust," "net fair market value of a trust," "unitrust," "unitrust policy," and "unitrust rate."
- Modernizes but does not substantially alter provisions relating to a fiduciary's authority and duties as they relate to unitrusts; the method for determining the unitrust rate; and the method for determining an asset's fair market value for the purpose of determining the unitrust amount.
- Ensures that the unitrust provisions remain within the IRS safe harbor of 3 – 5 percent. However, flexibility is included in that trusts may be drafted outside of this range.

Character of Receipts

The bill amends s. 738.401, F.S., which currently characterizes receipts from entities, applies a "lookback period"[17] of unlimited duration, and establishes rules applicable to receipts from public entities; provisions regarding private trustees administering investment entities; treating as principal money received from specified sources; and treating as income dividends a fiduciary elects to reinvest. Current law favors objective calculations over the exercise of fiduciary discretion in such matters.

The bill modifies current law by:
- Limiting the lookback period to three accounting periods to simplify trust administration.
- Restructuring the law to more closely match UFIPA's overall organization.
- Amending or adding definitions, including "capital distribution," "entity," and "entity distribution," to clarify certain concepts incorporated into this section.

Allocations

Deferred Compensation Accounts, Annuities, and Similar Arrangements

The bill renumbers from s. 738.602, F.S., to s. 738.409, F.S., a section of law characterizing receipts from deferred compensation accounts, annuities, and other similar arrangements. Under current law, the "income of the fund" is determined in a specified manner, and the amount is

[17] Florida's "lookback period" applies a portion of large receipts to income, at a rate of 3 percent per year.

compared to payments actually received from the fund; the lesser of such amounts is then allocated to income, while the remainder is allocated to principal.

The bill modifies this section by:

- Changing the phrase "income of the fund" to the more customary "internal income."
- Adding an accounting period concept to balance the allocation of intra-period receipts between principal and income.
- Specifically authorizing fiduciaries to transfer assets from principal to income as necessary to fully fund the internal income of the fund and distribute such income to the beneficiary.

Minerals, Water, and Other Natural Resources

The bill renumbers from s. 738.604, F.S., to s. 738.411, F.S., a provision allocating receipts from an interest in minerals, water, or other natural resources as 90 percent to principal and ten percent to income. The bill modifies this section by removing the 90/10 allocation standard and replacing it with a fact-specific standard.

Marital Deduction Property Not Productive of Income

The bill renumbers from s. 738.606, F.S., to s. 738.413, F.S., a provision providing a safe harbor to ensure that a trust intending to qualify for the estate tax marital deduction allows the surviving spouse to require the trustee to make property income-producing where the trust assets do not otherwise provide the spouse with sufficient income to qualify for the deduction. Current law also allows the surviving spouse to require the trustee to make property income-producing where trust assets have been used in whole or in part to satisfy the spouse's elective share under s. 732.2125, F.S.,[18] and the property, in the aggregate, does not provide the spouse with sufficient income.

The bill substantially preserves current law but provides that this section may be overridden only if the terms of the trust explicitly reference this section.

Derivatives and Options

The bill renumbers from s. 738.607, F.S., to s. 738.414, F.S., a provision providing for the allocation of all amounts received from derivatives and options to principal. The bill also modifies this section to provide for the allocation of 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction to income, with the remaining balance allocated to principal.

Asset-Backed Securities

The bill renumbers from s. 738.608, F.S., to s. 738.415, F.S. a provision for the allocation of payments received in exchange for the trust's or estate's entire interest in an asset-backed security[19] during a single accounting period entirely to principal. Current law also provides that, for payments that are part of a series of payments that will result in the liquidation of the trust's

[18] This section allows the surviving spouse of a decedent to claim up to 30 percent of the decedent's estate, regardless of the terms of the decedent's will. Practically speaking, this prevents a surviving spouse from being disinherited and potentially left destitute.
[19] Under current law, an "asset-backed security" is an asset, the value of which is based upon the right given to the owner to receive distributions from the proceeds of financial assets that provide collateral for the security.

or estate's interest in the security over more than a single accounting period, the fiduciary must allocate 10 percent of the payment to income and the balance to principal.

The bill modifies the definition of an "asset-backed security" to more closely align with the definition used by the Securities and Exchange Commission and extends the 90/10 distribution rule to all receipts from or related to such a security.

Other Financial Instruments or Arrangements

The bill creates s. 738.416, F.S., to be a "catch-all" provision for the allocation of receipts and disbursements arising from or related to financial instruments or arrangements not specifically mentioned in FUFIPA. Under the bill, allocation must be 90 percent to principal and 10 percent to income, making the allocation standard the same as for derivatives, options, and asset-backed securities.

Disbursements

Disbursements from Income and Principal

The bill amends s. 738.501, F.S., which currently directs that one-half of certain forms of compensation and expenses be disbursed from income, along with all of the ordinary expenses incurred in connection with a trust property that primarily concerns the income interest.

The bill modifies this section to address what happens where there is insufficient income to disburse the full amount charged and to give the fiduciary the discretion to disburse specified amounts charged if the fiduciary is an independent person and the disbursement would be in the beneficiaries' interest.

The bill also amends s. 738.502, F.S., which currently directs that the remaining one-half of certain forms of compensation and expenses be disbursed from principal, along with all of the trustee's compensation for preparing property for sale; payments on the principal of trust debt; and expenses of proceedings that primarily concern trust principal.

The bill modifies this section to provide that principal must be disbursed in an amount equal to the remaining balance of the compensation and expenses provided for in s. 738.501, F.S., and to allow a fiduciary to use income to disburse the balance of those amounts charged to income before using principal. Further, the bill incorporates certain tax provisions found elsewhere in current law into this section.

Transfers from Income to Principal for Depreciation

The bill amends s. 738.503, F.S., which currently allows a fiduciary to transfer a reasonable amount of the net cash receipts from a principal asset from income to principal, subject to depreciation to such principal, with restrictions.
The bill substantially preserves current law, with three exceptions. Specifically, the bill:

- Replaces the term "fixed asset" with the term "tangible asset" to conform to changes made elsewhere in FUFIPA.
- Excludes depreciation for assets accounted for as a liquidating asset.

- Removes a safe harbor specifying that any amount of depreciation taken for an asset must be presumed to be a reasonable amount of depreciation.

Reimbursements

The bill amends s. 738.504, F.S., which currently relates to allocations from insurance policies and similar contracts, to create a provision authorizing a fiduciary to reimburse income from principal. This reimbursement is not presently authorized under Florida law.

The bill also renumbers from s. 738.704, F.S., to s. 738.505, F.S., a provision authorizing a fiduciary to transfer an appropriate amount of income to principal to either reimburse or provide a reserve in specified situations. The bill modifies this section by clarifying that, when a current income interest of a principal asset ends and a successive income interest remains, the fiduciary may continue to transfer those appropriate amounts from income to principal as specified in this section. The bill also authorizes fiduciaries to transfer an appropriate amount from income to principal for the cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, and for a periodic payment on an obligation secured by a principal asset, in specified circumstances.

Income Taxes

The bill renumbers from s. 738.705, F.S., to s. 738.506, F.S., a provision specifying that, with respect to income tax, the fiduciary must disburse from income those amounts allocated to income and from principal those amounts allocated to principal. Current law also specifies that the same allocation rules must be followed on the trust's or estate's share of an entity's taxable income, except that principal must be used to disburse amounts exceeding total receipts from the entity; however, the fiduciary must also adjust income or principal receipts, pursuant to a specified formula, to the extent the trust's or estate's income taxes are reduced, but not eliminated, due to a deduction for beneficiary payments.

The bill substantially retains current law but makes several changes. Specifically, the bill:

- Removes the phrase "but not eliminated," because it created confusion.
- Removes the formula outlining the amount distributable to a beneficiary.
- Adds a mechanism that allows a fiduciary to reimburse the settlor of a "grantor trust"[20] for income taxes paid, either from income or principal.

Adjustments Between Principal and Income Because of Taxes

The bill renumbers from s. 738.706, F.S., to s. 738.507, F.S., a provision authorizing a fiduciary to adjust between principal and income to offset the shifting of economic interests or tax benefits between income and remainder beneficiaries due to elections and decisions made by a fiduciary; a tax imposed on the fiduciary or beneficiary due to a distribution from the trust or estate; or the taxable income of an entity owned by the trust or estate includable in the taxable income of the trust, estate, or beneficiary. This section also provides that, when an estate tax marital deduction or charitable contribution deduction is reduced due to a fiduciary deducting an amount paid from

[20] A "grantor trust" is a type of trust that allows the settlor, in this case known as the "grantor," to retain some control over trust assets. For tax purposes, the grantor is considered the owner of the trust and is liable for any taxes on trust income. Christopher R. Callahan and Scott M. Snyder, *Foreign Grantor Trust Planning: A Flexible Planning Structure for U.S. Income Tax*, Fla. Bar Journal Vol. 97, No. 6 (Nov./Dec. 2023), https://www.floridabar.org/the-florida-bar-journal/foreign-grantor-trust-planning-a-flexible-planning-structure-for-u-s-income-tax/ (last visited Jan. 25, 2024).

principal for income tax purposes, resulting in the amount of income tax paid by the trust or estate decreasing, the income tax payor must reimburse principal for the amount of tax not paid, with limitations ("deduction adjustment").

The bill substantially preserves current law but modifies this section to specify that a fiduciary that charges a beneficiary under the deduction adjustment may offset the charge by obtaining payment from the beneficiary, withholding future distributions to the beneficiary, or adopting another method or combination of methods.

Apportionment when Income Interest Ends

The bill amends s. 738.703, F.S., to incorporate the substance of former s. 738.303, F.S., which provides for the apportionment of income after an income interest ends. The bill also removes a provision for the proration of the unitrust amount under this section, because this concept is covered elsewhere in FUFIPA.

Relation to Electronic Signatures in Global and National Commerce Act

The bill amends s. 738.802, F.S., to replace existing law relocated elsewhere in the bill with a provision, not found in current law, specifying that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act ("GNCA"),[21] with exceptions, but does not authorize electronic delivery of specified notices described in the GNCA.

Non-Substantive Changes

The bill makes non-substantive, technical changes to what are now numbered as ss. 738.402, 738.403, 738.410, 738.412, 738.501, 738.502, 738.503, 738.504, 738.508, 738.601, 738.602, 738.701, 738.702, and 738.801, F.S.

Severability

The bill amends s. 738.803, F.S., to provide for severability. Specifically, the bill states that if any provision of FUFIPA or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of FUFIPA which can be given effect without the invalid provisions or application. The current act contains a similar provision.

Applicability

The bill amends s. 738.804, F.S., to provide that, except as otherwise provided by a trust's terms or the bill itself, the bill applies to any receipt or expense received or incurred and any disbursement made after January 1, 2025, by any trust or estate, regardless of when the trust or estate was established or the asset involved was acquired.

[21] See 15. U.S.C. s. 7001(c). The GNCA provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing.

Effective Date

The bill provides an effective date of January 1, 2025.

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 bill amends s. 738.802, F.S., to specify that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act ("GNCA"), using language similar to language already appearing elsewhere in Florida law.

The GNCA is a federal law, codified at 15 U.S.C. s. 7001, which provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that the information be provided in writing. To the extent that, in a particular case, FUFIPA could conflict with the GNCA, or its application could impair interstate or foreign commerce, a court may find the GNCA controls over the amendment to s. 738.802, F.S. This is because under the Supremacy Clause, found in Article IV of the U.S. Constitution, federal law is given supremacy over state law when the laws conflict.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will likely have a positive economic impact on the private sector to the extent that it provides more flexibility for individualized estate planning, allows for total-return

investing under the "modern portfolio theory," and otherwise gives Floridians advantages that benefit their financial interests.

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: 738.101, 738.102, 738.103, 738.104, 738.201, 738.202, 738.301, 738.302, 738.303, 738.401, 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, 738.603, 738.604, 738.605, 738.606, 738.607, 738.608, 738.704, 738.705, 738.706, 738.601, 738.602, 738.701, 738.702, 738.703, 738.801, 738.802, 738.803, and 738.804.

This bill creates the following sections of the Florida Statutes: 738.203, 738.304, 738.305, 738.306, 738.307, 738.308, 738.309, 738.310, 738.404, 738.405, 738.406, 738.407, 738.408, 738.409, 738.416, and 738.508.

This bill repeals the following sections of the Florida Statutes: 738.1041, 738.105.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Berman) recommended the following:

1 **Senate Amendment**
2
3 Delete lines 362 - 2329
4 and insert:
5 which a fiduciary may or must distribute net income, regardless
6 of whether the fiduciary also distributes principal to the
7 beneficiary.
8 (7) “Distribution” means a payment or transfer by a
9 fiduciary to a beneficiary in the beneficiary’s capacity as a
10 beneficiary, without consideration other than the beneficiary’s
11 right to receive the payment or transfer under the terms of the

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12 trust as defined in subsection (24), or in a will, life estate,
13 or term interest. “Distribute,” “distributed,” and “distributee”
14 have corresponding meanings.
15 (8) “Estate” means a decedent’s estate, including the
16 property of the decedent as the estate is originally constituted
17 and the property of the estate as it exists at any time during
18 administration.
19 (9) ~~(4)~~ “Fiduciary” includes ~~means~~ a trustee, a trust
20 director as defined in s. 736.0103, or a personal
21 representative, and a person acting under a delegation from a
22 fiduciary ~~or a trustee~~. The term also includes a person that
23 holds property for a successor beneficiary whose interest may be
24 affected by an allocation of receipts and expenditures between
25 income and principal. If there are two or more cofiduciaries,
26 the term includes all cofiduciaries acting under the terms of
27 the trust and applicable law ~~an executor, administrator,~~
28 ~~successor personal representative, special administrator, or a~~
29 ~~person performing substantially the same function~~.
30 (10) ~~(5)~~ “Income” means money or other property ~~that~~ a
31 fiduciary receives as current return from ~~a~~ principal ~~asset~~. The
32 term includes a part ~~portion~~ of receipts from a sale, exchange,
33 or liquidation of a principal asset, to the extent provided in
34 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503~~.
35 ~~(6) “Income beneficiary” means a person to whom net income~~
36 ~~of a trust is or may be payable.~~
37 (11) ~~(7)~~ “Income interest” means the right of a current ~~an~~
38 income beneficiary to receive all or part of net income, whether
39 the terms of the trust require the net income to be distributed
40 or authorize the net income to be distributed in the fiduciary’s

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41 ~~trustee's~~ discretion. The term includes the right of a current
42 beneficiary to use property held by a fiduciary.
43 (12) "Independent person" means a person who is not:
44 (a) For a trust:
45 1. A qualified beneficiary as defined in s. 736.0103;
46 2. A settlor of the trust;
47 3. An individual whose legal obligation to support a
48 beneficiary may be satisfied by a distribution from the trust;
49 or
50 4. Any trustee whom an interested distributee has the power
51 to remove and replace with a related or subordinate party.
52 (b) For an estate, a beneficiary;
53 (c) A spouse, a parent, a brother, a sister, or an issue of
54 an individual described in paragraph (a) or paragraph (b);
55 (d) A corporation, a partnership, a limited liability
56 company, or another entity in which persons described in
57 paragraphs (a), (b), and (c), in the aggregate, have voting
58 control; or
59 (e) An employee of a person described in paragraph (a),
60 paragraph (b), paragraph (c), or paragraph (d).
61 (13) "Internal Revenue Code" means the Internal Revenue
62 Code of 1986, as amended.
63 (14) ~~(8)~~ "Mandatory income interest" means the right of a
64 current ~~an~~ income beneficiary to receive net income that the
65 terms of the trust require the fiduciary to distribute.
66 (15) ~~(9)~~ "Net income" means the total allocations ~~receipts~~
67 ~~allocated to income~~ during an accounting period to income under
68 the terms of a trust and this chapter minus the disbursements
69 ~~made from income~~ during the period, other than distributions,

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70 allocated to income under the terms of the trust and this
71 chapter. To the extent that the trust is a unitrust under ss.
72 738.301-738.310, the term means the unitrust amount determined
73 under ss. 738.301-738.310. The term includes the amount of an
74 adjustment from principal to income under s. 738.203. The term
75 does not include the amount of an adjustment ~~plus or minus~~
76 ~~transfers under this chapter to or~~ from income to principal
77 under s. 738.203 ~~during the period~~.
78 (16) ~~(10)~~ "Person" means an individual, a business or a
79 nonprofit entity, ~~corporation, business trust,~~ an estate, a
80 trust, ~~partnership, limited liability company, association,~~
81 ~~joint venture,~~ a public corporation, ~~or any other legal or~~
82 ~~commercial entity or~~ a government or governmental subdivision,
83 agency, or instrumentality, or other legal entity.
84 (17) "Personal representative" means an executor, an
85 administrator, a successor personal representative, a special
86 administrator, or a person that performs substantially the same
87 function with respect to an estate under the law governing the
88 person's status.
89 (18) ~~(11)~~ "Principal" means property held in trust for
90 distribution to, production of income for, or use by a current
91 or successor ~~a remainder~~ beneficiary ~~when the trust terminates~~.
92 (19) "Record" means information inscribed on a tangible
93 medium or stored in an electronic or other medium and is
94 retrievable in perceivable form.
95 (20) "Settlor" means a person, including a testator, who
96 creates or contributes property to a trust. If more than one
97 person creates or contributes property to a trust, the term
98 includes each person, to the extent of the trust property

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99 attributable to that person's contribution, except to the extent
100 that another person has the power to revoke or withdraw that
101 portion.
102 (21) "Special tax benefit" means:
103 (a) Exclusion of a transfer to a trust from gifts described
104 in s. 2503(b) of the Internal Revenue Code because of the
105 qualification of an income interest in the trust as a present
106 interest in property;
107 (b) Status as a qualified subchapter S trust described in
108 s. 1361(d)(3) of the Internal Revenue Code at a time the trust
109 holds stock of an S corporation described in s. 1361(a)(1) of
110 the Internal Revenue Code;
111 (c) An estate or gift tax marital deduction for a transfer
112 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code
113 which depends or depended in whole or in part on the right of
114 the settlor's spouse to receive the net income of the trust;
115 (d) Exemption in whole or in part of a trust from the
116 federal generation-skipping transfer tax imposed by s. 2601 of
117 the Internal Revenue Code because the trust was irrevocable on
118 September 25, 1985, if there is any possibility that:
119 1. A taxable distribution as defined in s. 2612(b) of the
120 Internal Revenue Code could be made from the trust; or
121 2. A taxable termination as defined in s. 2612(a) of the
122 Internal Revenue Code could occur with respect to the trust; or
123 (e) An inclusion ratio as defined in s. 2642(a) of the
124 Internal Revenue Code of the trust which is less than one, if
125 there is any possibility that:
126 1. A taxable distribution as defined in s. 2612(b) of the
127 Internal Revenue Code could be made from the trust; or

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128 2. A taxable termination as defined in s. 2612(a) of the
129 Internal Revenue Code could occur with respect to the trust.
130 (22) "Successive interest" means the interest of a
131 successor beneficiary.
132 (23) ~~(12)~~ "Successor ~~Remainder~~ beneficiary" means a person
133 entitled to receive income or principal or to use property when
134 an income interest or other current interest ends.
135 (24) ~~(13)~~ "Terms of a trust" means:
136 (a) Except as otherwise provided in paragraph (b), the
137 manifestation of the settlor's intent regarding a trust's
138 provisions as:
139 1. Expressed in the will or trust instrument; or
140 2. Established by other evidence that would be admissible
141 in a judicial proceeding.
142 (b) The trust's provisions as established, determined, or
143 amended by:
144 1. A trustee or trust director in accordance with the
145 applicable law;
146 2. A court order; or
147 3. A nonjudicial settlement agreement under s. 736.0111.
148 (c) For an estate, a will; or
149 (d) For a life estate or term interest, the corresponding
150 manifestation of the rights of the beneficiaries to the extent
151 provided in s. 738.508 ~~the manifestation of the intent of a~~
152 ~~grantor or decedent with respect to the trust, expressed in a~~
153 ~~manner that admits of its proof in a judicial proceeding,~~
154 ~~whether by written or spoken words or by conduct~~.
155 (25) "Trust" includes an express trust, whether private or
156 charitable, with additions to the trust, wherever and however

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157 created; and a trust created or determined by a judgment or
158 decree under which the trust is to be administered in the manner
159 of an express trust. The term does not include a constructive
160 trust; a resulting trust; a conservatorship; a custodial
161 arrangement under the Florida Uniform Transfers to Minors Act; a
162 business trust providing for certificates to be issued to
163 beneficiaries; a common trust fund; a land trust under s.
164 689.071; a trust created by the form of the account or by the
165 deposit agreement at a financial institution; a voting trust; a
166 security arrangement; a liquidation trust; a trust for the
167 primary purpose of paying debts, dividends, interest, salaries,
168 wages, profits, pensions, retirement benefits, or employee
169 benefits of any kind; or an arrangement under which a person is
170 a nominee, an escrowee, or an agent for another.
171 (26) ~~(14)~~ "Trustee" means a person, other than a personal
172 representative, that owns or holds property for the benefit of a
173 beneficiary. The term includes an original, additional, or
174 successor trustee, regardless of whether they are ~~or not~~
175 appointed or confirmed by a court.
176 (27) "Will" means any testamentary instrument recognized
177 under applicable law which makes a legally effective disposition
178 of an individual's property, effective at the individual's
179 death. The term includes a codicil or other amendment to a
180 testamentary instrument.
181 Section 3. Section 738.103, Florida Statutes, is amended to
182 read:
183 (Substantial rewording of section. See
184 s. 738.103, F.S., for present text.)
185 738.103 Scope.—Except as otherwise provided in the terms of

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186 a trust or this chapter, this chapter applies to all of the
187 following:
188 (1) A trust or an estate.
189 (2) A life estate or other term interest in which the
190 interest of one or more persons will be succeeded by the
191 interest of one or more other persons to the extent provided in
192 s. 738.508.
193 Section 4. Section 738.104, Florida Statutes, is amended to
194 read:
195 (Substantial rewording of section. See
196 s. 738.104, F.S., for present text.)
197 738.104 Governing law.—Except as otherwise provided in the
198 terms of a trust or this chapter, this chapter applies when this
199 state is the principal place of administration of a trust or
200 estate or the situs of property that is not held in a trust or
201 estate and is subject to a life estate or other term interest
202 described in s. 738.103(2). By accepting the trusteeship of a
203 trust having its principal place of administration in this state
204 or by moving the principal place of administration of a trust to
205 this state, the trustee submits to the application of this
206 chapter to any matter within the scope of this chapter involving
207 the trust.
208 Section 5. Section 738.1041, Florida Statutes, is repealed.
209 Section 6. Section 738.105, Florida Statutes, is repealed.
210 Section 7. Section 738.201, Florida Statutes, is amended to
211 read:
212 (Substantial rewording of section. See
213 s. 738.201, F.S., for present text.)
214 738.201 Fiduciary duties; general principles.—

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215 (1) In making an allocation or determination or exercising
216 discretion under this chapter, a fiduciary shall do all of the
217 following:
218 (a) Act in good faith, based on what is a fair and
219 reasonable fee to all beneficiaries;
220 (b) Administer a trust or estate impartially, except to the
221 extent that the terms of the trust manifest an intent that the
222 fiduciary favors one or more beneficiaries;
223 (c) Administer the trust or estate in accordance with the
224 terms of the trust, even if there is a different provision in
225 this chapter.
226 (d) Administer the trust or estate in accordance with this
227 chapter, except to the extent that the terms of the trust
228 provide otherwise or authorize the fiduciary to determine
229 otherwise.
230 (2) A fiduciary's allocation, determination, or exercise of
231 discretion under this chapter is presumed to be fair and
232 reasonable to all beneficiaries. A fiduciary may exercise a
233 discretionary power of administration given to the fiduciary by
234 the terms of the trust, and an exercise of the power that
235 produces a result different from a result required or permitted
236 by this chapter does not create an inference that the fiduciary
237 abused the fiduciary's discretion.
238 (3) A fiduciary shall:
239 (a) Add a receipt to principal, to the extent that the
240 terms of the trust and this chapter do not allocate the receipt
241 between income and principal;
242 (b) Charge a disbursement to principal, to the extent that
243 the terms of the trust and this chapter do not allocate the

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244 disbursement between income and principal; and
245 (c) Within 65 days after the fiscal year ends, add any
246 undistributed income to principal, unless otherwise provided by
247 the terms of the trust.
248 (4) A fiduciary may exercise the power to adjust under s.
249 738.203(1), convert an income trust to a unitrust under ss.
250 738.301-738.310, change the percentage or method used to
251 calculate a unitrust amount under ss. 738.301-738.310, or
252 convert a unitrust to an income trust under ss. 738.301-738.310
253 if the fiduciary determines the exercise of the power will
254 assist the fiduciary to administer the trust or estate
255 impartially.
256 (5) The fiduciary must consider the following factors in
257 making the determination in subsection (4), including:
258 (a) The terms of the trust.
259 (b) The nature, distribution standards, and expected
260 duration of the trust.
261 (c) The effect of the allocation rules, including specific
262 adjustments between income and principal, under ss. 738.301-
263 738.416.
264 (d) The desirability of liquidity and regularity of income.
265 (e) The desirability of the preservation and appreciation
266 of principal.
267 (f) The extent to which an asset is used or may be used by
268 a beneficiary.
269 (g) The increase or decrease in the value of principal
270 assets, reasonably determined by the fiduciary.
271 (h) Whether and to what extent the terms of the trust give
272 the fiduciary power to accumulate income or invade principal or

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273 prohibit the fiduciary from accumulating income or invading
274 principal.
275 (i) The extent to which the fiduciary has accumulated
276 income or invaded principal in preceding accounting periods.
277 (j) The effect of current and reasonably expected economic
278 conditions.
279 (k) The reasonably expected tax consequences of the
280 exercise of the power.
281 (l) The identities and circumstances of the beneficiaries.
282 (6) Except as provided in ss. 738.301-738.310, this chapter
283 pertains to the administration of a trust and is applicable to
284 any trust that is administered in this state or under its law.
285 This chapter also applies to any estate that is administered in
286 this state unless the provision is limited in application to a
287 trustee, rather than a fiduciary.
288 Section 8. Section 738.202, Florida Statutes, is amended to
289 read:
290 (Substantial rewording of section. See
291 s. 738.202, F.S., for present text.)
292 738.202 Judicial review of exercise of discretionary power;
293 request for instruction.—
294 (1) As used in this section, the term “fiduciary decision”
295 means any of the following:
296 (a) A fiduciary’s allocation between income and principal
297 or other determination regarding income and principal required
298 or authorized by the terms of the trust or this chapter.
299 (b) The fiduciary’s exercise or nonexercise of a
300 discretionary power regarding income and principal granted by
301 the terms of the trust or this chapter, including the power to

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302 adjust under s. 738.203, convert an income trust to a unitrust
303 under ss. 738.301-738.310, change the percentage or method used
304 to calculate a unitrust amount under ss. 738.301-738.310,
305 convert a unitrust to an income trust under ss. 738.301-738.310,
306 or the method used to make property productive of income under
307 s. 738.413.
308 (c) The fiduciary's implementation of a decision described
309 in paragraph (a) or paragraph (b).
310 (2) The court may not order a fiduciary to change a
311 fiduciary decision unless the court determines that the
312 fiduciary decision was an abuse of the fiduciary's discretion. A
313 court may not determine that a fiduciary abused its discretion
314 merely because the court would have exercised the discretion in
315 a different manner or would not have exercised the discretion.
316 (3) If the court determines that a fiduciary decision was
317 an abuse of the fiduciary's discretion, the court may order a
318 remedy authorized by law, including those prescribed under ss.
319 736.1001 and 736.1002. Following such a determination by the
320 court, the remedy is to place the beneficiaries in the positions
321 the beneficiaries would have occupied if the fiduciary had not
322 abused its discretion, as follows:
323 (a) The court may order the fiduciary to exercise or
324 refrain from exercising the power to adjust under s. 738.203;
325 (b) The court may order the fiduciary to exercise or
326 refrain from exercising the power to convert an income trust to
327 a unitrust under ss. 738.301-738.310, change the percentage or
328 method used to calculate a unitrust amount under ss. 738.301-
329 738.310, or convert a unitrust to an income trust under ss.
330 738.301-738.310;

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331 (c) The court may compel the fiduciary to take any of the
332 actions listed under s. 738.413;
333 (d) To the extent that the abuse of discretion has resulted
334 in no distribution to a beneficiary or a distribution that is
335 too small, the court shall require the fiduciary to distribute
336 from the trust to the beneficiary an amount the court determines
337 will restore the beneficiary, in whole or in part, to his or her
338 appropriate position;
339 (e) To the extent that the abuse of discretion has resulted
340 in a distribution to a beneficiary that is too large, the court
341 shall restore the beneficiaries, the trust, or both, in whole or
342 in part, to their appropriate positions by requiring the
343 fiduciary to withhold an amount from one or more future
344 distributions to the beneficiary who received the distribution
345 that was too large or requiring that beneficiary to return some
346 or all of the distribution to the trust; or
347 (f) To the extent that the court is unable, after applying
348 paragraphs (a)-(e), to restore the beneficiaries or the trust,
349 or both, to the positions they would have occupied if the
350 fiduciary had not abused its discretion, the court may require
351 the fiduciary to pay an appropriate amount from its own funds to
352 one or more of the beneficiaries or the trust or both.
353 (4) On petition by the fiduciary for instruction, the court
354 may determine whether a proposed fiduciary decision will result
355 in an abuse of the fiduciary's discretion. If the petition
356 describes the proposed decision, contains sufficient information
357 to inform the beneficiary of the reasons for making the proposed
358 decision and the facts on which the fiduciary relies, and
359 explains how the beneficiary will be affected by the proposed

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360 decision, a beneficiary who opposes the proposed decision has
361 the burden to establish that it will result in an abuse of the
362 fiduciary's discretion.
363 (5) If an action is instituted alleging an abuse of
364 discretion in the exercise or nonexercise of the fiduciary's
365 discretion under this chapter and the court determines no abuse
366 of discretion has occurred, the fiduciary's costs and attorney
367 fees incurred in defending the action shall be paid from the
368 trust assets.
369 Section 9. Section 738.203, Florida Statutes, is created to
370 read:
371 738.203 Fiduciary's power to adjust.—
372 (1) Except as otherwise provided in the terms of a trust or
373 this section, a fiduciary, in a record without court approval,
374 may adjust between income and principal if the fiduciary
375 determines that the exercise of the power to adjust will assist
376 the fiduciary in administering the trust or estate impartially.
377 (2) This section does not create a duty to exercise or
378 consider the power to adjust under subsection (1) or to inform a
379 beneficiary about the applicability of this section.
380 (3) A fiduciary that in good faith exercises or fails to
381 exercise the power to adjust under subsection (1) is not liable
382 to a person affected by the exercise or failure to exercise.
383 (4) In deciding whether and to what extent to exercise the
384 power to adjust under subsection (1), a fiduciary shall consider
385 all factors the fiduciary considers relevant, including relevant
386 factors in s. 738.201(5), and the application of ss. 738.401(9),
387 738.408 and 738.413.
388 (5) A fiduciary may not exercise the power under subsection

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389 (1) to make an adjustment or under s. 738.408 to make a
390 determination that an allocation is insubstantial if:
391 (a) The adjustment or determination would reduce the amount
392 payable to a current income beneficiary from a trust that
393 qualifies for a special tax benefit, except to the extent that
394 the adjustment is made to provide for a reasonable apportionment
395 of the total return of the trust between the current income
396 beneficiary and successor beneficiaries;
397 (b) The adjustment or determination would change the amount
398 payable to a beneficiary, as a fixed annuity or a fixed fraction
399 of the value of the trust assets, under the terms of the trust;
400 (c) The adjustment or determination would reduce an amount
401 that is permanently set aside for a charitable purpose under the
402 terms of the trust unless both income and principal are set
403 aside for the charitable purpose;
404 (d) Possessing or exercising the power would cause a person
405 to be treated as the owner of all or part of the trust for
406 federal income tax purposes and the person would not be treated
407 as the owner if the fiduciary did not possess the power to
408 adjust;
409 (e) Possessing or exercising the power would cause all or
410 part of the value of the trust assets to be included in the
411 gross estate of an individual for federal real estate tax
412 purposes and the assets would not be included in the gross
413 estate of the individual if the fiduciary did not possess the
414 power to adjust;
415 (f) Possessing or exercising the power would cause an
416 individual to be treated as making a gift for federal gift tax
417 purposes;

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418 (g) The fiduciary is not an independent person;
419 (h) The trust is irrevocable and provides for income to be
420 paid to the settlor, and possessing or exercising the power
421 would cause the adjusted principal or income to be considered an
422 available resource or available income under a public-benefit
423 program; or
424 (i) The trust is a unitrust under ss. 738.301-738.310.
425 (6) If paragraph (5)(d), paragraph (5)(e), paragraph
426 (5)(f), or paragraph (5)(g) applies to a fiduciary:
427 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not
428 apply may exercise the power to adjust, unless the exercise of
429 the power by the remaining cofiduciary or cofiduciaries is not
430 permitted by the terms of the trust or law other than this
431 chapter; or
432 (b) If there is no cofiduciary to which paragraphs (5)(d)-
433 (g) do not apply, the fiduciary may appoint a cofiduciary to
434 which paragraphs (5)(d)-(g) do not apply which may be a special
435 fiduciary with limited powers, and the appointed cofiduciary may
436 exercise the power to adjust under subsection (1), unless the
437 appointment of a cofiduciary or the exercise of the power by a
438 cofiduciary is not permitted by the terms of the trust or law
439 other than this chapter.
440 (7) A fiduciary may release or delegate to a cofiduciary
441 the power to adjust under subsection (1) if the fiduciary
442 determines that the fiduciary's possession or exercise of the
443 power will or may:
444 (a) Cause a result described in paragraph (5)(a), paragraph
445 (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph (5)(e),
446 paragraph (5)(f), or paragraph (5)(h); or

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447 (b) Deprive the trust of a tax benefit or impose a tax
448 burden not described in paragraph (5)(a), paragraph (5)(b),
449 paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), or
450 paragraph (5)(f).
451 (8) A fiduciary's release or delegation to a cofiduciary
452 under subsection (7) of the power to adjust under subsection
453 (1):
454 (a) Must be in a record;
455 (b) Applies to the entire power, unless the release or
456 delegation provides a limitation, which may be a limitation to
457 the power to adjust:
458 1. From income to principal;
459 2. From principal to income;
460 3. For specified property; or
461 4. In specified circumstances.
462 (c) For a delegation, may be modified by a redelegation
463 under this subsection by the cofiduciary to which the delegation
464 is made; and
465 (d) Subject to paragraph (c), is permanent, unless the
466 release or delegation provides a specified period, including a
467 period measured by the life of an individual or the lives of
468 more than one individual.
469 (9) Terms of a trust that deny or limit the power to adjust
470 between income and principal do not affect the application of
471 this section, unless the terms of the trust expressly deny or
472 limit the power to adjust under subsection (1).
473 (10) The exercise of the power to adjust under subsection
474 (1) in any accounting period may apply to the current period,
475 the immediately preceding period, and one or more subsequent

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476 periods.
477 (11) A description of the exercise of the power to adjust
478 under subsection (1) must be:
479 (a) Included in a report, if any, sent to beneficiaries
480 under s. 736.0813; or
481 (b) Communicated at least annually to the qualified
482 beneficiaries as defined in s. 736.0103 other than the Attorney
483 General.
484 (12) With respect to a trust in existence on January 1,
485 2003:
486 (a) A fiduciary may not have the power to adjust under this
487 section until the statement required in subsection (13) is
488 provided and either no objection is made or any objection which
489 is made has been terminated.
490 1. An objection is made if, within 60 days after the date
491 of the statement required in subsection (13), a super majority
492 of the eligible beneficiaries deliver to the fiduciary a written
493 objection to the application of this section to such trust. An
494 objection shall be deemed to be delivered to the fiduciary on
495 the date the objection is mailed to the mailing address listed
496 in the notice provided in subsection (13).
497 2. An objection is terminated upon the earlier of the
498 receipt of consent from a super majority of eligible
499 beneficiaries of the class that made the objection, or the
500 resolution of the objection under paragraph (c).
501 (b) An objection or consent under this section may be
502 executed by a legal representative or natural guardian of a
503 beneficiary without the filing of any proceeding or approval of
504 any court.

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505 (c) If an objection is delivered to the fiduciary, then the
506 fiduciary may petition the circuit court for an order quashing
507 the objection and vesting in such fiduciary the power to adjust
508 under this section. The burden will be on the objecting
509 beneficiaries to prove that the power to adjust would be
510 inequitable, illegal, or otherwise in contravention of the
511 grantor's intent. The court may award costs and attorney fees
512 relating to the fiduciary's petition in the same manner as in
513 chancery actions. When costs and attorney fees are to be paid
514 out of the trust, the court may, in its discretion, direct from
515 which part of the trust they shall be paid.
516 (d) If no timely objection is made or if the fiduciary is
517 vested with the power to adjust by court order, the fiduciary
518 may thereafter exercise the power to adjust without providing
519 notice of its intent to do so unless, in vesting the fiduciary
520 with the power to adjust, the court determines that unusual
521 circumstances require otherwise.
522 (e)1. If a fiduciary makes a good faith effort to comply
523 with the notice provisions of subsection (13), but fails to
524 deliver notice to one or more beneficiaries entitled to such
525 notice, neither the validity of the notice required under this
526 subsection nor the fiduciary's power to adjust under this
527 section shall be affected until the fiduciary has actual notice
528 that one or more beneficiaries entitled to notice were not
529 notified. Until the fiduciary has actual notice of the notice
530 deficiency, the fiduciary shall have all of the powers and
531 protections granted a fiduciary with the power to adjust under
532 this chapter.
533 2. When the fiduciary has actual notice that one or more

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534 beneficiaries entitled to notice under subsection (13) were not
535 notified, the fiduciary's power to adjust under this section
536 shall cease until all beneficiaries who are entitled to such
537 notice, including those who were previously provided with such
538 notice, are notified and given the opportunity to object as
539 provided for under this subsection.
540 (f) The objection of a super majority of eligible
541 beneficiaries under this subsection shall be valid for a period
542 of 1 year after the date of the notice set forth in subsection
543 (13). Upon expiration of the objection, the fiduciary may
544 thereafter give a new notice under subsection (13).
545 (g) This section is not intended to create or imply a duty
546 of the fiduciary of a trust existing on January 1, 2003, to seek
547 a power to adjust under this subsection or to give the notice
548 described in subsection (13) if the fiduciary does not desire to
549 have a power to adjust under this section, and no inference of
550 impropriety shall be made as the result of a fiduciary not
551 seeking a power to adjust under this subsection.
552 (13)(a) A fiduciary of a trust in existence on January 1,
553 2003, that is not prohibited under subsection (5) from
554 exercising the power to adjust shall, any time before initially
555 exercising the power, provide to all eligible beneficiaries a
556 statement containing the following:
557 1. The name, telephone number, street address, and mailing
558 address of the fiduciary and of any person who may be contacted
559 for further information;
560 2. A statement that unless a super majority of the eligible
561 beneficiaries objects to the application of this section to the
562 trust within 60 days after the date the statement pursuant to

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563 this subsection was served, this section shall apply to the
564 trust; and
565 3. A statement that, if this section applies to the trust,
566 the fiduciary will have the power to adjust between income and
567 principal and that such a power may have an effect on the
568 distributions to such beneficiary from the trust.
569 (b) The statement may contain information regarding a
570 fiduciary's obligation with respect to the power to adjust
571 between income and principal under this section.
572 (c) The statement shall be served informally, in the manner
573 provided in the Florida Rules of Civil Procedure relating to
574 service of pleadings subsequent to the initial pleading. The
575 statement may be served on a legal representative or natural
576 guardian of a beneficiary without the filing of any proceeding
577 or approval of any court.
578 (14) For purposes of subsections (12) and (13), the term:
579 1. "Eligible beneficiaries" means:
580 a. If at the time the determination is made there are one
581 or more beneficiaries described in s. 736.0103(19)(c), the
582 beneficiaries described in s. 736.0103(19)(a) and (c); or
583 b. If there is no beneficiary described in s.
584 736.0103(19)(c), the beneficiaries described in s.
585 736.0103(19)(a) and (b).
586 2. "Super majority of the eligible beneficiaries" means:
587 a. If at the time the determination is made there are one
588 or more beneficiaries described in s. 736.0103(19)(c), at least
589 two-thirds in interest of the beneficiaries described in s.
590 736.0103(19)(a) or two-thirds in interest of the beneficiaries
591 described in s. 736.0103(19)(c), if the interests of the

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592 beneficiaries are reasonably ascertainable; otherwise, it means
593 two-thirds in number of either such class; or
594 b. If there is no beneficiary described in s.
595 736.0103(19)(c), at least two-thirds in interest of the
596 beneficiaries described in s. 736.0103(19)(a) or two-thirds in
597 interest of the beneficiaries described in s. 736.0103(19)(b),
598 if the interests of the beneficiaries are reasonably
599 ascertainable, otherwise, two-thirds in number of either such
600 class.
601 (15) A trust exists on January 1, 2003, if it is not
602 revocable on January 1, 2003. A trust is revocable if revocable
603 by the grantor alone or in conjunction with any other person. A
604 trust is not revocable for purposes of this section if revocable
605 by the grantor only with the consent of all persons having a
606 beneficial interest in the property.
607 Section 10. Section 738.301, Florida Statutes, is amended
608 to read:
609 (Substantial rewording of section. See
610 s. 738.301, F.S., for present text).
611 738.301 Definitions.—For purposes of this section and ss.
612 738.302-738.310:
613 (1) "Applicable value" means the amount of the net fair
614 market value of a trust taken into account under s. 738.307.
615 (2) "Express unitrust" means a trust for which, under the
616 terms of the trust without regard to this section and ss.
617 738.302-738.310, net income must be calculated as a unitrust
618 amount.
619 (3) "Income trust" means a trust, created by an inter vivos
620 or testamentary instrument, that directs or permits the trustee

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621 to distribute the net income of the trust to one or more
622 persons, in fixed proportions or in amounts or proportions
623 determined by the trustee and regardless of whether the trust
624 directs or permits the trustee to distribute the principal of
625 the trust to one or more such persons.
626 (4) "Net fair market value of a trust" means the fair
627 market value of the assets of the trust, less the reasonably
628 known noncontingent liabilities of the trust.
629 (5) "Unitrust" means a trust for which net income is a
630 unitrust amount. The term includes an express unitrust.
631 (6) "Unitrust amount" means an amount computed by
632 multiplying a determined value of a trust by a determined
633 percentage. For a unitrust administered under a unitrust policy,
634 the term means the applicable value multiplied by the unitrust
635 rate.
636 (7) "Unitrust policy" means a policy described in ss.
637 738.301-738.310 and adopted under s. 738.303.
638 (8) "Unitrust rate" means the rate used to compute the
639 unitrust amount for a unitrust administered under a unitrust
640 policy.
641 Section 11. Section 738.302, Florida Statutes, is amended
642 to read:
643 (Substantial rewording of section. See
644 s. 738.302, F.S., for present text.)
645 738.302 Applications; duties and remedies.—
646 (1) Except as otherwise provided in subsection (2), ss.
647 738.301-738.310 apply to all of the following:
648 (a) An income trust, unless the terms of the trust
649 expressly prohibit the use of ss. 738.301-738.310 by a specific

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650 reference to this paragraph or corresponding provision of prior
651 law, or an explicit expression of intent that net income not be
652 calculated as a unitrust amount.
653 (b) An express unitrust, except to the extent that the
654 terms of the trust explicitly:
655 1. Prohibit the use of ss. 738.301-738.310 by a specific
656 reference to this paragraph or corresponding provision of prior
657 law;
658 2. Prohibit conversion to an income trust; or
659 3. Limit changes to the method of calculating the unitrust
660 amount.
661 (c) A unitrust that had been converted from an income
662 trust.
663 (2) The provisions of ss. 738.301-738.310 do not apply to a
664 trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
665 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
666 Revenue Code.
667 (3) An income trust to which ss. 738.301-738.310 apply
668 under paragraph (1)(a) may be converted to a unitrust under ss.
669 738.301-738.310 regardless of the terms of the trust concerning
670 distributions. Conversion to a unitrust under ss. 738.301-
671 738.310 does not affect other terms of the trust concerning
672 distributions of income or principal.
673 (4) Sections 738.301-738.310 apply to an estate only to the
674 extent that a trust is a beneficiary of the estate. To the
675 extent of the trust’s interest in the estate, the estate may be
676 administered as a unitrust, the administration of the estate as
677 a unitrust may be discontinued, or the percentage or method used
678 to calculate the unitrust amount may be changed, in the same

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679 manner as for a trust under those sections.
680 (5) The provisions of ss. 738.301-738.310 do not create a
681 duty to take or consider action under ss. 738.301-738.310 or to
682 inform a beneficiary about the applicability of ss. 738.301-
683 738.310.
684 (6) A fiduciary that in good faith takes or fails to take
685 an action under ss. 738.301-738.310 is not liable to a person
686 affected by the action or inaction.
687 Section 12. Section 738.303, Florida Statutes, is amended
688 to read:
689 (Substantial rewording of section. See
690 s. 738.303, F.S., for present text.)
691 738.303 Authority of fiduciary.—
692 (1) By complying with subsections (2) and (6), and without
693 court approval, a fiduciary may do any of the following:
694 (a) Convert an income trust to a unitrust if the fiduciary
695 adopts in a record a unitrust policy for the trust which
696 provides:
697 1. That in administering the trust, the net income of the
698 trust will be a unitrust amount rather than net income
699 determined without regard to ss. 738.301-738.310; and
700 2. The percentage and method used to calculate the unitrust
701 amount.
702 (b) Change the percentage or method used to calculate a
703 unitrust amount for a unitrust if the fiduciary adopts in a
704 record a unitrust policy or an amendment or replacement of a
705 unitrust policy providing charges in the percentage or method
706 used to calculate the unitrust amount.
707 (c) Convert a unitrust to an income trust if the fiduciary

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708 adopts in a record a determination that, in administering the
709 trust, the net income of the trust will be net income determined
710 without regard to ss. 738.301-738.310 rather than a unitrust
711 amount.
712 (2) A fiduciary may take an action under subsection (1) if
713 all of the following apply:
714 (a) The fiduciary determines that the action will assist
715 the fiduciary to administer a trust impartially.
716 (b) The fiduciary sends a notice in a record to the
717 qualified beneficiaries determined under ss. 736.0103 and
718 736.0110 in the manner required by s. 738.304, describing and
719 proposing to take the action.
720 (c) The fiduciary sends a copy of the notice under
721 paragraph (b) to each settlor of the trust which is:
722 1. If an individual, living; or
723 2. If not an individual, in existence.
724 (d) At least one member of each class of the qualified
725 beneficiaries determined under ss. 736.0103 and 736.0110, other
726 than the Attorney General, receiving the notice under paragraph
727 (b) is:
728 1. If an individual, legally competent;
729 2. If not an individual, in existence; or
730 3. Represented in the manner provided in s. 738.304(2).
731 (e) The fiduciary does not receive, by the date specified
732 in the notice under s. 738.304(4)(e), an objection in a record
733 to the action proposed under paragraph (b) from a person to
734 which the notice under paragraph (b) is sent.
735 (3) If a fiduciary receives, not later than the date stated
736 in the notice under s. 738.304(4)(e), an objection in a record

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737 described in s. 738.304(4)(d) to a proposed action, the
738 fiduciary or a beneficiary may request the court to have the
739 action taken as proposed, taken with modifications, or
740 prevented. A person described in s. 738.304(1) may oppose the
741 proposed action in the proceeding under this subsection
742 regardless of whether the person:
743 (a) Consented under s. 738.304(3); or
744 (b) Objected under s. 738.304(4)(d).
745 (4) If, after sending a notice under paragraph (2)(b), a
746 fiduciary decides not to take the action proposed in the notice,
747 the fiduciary must notify in a record each person described in
748 s. 738.304(1) of the decision not to take the action and the
749 reasons for the decision.
750 (5) If a beneficiary requests in a record that a fiduciary
751 take an action described in subsection (1) and the fiduciary
752 declines to act or does not act within 60 days after receiving
753 the request, the beneficiary may request the court to direct the
754 fiduciary to take the action requested.
755 (6) In deciding whether and how to take an action
756 authorized in subsection (1), or whether and how to respond to a
757 request by a beneficiary under subsection (5), a fiduciary must
758 consider all factors relevant to the trust and beneficiaries,
759 including the relevant factors listed in s. 738.201(5).
760 (7) A fiduciary may release or delegate the power to
761 convert an income trust to a unitrust under paragraph (1)(a),
762 change the percentage or method used to calculate a unitrust
763 amount under paragraph (1)(b), or convert a unitrust to an
764 income trust under paragraph (1)(c), for a reason described in
765 s. 738.203(7) and in the manner described in s. 738.203(8).

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766 Section 13. Section 738.304, Florida Statutes, is created
767 to read:
768 738.304 Notice.—
769 (1) A notice required by s. 738.303(2)(b) must be sent in a
770 manner authorized under s. 736.0109 to all of the following:
771 (a) The qualified beneficiaries determined under s.
772 736.0103, other than the Attorney General.
773 (b) Each person that is granted a power over the trust by
774 the terms of the trust, to the extent that the power is
775 exercisable when the person is not then serving as a trustee:
776 1. Including all of the following:
777 a. Power over the investment, management, or distribution
778 of trust property or other matters of trust administration.
779 b. Power to appoint or remove a trustee or person described
780 in this paragraph.
781 2. Excluding all of the following:
782 a. Power of appointment.
783 b. Power of a beneficiary over the trust, to the extent
784 that the exercise or nonexercise of the power affects the
785 beneficial interest of the beneficiary or another beneficiary
786 represented by the beneficiary under ss. 736.0301-736.0306 with
787 respect to the exercise or nonexercise of the power.
788 c. Power over the trust if the terms of the trust provide
789 that the power is held in a nonfiduciary capacity and the power
790 must be held in a nonfiduciary capacity to achieve a tax
791 objective under the Internal Revenue Code.
792 (c) Each person that is granted a power by the terms of the
793 trust to appoint or remove a trustee or person described in
794 paragraph (b) to the extent that the power is exercisable when

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795 the person that exercises the power is not serving as a trustee
796 or person described in paragraph (b).
797 (2) The representation provisions of ss. 736.0301-736.0306
798 apply to notice under this section.
799 (3) A person may consent in a record at any time to action
800 proposed under s. 738.303(2)(b). A notice required by s.
801 738.303(2)(b) need not be sent to a person that consents under
802 this subsection.
803 (4) A notice required under s. 738.303(2)(b) must include
804 all of the following:
805 (a) The action proposed under s. 738.303(2)(b).
806 (b) For a conversion of an income trust to a unitrust, a
807 copy of the unitrust policy adopted under s. 738.303(1)(a).
808 (c) For a change in the percentage or method used to
809 calculate the unitrust amount, a copy of the unitrust policy or
810 amendment or replacement of the unitrust policy adopted under s.
811 738.303(1)(b).
812 (d) A statement that the person to which the notice is sent
813 may object to the proposed action by stating in a record the
814 basis for the objection and sending or delivering the record to
815 the fiduciary.
816 (e) The date by which an objection under paragraph (d) must
817 be received by the fiduciary, which must be at least 30 days
818 after the date the notice is sent.
819 (f) The date on which the action is proposed to be taken
820 and the date on which the action is proposed to take effect.
821 (g) The name and contact information of the fiduciary.
822 (h) The name and contact information of a person that may
823 be contacted for additional information.

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824 Section 14. Section 738.305, Florida Statutes, is created
825 to read:
826 738.305 Unitrust policy.—
827 (1) In administering a unitrust under ss. 738.301-738.310,
828 a fiduciary shall follow a unitrust policy adopted under s.
829 738.303(1)(a) or (b) or amended or replaced under s.
830 738.303(1)(b).
831 (2) A unitrust policy must provide all of the following:
832 (a) The unitrust rate or method for determining the
833 unitrust rate under s. 738.306.
834 (b) The method for determining the applicable value under
835 s. 738.307.
836 (c) The rules described in ss. 738.306-738.310 which apply
837 in the administration of the unitrust, whether the rules are:
838 1. Mandatory as provided in ss. 738.307(1) and (3),
839 738.308(1), and 738.310; or
840 2. Optional as provided in ss. 738.306, 738.307(2), and
841 738.308(2), to the extent that the fiduciary elects to adopt
842 those rules.
843 (3) A unitrust policy may do any of the following:
844 (a) Provide methods and standards for:
845 1. Determining the timing of the distributions;
846 2. Making distributions in cash or in kind or partly in
847 cash and partly in kind; or
848 3. Correcting an underpayment or overpayment to a
849 beneficiary based on the unitrust amount if there is an error in
850 calculating the unitrust amount.
851 (b) Specify sources and the order of sources, including
852 categories of income for federal income tax purposes, from which

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853 distributions of a unitrust amount are paid.
854 (c) Provide other standards and rules that the fiduciary
855 determines serve the interests of the beneficiaries.
856 Section 15. Section 738.306, Florida Statutes, is created
857 to read:
858 738.306 Unitrust rate.—
859 (1) A unitrust rate must be at least 3 percent and not more
860 than 5 percent. Within those limits, the unitrust rate may be:
861 (a) A fixed unitrust rate; or
862 (b)1. A unitrust rate that is determined for each period
863 using:
864 a. A market index or other published data; or
865 b. A mathematical blend of market indices or other
866 published data over a stated number of preceding periods.
867 2. If the rate calculated under this paragraph would be
868 less than 3, the rate is 3; and if the rate calculated would be
869 more than 5, the rate is 5.
870 (2) Within the limits of subsection (1), a unitrust policy
871 may provide for any of the following:
872 (a) A limit on how much the unitrust rate determined under
873 paragraph (1)(b) may increase over the unitrust rate for the
874 preceding period or a mathematical blend of unitrust rates over
875 a stated number of preceding periods.
876 (b) A limit on how much the unitrust rate determined under
877 paragraph (1)(b) may decrease below the unitrust rate for the
878 preceding period or a mathematical blend of unitrust rates over
879 a stated number of preceding periods.
880 (c) A mathematical blend of any of the unitrust rates
881 determined under paragraph (1)(b) and paragraphs (a) and (b).

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882 (3) If the fiduciary is not an independent person, the
883 percentage used to calculate the unitrust amount is the rate
884 determined under s. 7520(a)(2) of the Internal Revenue Code in
885 effect for the month the conversion under this section becomes
886 effective and for each January thereafter; however, if the rate
887 determined under s. 7520(a)(2) of the Internal Revenue Code
888 exceeds 5 percent, the unitrust rate is 5 percent, and if the
889 rate determined under s. 7520(a)(2) of the Internal Revenue Code
890 is less than 3 percent, the unitrust rate is 3 percent.
891 Section 16. Section 738.307, Florida Statutes, is created
892 to read:
893 738.307 Applicable value.—
894 (1) A unitrust policy must provide the method for
895 determining the fair market value of an asset for the purpose of
896 determining the unitrust amount, including all of the following:
897 (a) The frequency of valuing the asset, which need not
898 require a valuation in every period.
899 (b) The date for valuing the asset in each period in which
900 the asset is valued.
901 (2) Except as otherwise provided in s. 738.309, a unitrust
902 policy may provide methods for determining the amount of the net
903 fair market value of the trust to take into account in
904 determining the applicable value, including any of the
905 following:
906 (a) Obtaining an appraisal of an asset for which fair
907 market value is not readily available.
908 (b) Excluding specific assets or groups or types of assets
909 in addition to those described in subsection (3).
910 (c) Making other exceptions or modifications of the

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911 treatment of specific assets or groups or types of assets.
912 (d) Including identification and treatment of cash or
913 property held for distribution.
914 (e) Using an average of fair market values over a stated
915 number of preceding periods, not to exceed 3 calendar years.
916 (f) Determining the reasonable known liabilities of the
917 trust, including treatment of liabilities to conform with the
918 treatment of assets under paragraphs (a)-(e).
919 (3) The following property may not be included in
920 determining the value of the trust:
921 (a) Any residential property or any tangible personal
922 property that, as of the first business day of the current
923 valuation year, one or more current beneficiaries of the trust
924 have or have had the right to occupy or have or have had the
925 right to possess or control, other than in his or her capacity
926 as trustee of the trust. Instead, the right of occupancy or the
927 right to possession and control is the unitrust amount with
928 respect to such property; however, the unitrust amount must be
929 adjusted to take into account partial distributions from or
930 receipt into the trust of such property during the valuation
931 year;
932 (b) Any asset specifically given to a beneficiary and the
933 return on investment on such property, which return on
934 investment must be distributable to the beneficiary; and
935 (c) Any asset while held in an estate.
936 Section 17. Section 738.308, Florida Statutes, is created
937 to read:
938 738.308 Period.—
939 (1) A unitrust policy must provide the period used under

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940 ss. 738.306 and 738.307. The period must be the calendar year.
941 (2) A unitrust policy may provide standards for:
942 (a) Using fewer preceding periods under s. 738.306(1)(b)1.
943 or (2)(a) or (b) if:
944 1. The trust was not in existence in a preceding period; or
945 2. Market indices or other published data are not available
946 for a preceding period;
947 (b) Using fewer preceding periods under 738.307(2)(e) if:
948 1. The trust was not in existence in a preceding period; or
949 2. Fair market values are not available for a preceding
950 period; and
951 (c) Prorating a unitrust amount on a daily basis for a part
952 of a period in which the trust or the administration of the
953 trust as a unitrust or the interest of any beneficiary commences
954 or terminates.
955 Section 18. Section 738.309, Florida Statutes, is created
956 to read:
957 738.309 Express unitrust.—
958 (1) This section applies to a trust that, by its governing
959 instrument, requires or allows income or net income to be
960 calculated as a unitrust amount.
961 (2) The trustee of an express unitrust may determine the
962 unitrust amount by reference to the net fair market value of the
963 unitrust’s assets in 1 or more years.
964 (3) Distribution of a unitrust amount is considered a
965 distribution of all of the net income of an express unitrust and
966 is considered to be an income interest.
967 (4) The unitrust amount is considered to be a reasonable
968 apportionment of the total return of an express unitrust.

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969 (5) An express unitrust that provides or allows a
970 distribution based on a unitrust rate in excess of 5 percent per
971 year of the net fair market value of the unitrust assets is
972 considered a distribution of all of the income of the unitrust
973 and a distribution of principal of the unitrust to the extent
974 that the distribution exceeds 5 percent per year.
975 (6) An express unitrust may provide a mechanism for
976 changing the unitrust rate, similar to the mechanism provided
977 under s. 738.306, based upon the factors noted in that section,
978 and may provide for a conversion from a unitrust to an income
979 trust or a reconversion of an income trust to a unitrust under
980 s. 738.303.
981 (7) If an express unitrust does not specifically or by
982 reference to s. 738.306 prohibit a power to change the unitrust
983 rate or to convert to an income trust under s. 738.303, the
984 trustee must have such power.
985 (8) The governing instrument of an express unitrust may
986 grant the trustee discretion to adopt a consistent practice of
987 treating capital gains as part of the unitrust amount to the
988 extent that the unitrust amount exceeds the income determined as
989 if the trust were not an express unitrust, or the governing
990 instrument may specify the ordering of classes of income.
991 (9) Unless the terms of the express unitrust specifically
992 provide otherwise as provided in subsection (8), the
993 distribution of a unitrust amount is considered a distribution
994 made from the following sources, which are listed in order of
995 priority:
996 (a) Net accounting income determined under this chapter as
997 if the trust were not a unitrust;

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998 (b) Ordinary income not allocable to net accounting income;
999 (c) Net realized short-term capital gains;
1000 (d) Net realized long-term capital gains; and
1001 (e) The principal of the trust.
1002 (10) The governing instrument of an express unitrust may
1003 provide that the trustee may exclude assets used by the
1004 unitrust's beneficiary, including, but not limited to, a
1005 residence property or tangible personal property, from the net
1006 fair market value of the unitrust's assets for the purposes of
1007 computing the unitrust amount. The use of these assets may be
1008 considered equivalent to income or to the unitrust amount.
1009
1010 Section 19. Section 738.310, Florida Statutes, is created
1011 to read:
1012 738.310 Other rules.—Following the conversion of an income
1013 trust to a unitrust, the trustee shall consider the unitrust
1014 amount as paid from the following sources, which are listed in
1015 order of priority:
1016 (1) Net accounting income determined under this chapter as
1017 if the trust were not a unitrust;
1018 (2) Ordinary income not allocable to net accounting income;
1019 (3) Net realized short-term capital gains;
1020 (4) Net realized long-term capital gains; and
1021 (5) The principal of the trust.
1022 Section 20. Section 738.401, Florida Statutes, is amended
1023 to read:
1024 738.401 Character of receipts from entity.—
1025 (1) For purposes of this section, the term:
1026 (a) "Capital distribution" means an entity distribution of

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1027 money which is a:
1028 1. Return of capital; or
1029 2. Distribution in total or partial liquidation of the
1030 entity.
1031 (b) "Entity":
1032 1. Means a corporation, partnership, limited liability
1033 company, regulated investment company, real estate investment
1034 trust, common trust fund, or any other organization or
1035 arrangement in which a fiduciary owns or holds ~~has~~ an interest,
1036 regardless of whether the entity is a taxpayer for federal
1037 income tax purposes; and
1038 2. Does not include:
1039 a. A trust or estate to which s. 738.402 applies;
1040 b. A business or other activity to which s. 738.403 applies
1041 which is not conducted by an entity described in subparagraph
1042 1.;
1043 c. An asset-backed security; or
1044 d. An instrument or arrangement to which s. 738.416 applies
1045 ~~other than a trust or estate to which s. 738.402 applies, a~~
1046 ~~business or activity to which s. 738.403 applies, or an asset-~~
1047 ~~backed security to which s. 738.608 applies~~.
1048 (c) "Entity distribution" means a payment or transfer by an
1049 entity to a person in the person's capacity as an owner or
1050 holder of an interest in the entity.
1051 (d) "Lookback period" means the accounting period and the
1052 preceding two accounting periods or, if less, the number of
1053 accounting periods, or portion of accounting periods, that the
1054 interest in the entity has been held by the fiduciary.
1055 (2) In this section, an attribute or action of an entity

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1056 includes an attribute or action of any other entity in which the
1057 initial entity owns or holds an interest, including an interest
1058 owned or held indirectly through another entity.
1059 (3) Except as otherwise provided in paragraphs (4)(b), (c),
1060 and (d) ~~this section~~, a fiduciary shall allocate to income:
1061 (a) Money received in an entity distribution; and
1062 (b) Tangible personal property of nominal value received
1063 from the ~~money received from an~~ entity.
1064 (4)~~(3)~~ ~~Except as otherwise provided in this section,~~ A
1065 fiduciary shall allocate the following ~~receipts from an entity~~
1066 to principal:
1067 (a) Property received in an entity distribution which is
1068 not:
1069 1. ~~other than~~ Money; or
1070 2. Tangible personal property of nominal value.
1071 (b) Money received in an entity ~~one~~ distribution ~~or a~~
1072 ~~series of related distributions~~ in an exchange for part or all
1073 of the fiduciary's ~~a trust's or estate's~~ interest in the entity
1074 to the extent that the entity distribution reduces the
1075 fiduciary's interest in the entity relative to the interest of
1076 other persons that own or hold interests in the entity.
1077 (c) Money received in an entity distribution that is a
1078 capital distribution, to the extent not allocated to income
1079 ~~total or partial liquidation of the entity~~.
1080 (d) Money received in an entity distribution from an entity
1081 that is a regulated investment company or a real estate
1082 investment trust if the money received represents short-term or
1083 long-term capital gain realized within the entity.
1084 ~~(e) Money received from an entity listed on a public stock~~

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1085 ~~exchange during any year of the trust or estate which exceeds 10~~
1086 ~~percent of the fair market value of the trust's or estate's~~
1087 ~~interest in the entity on the first day of that year. The amount~~
1088 ~~to be allocated to principal must be reduced to the extent that~~
1089 ~~the cumulative distributions from the entity to the trust or~~
1090 ~~estate allocated to income do not exceed a cumulative annual~~
1091 ~~return of 3 percent of the fair market value of the interest in~~
1092 ~~the entity at the beginning of each year or portion of a year~~
1093 ~~for the number of years or portion of years in the period that~~
1094 ~~the interest in the entity has been held by the trust or estate.~~
1095 ~~If a trustee has exercised a power to adjust under s. 738.104~~
1096 ~~during any period the interest in the entity has been held by~~
1097 ~~the trust, the trustee, in determining the total income~~
1098 ~~distributions from that entity, must take into account the~~
1099 ~~extent to which the exercise of that power resulted in income to~~
1100 ~~the trust from that entity for that period. If the income of the~~
1101 ~~trust for any period has been computed under s. 738.1041, the~~
1102 ~~trustee, in determining the total income distributions from that~~
1103 ~~entity for that period, must take into account the portion of~~
1104 ~~the unitrust amount paid as a result of the ownership of the~~
1105 ~~trust's interest in the entity for that period.~~
1106 (5) ~~(4)~~ If a fiduciary elects, or continues an election made
1107 by its predecessor, to reinvest dividends in shares of stock of
1108 a distributing corporation or fund, whether evidenced by new
1109 certificates or entries on the books of the distributing entity,
1110 the new shares retain their character as income.
1111 (6) ~~(5)~~ Except as otherwise provided in subsections (10) and
1112 (11), money received in an entity distribution is a capital
1113 distribution ~~Money is received in partial liquidation~~:

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1114 (a) To the extent that the entity, at or near the time of
1115 the entity ~~a~~ distribution, indicates that such money is a
1116 capital distribution ~~in partial liquidation~~; or
1117 (b) To the extent that the total amount of money and
1118 property received by the fiduciary in the entity ~~in a~~
1119 distribution or a series of related entity distributions is or
1120 will be greater than ~~from an entity that is not listed on a~~
1121 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's
1122 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
1123 as shown by the entity's year-end financial statements
1124 immediately preceding the initial receipt.
1125
1126 ~~This subsection does not apply to an entity to which subsection~~
1127 ~~(7) applies.~~
1128 (7)~~(6)~~ In the case of a capital distribution, the amount
1129 received in an entity distribution allocated to principal must
1130 be reduced to the extent that the cumulative distributions from
1131 the entity to the fiduciary ~~Money may not be taken into account~~
1132 ~~in determining any excess under paragraph (5)(b), to the extent~~
1133 ~~that the cumulative distributions from the entity to the trust~~
1134 ~~or the estate~~ allocated to income do not exceed the greater of:
1135 (a) A cumulative annual return of 3 percent of the entity's
1136 carrying value computed at the beginning of each accounting
1137 period, or portion of an accounting period, during the lookback
1138 period ~~for the number of years or portion of years that the~~
1139 ~~entity was held by the fiduciary~~. If a fiduciary ~~trustee~~ has
1140 exercised a power to adjust under s. 738.203 during the lookback
1141 period, the fiduciary ~~s. 738.104 during any period the interest~~
1142 ~~in the entity has been held by the trust, the trustee~~, in

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1143 determining the total income distributions from that entity,
1144 must take into account the extent to which the exercise of the
1145 power resulted in income to the fiduciary ~~trust~~ from that entity
1146 for that period. If the income of a fiduciary during the
1147 lookback ~~trust for any~~ period has been computed under ss.
1148 738.301-738.310, the fiduciary ~~pursuant to s. 738.1041, the~~
1149 ~~trustee~~, in determining the total income distributions from the
1150 entity for that period, must take into account the portion of
1151 the unitrust amount paid as a result of the ownership of the
1152 trust's interest in the entity for that period; or
1153 (b) In ~~If~~ the case of an entity ~~is~~ treated as a
1154 partnership, subchapter S corporation, or ~~a~~ disregarded entity
1155 under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended~~,
1156 the amount of income tax attributable to the fiduciary's ~~trust's~~
1157 ~~or estate's~~ ownership share of the entity, based on its pro rata
1158 share of the taxable income of the entity that distributes the
1159 money, during the lookback period ~~for the number of years or~~
1160 ~~portion of years that the interest in the entity was held by the~~
1161 ~~fiduciary~~, calculated as if all of the ~~that~~ tax was incurred by
1162 the fiduciary.
1163 (8) If a fiduciary receives additional information about
1164 the application of this section to an entity distribution before
1165 the fiduciary has paid part of the entity distribution to a
1166 beneficiary, the fiduciary may consider the additional
1167 information before making the payment to the beneficiary and may
1168 change a decision to make the payment to the beneficiary.
1169 (9) If a fiduciary receives additional information about
1170 the application of this section to an entity distribution after
1171 the fiduciary has paid part of the entity distribution to a

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1172 beneficiary, the fiduciary is not required to change or recover
1173 the payment to the beneficiary but may consider that information
1174 in determining whether to exercise its other powers, including
1175 but not limited to the power to adjust under s. 738.203.
1176 (10) ~~(7)~~ The following applies to money or property received
1177 by a private trustee as a distribution from an investment entity
1178 described in this subsection:
1179 (a) The trustee shall first treat as income of the trust
1180 all of the money or property received from the investment entity
1181 in the current accounting period ~~year~~ which would be considered
1182 income under this chapter if the trustee had directly held the
1183 trust's pro rata share of the assets of the investment entity.
1184 For this purpose, all distributions received in the current
1185 accounting period ~~year~~ must be aggregated.
1186 (b) The trustee shall next treat as income of the trust any
1187 additional money or property received in the current accounting
1188 period ~~year~~ which would have been considered income in the prior
1189 2 accounting periods ~~years~~ under paragraph (a) if additional
1190 money or property had been received from the investment entity
1191 in any of those prior 2 accounting periods ~~years~~. The amount to
1192 be treated as income must ~~shall~~ be reduced by any distributions
1193 of money or property made by the investment entity to the trust
1194 during the current and the prior 2 accounting periods ~~years~~
1195 which were treated as income under this paragraph.
1196 (c) The remainder of the distribution, if any, is treated
1197 as principal.
1198 (d) As used in this subsection, the term:
1199 1. "Investment entity" means an entity, other than a
1200 business activity conducted by the trustee described in s.

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1201 738.403 or an entity that is listed on a public stock exchange,
1202 which is treated as a partnership, subchapter S corporation, or
1203 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
1204 ~~of 1986, as amended,~~ and which normally derives 50 percent or
1205 more of its annual cumulative net income from interest,
1206 dividends, annuities, royalties, rental activity, or other
1207 passive investments, including income from the sale or exchange
1208 of such passive investments.
1209 2. "Private trustee" means a trustee who is a natural
1210 person, but is not an independent person as set forth in s.
1211 738.102 ~~only if the trustee is unable to use the power to adjust~~
1212 ~~between income and principal with respect to receipts from~~
1213 ~~entities described in this subsection pursuant to s. 738.104~~. ~~A~~
1214 ~~bank, trust company, or other commercial trustee is not~~
1215 ~~considered a private trustee.~~
1216 (11) A fiduciary shall allocate to principal any money and
1217 property the fiduciary receives in a distribution or series of
1218 related distributions from a public entity which are greater
1219 than 10 percent of the fair market value of the fiduciary's
1220 interest in the public entity on the first day of the accounting
1221 period. The amount to be allocated to principal must be reduced
1222 to the extent that the cumulative distributions from the entity
1223 to the fiduciary allocated to income do not exceed a cumulative
1224 annual return of 3 percent of the fair market value of the
1225 interest in the entity at the beginning of each accounting
1226 period, or portion of an accounting period, during the lookback
1227 period. If a fiduciary has exercised a power to adjust under s.
1228 738.203 during the lookback period, the fiduciary, in
1229 determining the total income distributions from that entity,

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1230 must take into account the extent to which the exercise of that
1231 power resulted in income to the fiduciary from that entity for
1232 that period. If the income of the fiduciary during the lookback
1233 period has been computed under ss. 738.301-738.310, the
1234 fiduciary, in determining the total income distribution from
1235 that entity for that period, must take into account the portion
1236 of the unitrust amount paid as a result of the ownership of the
1237 trust's interest in the entity for that period. As used in this
1238 subsection, the term "public entity" means an entity listed on a
1239 public stock exchange.
1240 (12) ~~(8)~~ This section must ~~shall~~ be applied before ss.
1241 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
1242 or change any of the provisions of those sections.
1243 Section 21. Section 738.402, Florida Statutes, is amended
1244 to read:
1245 738.402 Distribution from trust or estate.—A fiduciary
1246 shall allocate to income an amount received as a distribution of
1247 income, including a unitrust distribution under ss. 738.301-
1248 738.310, from a trust or an estate in which the fiduciary ~~trust~~
1249 has an interest, other than an interest ~~a~~ purchased in a trust
1250 that is an investment entity, and shall ~~interest and~~ allocate to
1251 principal an amount received as a distribution of principal from
1252 the ~~such a~~ trust or estate. If a fiduciary purchases, or
1253 receives from a settlor, an interest in a trust that is an
1254 investment entity, ~~or a decedent or donor transfers an interest~~
1255 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
1256 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.
1257 Section 22. Section 738.403, Florida Statutes, is amended
1258 to read:

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1259 738.403 Business and other activity ~~activities~~ conducted by
1260 fiduciary.—
1261 (1) This section applies to ~~If a fiduciary who conducts~~ a
1262 business or other activity conducted by a fiduciary if the
1263 fiduciary determines that it is in the best interests of
1264 ~~interest of all~~ the beneficiaries to account separately for the
1265 business or other activity instead of:
1266 (a) Accounting for the business or other activity as part
1267 of the fiduciary's ~~trust's or estate's~~ general accounting
1268 records; or
1269 (b) Conducting the business or other activity through an
1270 entity described in s. 738.401(1)(b).~~, the~~
1271 (2) A fiduciary may account separately under this section
1272 ~~maintain separate accounting records~~ for the transactions of a
1273 ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~
1274 ~~not the~~ assets of the ~~such~~ business or other activity are
1275 segregated from other ~~trust or estate~~ assets held by the
1276 fiduciary.
1277 (3)~~(2)~~ A fiduciary who accounts separately under this
1278 section for a business or other activity:
1279 (a) May determine:
1280 1. The extent to which the net cash receipts of the
1281 business or other activity must be retained for:
1282 a. Working capital;
1283 b. The acquisition or replacement of fixed assets; and
1284 c. Other reasonably foreseeable needs of the business or
1285 other activity; and ~~working capital, the acquisition or~~
1286 ~~replacement of fixed assets, and other reasonably foreseeable~~
1287 ~~needs of the business or activity, and~~

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1288 2. The extent to which the remaining net cash receipts are
1289 accounted for as principal or income in the fiduciary's ~~trust's~~
1290 ~~or estate's~~ general accounting records for the trust.
1291 (b) May make a determination under paragraph (a) separately
1292 and differently from the fiduciary's decisions concerning
1293 distributions of income or principal; and
1294 (c) Shall account for the net amount received from the sale
1295 of an asset of ~~If a fiduciary sells assets of~~ the business or
1296 other activity, other than a sale in the ordinary course of the
1297 business or other activity, ~~the fiduciary must account for the~~
1298 ~~net amount received~~ as principal in the fiduciary's ~~trust's or~~
1299 ~~estate's~~ general accounting records for the trust, to the extent
1300 the fiduciary determines that the net amount received is no
1301 longer required in the conduct of the business or other
1302 activity.
1303 (4) ~~(3)~~ Activities for which a fiduciary may account
1304 separately under this section ~~maintain separate accounting~~
1305 ~~records~~ include:
1306 (a) Retail, manufacturing, service, and other traditional
1307 business activities.
1308 (b) Farming.
1309 (c) Raising and selling livestock and other animals.
1310 (d) Managing ~~Management of~~ rental properties.
1311 (e) Extracting ~~Extraction of~~ minerals and other natural
1312 resources.
1313 (f) Growing and cutting timber ~~operations~~.
1314 (g) An activity ~~Activities~~ to which s. 738.414, s. 738.415,
1315 or s. 738.416 ~~s. 738.607~~ applies.
1316 (h) Any other business conducted by the fiduciary.

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1317 Section 23. Section 738.404, Florida Statutes, is created
1318 to read:
1319 738.404 Principal receipts.—A fiduciary shall allocate to
1320 principal:
1321 (1) To the extent not allocated to income under this
1322 chapter, an asset received from any of the following:
1323 (a) An individual during the individual's lifetime.
1324 (b) An estate.
1325 (c) A trust on termination of an income interest.
1326 (d) A payor under a contract naming the fiduciary as
1327 beneficiary.
1328 (2) Except as otherwise provided in ss. 738.401-738.416,
1329 money or other property received from the sale, exchange,
1330 liquidation, or change in the form of a principal asset.
1331 (3) An amount recovered from a third party to reimburse the
1332 fiduciary because of a disbursement described in s. 738.502(1)
1333 or for another reason to the extent not based on the loss of
1334 income.
1335 (4) Proceeds of property taken by eminent domain except
1336 that proceeds awarded for loss of income in an accounting period
1337 are income if a current income beneficiary had a mandatory
1338 income interest during the period.
1339 (5) Net income received in an accounting period during
1340 which there is no beneficiary to which a fiduciary may or must
1341 distribute income.
1342 (6) Other receipts as provided in ss. 738.408-738.416.
1343 Section 24. Section 738.405, Florida Statutes, is created
1344 to read:
1345 738.405 Rental property.—To the extent that a fiduciary

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1346 does not account for the management of rental property as a
1347 business under s. 738.403, the fiduciary shall allocate to
1348 income an amount received as rent of real or personal property,
1349 including an amount received for cancellation or renewal of a
1350 lease. An amount received as a refundable deposit, including a
1351 security deposit or a deposit that is to be applied as rent for
1352 future periods:
1353 (1) Must be added to principal and held subject to the
1354 terms of the lease, except as otherwise provided by law other
1355 than this chapter; and
1356 (2) Is not allocated to income or available for
1357 distribution to a beneficiary until the fiduciary's contractual
1358 obligations have been satisfied with respect to that amount.
1359 Section 25. Section 738.406, Florida Statutes, is created
1360 to read:
1361 738.406 Receipt on obligation to be paid in money.—
1362 (1) This section does not apply to an obligation to which
1363 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
1364 738.415, or s. 738.416 applies.
1365 (2) A fiduciary shall allocate to income, without provision
1366 for amortization of premium, an amount received as interest on
1367 an obligation to pay money to the fiduciary, including an amount
1368 received as consideration for prepaying principal.
1369 (3) A fiduciary shall allocate to principal an amount
1370 received from the sale, redemption, or other disposition of an
1371 obligation to pay money to the fiduciary.
1372 (4) A fiduciary shall allocate to income the increment in
1373 value of a bond or other obligation for the payment of money
1374 bearing no stated interest but payable or redeemable, at

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1375 maturity or another future time, in an amount that exceeds the
1376 amount in consideration of which it was issued. If the increment
1377 in value accrues and becomes payable pursuant to a fixed
1378 schedule of appreciation, it may be distributed to the
1379 beneficiary who was the income beneficiary at the time of
1380 increment from the first principal cash available or, if none is
1381 available, when the increment is realized by sale, redemption,
1382 or other disposition. If unrealized increment is distributed as
1383 income but out of principal, the principal must be reimbursed
1384 for the increment when realized. If, in the reasonable judgment
1385 of the fiduciary, exercised in good faith, the ultimate payment
1386 of the bond principal is in doubt, the fiduciary may withhold
1387 the payment of incremental interest to the income beneficiary.
1388 Section 26. Section 738.407, Florida Statutes, is created
1389 to read:
1390 738.407 Insurance policy or contract.—
1391 (1) This section does not apply to a contract to which s.
1392 738.409 applies.
1393 (2) Except as otherwise provided in subsection (3), a
1394 fiduciary shall allocate to principal the proceeds of a life
1395 insurance policy or other contract received by the fiduciary as
1396 beneficiary, including a contract that insures against damage
1397 to, destruction of, or loss of title to an asset. The fiduciary
1398 shall allocate dividends on an insurance policy to income to the
1399 extent that premiums on the policy are paid from income and to
1400 principal to the extent premiums on the policy are paid from
1401 principal.
1402 (3) A fiduciary shall allocate to income proceeds of a
1403 contract that insures the fiduciary against loss of:

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1404 (a) Occupancy or other use by a current income beneficiary;
1405 (b) Income; or
1406 (c) Subject to s. 738.403, profits from a business.
1407 Section 27. Section 738.408, Florida Statutes, is created
1408 to read:
1409 738.408 Insubstantial allocation not required.—
1410 (1) If a fiduciary determines that an allocation between
1411 income and principal required by s. 738.409, s. 738.410, s.
1412 738.411, s. 738.412, or s. 738.415 is insubstantial, the
1413 fiduciary may allocate the entire amount to principal, unless s.
1414 738.203(5) applies to the allocation.
1415 (2) A fiduciary may presume an allocation is insubstantial
1416 under subsection (1) if:
1417 (a) The amount of the allocation would increase or decrease
1418 net income in an accounting period, as determined before the
1419 allocation, by less than 10 percent; and
1420 (b) The asset producing the receipt to be allocated has a
1421 carrying value less than 10 percent of the total carrying value
1422 of the assets owned or held by the fiduciary at the beginning of
1423 the accounting period.
1424 (3) The power to make a determination under subsection (1)
1425 may be:
1426 (a) Exercised by a cofiduciary in the manner described in
1427 s. 738.203(6); or
1428 (b) Released or delegated for a reason described in s.
1429 738.203(7) and in the manner described in s. 738.203(8).
1430 Section 28. Section 738.409, Florida Statutes, is created
1431 to read:
1432 738.409 Deferred compensation, annuity, or similar

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1433 payment.—
1434 (1) As used in this section, the term:
1435 (a) "Internal income of the separate fund" means the amount
1436 determined under subsection (2).
1437 (b) "Marital trust" means a trust:
1438 1. Of which the settlor's surviving spouse is the only
1439 current income beneficiary and is entitled to a distribution of
1440 all the current net income of the trust; and
1441 2. That qualifies for a marital deduction with respect to
1442 the settlor's estate under the Internal Revenue Code or
1443 comparable law of any state because:
1444 a. An election to qualify for a marital deduction under s.
1445 2056(b)(7) of the Internal Revenue Code has been made;
1446 b. The trust qualified for a marital deduction under s.
1447 2056(b)(5) of the Internal Revenue Code; or
1448 c. The trust otherwise qualifies for a marital deduction.
1449 (c) "Nonseparate fund" means an annuity, a deferred
1450 compensation plan, a pension plan, or other fund for which the
1451 value of the participant's or account owner's right to receive
1452 benefits can be determined only by the occurrence of a date or
1453 event as defined in the instrument governing the fund.
1454 (d) "Payment" means an amount a fiduciary may receive over
1455 a fixed number of years or during the life of one or more
1456 individuals because of services rendered or property transferred
1457 to the payor in exchange for future amounts the fiduciary may
1458 receive. The term includes an amount received in money or
1459 property from the payor's general assets or from a separate fund
1460 created by the payor.
1461 (e) "Percent calculated" means a percent equal to the rate

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1462 determined under s. 7520 of the Internal Revenue Code in effect
1463 for the month preceding the beginning of the accounting period;
1464 however, if the percent calculated exceeds 5 percent, it must be
1465 reduced to 5 percent, and if the percent calculated is less than
1466 3 percent, it must be increased to 3 percent. Notwithstanding
1467 the preceding sentence, a fiduciary who is an independent person
1468 as defined in s. 738.102 may set the percent calculated at a
1469 percentage no less than 3 percent and no greater than 5 percent.
1470 (f) "Separate fund" includes a private or commercial
1471 annuity, an individual retirement account, and a pension,
1472 profit-sharing, stock-bonus, stock ownership plan, or other
1473 deferred compensation fund holding assets exclusively for the
1474 benefit of a participant or account owner.
1475 (2) For each accounting period, the following rules apply
1476 to a separate fund:
1477 (a) The fiduciary may determine the internal income of the
1478 separate fund as if the separate fund were a trust subject to
1479 this chapter.
1480 (b) Alternatively, the fiduciary may deem the internal
1481 income of the separate fund to equal the percent calculated of
1482 the value of the separate fund according to the most recent
1483 statement of value preceding the beginning of the accounting
1484 period. The fiduciary is not liable for good faith reliance upon
1485 any valuation supplied by the person or persons in possession of
1486 the fund. If the fiduciary makes or terminates an election under
1487 this paragraph, the fiduciary must make such disclosure in a
1488 trust disclosure document that satisfies the requirements of s.
1489 736.1008(4)(c).
1490 (c) If the fiduciary cannot determine the value of the

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1491 separate fund under paragraph (b), the value of the separate
1492 fund is deemed to equal the present value of the expected future
1493 payments, as determined under s. 7520 of the Internal Revenue
1494 Code for the month preceding the beginning of the accounting
1495 period for which the computation is made.
1496 (d) The fiduciary may elect the method of determining the
1497 income of the fund pursuant to this subsection and may change
1498 the method of determining income of the fund for any future
1499 accounting period.
1500 (3) A fiduciary shall allocate a payment received from a
1501 separate fund during an accounting period to income, to the
1502 extent of the internal income of the separate fund during the
1503 period, and allocate the balance to principal.
1504 (4) The fiduciary of a marital trust shall:
1505 (a) Withdraw from a separate fund the amount the current
1506 income beneficiary of the trust requests the fiduciary to
1507 withdraw, not greater than the amount by which the internal
1508 income of the separate fund during the accounting period exceeds
1509 the amount the fiduciary otherwise receives from the separate
1510 fund during the period.
1511 (b) Transfer from principal to income the amount the
1512 current income beneficiary requests the fiduciary to transfer,
1513 but not greater than the amount by which the internal income of
1514 the separate fund during the period exceeds the amount the
1515 fiduciary receives from the separate fund during the period
1516 after the application of paragraph (a).
1517 (c) Distribute to the current income beneficiary as income:
1518 1. The amount of the internal income of the separate fund
1519 received or withdrawn during the period; and

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1520 2. The amount transferred from principal to income under
1521 paragraph (b).
1522 (5) For a trust, other than a marital trust, of which one
1523 or more current income beneficiaries are entitled to a
1524 distribution of all the current net income, the fiduciary shall
1525 transfer from principal to income the amount by which the
1526 internal income of the separate fund during the accounting
1527 period exceeds the amount the fiduciary receives from the
1528 separate fund during the period.
1529 (6) The fiduciary of a nonseparate fund shall calculate
1530 internal income of the fund as the percent calculated of the
1531 present value of the right to receive the remaining payments as
1532 determined under s. 7520(a)(2) of the Internal Revenue Code for
1533 the month preceding the beginning of the accounting period.
1534 (7) If a fiduciary owns a separate fund or a nonseparate
1535 fund before January 1, 2025, the fiduciary may determine
1536 internal income, allocate payments, and account for unwithdrawn
1537 internal income as provided in this section or in the manner
1538 used by the fiduciary before January 1, 2025. Such fiduciary is
1539 not required to consider subsection (5). If the fiduciary
1540 acquires a separate fund or a nonseparate fund on or after
1541 January 1, 2025, the fiduciary must calculate internal income,
1542 allocate payments, and account for unwithdrawn internal income
1543 as provided in this section.
1544 Section 29. Section 738.603, Florida Statutes, is
1545 transferred, renumbered as section 738.410, Florida Statutes,
1546 and amended to read:
1547 738.410 ~~738.603~~ Liquidating asset.—
1548 (1) As used in ~~For purposes of~~ this section, the term

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1549 "liquidating asset" means an asset whose value ~~the value of~~
1550 ~~which~~ will diminish or terminate because the asset is expected
1551 to produce receipts for a ~~period of~~ limited time ~~duration~~. The
1552 term includes a leasehold, patent, copyright, royalty right, and
1553 right to receive payments during a period of ~~for~~ more than 1
1554 year under an arrangement that does not provide for the payment
1555 of interest on the unpaid balance. ~~The term does not include a~~
1556 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
1557 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~
1558 ~~an asset subject to s. 738.608, or any asset for which the~~
1559 ~~fiduciary establishes a reserve for depreciation under s.~~
1560 ~~738.703.~~
1561 (2) This section does not apply to a receipt that is
1562 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
1563 738.414, s. 738.415, s. 738.416, or s. 738.503.
1564 (3) A fiduciary shall allocate to income a receipt produced
1565 by a liquidating asset to the extent that the receipt does not
1566 exceed 5 percent of the ~~receipts from the~~ carrying value of the
1567 asset at the beginning of the accounting period and allocate ~~a~~
1568 ~~liquidating asset and the balance~~ to principal the balance of
1569 the receipt.
1570 (4) The amount ~~Amounts~~ allocated to principal shall reduce
1571 the carrying value of the liquidating asset, but not below zero.
1572 Amounts received in excess of the remaining carrying value must
1573 be allocated to principal.
1574 Section 30. Section 738.604, Florida Statutes, is
1575 transferred, renumbered as section 738.411, Florida Statutes,
1576 and amended to read:
1577 738.411 ~~738.604~~ Minerals, water, and other natural

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1578 resources.—
1579 (1) To the extent that ~~If~~ a fiduciary does not account for
1580 a receipt ~~accounts for receipts~~ from an interest in minerals,
1581 water, or other natural resources as a business under s. 738.403
1582 ~~pursuant to this section~~, the fiduciary shall allocate the
1583 receipt ~~such receipts as follows~~:
1584 (a) To income, to the extent received:
1585 1. ~~If received~~ As ~~nominal~~ delay rental or ~~nominal~~ annual
1586 rent on a lease;
1587 2. As a factor for interest or the equivalent of interest
1588 under an agreement creating a production payment; or
1589 3. On account of an interest in renewable water;~~, a receipt~~
1590 ~~shall be allocated to income.~~
1591 (b) To principal, if received from a production payment, ~~a~~
1592 ~~receipt shall be allocated to income if and~~ to the extent that
1593 subparagraph (a)2. does not apply; or ~~the agreement creating the~~
1594 ~~production payment provides a factor for interest or its~~
1595 ~~equivalent. The balance shall be allocated to principal.~~
1596 (c) Between income and principal equitably, to the extent
1597 received:
1598 1. On account of an interest in nonrenewable water;
1599 2. ~~If an amount received~~ As a royalty, shut-in-well
1600 payment, take-or-pay payment, or bonus; or~~, or delay rental is~~
1601 ~~more than nominal, 90 percent shall be allocated to principal~~
1602 ~~and the balance to income.~~
1603 3.~~(d)~~ ~~If an amount is received~~ From a working interest or
1604 any other interest not provided for in paragraph (a) or~~,~~
1605 paragraph (b) or subparagraph 1. or subparagraph 2.~~, or~~
1606 ~~paragraph (c), 90 percent of the net amount received shall be~~

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1607 ~~allocated to principal and the balance to income.~~
1608 (2) ~~An amount received on account of an interest in water~~
1609 ~~that is renewable shall be allocated to income. If the water is~~
1610 ~~not renewable, 90 percent of the amount shall be allocated to~~
1611 ~~principal and the balance to income.~~
1612 ~~(3)~~ This section ~~chapter~~ applies to an interest owned or
1613 held by a fiduciary regardless of whether ~~or not~~ a settlor
1614 ~~decedent or donor~~ was extracting minerals, water, or other
1615 natural resources before the fiduciary owned or held the
1616 interest ~~became subject to the trust or estate~~.
1617 (3) An allocation of a receipt under paragraph (1)(c) is
1618 presumed to be equitable if the amount allocated to principal is
1619 equal to the amount allowed by the Internal Revenue Code as a
1620 deduction for depletion of the interest.
1621 (4) If a fiduciary ~~trust or estate~~ owns or holds an
1622 interest in minerals, water, or other natural resources before
1623 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
1624 receipts from the interest as provided in this section ~~chapter~~
1625 or in the manner used by the fiduciary before January 1, 2025
1626 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an
1627 interest in minerals, water, or other natural resources on or
1628 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
1629 allocate receipts from the interest as provided in this section
1630 ~~chapter~~.
1631 Section 31. Section 738.605, Florida Statutes, is
1632 transferred, renumbered as section 738.412, Florida Statutes,
1633 and amended to read:
1634 738.412 ~~738.605~~ Timber.—
1635 (1) To the extent that ~~If~~ a fiduciary does not account

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1636 ~~accounts~~ for receipts from the sale of timber and related
1637 products as a business under s. 738.403 ~~pursuant to this~~
1638 ~~section~~, the fiduciary shall allocate the ~~such~~ net receipts ~~as~~
1639 ~~follows~~:
1640 (a) To income, to the extent that the amount of timber cut
1641 ~~removed~~ from the land does not exceed the rate of growth of the
1642 timber ~~during the accounting periods in which a beneficiary has~~
1643 ~~a mandatory income interest~~;
1644 (b) To principal, to the extent that the amount of timber
1645 cut ~~removed~~ from the land exceeds the rate of growth of the
1646 timber or the net receipts are from the sale of standing timber;
1647 (c) ~~To or~~ Between income and principal if the net receipts
1648 are from the lease of land used for growing and cutting timber
1649 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
1650 ~~trust or estate~~ by determining the amount of timber cut ~~removed~~
1651 from the land under the lease or contract and applying the rules
1652 in paragraphs (a) and (b); or
1653 (d) To principal, to the extent that advance payments,
1654 bonuses, and other payments are not allocated under ~~pursuant to~~
1655 paragraph (a), paragraph (b), or paragraph (c).
1656 (2) In determining net receipts to be allocated under
1657 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and
1658 transfer to principal a reasonable amount for depletion.
1659 (3) This section ~~chapter~~ applies to land owned or held by a
1660 fiduciary regardless of whether ~~or not~~ a settlor ~~decedent or~~
1661 ~~donor~~ was cutting ~~harvesting~~ timber from the land ~~property~~
1662 before the fiduciary owned or held the property ~~became subject~~
1663 ~~to the trust or estate~~.
1664 (4) If a fiduciary ~~trust or estate~~ owns or holds an

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1665 interest in land used for growing and cutting timber before
1666 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
1667 allocate net receipts from the sale of timber and related
1668 products as provided in this section ~~chapter~~ or in the manner
1669 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
1670 the fiduciary ~~trust or estate~~ acquires an interest in land used
1671 for growing and cutting timber on or after January 1, 2025
1672 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
1673 allocate net receipts from the sale of timber and related
1674 products as provided in this section ~~chapter~~.
1675 Section 32. Section 738.606, Florida Statutes, is
1676 transferred, renumbered as section 738.413, Florida Statutes,
1677 and amended to read:
1678 738.413 ~~738.606~~ Marital deduction property not productive
1679 of income.—
1680 (1) If a trust received property for which a gift or estate
1681 tax marital deduction was ~~under the Internal Revenue Code or~~
1682 ~~comparable law of any state is~~ allowed, ~~for all~~ or if ~~part of~~ a
1683 trust received property satisfying~~, or if assets are transferred~~
1684 ~~to a trust that satisfies~~ the requirements of s. 732.2025(2)(a)
1685 and (c), and such property has ~~assets have~~ been used in whole or
1686 in part to satisfy an election by a surviving spouse under s.
1687 732.2125, and the settlor's spouse holds a mandatory income
1688 interest in the trust, the spouse may require the trustee, to
1689 the extent that the trust assets otherwise do ~~consist of~~
1690 ~~property that, in the aggregate, does~~ not provide the spouse
1691 with sufficient income from or use of the trust assets to
1692 qualify for the deduction, or to satisfy an election by a
1693 surviving spouse under s. 732.2125, to make the property

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1694 productive of income within a reasonable time. The trustee may:
1695 (a) Convert property to property productive of income
1696 within a reasonable time;
1697 (b) Exercise the power to adjust under s. 738.203;
1698 (c) Exercise the power to convert to or from a unitrust
1699 under s. 738.303; or
1700 (d) Exercise the fiduciary's authority under the terms of
1701 the trust to otherwise provide the surviving spouse with
1702 sufficient income from the trust assets, or the use of the trust
1703 assets, to qualify for the marital deduction, or to satisfy an
1704 election by a surviving spouse under s. 732.2125.
1705 (2) The trustee may decide which action or combination of
1706 actions listed in subsection (1) to take.
1707 (3) Subsection (1) shall apply~~, and if amounts the trustee~~
1708 ~~transfers from principal to income under s. 738.104 and~~
1709 ~~distributes to the spouse from principal pursuant to the terms~~
1710 ~~of the trust are insufficient to provide the spouse with the~~
1711 ~~beneficial enjoyment required to obtain the marital deduction,~~
1712 even though, in the case of an elective share trust under s.
1713 732.2025(2), a marital deduction is not made or is only
1714 partially made~~, the spouse may require the trustee of such~~
1715 ~~marital trust or elective share trust to make property~~
1716 ~~productive of income, convert property within a reasonable time,~~
1717 ~~or exercise the power conferred by ss. 738.104 and 738.1041~~.
1718 (4) The terms of a trust as defined in s. 738.102 may not
1719 supersede this section unless such terms explicitly reference
1720 this section ~~The trustee may decide which action or combination~~
1721 ~~of actions to take~~.
1722 ~~(2) In cases not governed by subsection (1), proceeds from~~

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1723 ~~the sale or other disposition of an asset are principal without~~
1724 ~~regard to the amount of income the asset produces during any~~
1725 ~~accounting period.~~
1726 Section 33. Section 738.607, Florida Statutes, is
1727 transferred, renumbered as section 738.414, Florida Statutes,
1728 and amended to read:
1729 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—
1730 (1) As used in ~~For purposes of~~ this section, the term
1731 "derivative" means a contract, an ~~or financial~~ instrument, or
1732 other arrangement, or ~~a~~ combination of contracts, ~~and financial~~
1733 instruments, or other arrangements, of which the value, rights,
1734 and obligations are, in whole or in part, dependent on or
1735 derived from an underlying ~~which gives a trust the right or~~
1736 ~~obligation to participate in some or all changes in the price of~~
1737 ~~a~~ tangible or intangible asset, a ~~or~~ group of tangible or
1738 intangible assets, an index, or an occurrence of an event. The
1739 term includes stocks, fixed income securities, and financial
1740 instruments and arrangements based on indices, commodities,
1741 interest rates, weather-related events, and credit-default
1742 events ~~assets, or changes in a rate, an index of prices or~~
1743 ~~rates, or other market indicator for an asset or a group of~~
1744 ~~assets~~.
1745 (2) To the extent that a fiduciary does not account for a
1746 transaction in derivatives as a business under s. 738.403 ~~for~~
1747 ~~transactions in derivatives~~, the fiduciary shall allocate 10
1748 percent of ~~to principal~~ receipts from the transaction and 10
1749 percent of ~~and~~ disbursements made in connection with the
1750 transaction to income and allocate the balance to principal
1751 ~~those transactions~~.

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1752 (3) Subsection (4) applies if:
1753 (a) A fiduciary:
1754 1. ~~If a fiduciary~~ Grants an option to buy property from a
1755 ~~the~~ trust, regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or~~
1756 ~~estate~~ owns the property when the option is granted;~~,~~
1757 2. Grants an option that permits another person to sell
1758 property to the trust; or
1759 3. ~~estate, or~~ Acquires an option to buy property for the
1760 trust or ~~estate or~~ an option to sell an asset owned by the trust
1761 ~~or estate;~~~~,~~ and
1762 (b) The fiduciary or other owner of the asset is required
1763 to deliver the asset if the option is exercised~~, an amount~~
1764 ~~received for granting the option shall be allocated to~~
1765 ~~principal~~. ~~An amount paid to acquire the option shall be paid~~
1766 ~~from principal.~~
1767 (4) If this subsection applies, the fiduciary must allocate
1768 10 percent to income and allocate the balance to principal of
1769 the following amounts:
1770 (a) An amount received for granting the option;
1771 (b) An amount paid to acquire the option; and
1772 (c) ~~A~~ Gain or loss realized on ~~upon~~ the exercise, exchange,
1773 settlement, offset, closing, or expiration of the option ~~of an~~
1774 ~~option, including an option granted to a grantor of the trust or~~
1775 ~~estate for services rendered, shall be allocated to principal~~.
1776 Section 34. Section 738.608, Florida Statutes, is
1777 transferred, renumbered as section 738.415, Florida Statutes,
1778 and amended to read:
1779 738.415 ~~738.608~~ Asset-backed securities.—
1780 (1) Except as otherwise provided in subsection (2), a

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1781 fiduciary shall allocate to income a receipt from or related to
1782 an asset-backed security, as defined in s. 738.102, to the
1783 extent that the payor identifies the payment as being from ~~For~~
1784 ~~purposes of this section, "asset-backed security" means an asset~~
1785 ~~the value of which is based upon the right given the owner to~~
1786 ~~receive distributions from the proceeds of financial assets that~~
1787 ~~provide collateral for the security. The term includes an asset~~
1788 ~~that gives the owner the right to receive from the collateral~~
1789 ~~financial assets only the~~ interest or other current return and
1790 allocate to principal the balance of the receipt ~~or only the~~
1791 ~~proceeds other than interest or current return~~. ~~The term does~~
1792 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~
1793 (2) If a fiduciary receives one or more payments in
1794 exchange for part or all of the fiduciary's interest in an
1795 asset-backed security, including a liquidation or redemption of
1796 the fiduciary's interest in the security ~~trust or estate~~
1797 ~~receives a payment from interest or other current return and~~
1798 ~~from other proceeds of the collateral financial assets~~, the
1799 fiduciary must ~~shall~~ allocate to income 10 percent of receipts
1800 from the transaction and 10 percent of disbursements made in
1801 connection with the transaction, and allocate to principal ~~the~~
1802 ~~portion of the payment which the payor identifies as being from~~
1803 ~~interest or other current return and allocate~~ the balance of the
1804 receipts and disbursements ~~payment to principal~~.
1805 ~~(3) If a trust or estate receives one or more payments in~~
1806 ~~exchange for the trust's or estate's entire interest in an~~
1807 ~~asset-backed security during a single accounting period, the~~
1808 ~~fiduciary shall allocate the payments to principal. If a payment~~
1809 ~~is one of a series of payments that will result in the~~

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1810 ~~liquidation of the trust's or estate's interest in the security~~
1811 ~~over more than a single accounting period, the fiduciary shall~~
1812 ~~allocate 10 percent of the payment to income and the balance to~~
1813 ~~principal.~~
1814 Section 35. Section 738.416, Florida Statutes, is created
1815 to read:
1816 738.416 Other financial instrument or arrangement.—A
1817 fiduciary shall allocate receipts from or related to a financial
1818 instrument or arrangement not otherwise addressed by this
1819 chapter. The allocation must be consistent with ss. 738.414 and
1820 738.415.
1821 Section 36. Section 738.501, Florida Statutes, is amended
1822 to read:
1823 (Substantial rewording of section. See
1824 s. 738.501, F.S., for present text.)
1825 738.501 Disbursement from income.—Subject to s. 738.504,
1826 and except as otherwise provided in s. 738.601(3)(b) or (c), a
1827 fiduciary shall disburse from income:
1828 (1) One-half of:
1829 (a) The regular compensation of the fiduciary and of any
1830 person providing investment advisory, custodial, or other
1831 services to the fiduciary to the extent that income is
1832 sufficient; and
1833 (b) An expense for an accounting, judicial or nonjudicial
1834 proceeding, or other matter that involves both income and
1835 successive interests to the extent income is sufficient.
1836 (2) The balance of the disbursements described in
1837 subsection (1), to the extent that a fiduciary who is an
1838 independent person determines that making those disbursements

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1839 from income would be in the interests of the beneficiaries.
1840 (3) Any other ordinary expense incurred in connection with
1841 administration, management, or preservation of property and
1842 distribution of income, including interest, an ordinary repair,
1843 a regularly recurring tax assessed against principal, and an
1844 expense of an accounting, judicial or nonjudicial proceeding, or
1845 other matter that involves primarily an income interest, to the
1846 extent that income is sufficient.
1847 (4) A premium on insurance covering loss of a principal
1848 asset or income from or use of the asset.
1849 Section 37. Section 738.502, Florida Statutes, is amended
1850 to read:
1851 (Substantial rewording of section. See
1852 s. 738.502, F.S., for present text.)
1853 738.502 Disbursement from principal.—
1854 (1) Subject to s. 738.505, and except as otherwise provided
1855 in s. 738.601(3)(b), a fiduciary shall disburse all of the
1856 following from principal:
1857 (a) The balance of the disbursements described in s.
1858 738.501(1) and (3), after application of s. 738.501(2).
1859 (b) The fiduciary’s compensation calculated on principal as
1860 a fee for acceptance, distribution, or termination.
1861 (c) A payment of an expense to prepare for or execute a
1862 sale or other disposition of property.
1863 (d) A payment on the principal of a trust debt.
1864 (e) A payment of an expense of an accounting, judicial or
1865 nonjudicial proceeding, or other matter that involves primarily
1866 principal, including a proceeding to construe the terms of the
1867 trust or protect property.

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1868 (f) A payment of a premium for insurance, including title
1869 insurance, not described in s. 738.501(4) of which the fiduciary
1870 is the owner and beneficiary.
1871 (g) A payment of estate, inheritance, and other transfer
1872 taxes, including penalties, apportioned to the trust.
1873 (h) A payment related to environmental matters including:
1874 1. Reclamation;
1875 2. Assessing environmental conditions;
1876 3. Remedying and removing environmental contamination;
1877 4. Monitoring remedial activities and the release of
1878 substances;
1879 5. Preventing future releases of substances;
1880 6. Collecting amounts from persons liable or potentially
1881 liable for the costs of the activities described in
1882 subparagraphs 1.-5.;
1883 7. Penalties imposed under environmental laws or
1884 regulations;
1885 8. Other actions to comply with environmental laws or
1886 regulations;
1887 9. Statutory or common law claims by third parties; and
1888 10. Defending claims based on environmental matters.
1889 (i) A payment of a premium for insurance for matters
1890 described in paragraph (h).
1891 (2) If a principal asset is encumbered with an obligation
1892 that requires income from the asset to be paid directly to a
1893 creditor, the fiduciary must transfer from principal to income
1894 an amount equal to the income paid to the creditor in reduction
1895 of the principal balance of the obligation.
1896 Section 38. Section 738.503, Florida Statutes, is amended

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1897 to read:
1898 (Substantial rewording of section. See
1899 s. 738.503, F.S., for present text.)
1900 738.503 Transfers from income to principal for
1901 depreciation.—
1902 (1) For purposes of this section, "depreciation" means a
1903 reduction in value due to wear, tear, decay, corrosion, or
1904 gradual obsolescence of a tangible asset having a useful life of
1905 more than 1 year.
1906 (2) A fiduciary may transfer to principal a reasonable
1907 amount of the net cash receipts from a principal asset that is
1908 subject to depreciation but may not transfer any amount for
1909 depreciation:
1910 (a) Of the part of real property used or available for use
1911 by a beneficiary as a residence;
1912 (b) Of tangible personal property held or made available
1913 for the personal use or enjoyment of a beneficiary; or
1914 (c) Under this section, to the extent that the fiduciary
1915 accounts:
1916 1. Under s. 738.410 for the asset; or
1917 2. Under s. 738.403 for the business or other activity in
1918 which the asset is used.
1919 (3) An amount transferred to principal under this section
1920 need not be separately held.
1921 Section 39. Section 738.504, Florida Statutes, is amended
1922 to read:
1923 (Substantial rewording of section. See
1924 s. 738.504, F.S., for present text.)
1925 738.504 Reimbursement of income from principal.—

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1926 (1) If a fiduciary makes or expects to make an income
1927 disbursement described in subsection (2), the fiduciary may
1928 transfer an appropriate amount from principal to income in one
1929 or more accounting periods to reimburse income.
1930 (2) To the extent that the fiduciary has not been and does
1931 not expect to be reimbursed by a third party, income
1932 disbursements to which subsection (1) applies include:
1933 (a) An amount chargeable to principal but paid from income
1934 because principal is illiquid;
1935 (b) A disbursement made to prepare property for sale,
1936 including improvements and commissions; and
1937 (c) A disbursement described in s. 738.502(1).
1938 (3) If an asset whose ownership gives rise to an income
1939 disbursement becomes subject to a successive interest after an
1940 income interest ends, the fiduciary may continue to make
1941 transfers under subsection (1).
1942 Section 40. Section 738.704, is transferred, renumbered as
1943 section 738.505, Florida Statutes, and amended to read:
1944 738.505 ~~738.704~~ Reimbursement of principal from income
1945 ~~Transfers from income to reimburse principal~~.—
1946 (1) If a fiduciary makes or expects to make a principal
1947 disbursement described in subsection (2) ~~this section~~, the
1948 fiduciary may transfer an appropriate amount from income to
1949 principal in one or more accounting periods to reimburse
1950 principal or to provide a reserve for future principal
1951 disbursements.
1952 (2) ~~Principal disbursements to which subsection (1) applies~~
1953 ~~include the following, but only~~ To the extent that a ~~the~~
1954 fiduciary has not been and does not expect to be reimbursed by a

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1955 third party, principal disbursements to which subsection (1)
1956 applies include:
1957 (a) An amount chargeable to income but paid from principal
1958 because income is not sufficient; ~~the amount is unusually large.~~
1959 (b) The cost of an improvement to principal, whether a
1960 change to an existing asset or the construction of a new asset,
1961 including a special assessment; ~~Disbursements made to prepare~~
1962 ~~property for rental, including tenant allowances, leasehold~~
1963 ~~improvements, and broker's commissions.~~
1964 (c) A disbursement made to prepare property for rental,
1965 including tenant allowances, leasehold improvements, and
1966 commissions; ~~Disbursements described in s. 738.702(1)(g)~~.
1967 (d) A periodic payment on an obligation secured by a
1968 principal asset, to the extent the amount transferred from
1969 income to principal for depreciation is less than the periodic
1970 payment; and
1971 (e) A disbursement described in s. 738.502(1).
1972 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives rise
1973 to a principal disbursement ~~the disbursements~~ becomes subject to
1974 a successive ~~income~~ interest after an income interest ends, the
1975 ~~a~~ fiduciary may continue to make transfers under ~~transfer~~

By Senator Berman

26-00106D-24 20241316__

A bill to be entitled

An act relating to the Florida Uniform Fiduciary Income and Principal Act; amending s. 738.101, F.S.; revising a short title; amending s. 738.102, F.S.; revising and providing definitions governing ch. 738, F.S.; amending s. 738.103, F.S.; specifying the scope of ch. 738, F.S.; amending s. 738.104, F.S.; specifying circumstances under which ch. 738, F.S., applies to a trust; repealing s. 738.1041, F.S., relating to total return unitrusts; repealing s. 738.105, F.S., relating to judicial control of discretionary powers; amending s. 738.201, F.S.; specifying the duties of a fiduciary; providing that a fiduciary's allocation, determination, or exercise of discretion is presumed to be fair and reasonable to all beneficiaries; requiring a fiduciary to take specified actions; authorizing a fiduciary to exercise discretionary power of administration under specified circumstances; requiring the fiduciary to consider specified factors before exercising such discretionary power; providing for applicability; amending s. 738.202, F.S.; defining the term "fiduciary decision"; prohibiting a court from ordering a fiduciary to change his or her decision unless the decision was an abuse of discretionary power; prohibiting a court from determining that a fiduciary abused its discretion under specified conditions; authorizing a court to order a specified remedy; authorizing a court to determine whether a proposed fiduciary decision will

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result in an abuse of discretion; providing that a beneficiary who opposes a proposed decision has the burden to establish that such decision is an abuse of discretion; requiring that any attorney fees incurred in defending an action related to the abuse of a fiduciary's discretion be paid from trust assets; creating s. 738.203, F.S.; authorizing a fiduciary to adjust between income and principal if such adjustment assists in administering the trust or estate impartially; providing construction; providing that a fiduciary is not liable to another for an adjustment, or failure to adjust, between income and principal made in good faith; requiring a fiduciary to consider certain relevant factors when considering such adjustment; prohibiting a fiduciary from exercising or considering such adjustment if certain conditions exist; revising applicability; authorizing a fiduciary to release or delegate to a cofiduciary specified powers to adjust under specified conditions; providing requirements and powers for any such releases and delegations; providing applicability; requiring that the description of an exercise of the power to adjust between income and principal contain specified information; amending s. 738.301, F.S.; defining terms; amending s. 738.302, F.S.; specifying applicability of specified provisions; authorizing the conversion of an income trust to a unitrust; restricting provisions to trusts that are beneficiaries of an estate; providing construction;

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59 providing that a fiduciary acting in good faith is not
60 liable to a person affected by a certain action or
61 inaction; amending s. 738.303, F.S.; specifying the
62 authority of a fiduciary with respect to the
63 administration of certain trusts; providing the
64 circumstances under which a fiduciary may perform such
65 actions; authorizing a beneficiary or a fiduciary to
66 request the court to allow the beneficiary or
67 fiduciary to take a specified action; requiring a
68 fiduciary to inform specified persons of a decision to
69 take action; authorizing a beneficiary to request a
70 court to direct the fiduciary to take the requested
71 action under specified circumstances; requiring
72 fiduciaries to consider specified factors before
73 taking a certain action; authorizing a fiduciary to
74 release or delegate the power to take certain actions;
75 creating s. 738.304, F.S.; requiring a certain notice
76 to be sent to specified parties; providing
77 applicability; authorizing a person to consent to a
78 specified action in a record; providing that such
79 person does not need to be sent notice of such action;
80 providing requirements for such notices; creating s.
81 738.305, F.S.; requiring a fiduciary of a unitrust to
82 follow a certain policy; providing rules for a
83 unitrust policy; providing additional actions a
84 unitrust policy may contain; creating s. 738.306,
85 F.S.; requiring a unitrust rate to be within a
86 specified range; authorizing a unitrust policy to
87 provide for specified limits within such range;

88 requiring a fiduciary who is a non-independent person
89 to use a specified unitrust rate; creating s. 738.307,
90 F.S.; requiring a unitrust policy to provide a
91 specified method for determining fair market value of
92 an asset in determining a unitrust amount; authorizing
93 specified unitrust policies to provide methods for
94 determining a certain net fair market value;
95 prohibiting certain property from being included in
96 the determination of the value of a trust; creating s.
97 738.308, F.S.; requiring a unitrust policy to provide
98 a specified period; specifying that such period must
99 be a calendar year; authorizing a unitrust policy to
100 provide certain standards for periods; creating s.
101 738.309, F.S.; providing applicability; authorizing a
102 trustee of an express unitrust to determine the
103 unitrust amount by reference to the net fair market
104 value of the unitrust's assets in a specified
105 timeframe; providing that distribution of a unitrust
106 amount is considered a distribution of all the net
107 income of an express unitrust and is considered an
108 income interest; specifying that the unitrust amount
109 is considered a reasonable apportionment of the total
110 return of the express unitrust; providing that an
111 express unitrust that allows a distribution in excess
112 of a specified unitrust rate is considered a
113 distribution of all of the income of the unitrust;
114 authorizing an express unitrust to provide a mechanism
115 for changing the unitrust rate and for conversion from
116 a unitrust to an income trust or from an income trust

117 to a unitrust; specifying that unless an express
118 unitrust prohibits the power to change the rate or
119 convert the trust, the trustee has such power;
120 authorizing the governing instrument of an express
121 unitrust to grant the trustee discretion to adopt a
122 certain practice; specifying that unless an express
123 unitrust provides otherwise, the distribution of an
124 amount is considered a distribution from specified
125 sources in a specified order of priority; authorizing
126 a governing instrument of an express unitrust to allow
127 exclusion of specified assets; providing that the use
128 of such assets may be considered equivalent to income
129 or to the unitrust amount; creating s. 738.310, F.S.;
130 requiring a trustee, after the conversion of an income
131 trust to a unitrust, to consider the unitrust amount
132 paid from certain sources in a specified order of
133 priority; amending s. 738.401, F.S.; defining and
134 revising terms; specifying that an attribute or action
135 of an entity includes an attribute or action from any
136 other entity in which the initial entity has an
137 ownership interest or holds another interest;
138 requiring a fiduciary to allocate certain money and
139 tangible personal property to income; requiring a
140 fiduciary to allocate specified property and money to
141 principal; providing that certain money received in an
142 entity distribution is a capital distribution in
143 specified circumstances; specifying that in cases of
144 capital distribution, the amount received in an entity
145 distribution must be reduced to the extent that

146 cumulative distributions from the entity to the
147 fiduciary are within certain ranges; authorizing a
148 fiduciary to consider additional information before
149 deciding to make or change a decision to make a
150 payment to a beneficiary; providing that if a
151 fiduciary receives specified additional information
152 after a distribution to a beneficiary, the fiduciary
153 is not required to change or recover the payment;
154 authorizing a fiduciary in such a situation to
155 exercise other specified powers; revising definitions;
156 requiring a fiduciary to allocate certain money and
157 property to principal; providing the mechanism for
158 such allocation; defining the term “public entity”;
159 conforming provisions to changes made by the act;
160 amending s. 738.402, F.S.; conforming provisions to
161 changes made by the act; amending s. 738.403, F.S.;
162 providing applicability; authorizing a fiduciary to
163 make certain determinations separately and differently
164 from the decisions concerning distributions of income
165 or principal; conforming provisions to changes made by
166 the act; making technical changes; creating s.
167 738.404, F.S.; specifying receipts that a fiduciary
168 must allocate to principal; creating s. 738.405, F.S.;
169 providing for the allocation of income from rental
170 property; creating s. 738.406, F.S.; specifying
171 applicability; requiring a fiduciary to allocate to
172 income certain amounts received as interest; requiring
173 a fiduciary to allocate to income increments in value
174 of certain bonds or other obligations; creating s.

175 738.407, F.S.; specifying applicability; requiring a
176 fiduciary to allocate proceeds from insurance policies
177 or contracts to principal in a specified manner;
178 creating s. 738.408, F.S.; specifying circumstances
179 under which a fiduciary may allocate an insubstantial
180 allocation to principal, subject to certain conditions
181 and limitations; creating s. 738.409, F.S.; defining
182 terms; specifying the manner in which a fiduciary may
183 determine incomes of separate funds; providing duties
184 of a fiduciary of a marital trust and other trusts;
185 requiring a fiduciary of a nonseparate fund to
186 calculate internal income in a specified manner;
187 providing construction; transferring, renumbering, and
188 amending s. 738.603, F.S.; revising the definition of
189 the term "liquidating asset"; providing applicability;
190 requiring a fiduciary to allocate to income and
191 principal the receipts produced by liquidating assets
192 in a certain manner; transferring, renumbering, and
193 amending s. 738.604, F.S.; requiring a fiduciary to
194 allocate the receipts from interests in minerals,
195 water, or other natural resources to income,
196 principal, or between income and principal under
197 specified conditions; revising applicability;
198 providing that an allocation between income and
199 principal from a receipt from a natural resource is
200 presumed equitable under a specified condition;
201 providing construction; transferring, renumbering, and
202 amending s. 738.605, F.S.; requiring a fiduciary to
203 allocate receipts from timber to income, principal, or

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204 between income and principal under specified
205 conditions; revising applicability; transferring,
206 renumbering, and amending s. 738.606, F.S.;
207 authorizing a settlor's spouse to require the trustee
208 of a trust that receives certain property to make such
209 property produce income under specified conditions;
210 authorizing the trustee to take specified actions if
211 directed by such spouse; providing that the trustee
212 decides whether to take one or a combination of such
213 actions; revising applicability; providing
214 construction; transferring, renumbering, and amending
215 s. 738.607, F.S.; revising the definition of the term
216 "derivative"; requiring a fiduciary to allocate
217 specified percentages of certain receipts and
218 disbursements to income and allocate the balance to
219 principal; providing construction; requiring certain
220 fiduciaries to allocate a specified percentage to
221 income and allocate the balance to principal of
222 certain amounts; transferring, renumbering, and
223 amending s. 738.608, F.S.; requiring a fiduciary to
224 allocate to income a receipt from or related to asset-
225 backed securities under a specified condition;
226 requiring a fiduciary to allocate to income a
227 specified percentage of receipts from the transaction
228 and the disbursement of a payment received as a result
229 of an interest in an asset-backed security; conforming
230 provisions to changes made by the act; creating s.
231 738.416, F.S.; requiring a fiduciary to make specified
232 allocations from receipts from other financial

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233 instruments or arrangements; providing construction;
234 amending s. 738.501, F.S.; specifying the manner by
235 which a fiduciary must make disbursements from income;
236 amending s. 738.502, F.S.; specifying the manner by
237 which a fiduciary must make disbursements from
238 principal; amending s. 738.503, F.S.; defining the
239 term “depreciation”; specifying the manner by which a
240 fiduciary may make transfers from income to principal
241 to account for depreciation; amending s. 738.504,
242 F.S.; specifying the manner by which a fiduciary may
243 make transfers from principal to income for
244 reimbursements; transferring, renumbering, and
245 amending s. 738.704, F.S.; providing that a fiduciary
246 that makes or expects to make a certain principal
247 disbursement may transfer an appropriate amount from
248 income to principal in one or more accounting periods;
249 providing applicability; making technical changes;
250 deleting a provision relating to payments necessary to
251 avoid defaulting on a mortgage or security interest on
252 certain property; transferring, renumbering, and
253 amending s. 738.705, F.S.; revising the sources from
254 which a fiduciary must pay a tax required by a share
255 of an entity’s taxable income; requiring a fiduciary
256 to adjust income or principal receipts if the taxes
257 paid are reduced due to a deduction for a payment made
258 to a beneficiary; providing construction; making
259 technical changes; transferring, renumbering, and
260 amending s. 738.706, F.S.; revising the circumstances
261 under which a fiduciary may make adjustments between

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262 income and principal to offset shifts in the economic
263 interests or tax benefits of specified beneficiaries;
264 requiring a fiduciary to charge a beneficiary to
265 reimburse the principal if the beneficiary benefits
266 from an applicable tax deduction; requiring the share
267 of reimbursement for each fiduciary or beneficiary to
268 be the same as its share of the decrease in income
269 tax; authorizing such fiduciary to charge a
270 beneficiary to offset the estate tax by obtaining
271 payment from the beneficiary, withholding an amount
272 from future distributions, or adopting another method
273 or combination of methods; creating s. 738.508, F.S.;
274 defining terms; specifying the manner by which
275 property expenses are apportioned between a tenant and
276 remainderman; providing applicability and
277 construction; amending s. 738.601, F.S.; providing
278 applicability; specifying the manner by which a
279 fiduciary determines and distributes net income;
280 providing circumstances under which a fiduciary may
281 not reduce certain principal or income receipts;
282 amending s. 738.602, F.S.; providing that certain
283 beneficiaries of non-unitrusts are entitled to receive
284 a specified share of net income; providing that
285 certain requirements apply in determining a
286 beneficiary’s share of net income; providing
287 construction; amending s. 738.701, F.S.; providing
288 that an income beneficiary is entitled to net income
289 when an asset is subject to a certain trust or
290 successive interest; providing that an asset becomes

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subject to a specified trust on certain dates; amending s. 738.702, F.S.; specifying the manner by which a fiduciary allocates certain receipts and makes disbursements when a decedent dies or income interest begins; providing construction; amending s. 738.703, F.S.; defining the term "undistributed income"; specifying the manner by which a fiduciary makes allocations of undistributed income when income interest ends; amending s. 738.801, F.S.; providing for uniform application and construction of the act; amending s. 738.802, F.S.; providing construction in relation to federal law; amending s. 738.803, F.S.; making a technical change; amending s. 738.804, F.S.; revising application of ch. 738, F.S., to conform to changes made by the act; providing an effective date.

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

Section 1. Section 738.101, Florida Statutes, is amended to read:

738.101 Short title.—This chapter may be cited as the "Florida Uniform Fiduciary Income and Principal ~~and Income~~ Act."

Section 2. Section 738.102, Florida Statutes, is amended to read:

738.102 Definitions.—As used in this chapter, the term:

(1) "Accounting period" means a calendar year unless ~~another 12-month period is selected by~~ a fiduciary selects another period of 12 calendar months or approximately 12 calendar months. The term includes a part ~~portion~~ of a calendar

year or another period of 12 calendar months or approximately 12 calendar months which ~~other 12-month period that begins when an income interest~~ begins or ends when an income interest ends.

(2) "Asset-backed security," as provided in s. 738.415, means a security that is serviced primarily by the cash flows of a discrete pool of fixed or revolving receivables or other financial assets that by their terms convert to cash within a finite time. The term includes rights or other assets that ensure the servicing or timely distribution of proceeds to the holder of the asset-backed security. The term does not include an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

(3) "Beneficiary" includes:

(a) For a trust:

1. A current beneficiary, including a current income beneficiary and a beneficiary that may receive only principal;

2. A remainder beneficiary; and

3. Any other successor beneficiary;

(b) For an estate, an heir, and a devisee; and

(c) For a life estate or term interest, a person who holds a life estate, a term interest, or a remainder or other interest following a life estate or term interest ~~means, in the case of a decedent's estate, an heir or devisee and, in the case of a trust, an income beneficiary or a remainder beneficiary~~.

(4) ~~(3)~~ "Carrying value" means the fair market value at the time the assets are received by the fiduciary. For an estate and for a trust ~~the estates of decedents and trusts~~ described in s. 733.707(3), after the grantor's death, the assets are considered received as of the date of the settlor's death. If there is a change in fiduciaries, a majority of the continuing fiduciaries

349 may elect to adjust the carrying values to reflect the fair
350 market value of the assets at the beginning of their
351 administration. If such election is made, it must be reflected
352 on the first accounting filed after the election. For assets
353 acquired during the administration of the estate or trust, the
354 carrying value is equal to the acquisition costs of the asset.
355 Carrying value of assets should not be arbitrarily "written up"
356 or "written down." In some circumstances, including, but not
357 limited to, those described in ss. 738.410 and 738.602, carrying
358 value may be adjusted with proper disclosure to reflect changes
359 in carrying value applied in a consistent manner.
360 (5) "Court" means a circuit court of this state.
361 (6) "Current income beneficiary" means a beneficiary to
362 which a fiduciary may distribute net income, regardless of
363 whether the fiduciary also distributes principal to the
364 beneficiary.
365 (7) "Distribution," "distribute," "distributed," or
366 "distributee" means a payment or transfer by a fiduciary to a
367 beneficiary in the beneficiary's capacity as a beneficiary,
368 without consideration other than the beneficiary's right to
369 receive the payment or transfer under the terms of the trust as
370 defined in this section, or in a will, a life estate, or a term
371 interest.
372 (8) "Estate" means a decedent's estate, including the
373 property of the decedent as the estate is originally constituted
374 and the property of the estate as it exists at any time during
375 administration.
376 (9)~~(4)~~ "Fiduciary" includes ~~means~~ a trustee, a trust
377 director as defined in s. 736.0103, or a personal

378 representative, and a person acting under a delegation from a
379 fiduciary ~~or a trustee~~. The term also includes a person that
380 holds property for a successor beneficiary whose interest may be
381 affected by an allocation of receipts and expenditures between
382 income and principal. If there are two or more cofiduciaries,
383 the term includes all cofiduciaries acting under the terms of
384 the trust and applicable law ~~an executor, administrator,~~
385 ~~successor personal representative, special administrator, or a~~
386 ~~person performing substantially the same function~~.
387 (10)~~(5)~~ "Income" means money or other property ~~that~~ a
388 fiduciary receives as current return from ~~a~~ principal ~~asset~~. The
389 term includes a part ~~portion~~ of receipts from a sale, exchange,
390 or liquidation of a principal asset, to the extent provided in
391 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503~~.
392 ~~(6) "Income beneficiary" means a person to whom net income~~
393 ~~of a trust is or may be payable.~~
394 (11)~~(7)~~ "Income interest" means the right of a current ~~an~~
395 income beneficiary to receive all or part of net income, whether
396 the terms of the trust require the net income to be distributed
397 or authorize the net income to be distributed in the fiduciary's
398 ~~trustee's~~ discretion. The term includes the right of a current
399 beneficiary to use property held by a fiduciary.
400 (12) "Independent person" means a person who is not:
401 (a) For a trust:
402 1. A qualified beneficiary as defined in s. 736.0103;
403 2. A settlor of the trust;
404 3. An individual whose legal obligation to support a
405 beneficiary may be satisfied by a distribution from the trust;
406 or

4. Any trustee whom an interested distributee has the power to remove and replace with a related or subordinate party.

(b) For an estate, a beneficiary;

(c) A spouse, a parent, a brother, a sister, or an issue of an individual described in paragraph (a) or paragraph (b);

(d) A corporation, a partnership, a limited liability company, or another entity in which persons described in paragraphs (a), (b), and (c), in the aggregate, have voting control; or

(e) An employee of a person described in paragraph (a), paragraph (b), paragraph (c), or paragraph (d).

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(14) ~~(8)~~ "Mandatory income interest" means the right of a current ~~an~~ income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(15) ~~(9)~~ "Net income" means the total allocations ~~receipts allocated to income~~ during an accounting period to income under the terms of a trust and this chapter minus the disbursements ~~made from income~~ during the period, other than distributions, allocated to income under the terms of the trust and this chapter. To the extent that the trust is a unitrust under ss. 738.301-738.310, the term means the unitrust amount determined under ss. 738.301-738.310. The term includes the amount of an adjustment from principal to income under s. 738.203. The term does not include the amount of an adjustment ~~plus or minus transfers under this chapter to or~~ from income to principal under s. 738.203 ~~during the period~~.

(16) ~~(10)~~ "Person" means an individual, a business or a

nonprofit entity, ~~corporation, business trust,~~ an estate, a trust, ~~partnership, limited liability company, association, joint venture,~~ a public corporation, ~~or any other legal or commercial entity or~~ a government or governmental subdivision, agency, or instrumentality, or other legal entity.

(17) "Personal representative" means an executor, an administrator, a successor personal representative, a special administrator, or a person that performs substantially the same function with respect to an estate under the law governing the person's status.

(18) ~~(11)~~ "Principal" means property held in trust for distribution to, production of income for, or use by a current or successor ~~a remainder~~ beneficiary ~~when the trust terminates~~.

(19) "Record" means information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.

(20) "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, the term includes each person, to the extent of the trust property attributable to that person's contribution, except to the extent that another person has the power to revoke or withdraw that portion.

(21) "Special tax benefit" means:

(a) Exclusion of a transfer to a trust from gifts described in s. 2503(b) of the Internal Revenue Code because of the qualification of an income interest in the trust as a present interest in property;

(b) Status as a qualified subchapter S trust described in

465 s. 1361(d)(3) of the Internal Revenue Code at a time the trust
466 holds stock of an S corporation described in s. 1361(a)(1) of
467 the Internal Revenue Code;
468 (c) An estate or gift tax marital deduction for a transfer
469 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code
470 which depends or depended in whole or in part on the right of
471 the settlor's spouse to receive the net income of the trust;
472 (d) Exemption in whole or in part of a trust from the
473 federal generation-skipping transfer tax imposed by s. 2601 of
474 the Internal Revenue Code because the trust was irrevocable on
475 September 25, 1985, if there is any possibility that:
476 1. A taxable distribution as defined in s. 2612(b) of the
477 Internal Revenue Code could be made from the trust; or
478 2. A taxable termination as defined in s. 2612(a) of the
479 Internal Revenue Code could occur with respect to the trust; or
480 (e) An inclusion ratio as defined in s. 2642(a) of the
481 Internal Revenue Code of the trust which is less than one, if
482 there is any possibility that:
483 1. A taxable distribution as defined in s. 2612(b) of the
484 Internal Revenue Code could be made from the trust; or
485 2. A taxable termination as defined in s. 2612(a) of the
486 Internal Revenue Code could occur with respect to the trust.
487 (22) "Successive interest" means the interest of a
488 successor beneficiary.
489 (23) ~~(12)~~ "Successor ~~Remainder~~ beneficiary" means a person
490 entitled to receive income or principal or to use property when
491 an income interest or other current interest ends.
492 (24) ~~(13)~~ "Terms of a trust" means:
493 (a) Except as otherwise provided in paragraph (b), the

494 manifestation of the settlor's intent regarding a trust's
495 provisions as:
496 1. Expressed in the will or trust instrument; or
497 2. Established by other evidence that would be admissible
498 in a judicial proceeding.
499 (b) The trust's provisions as established, determined, or
500 amended by:
501 1. A trustee or trust director in accordance with the
502 applicable law;
503 2. A court order; or
504 3. A nonjudicial settlement agreement under s. 736.0111.
505 (c) For an estate, a will; or
506 (d) For a life estate or term interest, the corresponding
507 manifestation of the rights of the beneficiaries to the extent
508 provided in s. 738.508 ~~the manifestation of the intent of a~~
509 ~~grantor or decedent with respect to the trust, expressed in a~~
510 ~~manner that admits of its proof in a judicial proceeding,~~
511 ~~whether by written or spoken words or by conduct~~.
512 (25) "Trust" includes an express trust, whether private or
513 charitable, with additions to the trust, wherever and however
514 created; and a trust created or determined by a judgment or
515 decree under which the trust is to be administered. The term
516 does not include a constructive trust; a resulting trust; a
517 conservatorship; a custodial arrangement under the Florida
518 Uniform Transfers to Minors Act; a business trust providing for
519 certificates to be issued to beneficiaries; a common trust fund;
520 a land trust under s. 689.071; a trust created by the form of
521 the account or by the deposit agreement at a financial
522 institution; a voting trust; a security arrangement; a

523 liquidation trust; a trust for the primary purpose of paying
524 debts, dividends, interest, salaries, wages, profits, pensions,
525 retirement benefits, or employee benefits of any kind; or an
526 arrangement under which a person is a nominee, an escrowee, or
527 an agent for another.
528 (26) ~~(14)~~ "Trustee" means a person, other than a personal
529 representative, that owns or holds property for the benefit of a
530 beneficiary. The term includes an original, additional, or
531 successor trustee, regardless of whether they are ~~or not~~
532 appointed or confirmed by a court.
533 (27) "Will" means any testamentary instrument recognized
534 under applicable law which makes a legally effective disposition
535 of an individual's property, effective at the individual's
536 death. The term includes a codicil or other amendment to a
537 testamentary instrument.
538 Section 3. Section 738.103, Florida Statutes, is amended to
539 read:
540 (Substantial rewording of section. See
541 s. 738.103, F.S., for present text.)
542 738.103 Scope.—Except as otherwise provided in the terms of
543 a trust or this chapter, this chapter applies to all of the
544 following:
545 (1) A trust or an estate.
546 (2) A life estate or other term interest in which the
547 interest of one or more persons will be succeeded by the
548 interest of one or more other persons to the extent provided in
549 s. 738.508.
550 Section 4. Section 738.104, Florida Statutes, is amended to
551 read:

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552 (Substantial rewording of section. See
553 s. 738.104, F.S., for present text.)
554 738.104 Governing law.—Except as otherwise provided in the
555 terms of a trust or this chapter, this chapter applies when this
556 state is the principal place of administration of a trust or
557 estate or the situs of property that is not held in a trust or
558 estate and is subject to a life estate or other term interest
559 described in s. 738.103(2). By accepting the trusteeship of a
560 trust having its principal place of administration in this state
561 or by moving the principal place of administration of a trust to
562 this state, the trustee submits to the application of this
563 chapter to any matter within the scope of this chapter involving
564 the trust.
565 Section 5. Section 738.1041, Florida Statutes, is repealed.
566 Section 6. Section 738.105, Florida Statutes, is repealed.
567 Section 7. Section 738.201, Florida Statutes, is amended to
568 read:
569 (Substantial rewording of section. See
570 s. 738.201, F.S., for present text.)
571 738.201 Fiduciary duties; general principles.—
572 (1) In making an allocation or determination or exercising
573 discretion under this chapter, a fiduciary shall do all of the
574 following:
575 (a) Act in good faith, based on what is a fair and
576 reasonable fee to all beneficiaries;
577 (b) Administer a trust or estate impartially, except to the
578 extent that the terms of the trust manifest an intent that the
579 fiduciary favors one or more beneficiaries;
580 (c) Administer the trust or estate in accordance with the

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581 terms of the trust, even if there is a different provision in
582 this chapter.
583 (d) Administer the trust or estate in accordance with this
584 chapter, except to the extent that the terms of the trust
585 provide otherwise or authorize the fiduciary to determine
586 otherwise.
587 (2) A fiduciary's allocation, determination, or exercise of
588 discretion under this chapter is presumed to be fair and
589 reasonable to all beneficiaries. A fiduciary may exercise a
590 discretionary power of administration given to the fiduciary by
591 the terms of the trust, and an exercise of the power that
592 produces a result different from a result required or permitted
593 by this chapter does not create an inference that the fiduciary
594 abused the fiduciary's discretion.
595 (3) A fiduciary shall:
596 (a) Add a receipt to principal, to the extent that the
597 terms of the trust and this chapter do not allocate the receipt
598 between income and principal;
599 (b) Charge a disbursement to principal, to the extent that
600 the terms of the trust and this chapter do not allocate the
601 disbursement between income and principal; and
602 (c) Within 65 days after the fiscal year ends, add any
603 undistributed income to principal, unless otherwise provided by
604 the terms of the trust.
605 (4) A fiduciary may exercise the power to adjust under s.
606 738.203(1), convert an income trust to a unitrust under ss.
607 738.301-738.310, change the percentage or method used to
608 calculate a unitrust amount under ss. 738.301-738.310, or
609 convert a unitrust to an income trust under ss. 738.301-738.310

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610 if the fiduciary determines the exercise of the power will
611 assist the fiduciary to administer the trust or estate
612 impartially.
613 (5) The fiduciary must consider the following factors in
614 making the determination in subsection (4), including:
615 (a) The terms of the trust.
616 (b) The nature, distribution standards, and expected
617 duration of the trust.
618 (c) The effect of the allocation rules, including specific
619 adjustments between income and principal, under ss. 738.301-
620 738.416.
621 (d) The desirability of liquidity and regularity of income.
622 (e) The desirability of the preservation and appreciation
623 of principal.
624 (f) The extent to which an asset is used or may be used by
625 a beneficiary.
626 (g) The increase or decrease in the value of principal
627 assets, reasonably determined by the fiduciary.
628 (h) Whether and to what extent the terms of the trust give
629 the fiduciary power to accumulate income or invade principal or
630 prohibit the fiduciary from accumulating income or invading
631 principal.
632 (i) The extent to which the fiduciary has accumulated
633 income or invaded principal in preceding accounting periods.
634 (j) The effect of current and reasonably expected economic
635 conditions.
636 (k) The reasonably expected tax consequences of the
637 exercise of the power.
638 (l) The identities and circumstances of the beneficiaries.

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639 (6) Except as provided in ss. 738.301-738.310, this chapter
640 pertains to the administration of a trust and is applicable to
641 any trust that is administered in this state or under its law.
642 This chapter also applies to any estate that is administered in
643 this state unless the provision is limited in application to a
644 trustee, rather than a fiduciary.
645 Section 8. Section 738.202, Florida Statutes, is amended to
646 read:
647 (Substantial rewording of section. See
648 s. 738.202, F.S., for present text.)
649 738.202 Judicial review of exercise of discretionary power;
650 request for instruction.—
651 (1) As used in this section, the term "fiduciary decision"
652 means any of the following:
653 (a) A fiduciary's allocation between income and principal
654 or other determination regarding income and principal required
655 or authorized by the terms of the trust or this chapter.
656 (b) The fiduciary's exercise or nonexercise of a
657 discretionary power regarding income and principal granted by
658 the terms of the trust or this chapter, including the power to
659 adjust under s. 738.203, convert an income trust to a unitrust
660 under ss. 738.301-738.310, change the percentage of method used
661 to calculate a unitrust amount under ss. 738.301-738.310,
662 convert a unitrust to an income trust under ss. 738.301-738.310,
663 or the method used to make property productive of income under
664 s. 738.413.
665 (c) The fiduciary's implementation of a decision described
666 in paragraph (a) or paragraph (b).
667 (2) The court may not order a fiduciary to change a

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668 fiduciary decision unless the court determines that the
669 fiduciary decision was an abuse of the fiduciary's discretion. A
670 court may not determine that a fiduciary abused its discretion
671 merely because the court would have exercised the discretion in
672 a different manner or would not have exercised the discretion.
673 (3) If the court determines that a fiduciary decision was
674 an abuse of the fiduciary's discretion, the court may order a
675 remedy authorized by law, including those prescribed under ss.
676 736.1001 and 736.1002. Following such a determination by the
677 court, the remedy is to place the beneficiaries in the positions
678 the beneficiaries would have occupied if the fiduciary had not
679 abused its discretion, as follows:
680 (a) The court may order the fiduciary to exercise or
681 refrain from exercising the power to adjust under s. 738.203;
682 (b) The court may order the fiduciary to exercise or
683 refrain from exercising the power to convert an income trust to
684 a unitrust under ss. 738.301-738.310, change the percentage or
685 method used to calculate a unitrust amount under ss. 738.301-
686 738.310, or convert a unitrust to an income trust under ss.
687 738.301-738.310;
688 (c) The court may compel the fiduciary to take any of the
689 actions listed under s. 738.413;
690 (d) To the extent that the abuse of discretion has resulted
691 in no distribution to a beneficiary or a distribution that is
692 too small, the court shall require the fiduciary to distribute
693 from the trust to the beneficiary an amount the court determines
694 will restore the beneficiary, in whole or in part, to his or her
695 appropriate position;
696 (e) To the extent that the abuse of discretion has resulted

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697 in a distribution to a beneficiary that is too large, the court
698 shall restore the beneficiaries, the trust, or both, in whole or
699 in part, to their appropriate positions by requiring the
700 fiduciary to withhold an amount from one or more future
701 distributions to the beneficiary who received the distribution
702 that was too large or requiring that beneficiary to return some
703 or all of the distribution to the trust; or
704 (f) To the extent that the court is unable, after applying
705 paragraphs (a)-(e), to restore the beneficiaries or the trust,
706 or both, to the positions they would have occupied if the
707 fiduciary had not abused its discretion, the court may require
708 the fiduciary to pay an appropriate amount from its own funds to
709 one or more of the beneficiaries or the trust or both.
710 (4) On petition by the fiduciary for instruction, the court
711 may determine whether a proposed fiduciary decision will result
712 in an abuse of the fiduciary's discretion. If the petition
713 describes the proposed decision, contains sufficient information
714 to inform the beneficiary of the reasons for making the proposed
715 decision and the facts on which the fiduciary relies, and
716 explains how the beneficiary will be affected by the proposed
717 decision, a beneficiary who opposes the proposed decision has
718 the burden to establish that it will result in an abuse of the
719 fiduciary's discretion.
720 (5) If an action is instituted alleging an abuse of
721 discretion in the exercise or nonexercise of the fiduciary's
722 discretion under this chapter and the court determines no abuse
723 of discretion has occurred, the fiduciary's costs and attorney
724 fees incurred in defending the action shall be paid from the
725 trust assets.

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726 Section 9. Section 738.203, Florida Statutes, is created to
727 read:
728 738.203 Fiduciary's power to adjust.—
729 (1) Except as otherwise provided in the terms of a trust or
730 this section, a fiduciary, in a record without court approval,
731 may adjust between income and principal if the fiduciary
732 determines that the exercise of the power to adjust will assist
733 the fiduciary in administering the trust or estate impartially.
734 (2) This section does not create a duty to exercise or
735 consider the power to adjust under subsection (1) or to inform a
736 beneficiary about the applicability of this section.
737 (3) A fiduciary that in good faith exercises or fails to
738 exercise the power to adjust under subsection (1) is not liable
739 to a person affected by the exercise or failure to exercise.
740 (4) In deciding whether and to what extent to exercise the
741 power to adjust under subsection (1), a fiduciary shall consider
742 all factors the fiduciary considers relevant, including relevant
743 factors in s. 738.201(5) and ss. 738.408 and 738.413.
744 (5) A fiduciary may not exercise the power under subsection
745 (1) to make an adjustment or under s. 738.408 to make a
746 determination that an allocation is insubstantial if:
747 (a) The adjustment or determination would reduce the amount
748 payable to a current income beneficiary from a trust that
749 qualifies for a special tax benefit, except to the extent that
750 the adjustment is made to provide for a reasonable apportionment
751 of the total return of the trust between the current income
752 beneficiary and successor beneficiaries;
753 (b) The adjustment or determination would change the amount
754 payable to a beneficiary, as a fixed annuity or a fixed fraction

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755 of the value of the trust assets, under the terms of the trust;
756 (c) The adjustment or determination would reduce an amount
757 that is permanently set aside for a charitable purpose under the
758 terms of the trust unless both income and principal are set
759 aside for the charitable purpose;
760 (d) Possessing or exercising the power would cause a person
761 to be treated as the owner of all or part of the trust for
762 federal income tax purposes and the person would not be treated
763 as the owner if the fiduciary did not possess the power to
764 adjust;
765 (e) Possessing or exercising the power would cause all or
766 part of the value of the trust assets to be included in the
767 gross estate of an individual for federal real estate tax
768 purposes and the assets would not be included in the gross
769 estate of the individual if the fiduciary did not possess the
770 power to adjust;
771 (f) Possessing or exercising the power would cause an
772 individual to be treated as making a gift for federal gift tax
773 purposes;
774 (g) The fiduciary is not an independent person;
775 (h) The trust is irrevocable and provides for income to be
776 paid to the settlor, and possessing or exercising the power
777 would cause the adjusted principal or income to be considered an
778 available resource or available income under a public-benefit
779 program; or
780 (i) The trust is a unitrust under ss. 738.301-738.310.
781 (6) If paragraph (5)(d), paragraph (5)(e), paragraph
782 (5)(f), or paragraph (5)(g) applies to a fiduciary:
783 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not

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784 apply may exercise the power to adjust, unless the exercise of
785 the power by the remaining cofiduciary or cofiduciaries is not
786 permitted by the terms of the trust or law other than this
787 chapter; or
788 (b) If there is no cofiduciary to which paragraphs (5)(d)-
789 (g) do not apply, the fiduciary may appoint a cofiduciary to
790 which paragraphs (5)(d)-(g) do not apply which may be a special
791 fiduciary with limited powers, and the appointed cofiduciary may
792 exercise the power to adjust under subsection (1), unless the
793 appointment of a cofiduciary or the exercise of the power by a
794 cofiduciary is not permitted by the terms of the trust or law
795 other than this chapter.
796 (7) A fiduciary may release or delegate to a cofiduciary
797 the power to adjust under subsection (1) if the fiduciary
798 determines that the fiduciary's possession or exercise of the
799 power will or may:
800 (a) Cause a result described in paragraph (5)(a), paragraph
801 (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph (5)(e),
802 paragraph (5)(f), or paragraph (5)(h); or
803 (b) Deprive the trust of a tax benefit or impose a tax
804 burden not described in paragraph (5)(a), paragraph (5)(b),
805 paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), or
806 paragraph (5)(f).
807 (8) A fiduciary's release or delegation to a cofiduciary
808 under subsection (7) of the power to adjust under subsection
809 (1):
810 (a) Must be in a record;
811 (b) Applies to the entire power, unless the release or
812 delegation provides a limitation, which may be a limitation to

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813 the power to adjust:
814 1. From income to principal;
815 2. From principal to income;
816 3. For specified property; or
817 4. In specified circumstances.
818 (c) For a delegation, may be modified by a redelegation
819 under this subsection by the cofiduciary to which the delegation
820 is made; and
821 (d) Subject to paragraph (c), is permanent, unless the
822 release or delegation provides a specified period, including a
823 period measured by the life of an individual or the lives of
824 more than one individual.
825 (9) Terms of a trust that deny or limit the power to adjust
826 between income and principal do not affect the application of
827 this section, unless the terms of the trust expressly deny or
828 limit the power to adjust under subsection (1).
829 (10) The exercise of the power to adjust under subsection
830 (1) in any accounting period may apply to the current period,
831 the immediately preceding period, and one or more subsequent
832 periods.
833 (11) A description of the exercise of the power to adjust
834 under subsection (1) must be:
835 (a) Included in a report, if any, sent to beneficiaries
836 under s. 736.0813; or
837 (b) Communicated at least annually to the qualified
838 beneficiaries as defined in s. 736.0103 other than the Attorney
839 General.
840 (12) With respect to a trust in existence on January 1,
841 2003:

842 (a) A fiduciary may not have the power to adjust under this
843 section until the statement required in subsection (13) is
844 provided and either no objection is made or any objection which
845 is made has been terminated.
846 1. An objection is made if, within 60 days after the date
847 of the statement required in subsection (13), a super majority
848 of the eligible beneficiaries deliver to the fiduciary a written
849 objection to the application of this section to such trust. An
850 objection shall be deemed to be delivered to the fiduciary on
851 the date the objection is mailed to the mailing address listed
852 in the notice provided in subsection (13).
853 2. An objection is terminated upon the earlier of the
854 receipt of consent from a super majority of eligible
855 beneficiaries of the class that made the objection, or the
856 resolution of the objection under paragraph (c).
857 (b) An objection or consent under this section may be
858 executed by a legal representative or natural guardian of a
859 beneficiary without the filing of any proceeding or approval of
860 any court.
861 (c) If an objection is delivered to the fiduciary, then the
862 fiduciary may petition the circuit court for an order quashing
863 the objection and vesting in such fiduciary the power to adjust
864 under this section. The burden will be on the objecting
865 beneficiaries to prove that the power to adjust would be
866 inequitable, illegal, or otherwise in contravention of the
867 grantor's intent. The court may award costs and attorney fees
868 relating to the fiduciary's petition in the same manner as in
869 chancery actions. When costs and attorney fees are to be paid
870 out of the trust, the court may, in its discretion, direct from

871 which part of the trust they shall be paid.
872 (d) If no timely objection is made or if the fiduciary is
873 vested with the power to adjust by court order, the fiduciary
874 may thereafter exercise the power to adjust without providing
875 notice of its intent to do so unless, in vesting the fiduciary
876 with the power to adjust, the court determines that unusual
877 circumstances require otherwise.
878 (e)1. If a fiduciary makes a good faith effort to comply
879 with the notice provisions of subsection (13), but fails to
880 deliver notice to one or more beneficiaries entitled to such
881 notice, neither the validity of the notice required under this
882 subsection nor the fiduciary's power to adjust under this
883 section shall be affected until the fiduciary has actual notice
884 that one or more beneficiaries entitled to notice were not
885 notified. Until the fiduciary has actual notice of the notice
886 deficiency, the fiduciary shall have all of the powers and
887 protections granted a fiduciary with the power to adjust under
888 this chapter.
889 2. When the fiduciary has actual notice that one or more
890 beneficiaries entitled to notice under subsection (13) were not
891 notified, the fiduciary's power to adjust under this section
892 shall cease until all beneficiaries who are entitled to such
893 notice, including those who were previously provided with such
894 notice, are notified and given the opportunity to object as
895 provided for under this subsection.
896 (f) The objection of a super majority of eligible
897 beneficiaries under this subsection shall be valid for a period
898 of 1 year after the date of the notice set forth in subsection
899 (13). Upon expiration of the objection, the fiduciary may

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900 thereafter give a new notice under subsection (13).
901 (g) This section is not intended to create or imply a duty
902 of the fiduciary of a trust existing on January 1, 2003, to seek
903 a power to adjust under this subsection or to give the notice
904 described in subsection (13) if the fiduciary does not desire to
905 have a power to adjust under this section, and no inference of
906 impropriety shall be made as the result of a fiduciary not
907 seeking a power to adjust under this subsection.
908 (13)(a) A fiduciary of a trust in existence on January 1,
909 2003, that is not prohibited under subsection (5) from
910 exercising the power to adjust shall, any time before initially
911 exercising the power, provide to all eligible beneficiaries a
912 statement containing the following:
913 1. The name, telephone number, street address, and mailing
914 address of the fiduciary and of any person who may be contacted
915 for further information;
916 2. A statement that unless a super majority of the eligible
917 beneficiaries objects to the application of this section to the
918 trust within 60 days after the date the statement pursuant to
919 this subsection was served, this section shall apply to the
920 trust; and
921 3. A statement that, if this section applies to the trust,
922 the fiduciary will have the power to adjust between income and
923 principal and that such a power may have an effect on the
924 distributions to such beneficiary from the trust.
925 (b) The statement may contain information regarding a
926 fiduciary's obligation with respect to the power to adjust
927 between income and principal under this section.
928 (c) The statement shall be served informally, in the manner

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929 provided in the Florida Rules of Civil Procedure relating to
930 service of pleadings subsequent to the initial pleading. The
931 statement may be served on a legal representative or natural
932 guardian of a beneficiary without the filing of any proceeding
933 or approval of any court.
934 (14) For purposes of subsections (12) and (13), the term:
935 1. "Eligible beneficiaries" means:
936 a. If at the time the determination is made there are one
937 or more beneficiaries described in s. 736.0103(19)(c), the
938 beneficiaries described in s. 736.0103(19)(a) and (c); or
939 b. If there is no beneficiary described in s.
940 736.0103(19)(c), the beneficiaries described in s.
941 736.0103(19)(a) and (b).
942 2. "Super majority of the eligible beneficiaries" means:
943 a. If at the time the determination is made there are one
944 or more beneficiaries described in s. 736.0103(19)(c), at least
945 two-thirds in interest of the beneficiaries described in s.
946 736.0103(19)(a) or two-thirds in interest of the beneficiaries
947 described in s. 736.0103(19)(c), if the interests of the
948 beneficiaries are reasonably ascertainable; otherwise, it means
949 two-thirds in number of either such class; or
950 b. If there is no beneficiary described in s.
951 736.0103(19)(c), at least two-thirds in interest of the
952 beneficiaries described in s. 736.0103(19)(a) or two-thirds in
953 interest of the beneficiaries described in s. 736.0103(19)(b),
954 if the interests of the beneficiaries are reasonably
955 ascertainable, otherwise, two-thirds in number of either such
956 class.
957 (15) A trust exists on January 1, 2003, if it is not

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958 revocable on January 1, 2003. A trust is revocable if revocable
959 by the grantor alone or in conjunction with any other person. A
960 trust is not revocable for purposes of this section if revocable
961 by the grantor only with the consent of all persons having a
962 beneficial interest in the property.
963 Section 10. Section 738.301, Florida Statutes, is amended
964 to read:
965 (Substantial rewording of section. See
966 s. 738.301, F.S., for present text).
967 738.301 Definitions.—For purposes of this section and ss.
968 738.302-738.310:
969 (1) "Applicable value" means the amount of the net fair
970 market value of a trust taken into account under s. 738.307.
971 (2) "Express unitrust" means a trust for which, under the
972 terms of the trust without regard to this section and ss.
973 738.302-738.310, net income must be calculated as a unitrust
974 amount.
975 (3) "Income trust" means a trust, created by an inter vivos
976 or testamentary instrument, that directs or permits the trustee
977 to distribute the net income of the trust to one or more
978 persons, in fixed proportions or in amounts or proportions
979 determined by the trustee and regardless of whether the trust
980 directs or permits the trustee to distribute the principal of
981 the trust to one or more such persons.
982 (4) "Net fair market value of a trust" means the fair
983 market value of the assets of the trust, less the reasonably
984 known noncontingent liabilities of the trust.
985 (5) "Unitrust" means a trust for which net income is a
986 unitrust amount. The term includes an express unitrust.

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987 (6) "Unitrust amount" means an amount computed by
988 multiplying a determined value of a trust by a determined
989 percentage. For a unitrust administered under a unitrust policy,
990 the term means the applicable value multiplied by the unitrust
991 rate.
992 (7) "Unitrust policy" means a policy described in ss.
993 738.301-738.310 and adopted under s. 738.303.
994 (8) "Unitrust rate" means the rate used to compute the
995 unitrust amount for a unitrust administered under a unitrust
996 policy.
997 Section 11. Section 738.302, Florida Statutes, is amended
998 to read:
999 (Substantial rewording of section. See
1000 s. 738.302, F.S., for present text.)
1001 738.302 Applications; duties and remedies.—
1002 (1) Except as otherwise provided in subsection (2), ss.
1003 738.301-738.310 apply to all of the following:
1004 (a) An income trust, unless the terms of the trust
1005 expressly prohibit the use of ss. 738.301-738.310 by a specific
1006 reference to this paragraph or corresponding provision of prior
1007 law, or an explicit expression of intent that net income not be
1008 calculated as a unitrust amount.
1009 (b) An express unitrust, except to the extent that the
1010 terms of the trust explicitly:
1011 1. Prohibit the use of ss. 738.301-738.310 by a specific
1012 reference to this paragraph or corresponding provision of prior
1013 law;
1014 2. Prohibit conversion to an income trust; or
1015 3. Limit changes to the method of calculating the unitrust

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1016 amount.
1017 (c) A unitrust that had been converted from an income
1018 trust.
1019 (2) The provisions of ss. 738.301-738.310 do not apply to a
1020 trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
1021 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
1022 Revenue Code.
1023 (3) An income trust to which ss. 738.301-738.310 apply
1024 under paragraph (1)(a) may be converted to a unitrust under ss.
1025 738.301-738.310 regardless of the terms of the trust concerning
1026 distributions. Conversion to a unitrust under ss. 738.301-
1027 738.310 does not affect other terms of the trust concerning
1028 distributions of income or principal.
1029 (4) Sections 738.301-738.310 apply to an estate only to the
1030 extent that a trust is a beneficiary of the estate. To the
1031 extent of the trust's interest in the estate, the estate may be
1032 administered as a unitrust, the administration of the estate as
1033 a unitrust may be discontinued, or the percentage or method used
1034 to calculate the unitrust amount may be changed, in the same
1035 manner as for a trust under those sections.
1036 (5) The provisions of ss. 738.301-738.310 do not create a
1037 duty to take or consider action under ss. 738.301-738.310 or to
1038 inform a beneficiary about the applicability of ss. 738.301-
1039 738.310.
1040 (6) A fiduciary that in good faith takes or fails to take
1041 an action under ss. 738.301-738.310 is not liable to a person
1042 affected by the action or inaction.
1043 Section 12. Section 738.303, Florida Statutes, is amended
1044 to read:

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1045 (Substantial rewording of section. See
1046 s. 738.303, F.S., for present text.)
1047 738.303 Authority of fiduciary.—
1048 (1) By complying with subsections (2) and (6), and without
1049 court approval, a fiduciary may do any of the following:
1050 (a) Convert an income trust to a unitrust if the fiduciary
1051 adopts in a record a unitrust policy for the trust which
1052 provides:
1053 1. That in administering the trust, the net income of the
1054 trust will be a unitrust amount rather than net income
1055 determined without regard to ss. 738.301-738.310; and
1056 2. The percentage and method used to calculate the unitrust
1057 amount.
1058 (b) Change the percentage or method used to calculate a
1059 unitrust amount for a unitrust if the fiduciary adopts in a
1060 record a unitrust policy or an amendment or replacement of a
1061 unitrust policy providing charges in the percentage or method
1062 used to calculate the unitrust amount.
1063 (c) Convert a unitrust to an income trust if the fiduciary
1064 adopts in a record a determination that, in administering the
1065 trust, the net income of the trust will be net income determined
1066 without regard to ss. 738.301-738.310 rather than a unitrust
1067 amount.
1068 (2) A fiduciary may take an action under subsection (1) if
1069 all of the following apply:
1070 (a) The fiduciary determines that the action will assist
1071 the fiduciary to administer a trust impartially.
1072 (b) The fiduciary sends a notice in a record to the
1073 qualified beneficiaries determined under ss. 736.0103 and

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1074 736.0110 in the manner required by s. 738.304, describing and
1075 proposing to take the action.
1076 (c) The fiduciary sends a copy of the notice under
1077 paragraph (b) to each settlor of the trust which is:
1078 1. If an individual, living; or
1079 2. If not an individual, in existence.
1080 (d) At least one member of each class of the qualified
1081 beneficiaries determined under ss. 736.0103 and 736.0110, other
1082 than the Attorney General, receiving the notice under paragraph
1083 (b) is:
1084 1. If an individual, legally competent;
1085 2. If not an individual, in existence; or
1086 3. Represented in the manner provided in s. 738.304(2).
1087 (e) The fiduciary does not receive, by the date specified
1088 in the notice under s. 738.304(4)(e), an objection in a record
1089 to the action proposed under paragraph (b) from a person to
1090 which the notice under paragraph (b) is sent.
1091 (3) If a fiduciary receives, not later than the date stated
1092 in the notice under s. 738.304(4)(e), an objection in a record
1093 described in s. 738.304(4)(d) to a proposed action, the
1094 fiduciary or a beneficiary may request the court to have the
1095 action taken as proposed, taken with modifications, or
1096 prevented. A person described in s. 738.304(1) may oppose the
1097 proposed action in the proceeding under this subsection
1098 regardless of whether the person:
1099 (a) Consented under s. 738.304(3); or
1100 (b) Objected under s. 738.304(4)(d).
1101 (4) If, after sending a notice under paragraph (2)(b), a
1102 fiduciary decides not to take the action proposed in the notice,

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1103 the fiduciary must notify in a record each person described in
1104 s. 738.304(1) of the decision not to take the action and the
1105 reasons for the decision.
1106 (5) If a beneficiary requests in a record that a fiduciary
1107 take an action described in subsection (1) and the fiduciary
1108 declines to act or does not act within 60 days after receiving
1109 the request, the beneficiary may request the court to direct the
1110 fiduciary to take the action requested.
1111 (6) In deciding whether and how to take an action
1112 authorized in subsection (1), or whether and how to respond to a
1113 request by a beneficiary under subsection (5), a fiduciary must
1114 consider all factors relevant to the trust and beneficiaries,
1115 including the relevant factors listed in s. 738.201(5).
1116 (7) A fiduciary may release or delegate the power to
1117 convert an income trust to a unitrust under paragraph (1)(a),
1118 change the percentage or method used to calculate a unitrust
1119 amount under paragraph (1)(b), or convert a unitrust to an
1120 income trust under paragraph (1)(c), for a reason described in
1121 s. 738.203(7) and in the manner described in s. 738.203(8).
1122 Section 13. Section 738.304, Florida Statutes, is created
1123 to read:
1124 738.304 Notice.—
1125 (1) A notice required by s. 738.303(2)(b) must be sent in a
1126 manner authorized under s. 736.0109 to all of the following:
1127 (a) The qualified beneficiaries as defined in s. 736.0103,
1128 other than the Attorney General.
1129 (b) Each person that is granted a power over the trust by
1130 the terms of the trust, to the extent that the power is
1131 exercisable when the person is not then serving as a trustee:

1132 1. Including all of the following:
1133 a. Power over the investment, management, or distribution
1134 of trust property or other matters of trust administration.
1135 b. Power to appoint or remove a trustee or person described
1136 in this paragraph.
1137 2. Excluding all of the following:
1138 a. Power of appointment.
1139 b. Power of a beneficiary over the trust, to the extent
1140 that the exercise or nonexercise of the power affects the
1141 beneficial interest of the beneficiary or another beneficiary
1142 represented by the beneficiary under ss. 736.0301-736.0306 with
1143 respect to the exercise or nonexercise of the power.
1144 c. Power over the trust if the terms of the trust provide
1145 that the power is held in a nonfiduciary capacity and the power
1146 must be held in a nonfiduciary capacity to achieve a tax
1147 objective under the Internal Revenue Code.
1148 (c) Each person that is granted a power by the terms of the
1149 trust to appoint or remove a trustee or person described in
1150 paragraph (b) to the extent that the power is exercisable when
1151 the person that exercises the power is not serving as a trustee
1152 or person described in paragraph (b).
1153 (2) The representation provisions of ss. 736.0301-736.0306
1154 apply to notice under this section.
1155 (3) A person may consent in a record at any time to action
1156 proposed under s. 738.303(2)(b). A notice required by s.
1157 738.303(2)(b) need not be sent to a person that consents under
1158 this subsection.
1159 (4) A notice required under s. 738.303(2)(b) must include
1160 all of the following:

1161 (a) The action proposed under s. 738.303(2)(b).
1162 (b) For a conversion of an income trust to a unitrust, a
1163 copy of the unitrust policy adopted under s. 738.303(1)(a).
1164 (c) For a change in the percentage or method used to
1165 calculate the unitrust amount, a copy of the unitrust policy or
1166 amendment or replacement of the unitrust policy adopted under s.
1167 738.303(1)(b).
1168 (d) A statement that the person to which the notice is sent
1169 may object to the proposed action by stating in a record the
1170 basis for the objection and sending or delivering the record to
1171 the fiduciary.
1172 (e) The date by which an objection under paragraph (d) must
1173 be received by the fiduciary, which must be at least 30 days
1174 after the date the notice is sent.
1175 (f) The date on which the action is proposed to be taken
1176 and the date on which the action is proposed to take effect.
1177 (g) The name and contact information of the fiduciary.
1178 (h) The name and contact information of a person that may
1179 be contacted for additional information.
1180 Section 14. Section 738.305, Florida Statutes, is created
1181 to read:
1182 738.305 Unitrust policy.—
1183 (1) In administering a unitrust under ss. 738.301-738.310,
1184 a fiduciary shall follow a unitrust policy adopted under s.
1185 738.303(1)(a) or (b) or amended or replaced under s.
1186 738.303(1)(b).
1187 (2) A unitrust policy must provide all of the following:
1188 (a) The unitrust rate or method for determining the
1189 unitrust rate under s. 738.306.

1190 (b) The method for determining the applicable value under
1191 s. 738.307.
1192 (c) The rules described in ss. 738.306-738.310 which apply
1193 in the administration of the unitrust, whether the rules are:
1194 1. Mandatory as provided in ss. 738.307(1) and (3),
1195 738.308(1), and 738.310; or
1196 2. Optional as provided in ss. 738.306, 738.307(2), and
1197 738.308(2), to the extent that the fiduciary elects to adopt
1198 those rules.
1199 (3) A unitrust policy may do any of the following:
1200 (a) Provide methods and standards for:
1201 1. Determining the timing of the distributions;
1202 2. Making distributions in cash or in kind or partly in
1203 cash and partly in kind; or
1204 3. Correcting an underpayment or overpayment to a
1205 beneficiary based on the unitrust amount if there is an error in
1206 calculating the unitrust amount.
1207 (b) Specify sources and the order of sources, including
1208 categories of income for federal income tax purposes, from which
1209 distributions of a unitrust amount are paid.
1210 (c) Provide other standards and rules that the fiduciary
1211 determines serve the interests of the beneficiaries.
1212 Section 15. Section 738.306, Florida Statutes, is created
1213 to read:
1214 738.306 Unitrust rate.—
1215 (1) A unitrust rate must be at least 3 percent and not more
1216 than 5 percent. Within those limits, the unitrust rate may be:
1217 (a) A fixed unitrust rate; or
1218 (b)1. A unitrust rate that is determined for each period

1219 using:
1220 a. A market index or other published data; or
1221 b. A mathematical blend of market indices or other
1222 published data over a stated number of preceding periods.
1223 2. If the rate calculated under this paragraph would be
1224 less than 3, the rate is 3; and if the rate calculated would be
1225 more than 5, the rate is 5.
1226 (2) Within the limits of subsection (1), a unitrust policy
1227 may provide for any of the following:
1228 (a) A limit on how much the unitrust rate determined under
1229 paragraph (1)(b) may increase over the unitrust rate for the
1230 preceding period or a mathematical blend of unitrust rates over
1231 a stated number of preceding periods.
1232 (b) A limit on how much the unitrust rate determined under
1233 paragraph (1)(b) may decrease below the unitrust rate for the
1234 preceding period or a mathematical blend of unitrust rates over
1235 a stated number of preceding periods.
1236 (c) A mathematical blend of any of the unitrust rates
1237 determined under paragraph (1)(b) and paragraphs (a) and (b).
1238 (3) If the fiduciary is not an independent person, the
1239 percentage used to calculate the unitrust amount is the rate
1240 determined under s. 7520(a)(2) of the Internal Revenue Code in
1241 effect for the month the conversion under this section becomes
1242 effective and for each January thereafter; however, if the rate
1243 determined under s. 7520(a)(2) of the Internal Revenue Code
1244 exceeds 5 percent, the unitrust rate is 5 percent, and if the
1245 rate determined under s. 7520(a)(2) of the Internal Revenue Code
1246 is less than 3 percent, the unitrust rate is 3 percent.
1247 Section 16. Section 738.307, Florida Statutes, is created

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1248 to read:
1249 738.307 Applicable value.—
1250 (1) A unitrust policy must provide the method for
1251 determining the fair market value of an asset for the purpose of
1252 determining the unitrust amount, including all of the following:
1253 (a) The frequency of valuing the asset, which need not
1254 require a valuation in every period.
1255 (b) The date for valuing the asset in each period in which
1256 the asset is valued.
1257 (2) Except as otherwise provided in s. 738.309, a unitrust
1258 policy may provide methods for determining the amount of the net
1259 fair market value of the trust to take into account in
1260 determining the applicable value, including any of the
1261 following:
1262 (a) Obtaining an appraisal of an asset for which fair
1263 market value is not readily available.
1264 (b) Excluding specific assets or groups or types of assets
1265 in addition to those described in subsection (3).
1266 (c) Making other exceptions or modifications of the
1267 treatment of specific assets or groups or types of assets.
1268 (d) Including identification and treatment of cash or
1269 property held for distribution.
1270 (e) Using an average of fair market values over a stated
1271 number of preceding periods, not to exceed 3 calendar years.
1272 (f) Determining the reasonable known liabilities of the
1273 trust, including treatment of liabilities to conform with the
1274 treatment of assets under paragraphs (a)-(e).
1275 (3) The following property may not be included in
1276 determining the value of the trust:

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1277 (a) Any residential property or any tangible personal
1278 property that, as of the first business day of the current
1279 valuation year, one or more current beneficiaries of the trust
1280 have or have had the right to occupy or have or have had the
1281 right to possess or control, other than in his or her capacity
1282 as trustee of the trust. Instead, the right of occupancy or the
1283 right to possession and control is the unitrust amount with
1284 respect to such property; however, the unitrust amount must be
1285 adjusted to take into account partial distributions from or
1286 receipt into the trust of such property during the valuation
1287 year;
1288 (b) Any asset specifically given to a beneficiary and the
1289 return on investment on such property, which return on
1290 investment must be distributable to the beneficiary; and
1291 (c) Any asset while held in an estate.
1292 Section 17. Section 738.308, Florida Statutes, is created
1293 to read:
1294 738.308 Period.—
1295 (1) A unitrust policy must provide the period used under
1296 ss. 738.306 and 738.307. The period must be the calendar year.
1297 (2) A unitrust policy may provide standards for:
1298 (a) Using fewer preceding periods under s. 738.306(1)(b)1.
1299 or (2)(a) or (b) if:
1300 1. The trust was not in existence in a preceding period; or
1301 2. Market indices or other published data are not available
1302 for a preceding period;
1303 (b) Using fewer preceding periods under 738.307(2)(e) if:
1304 1. The trust was not in existence in a preceding period; or
1305 2. Fair market values are not available for a preceding

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1306 period; and
1307 (c) Prorating a unitrust amount on a daily basis for a part
1308 of a period in which the trust or the administration of the
1309 trust as a unitrust or the interest of any beneficiary commences
1310 or terminates.
1311 Section 18. Section 738.309, Florida Statutes, is created
1312 to read:
1313 738.309 Express unitrust.—
1314 (1) This section applies to a trust that, by its governing
1315 instrument, requires or allows income or net income to be
1316 calculated as a unitrust amount.
1317 (2) The trustee of an express unitrust may determine the
1318 unitrust amount by reference to the net fair market value of the
1319 unitrust's assets in 1 or more years.
1320 (3) Distribution of a unitrust amount is considered a
1321 distribution of all of the net income of an express unitrust and
1322 is considered to be an income interest.
1323 (4) The unitrust amount is considered to be a reasonable
1324 apportionment of the total return of an express unitrust.
1325 (5) An express unitrust that provides or allows a
1326 distribution based on a unitrust rate in excess of 5 percent per
1327 year of the net fair market value of the unitrust assets is
1328 considered a distribution of all of the income of the unitrust
1329 to the extent that the distribution exceeds 5 percent per year
1330 and a distribution of principal of the unitrust.
1331 (6) An express unitrust may provide a mechanism for
1332 changing the unitrust rate, similar to the mechanism provided
1333 under s. 738.306, based upon the factors noted in that section,
1334 and may provide for a conversion from a unitrust to an income

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1335 trust or a reconversion of an income trust to a unitrust under
1336 s. 738.303.
1337 (7) If an express unitrust does not specifically or by
1338 reference to s. 738.306 prohibit a power to change the unitrust
1339 rate or to convert to an income trust under s. 738.303, the
1340 trustee must have such power.
1341 (8) The governing instrument of an express unitrust may
1342 grant the trustee discretion to adopt a consistent practice of
1343 treating capital gains as part of the unitrust amount to the
1344 extent that the unitrust amount exceeds the income determined as
1345 if the trust were not an express unitrust, or the governing
1346 instrument may specify the ordering of classes of income.
1347 (9) Unless the terms of the express unitrust specifically
1348 provide otherwise as provided in subsection (8), the
1349 distribution of a unitrust amount is considered a distribution
1350 made from the following sources, which are listed in order of
1351 priority:
1352 (a) Net accounting income determined under this chapter as
1353 if the trust were not a unitrust;
1354 (b) Ordinary income not allocable to net accounting income;
1355 (c) Net realized short-term capital gains;
1356 (d) Net realized long-term capital gains; and
1357 (e) The principal of the trust.
1358 (10) The governing instrument of an express unitrust may
1359 provide that the trustee may exclude assets used by the
1360 unitrust's beneficiary, including, but not limited to, a
1361 residence property or tangible personal property, from the net
1362 fair market value of the unitrust's assets for the purposes of
1363 computing the unitrust amount. The use of these assets may be

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1364 considered equivalent to income or to the unitrust amount.
1365 Section 19. Section 738.310, Florida Statutes, is created
1366 to read:
1367 738.310 Other rules.—Following the conversion of an income
1368 trust to a unitrust, the trustee shall consider the unitrust
1369 amount as paid from the following sources, which are listed in
1370 order of priority:
1371 (1) Net accounting income determined under this chapter as
1372 if the trust were not a unitrust;
1373 (2) Ordinary income not allocable to net accounting income;
1374 (3) Net realized short-term capital gains;
1375 (4) Net realized long-term capital gains; and
1376 (5) The principal of the trust.
1377 Section 20. Section 738.401, Florida Statutes, is amended
1378 to read:
1379 738.401 Character of receipts from entity.—
1380 (1) For purposes of this section, the term:
1381 (a) "Capital distribution" means an entity distribution of
1382 money which is a:
1383 1. Return of capital; or
1384 2. Distribution in total or partial liquidation of the
1385 entity.
1386 (b) "Entity":
1387 1. Means a corporation, partnership, limited liability
1388 company, regulated investment company, real estate investment
1389 trust, common trust fund, or any other organization or
1390 arrangement in which a fiduciary owns or holds ~~has~~ an interest,
1391 regardless of whether the entity is a taxpayer for federal
1392 income tax purposes; and

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1393 2. Does not include:
1394 a. A trust or estate to which s. 738.402 applies;
1395 b. A business or other activity to which s. 738.403 applies
1396 which is not conducted by an entity described in subparagraph
1397 1.;
1398 c. An asset-backed security; or
1399 d. An instrument or arrangement to which s. 738.416 applies
1400 ~~other than a trust or estate to which s. 738.402 applies, a~~
1401 ~~business or activity to which s. 738.403 applies, or an asset-~~
1402 ~~backed security to which s. 738.608 applies~~.
1403 (c) "Entity distribution" means a payment or transfer by an
1404 entity to a person in the person's capacity as an owner or
1405 holder of an interest in the entity.
1406 (d) "Lookback period" means the accounting period and the
1407 preceding two accounting periods or, if less, the number of
1408 accounting periods, or portion of accounting periods, that the
1409 interest in the entity has been held by the fiduciary.
1410 (2) In this section, an attribute or action of an entity
1411 includes an attribute or action of any other entity in which the
1412 initial entity owns or holds an interest, including an interest
1413 owned or held indirectly through another entity.
1414 (3) Except as otherwise provided in paragraphs (4)(b), (c),
1415 and (d) ~~this section~~, a fiduciary shall allocate to income:
1416 (a) Money received in an entity distribution; and
1417 (b) Tangible personal property of nominal value received
1418 from the ~~money received from an~~ entity.
1419 (4) ~~(3) Except as otherwise provided in this section,~~ A
1420 fiduciary shall allocate the following ~~receipts from an entity~~
1421 to principal:

1422 (a) Property received in an entity distribution which is
1423 not:
1424 1. ~~other than~~ Money; or
1425 2. Tangible personal property of nominal value.
1426 (b) Money received in an entity ~~one~~ distribution ~~or a~~
1427 ~~series of related distributions~~ in an exchange for part or all
1428 of the fiduciary's ~~a trust's or estate's~~ interest in the entity
1429 to the extent that the entity distribution reduces the
1430 fiduciary's interest in the entity relative to the interest of
1431 other persons that own or hold interests in the entity.
1432 (c) Money received in an entity distribution that is a
1433 capital distribution, to the extent not allocated to income
1434 ~~total or partial liquidation of the entity~~.
1435 (d) Money received in an entity distribution from an entity
1436 that is a regulated investment company or a real estate
1437 investment trust if the money received represents short-term or
1438 long-term capital gain realized within the entity.
1439 ~~(e) Money received from an entity listed on a public stock~~
1440 ~~exchange during any year of the trust or estate which exceeds 10~~
1441 ~~percent of the fair market value of the trust's or estate's~~
1442 ~~interest in the entity on the first day of that year. The amount~~
1443 ~~to be allocated to principal must be reduced to the extent that~~
1444 ~~the cumulative distributions from the entity to the trust or~~
1445 ~~estate allocated to income do not exceed a cumulative annual~~
1446 ~~return of 3 percent of the fair market value of the interest in~~
1447 ~~the entity at the beginning of each year or portion of a year~~
1448 ~~for the number of years or portion of years in the period that~~
1449 ~~the interest in the entity has been held by the trust or estate.~~
1450 ~~If a trustee has exercised a power to adjust under s. 738.104~~

1451 ~~during any period the interest in the entity has been held by~~
1452 ~~the trust, the trustee, in determining the total income~~
1453 ~~distributions from that entity, must take into account the~~
1454 ~~extent to which the exercise of that power resulted in income to~~
1455 ~~the trust from that entity for that period. If the income of the~~
1456 ~~trust for any period has been computed under s. 738.1041, the~~
1457 ~~trustee, in determining the total income distributions from that~~
1458 ~~entity for that period, must take into account the portion of~~
1459 ~~the unitrust amount paid as a result of the ownership of the~~
1460 ~~trust's interest in the entity for that period.~~
1461 (5) ~~(4)~~ If a fiduciary elects, or continues an election made
1462 by its predecessor, to reinvest dividends in shares of stock of
1463 a distributing corporation or fund, whether evidenced by new
1464 certificates or entries on the books of the distributing entity,
1465 the new shares retain their character as income.
1466 (6) ~~(5)~~ Except as otherwise provided in subsections (10) and
1467 (11), money received in an entity distribution is a capital
1468 distribution ~~Money is received in partial liquidation~~:
1469 (a) To the extent that the entity, at or near the time of
1470 the entity ~~a~~ distribution, indicates that such money is a
1471 capital distribution ~~in partial liquidation~~; or
1472 (b) To the extent that the total amount of money and
1473 property received by the fiduciary in the entity ~~in a~~
1474 distribution or a series of related entity distributions is or
1475 will be greater than ~~from an entity that is not listed on a~~
1476 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's
1477 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
1478 as shown by the entity's year-end financial statements
1479 immediately preceding the initial receipt.

1480
1481 ~~This subsection does not apply to an entity to which subsection~~
1482 ~~(7) applies.~~
1483 (7) ~~(6)~~ In the case of a capital distribution, the amount
1484 received in an entity distribution allocated to principal must
1485 be reduced to the extent that the cumulative distributions from
1486 the entity to the fiduciary ~~Money may not be taken into account~~
1487 ~~in determining any excess under paragraph (5)(b), to the extent~~
1488 ~~that the cumulative distributions from the entity to the trust~~
1489 ~~or the estate~~ allocated to income do not exceed the greater of:
1490 (a) A cumulative annual return of 3 percent of the entity's
1491 carrying value computed at the beginning of each accounting
1492 period, or portion of an accounting period, during the lookback
1493 period ~~for the number of years or portion of years that the~~
1494 ~~entity was held by the fiduciary~~. If a fiduciary ~~trustee~~ has
1495 exercised a power to adjust under s. 738.203 during the lookback
1496 period, the fiduciary ~~s. 738.104 during any period the interest~~
1497 ~~in the entity has been held by the trust, the trustee~~, in
1498 determining the total income distributions from that entity,
1499 must take into account the extent to which the exercise of the
1500 power resulted in income to the fiduciary ~~trust~~ from that entity
1501 for that period. If the income of a fiduciary during the
1502 lookback ~~trust for any~~ period has been computed under ss.
1503 738.301-738.310, the fiduciary ~~pursuant to s. 738.1041, the~~
1504 ~~trustee~~, in determining the total income distributions from the
1505 entity for that period, must take into account the portion of
1506 the unitrust amount paid as a result of the ownership of the
1507 trust's interest in the entity for that period; or
1508 (b) In ~~If~~ the case of an entity ~~is~~ treated as a

1509 partnership, subchapter S corporation, or ~~a~~ disregarded entity
1510 under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended~~,
1511 the amount of income tax attributable to the fiduciary's ~~trust's~~
1512 ~~or estate's~~ ownership share of the entity, based on its pro rata
1513 share of the taxable income of the entity that distributes the
1514 money, during the lookback period ~~for the number of years or~~
1515 ~~portion of years that the interest in the entity was held by the~~
1516 ~~fiduciary~~, calculated as if all of the ~~that~~ tax was incurred by
1517 the fiduciary.
1518 (8) If a fiduciary receives additional information about
1519 the application of this section to an entity distribution before
1520 the fiduciary has paid part of the entity distribution to a
1521 beneficiary, the fiduciary may consider the additional
1522 information before making the payment to the beneficiary and may
1523 change a decision to make the payment to the beneficiary.
1524 (9) If a fiduciary receives additional information about
1525 the application of this section to an entity distribution after
1526 the fiduciary has paid part of the entity distribution to a
1527 beneficiary, the fiduciary is not required to change or recover
1528 the payment to the beneficiary but may consider that information
1529 in determining whether to exercise its other powers, including
1530 but not limited to the power to adjust under s. 738.203.
1531 (10) ~~(7)~~ The following applies to money or property received
1532 by a private trustee as a distribution from an investment entity
1533 described in this subsection:
1534 (a) The trustee shall first treat as income of the trust
1535 all of the money or property received from the investment entity
1536 in the current accounting period ~~year~~ which would be considered
1537 income under this chapter if the trustee had directly held the

1538 trust's pro rata share of the assets of the investment entity.
1539 For this purpose, all distributions received in the current
1540 accounting period ~~year~~ must be aggregated.
1541 (b) The trustee shall next treat as income of the trust any
1542 additional money or property received in the current accounting
1543 period ~~year~~ which would have been considered income in the prior
1544 2 accounting periods ~~years~~ under paragraph (a) if additional
1545 money or property had been received from the investment entity
1546 in any of those prior 2 accounting periods ~~years~~. The amount to
1547 be treated as income must ~~shall~~ be reduced by any distributions
1548 of money or property made by the investment entity to the trust
1549 during the current and the prior 2 accounting periods ~~years~~
1550 which were treated as income under this paragraph.
1551 (c) The remainder of the distribution, if any, is treated
1552 as principal.
1553 (d) As used in this subsection, the term:
1554 1. "Investment entity" means an entity, other than a
1555 business activity conducted by the trustee described in s.
1556 738.403 or an entity that is listed on a public stock exchange,
1557 which is treated as a partnership, subchapter S corporation, or
1558 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
1559 ~~of 1986, as amended,~~ and which normally derives 50 percent or
1560 more of its annual cumulative net income from interest,
1561 dividends, annuities, royalties, rental activity, or other
1562 passive investments, including income from the sale or exchange
1563 of such passive investments.
1564 2. "Private trustee" means a trustee who is a natural
1565 person, but is not an independent person as set forth in s.
1566 738.102 ~~only if the trustee is unable to use the power to adjust~~

1567 ~~between income and principal with respect to receipts from~~
1568 ~~entities described in this subsection pursuant to s. 738.104~~. ~~A~~
1569 ~~bank, trust company, or other commercial trustee is not~~
1570 ~~considered a private trustee.~~
1571 (11) A fiduciary shall allocate to principal any money and
1572 property the fiduciary receives in a distribution or series of
1573 related distributions from a public entity which are greater
1574 than 10 percent of the fair market value of the fiduciary's
1575 interest in the public entity on the first day of the accounting
1576 period. The amount to be allocated to principal must be reduced
1577 to the extent that the cumulative distributions from the entity
1578 to the fiduciary allocated to income do not exceed a cumulative
1579 annual return of 3 percent of the fair market value of the
1580 interest in the entity at the beginning of each accounting
1581 period, or portion of an accounting period, during the lookback
1582 period. If a fiduciary has exercised a power to adjust under s.
1583 738.203 during the lookback period, the fiduciary, in
1584 determining the total income distributions from that entity,
1585 must take into account the extent to which the exercise of that
1586 power resulted in income to the fiduciary from that entity for
1587 that period. If the income of the fiduciary during the lookback
1588 period has been computed under ss. 738.301-738.310, the
1589 fiduciary, in determining the total income distribution from
1590 that entity for that period, must take into account the portion
1591 of the unitrust amount paid as a result of the ownership of the
1592 trust's interest in the entity for that period. As used in this
1593 subsection, the term "public entity" means an entity listed on a
1594 public stock exchange.
1595 (12) ~~(8)~~ This section must ~~shall~~ be applied before ss.

1596 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
1597 or change any of the provisions of those sections.
1598 Section 21. Section 738.402, Florida Statutes, is amended
1599 to read:
1600 738.402 Distribution from trust or estate.—A fiduciary
1601 shall allocate to income an amount received as a distribution of
1602 income, including a unitrust distribution under ss. 738.301-
1603 738.310, from a trust or an estate in which the fiduciary ~~trust~~
1604 has an interest, other than an interest ~~a~~ purchased in a trust
1605 that is an investment entity, and shall ~~interest and~~ allocate to
1606 principal an amount received as a distribution of principal from
1607 the ~~such a~~ trust or estate. If a fiduciary purchases, or
1608 receives from a settlor, an interest in a trust that is an
1609 investment entity, ~~or a decedent or donor transfers an interest~~
1610 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
1611 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.
1612 Section 22. Section 738.403, Florida Statutes, is amended
1613 to read:
1614 738.403 Business and other activity ~~activities~~ conducted by
1615 fiduciary.—
1616 (1) This section applies to ~~If a fiduciary who conducts~~ a
1617 business or other activity conducted by a fiduciary if the
1618 fiduciary determines that it is in the best interests of
1619 ~~interest of all~~ the beneficiaries to account separately for the
1620 business or other activity instead of:
1621 (a) Accounting for the business or other activity as part
1622 of the fiduciary's ~~trust's or estate's~~ general accounting
1623 records; or
1624 (b) Conducting the business or other activity through an

1625 entity described in s. 738.401(1)(b).~~, the~~
1626 (2) A fiduciary may account separately under this section
1627 ~~maintain separate accounting records~~ for the transactions of a
1628 ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~
1629 ~~not the~~ assets of the ~~such~~ business or other activity are
1630 segregated from other ~~trust or estate~~ assets held by the
1631 fiduciary.
1632 (3)~~(2)~~ A fiduciary who accounts separately under this
1633 section for a business or other activity:
1634 (a) May determine:
1635 1. The extent to which the net cash receipts of the
1636 business or other activity must be retained for:
1637 a. Working capital;
1638 b. The acquisition or replacement of fixed assets; and
1639 c. Other reasonably foreseeable needs of the business or
1640 other activity; and ~~working capital, the acquisition or~~
1641 ~~replacement of fixed assets, and other reasonably foreseeable~~
1642 ~~needs of the business or activity, and~~
1643 2. The extent to which the remaining net cash receipts are
1644 accounted for as principal or income in the fiduciary's ~~trust's~~
1645 ~~or estate's~~ general accounting records for the trust.
1646 (b) May make a determination under paragraph (a) separately
1647 and differently from the fiduciary's decisions concerning
1648 distributions of income or principal; and
1649 (c) Shall account for the net amount received from the sale
1650 of an asset of ~~If a fiduciary sells assets of~~ the business or
1651 other activity, other than a sale in the ordinary course of the
1652 business or other activity, ~~the fiduciary must account for the~~
1653 ~~net amount received~~ as principal in the fiduciary's ~~trust's or~~

1654 ~~estate's~~ general accounting records for the trust, to the extent
1655 the fiduciary determines that the net amount received is no
1656 longer required in the conduct of the business or other
1657 activity.
1658 (4)~~(3)~~ Activities for which a fiduciary may account
1659 separately under this section ~~maintain separate accounting~~
1660 ~~records~~ include:
1661 (a) Retail, manufacturing, service, and other traditional
1662 business activities.
1663 (b) Farming.
1664 (c) Raising and selling livestock and other animals.
1665 (d) Managing ~~Management of~~ rental properties.
1666 (e) Extracting ~~Extraction of~~ minerals and other natural
1667 resources.
1668 (f) Growing and cutting timber ~~operations~~.
1669 (g) An activity ~~Activities~~ to which s. 738.414, s. 738.415,
1670 or s. 738.416 ~~s. 738.607~~ applies.
1671 (h) Any other business conducted by the fiduciary.
1672 Section 23. Section 738.404, Florida Statutes, is created
1673 to read:
1674 738.404 Principal receipts.—A fiduciary shall allocate to
1675 principal:
1676 (1) To the extent not allocated to income under this
1677 chapter, an asset received from any of the following:
1678 (a) An individual during the individual's lifetime.
1679 (b) An estate.
1680 (c) A trust on termination of an income interest.
1681 (d) A payor under a contract naming the fiduciary as
1682 beneficiary.

1683 (2) Except as otherwise provided in ss. 738.401-738.416,
1684 money or other property received from the sale, exchange,
1685 liquidation, or change in the form of a principal asset.
1686 (3) An amount recovered from a third party to reimburse the
1687 fiduciary because of a disbursement described in s. 738.502(1)
1688 or for another reason to the extent not based on the loss of
1689 income.
1690 (4) Proceeds of property taken by eminent domain except
1691 that proceeds awarded for loss of income in an accounting period
1692 are income if a current income beneficiary had a mandatory
1693 income interest during the period.
1694 (5) Net income received in an accounting period during
1695 which there is no beneficiary to which a fiduciary may or must
1696 distribute income.
1697 (6) Other receipts as provided in ss. 738.408-738.416.
1698 Section 24. Section 738.405, Florida Statutes, is created
1699 to read:
1700 738.405 Rental property.—To the extent that a fiduciary
1701 does not account for the management of rental property as a
1702 business under s. 738.403, the fiduciary shall allocate to
1703 income an amount received as rent of real or personal property,
1704 including an amount received for cancellation or renewal of a
1705 lease. An amount received as a refundable deposit, including a
1706 security deposit or a deposit that is to be applied as rent for
1707 future periods:
1708 (1) Must be added to principal and held subject to the
1709 terms of the lease, except as otherwise provided by law other
1710 than this chapter; and
1711 (2) Is not allocated to income or available for

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1712 distribution to a beneficiary until the fiduciary's contractual
1713 obligations have been satisfied with respect to that amount.
1714 Section 25. Section 738.406, Florida Statutes, is created
1715 to read:
1716 738.406 Receipt on obligation to be paid in money.—
1717 (1) This section does not apply to an obligation to which
1718 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
1719 738.415, or s. 738.416 applies.
1720 (2) A fiduciary shall allocate to income, without provision
1721 for amortization of premium, an amount received as interest on
1722 an obligation to pay money to the fiduciary, including an amount
1723 received as consideration for prepaying principal.
1724 (3) A fiduciary shall allocate to principal an amount
1725 received from the sale, redemption, or other disposition of an
1726 obligation to pay money to the fiduciary.
1727 (4) A fiduciary shall allocate to income the increment in
1728 value of a bond or other obligation for the payment of money
1729 bearing no stated interest but payable or redeemable, at
1730 maturity or another future time, in an amount that exceeds the
1731 amount in consideration of which it was issued. If the increment
1732 in value accrues and becomes payable pursuant to a fixed
1733 schedule of appreciation, it may be distributed to the
1734 beneficiary who was the income beneficiary at the time of
1735 increment from the first principal cash available or, if none is
1736 available, when the increment is realized by sale, redemption,
1737 or other disposition. If unrealized increment is distributed as
1738 income but out of principal, the principal must be reimbursed
1739 for the increment when realized. If, in the reasonable judgment
1740 of the fiduciary, exercised in good faith, the ultimate payment

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1741 of the bond principal is in doubt, the fiduciary may withhold
1742 the payment of incremental interest to the income beneficiary.
1743 Section 26. Section 738.407, Florida Statutes, is created
1744 to read:
1745 738.407 Insurance policy or contract.—
1746 (1) This section does not apply to a contract to which s.
1747 738.409 applies.
1748 (2) Except as otherwise provided in subsection (3), a
1749 fiduciary shall allocate to principal the proceeds of a life
1750 insurance policy or other contract received by the fiduciary as
1751 beneficiary, including a contract that insures against damage
1752 to, destruction of, or loss of title to an asset. The fiduciary
1753 shall allocate dividends on an insurance policy to income to the
1754 extent that premiums on the policy are paid from income and to
1755 principal to the extent premiums on the policy are paid from
1756 principal.
1757 (3) A fiduciary shall allocate to income proceeds of a
1758 contract that insures the fiduciary against loss of:
1759 (a) Occupancy or other use by a current income beneficiary;
1760 (b) Income; or
1761 (c) Subject to s. 738.403, profits from a business.
1762 Section 27. Section 738.408, Florida Statutes, is created
1763 to read:
1764 738.408 Insubstantial allocation not required.—
1765 (1) If a fiduciary determines that an allocation between
1766 income and principal required by s. 738.409, s. 738.410, s.
1767 738.411, s. 738.412, or s. 738.415 is insubstantial, the
1768 fiduciary may allocate the entire amount to principal, unless s.
1769 738.203(5) applies to the allocation.

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1770 (2) A fiduciary may presume an allocation is insubstantial
1771 under subsection (1) if:
1772 (a) The amount of the allocation would increase or decrease
1773 net income in an accounting period, as determined before the
1774 allocation, by less than 10 percent; and
1775 (b) The asset producing the receipt to be allocated has a
1776 carrying value less than 10 percent of the total carrying value
1777 of the assets owned or held by the fiduciary at the beginning of
1778 the accounting period.
1779 (3) The power to make a determination under subsection (1)
1780 may be:
1781 (a) Exercised by a cofiduciary in the manner described in
1782 s. 738.203(6); or
1783 (b) Released or delegated for a reason described in s.
1784 738.203(7) and in the manner described in s. 738.203(8).
1785 Section 28. Section 738.409, Florida Statutes, is created
1786 to read:
1787 738.409 Deferred compensation, annuity, or similar
1788 payment.—
1789 (1) As used in this section, the term:
1790 (a) "Internal income of the separate fund" means the amount
1791 determined under subsection (2).
1792 (b) "Marital trust" means a trust:
1793 1. Of which the settlor's surviving spouse is the only
1794 current income beneficiary and is entitled to a distribution of
1795 all the current net income of the trust; and
1796 2. That qualifies for a marital deduction with respect to
1797 the settlor's estate under the Internal Revenue Code or
1798 comparable law of any state because:

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1799 a. An election to qualify for a marital deduction under s.
1800 2056(b)(7) of the Internal Revenue Code has been made;
1801 b. The trust qualified for a marital deduction under s.
1802 2056(b)(5) of the Internal Revenue Code; or
1803 c. The trust otherwise qualifies for a marital deduction.
1804 (c) "Nonseparate fund" means an annuity, a deferred
1805 compensation plan, a pension plan, or other fund for which the
1806 value of the participant's or account owner's right to receive
1807 benefits can be determined only by the occurrence of a date or
1808 event as defined in the instrument governing the fund.
1809 (d) "Payment" means an amount a fiduciary may receive over
1810 a fixed number of years or during the life of one or more
1811 individuals because of services rendered or property transferred
1812 to the payor in exchange for future amounts the fiduciary may
1813 receive. The term includes an amount received in money or
1814 property from the payor's general assets or from a separate fund
1815 created by the payor.
1816 (e) "Percent calculated" means a percent equal to the rate
1817 determined under s. 7520 of the Internal Revenue Code in effect
1818 for the month preceding the beginning of the accounting period;
1819 however, if the percent calculated exceeds 5 percent, it must be
1820 reduced to 5 percent, and if the percent calculated is less than
1821 3 percent, it must be increased to 3 percent. Notwithstanding
1822 the preceding sentence, a fiduciary who is an independent person
1823 as defined in s. 738.102 may set the percent calculated at a
1824 percentage no less than 3 percent and no greater than 5 percent.
1825 (f) "Separate fund" includes a private or commercial
1826 annuity, an individual retirement account, and a pension,
1827 profit-sharing, stock-bonus, stock ownership plan, or other

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1828 deferred compensation fund holding assets exclusively for the
1829 benefit of a participant or account owner.
1830 (2) For each accounting period, the following rules apply
1831 to a separate fund:
1832 (a) The fiduciary may determine the internal income of the
1833 separate fund as if the separate fund were a trust subject to
1834 this chapter.
1835 (b) Alternatively, the fiduciary may deem the internal
1836 income of the separate fund to equal the percent calculated of
1837 the value of the separate fund according to the most recent
1838 statement of value preceding the beginning of the accounting
1839 period. The fiduciary is not liable for good faith reliance upon
1840 any valuation supplied by the person or persons in possession of
1841 the fund. If the fiduciary makes or terminates an election under
1842 this paragraph, the fiduciary must make such disclosure in a
1843 trust disclosure document that satisfies the requirements of s.
1844 736.1008(4)(c).
1845 (c) If the fiduciary cannot determine the value of the
1846 separate fund under paragraph (b), the value of the separate
1847 fund is deemed to equal the present value of s. 7520 of the
1848 Internal Revenue Code for the month preceding the beginning of
1849 the accounting period for which the computation is made.
1850 (d) The fiduciary may elect the method of determining the
1851 income of the fund pursuant to this subsection and may change
1852 the method of determining income of the fund for any future
1853 accounting period.
1854 (3) A fiduciary shall allocate a payment received from a
1855 separate fund during an accounting period to income, to the
1856 extent of the internal income of the separate fund during the

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1857 period, and allocate the balance to principal.
1858 (4) The fiduciary of a marital trust shall:
1859 (a) Withdraw from a separate fund the amount the current
1860 income beneficiary of the trust requests the fiduciary to
1861 withdraw, not greater than the amount by which the internal
1862 income of the separate fund during the accounting period exceeds
1863 the amount the fiduciary otherwise receives from the separate
1864 fund during the period.
1865 (b) Transfer from principal to income the amount the
1866 current income beneficiary requests the fiduciary to transfer,
1867 but not greater than the amount by which the internal income of
1868 the separate fund during the period exceeds the amount the
1869 fiduciary receives from the separate fund during the period
1870 after the application of paragraph (a).
1871 (c) Distribute to the current income beneficiary as income:
1872 1. The amount of the internal income of the separate fund
1873 received or withdrawn during the period; and
1874 2. The amount transferred from principal to income under
1875 paragraph (b).
1876 (5) For a trust, other than a marital trust, of which one
1877 or more current income beneficiaries are entitled to a
1878 distribution of all the current net income, the fiduciary shall
1879 transfer from principal to income the amount by which the
1880 internal income of the separate fund during the accounting
1881 period exceeds the amount the fiduciary receives from the
1882 separate fund during the period.
1883 (6) The fiduciary of a nonseparate fund shall calculate
1884 internal income of the fund as the percent calculated of the
1885 present value of the right to receive the remaining payments as

1886 determined under s. 7520(a)(2) of the Internal Revenue Code for
1887 the month preceding the beginning of the accounting period.
1888 (7) If a fiduciary owns a separate fund or a nonseparate
1889 fund before January 1, 2025, the fiduciary may determine
1890 internal income, allocate payments, and account for unwithdrawn
1891 internal income as provided in this section or in the manner
1892 used by the fiduciary before January 1, 2025. Such fiduciary is
1893 not required to consider subsection (5). If the fiduciary
1894 acquires a separate fund or a nonseparate fund on or after
1895 January 1, 2025, the fiduciary must calculate internal income,
1896 allocate payments, and account for unwithdrawn internal income
1897 as provided in this section.
1898 Section 29. Section 738.603, Florida Statutes, is
1899 transferred, renumbered as section 738.410, Florida Statutes,
1900 and amended to read:
1901 738.410 ~~738.603~~ Liquidating asset.—
1902 (1) As used in ~~For purposes of~~ this section, the term
1903 "liquidating asset" means an asset whose value ~~the value of~~
1904 ~~which~~ will diminish or terminate because the asset is expected
1905 to produce receipts for a ~~period of~~ limited time ~~duration~~. The
1906 term includes a leasehold, patent, copyright, royalty right, and
1907 right to receive payments during a period of ~~for~~ more than 1
1908 year under an arrangement that does not provide for the payment
1909 of interest on the unpaid balance. ~~The term does not include a~~
1910 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
1911 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~
1912 ~~an asset subject to s. 738.608, or any asset for which the~~
1913 ~~fiduciary establishes a reserve for depreciation under s.~~
1914 ~~738.703.~~

1915 (2) This section does not apply to a receipt that is
1916 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
1917 738.414, s. 738.415, s. 738.416, or s. 738.503.
1918 (3) A fiduciary shall allocate to income a receipt produced
1919 by a liquidating asset to the extent that the receipt does not
1920 exceed 5 percent of the ~~receipts from the~~ carrying value of the
1921 asset at the beginning of the accounting period and allocate ~~a~~
1922 ~~liquidating asset and the balance~~ to principal the balance of
1923 the receipt.
1924 (4) The amount ~~Amounts~~ allocated to principal shall reduce
1925 the carrying value of the liquidating asset, but not below zero.
1926 Amounts received in excess of the remaining carrying value must
1927 be allocated to principal.
1928 Section 30. Section 738.604, Florida Statutes, is
1929 transferred, renumbered as section 738.411, Florida Statutes,
1930 and amended to read:
1931 738.411 ~~738.604~~ Minerals, water, and other natural
1932 resources.—
1933 (1) To the extent that ~~If~~ a fiduciary does not account for
1934 a receipt ~~accounts for receipts~~ from an interest in minerals,
1935 water, or other natural resources as a business under s. 738.403
1936 ~~pursuant to this section~~, the fiduciary shall allocate the
1937 receipt ~~such receipts as follows~~:
1938 (a) To income, to the extent received:
1939 1. ~~If received~~ As ~~nominal~~ delay rental or ~~nominal~~ annual
1940 rent on a lease;
1941 2. As a factor for interest or the equivalent of interest
1942 under an agreement creating a production payment; or
1943 3. On account of an interest in renewable water;~~, a receipt~~

1944 ~~shall be allocated to income.~~
1945 (b) To principal, if received from a production payment, ~~a~~
1946 ~~receipt shall be allocated to income if and~~ to the extent that
1947 subparagraph (a)2. does not apply; or ~~the agreement creating the~~
1948 ~~production payment provides a factor for interest or its~~
1949 ~~equivalent. The balance shall be allocated to principal.~~
1950 (c) Between income and principal equitably, to the extent
1951 received:
1952 1. On account of an interest in nonrenewable water;
1953 2. ~~If an amount received~~ As a royalty, shut-in-well
1954 payment, take-or-pay payment, or bonus; or~~, or delay rental is~~
1955 ~~more than nominal, 90 percent shall be allocated to principal~~
1956 ~~and the balance to income.~~
1957 3.~~(d)~~ ~~If an amount is received~~ From a working interest or
1958 any other interest not provided for in paragraph (a) or~~,~~
1959 paragraph (b) or subparagraph 1. or subparagraph 2.~~, or~~
1960 ~~paragraph (c), 90 percent of the net amount received shall be~~
1961 ~~allocated to principal and the balance to income.~~
1962 (2) ~~An amount received on account of an interest in water~~
1963 ~~that is renewable shall be allocated to income. If the water is~~
1964 ~~not renewable, 90 percent of the amount shall be allocated to~~
1965 ~~principal and the balance to income.~~
1966 ~~(3)~~ This section ~~chapter~~ applies to an interest owned or
1967 held by a fiduciary regardless of whether ~~or not~~ a settlor
1968 ~~decedent or donor~~ was extracting minerals, water, or other
1969 natural resources before the fiduciary owned or held the
1970 interest ~~became subject to the trust or estate~~.
1971 (3) An allocation of a receipt under paragraph (1)(c) is
1972 presumed to be equitable if the amount allocated to principal is

1973 equal to the amount allowed by the Internal Revenue Code as a
1974 deduction for depletion of the interest.
1975 (4) If a fiduciary ~~trust or estate~~ owns or holds an
1976 interest in minerals, water, or other natural resources before
1977 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
1978 receipts from the interest as provided in this section ~~chapter~~
1979 or in the manner used by the fiduciary before January 1, 2025
1980 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an
1981 interest in minerals, water, or other natural resources on or
1982 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
1983 allocate receipts from the interest as provided in this section
1984 ~~chapter~~.
1985 Section 31. Section 738.605, Florida Statutes, is
1986 transferred, renumbered as section 738.412, Florida Statutes,
1987 and amended to read:
1988 738.412 ~~738.605~~ Timber.—
1989 (1) To the extent that ~~If~~ a fiduciary does not account
1990 ~~accounts~~ for receipts from the sale of timber and related
1991 products as a business under s. 738.403 ~~pursuant to this~~
1992 ~~section~~, the fiduciary shall allocate the ~~such~~ net receipts ~~as~~
1993 ~~follows~~:
1994 (a) To income, to the extent that the amount of timber cut
1995 ~~removed~~ from the land does not exceed the rate of growth of the
1996 timber ~~during the accounting periods in which a beneficiary has~~
1997 ~~a mandatory income interest~~;
1998 (b) To principal, to the extent that the amount of timber
1999 cut ~~removed~~ from the land exceeds the rate of growth of the
2000 timber or the net receipts are from the sale of standing timber;
2001 (c) ~~To or~~ Between income and principal if the net receipts

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2002 are from the lease of land used for growing and cutting timber
2003 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
2004 ~~trust or estate~~ by determining the amount of timber cut ~~removed~~
2005 from the land under the lease or contract and applying the rules
2006 in paragraphs (a) and (b); or
2007 (d) To principal, to the extent that advance payments,
2008 bonuses, and other payments are not allocated under ~~pursuant to~~
2009 paragraph (a), paragraph (b), or paragraph (c).
2010 (2) In determining net receipts to be allocated under
2011 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and
2012 transfer to principal a reasonable amount for depletion.
2013 (3) This section ~~chapter~~ applies to land owned or held by a
2014 fiduciary regardless of whether ~~or not~~ a settlor ~~decedent or~~
2015 ~~donor~~ was cutting ~~harvesting~~ timber from the land ~~property~~
2016 before the fiduciary owned or held the property ~~became subject~~
2017 ~~to the trust or estate~~.
2018 (4) If a fiduciary ~~trust or estate~~ owns or holds an
2019 interest in land used for growing and cutting timber before
2020 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
2021 allocate net receipts from the sale of timber and related
2022 products as provided in this section ~~chapter~~ or in the manner
2023 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
2024 the fiduciary ~~trust or estate~~ acquires an interest in land used
2025 for growing and cutting timber on or after January 1, 2025
2026 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
2027 allocate net receipts from the sale of timber and related
2028 products as provided in this section ~~chapter~~.
2029 Section 32. Section 738.606, Florida Statutes, is
2030 transferred, renumbered as section 738.413, Florida Statutes,

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and amended to read:

738.413 ~~738.606~~ Marital deduction property not productive of income.—

(1) If a trust received property for which a gift or estate tax marital deduction was ~~under the Internal Revenue Code or comparable law of any state is~~ allowed, ~~for all~~ or if ~~part of~~ a trust received property satisfying~~, or if assets are transferred to a trust that satisfies~~ the requirements of s. 732.2025(2)(a) and (c), and such property has ~~assets have~~ been used in whole or in part to satisfy an election by a surviving spouse under s. 732.2125, and the settlor's spouse holds a mandatory income interest in the trust, the spouse may require the trustee, to the extent that the trust assets otherwise do ~~consist of property that, in the aggregate, does~~ not provide the spouse with sufficient income from or use of the trust assets to qualify for the deduction, or to satisfy an election by a surviving spouse under s. 732.2125, to make the property productive of income within a reasonable time. The trustee may:

(a) Convert property to property productive of income within a reasonable time;

(b) Exercise the power to adjust under s. 738.203;

(c) Exercise the power to convert to or from a unitrust under s. 738.303; or

(d) Exercise the fiduciary's authority under the terms of the trust to otherwise provide the surviving spouse with sufficient income from the trust assets, or the use of the trust assets, to qualify for the marital deduction, or to satisfy an election by a surviving spouse under s. 732.2125.

(2) The trustee may decide which action or combination of

actions listed in subsection (1) to take.

(3) Subsection (1) shall apply~~, and if amounts the trustee transfers from principal to income under s. 738.104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction,~~ even though, in the case of an elective share trust under s. 732.2025(2), a marital deduction is not made or is only partially made~~, the spouse may require the trustee of such marital trust or elective share trust to make property productive of income, convert property within a reasonable time, or exercise the power conferred by ss. 738.104 and 738.1041~~.

(4) The terms of a trust as defined in s. 738.102 may not supersede this section unless such terms explicitly reference this section ~~The trustee may decide which action or combination of actions to take~~.

~~(2) In cases not governed by subsection (1), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.~~

Section 33. Section 738.607, Florida Statutes, is transferred, renumbered as section 738.414, Florida Statutes, and amended to read:

738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

(1) As used in ~~For purposes of~~ this section, the term "derivative" means a contract, an ~~or financial~~ instrument, or other arrangement, or ~~a~~ combination of contracts, ~~and financial~~ instruments, or other arrangements, of which the value, rights, and obligations are, in whole or in part, dependent on or

2089 derived from an underlying ~~which gives a trust the right or~~
2090 ~~obligation to participate in some or all changes in the price of~~
2091 ~~a~~ tangible or intangible asset, a ~~or~~ group of tangible or
2092 intangible assets, an index, or an occurrence of an event. The
2093 term includes stocks, fixed income securities, and financial
2094 instruments and arrangements based on indices, commodities,
2095 interest rates, weather-related events, and credit-default
2096 events ~~assets, or changes in a rate, an index of prices or~~
2097 ~~rates, or other market indicator for an asset or a group of~~
2098 ~~assets~~.
2099 (2) To the extent that a fiduciary does not account for a
2100 transaction in derivatives as a business under s. 738.403 ~~for~~
2101 ~~transactions in derivatives~~, the fiduciary shall allocate 10
2102 percent of ~~to principal~~ receipts from the transaction and 10
2103 percent of ~~and~~ disbursements made in connection with the
2104 transaction to income and allocate the balance to principal
2105 ~~those transactions~~.
2106 (3) Subsection (4) applies if:
2107 (a) A fiduciary:
2108 1. ~~If a fiduciary~~ Grants an option to buy property from a
2109 ~~the~~ trust, regardless of ~~or estate~~ whether ~~or not~~ the trust ~~or~~
2110 ~~estate~~ owns the property when the option is granted;~~,~~
2111 2. Grants an option that permits another person to sell
2112 property to the trust; or
2113 3. ~~estate, or~~ Acquires an option to buy property for the
2114 trust or ~~estate or~~ an option to sell an asset owned by the trust
2115 ~~or estate;~~, and
2116 (b) The fiduciary or other owner of the asset is required
2117 to deliver the asset if the option is exercised~~, an amount~~

2118 ~~received for granting the option shall be allocated to~~
2119 ~~principal~~. ~~An amount paid to acquire the option shall be paid~~
2120 ~~from principal.~~
2121 (4) If this subsection applies, the fiduciary must allocate
2122 10 percent to income and allocate the balance to principal of
2123 the following amounts:
2124 (a) An amount received for granting the option;
2125 (b) An amount paid to acquire the option; and
2126 (c) ~~A~~ Gain or loss realized on ~~upon~~ the exercise, exchange,
2127 settlement, offset, closing, or expiration of the option ~~of an~~
2128 ~~option, including an option granted to a grantor of the trust or~~
2129 ~~estate for services rendered, shall be allocated to principal~~.
2130 Section 34. Section 738.608, Florida Statutes, is
2131 transferred, renumbered as section 738.415, Florida Statutes,
2132 and amended to read:
2133 738.415 ~~738.608~~ Asset-backed securities.—
2134 (1) Except as otherwise provided in subsection (2), a
2135 fiduciary shall allocate to income a receipt from or related to
2136 an asset-backed security, as defined in s. 738.102, to the
2137 extent that the payor identifies the payment as being from ~~For~~
2138 ~~purposes of this section, "asset-backed security" means an asset~~
2139 ~~the value of which is based upon the right given the owner to~~
2140 ~~receive distributions from the proceeds of financial assets that~~
2141 ~~provide collateral for the security. The term includes an asset~~
2142 ~~that gives the owner the right to receive from the collateral~~
2143 ~~financial assets only the~~ interest or other current return and
2144 allocate to principal the balance of the receipt ~~or only the~~
2145 ~~proceeds other than interest or current return~~. ~~The term does~~
2146 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

2147 (2) If a fiduciary receives one or more payments in
2148 exchange for part or all of the fiduciary's interest in an
2149 asset-backed security, including a liquidation or redemption of
2150 the fiduciary's interest in the security ~~trust or estate~~
2151 ~~receives a payment from interest or other current return and~~
2152 ~~from other proceeds of the collateral financial assets~~, the
2153 fiduciary must ~~shall~~ allocate to income 10 percent of receipts
2154 from the transaction and 10 percent of disbursements made in
2155 connection with the transaction, and allocate to principal ~~the~~
2156 ~~portion of the payment which the payor identifies as being from~~
2157 ~~interest or other current return and allocate~~ the balance of the
2158 receipts and disbursements ~~payment to principal~~.
2159 ~~(3) If a trust or estate receives one or more payments in~~
2160 ~~exchange for the trust's or estate's entire interest in an~~
2161 ~~asset-backed security during a single accounting period, the~~
2162 ~~fiduciary shall allocate the payments to principal. If a payment~~
2163 ~~is one of a series of payments that will result in the~~
2164 ~~liquidation of the trust's or estate's interest in the security~~
2165 ~~over more than a single accounting period, the fiduciary shall~~
2166 ~~allocate 10 percent of the payment to income and the balance to~~
2167 ~~principal.~~
2168 Section 35. Section 738.416, Florida Statutes, is created
2169 to read:
2170 738.416 Other financial instrument or arrangement.—A
2171 fiduciary shall allocate receipts from or related to a financial
2172 instrument or arrangement not otherwise addressed by this
2173 chapter. The allocation must be consistent with ss. 738.414 and
2174 738.415.
2175 Section 36. Section 738.501, Florida Statutes, is amended

2176 to read:
2177 (Substantial rewording of section. See
2178 s. 738.501, F.S., for present text.)
2179 738.501 Disbursement from income.—Subject to s. 738.504,
2180 and except as otherwise provided in s. 738.601(3)(b) or (c), a
2181 fiduciary shall disburse from income:
2182 (1) One-half of:
2183 (a) The regular compensation of the fiduciary and of any
2184 person providing investment advisory, custodial, or other
2185 services to the fiduciary to the extent that income is
2186 sufficient; and
2187 (b) An expense for an accounting, judicial or nonjudicial
2188 proceeding, or other matter that involves both income and
2189 successive interests to the extent income is sufficient.
2190 (2) The balance of the disbursements described in
2191 subsection (1), to the extent that a fiduciary who is an
2192 independent person determines that making those disbursements
2193 from income would be in the interests of the beneficiaries.
2194 (3) Any other ordinary expense incurred in connection with
2195 administration, management, or preservation of property and
2196 distribution of income, including interest, an ordinary repair,
2197 a regularly recurring tax assessed against principal, and an
2198 expense of an accounting, judicial or nonjudicial proceeding, or
2199 other matter that involves primarily an income interest, to the
2200 extent that income is sufficient.
2201 (4) A premium on insurance covering loss of a principal
2202 asset or income from or use of the asset.
2203 Section 37. Section 738.502, Florida Statutes, is amended
2204 to read:

2205 (Substantial rewording of section. See
2206 s. 738.502, F.S., for present text.)
2207 738.502 Disbursement from principal.—
2208 (1) Subject to s. 738.505, and except as otherwise provided
2209 in s. 738.601(3)(b), a fiduciary shall disburse all of the
2210 following from principal:
2211 (a) The balance of the disbursements described in s.
2212 738.501(1) and (3), after application of s. 738.501(2).
2213 (b) The fiduciary's compensation calculated on principal as
2214 a fee for acceptance, distribution, or termination.
2215 (c) A payment of an expense to prepare for or execute a
2216 sale or other disposition of property.
2217 (d) A payment on the principal of a trust debt.
2218 (e) A payment of an expense of an accounting, judicial or
2219 nonjudicial proceeding, or other matter that involves primarily
2220 principal, including a proceeding to construe the terms of the
2221 trust or protect property.
2222 (f) A payment of a premium for insurance, including title
2223 insurance, not described in s. 738.501(4) of which the fiduciary
2224 is the owner and beneficiary.
2225 (g) A payment of estate, inheritance, and other transfer
2226 taxes, including penalties, apportioned to the trust.
2227 (h) A payment related to environmental matters including:
2228 1. Reclamation;
2229 2. Assessing environmental conditions;
2230 3. Remedying and removing environmental contamination;
2231 4. Monitoring remedial activities and the release of
2232 substances;
2233 5. Preventing future releases of substances;

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2234 6. Collecting amounts from persons liable or potentially
2235 liable for the costs of the activities described in
2236 subparagraphs 1.-5.;
2237 7. Penalties imposed under environmental laws or
2238 regulations;
2239 8. Other actions to comply with environmental laws or
2240 regulations;
2241 9. Statutory or common law claims by third parties; and
2242 10. Defending claims based on environmental matters.
2243 (i) A payment of a premium for insurance for matters
2244 described in paragraph (h).
2245 (2) If a principal asset is encumbered with an obligation
2246 that requires income from the asset to be paid directly to a
2247 creditor, the fiduciary must transfer from principal to income
2248 an amount equal to the income paid to the creditor in reduction
2249 of the principal balance of the obligation.
2250 Section 38. Section 738.503, Florida Statutes, is amended
2251 to read:
2252 (Substantial rewording of section. See
2253 s. 738.503, F.S., for present text.)
2254 738.503 Transfers from income to principal for
2255 depreciation.—
2256 (1) For purposes of this section, "depreciation" means a
2257 reduction in value due to wear, tear, decay, corrosion, or
2258 gradual obsolescence of a tangible asset having a useful life of
2259 more than 1 year.
2260 (2) A fiduciary may transfer to principal a reasonable
2261 amount of the net cash receipts from a principal asset that is
2262 subject to depreciation but may not transfer any amount for

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depreciation:

(a) Of the part of real property used or available for use by a beneficiary as a residence;

(b) Of tangible personal property held or made available for the personal use or enjoyment of a beneficiary; or

(c) Under this section, to the extent that the fiduciary accounts:

1. Under s. 738.410 for the asset; or

2. Under s. 738.403 for the business or other activity in which the asset is used.

(3) An amount transferred to principal under this section need not be separately held.

Section 39. Section 738.504, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 738.504, F.S., for present text.)

738.504 Reimbursement of income from principal.—

(1) If a fiduciary makes or expects to make an income disbursement described in subsection (2), the fiduciary may transfer an appropriate amount from principal to income in one or more accounting periods to reimburse income.

(2) To the extent that the fiduciary has not been and does not expect to be reimbursed by a third party, income disbursements to which subsection (1) applies include:

(a) An amount chargeable to principal but paid from income because principal is illiquid;

(b) A disbursement made to prepare property for sale, including improvements and commissions; and

(c) A disbursement described in s. 738.502(1).

(3) If an asset whose ownership gives rise to an income disbursement becomes subject to a successive interest after an income interest ends, the fiduciary may continue to make transfers under subsection (1).

Section 40. Section 738.704, is transferred, renumbered as section 738.505, Florida Statutes, and amended to read:

738.505 ~~738.704~~ Reimbursement of principal from income ~~Transfers from income to reimburse principal~~.—

(1) If a fiduciary makes or expects to make a principal disbursement described in subsection (2) ~~this section~~, the fiduciary may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) ~~Principal disbursements to which subsection (1) applies include the following, but only~~ To the extent that a ~~the~~ fiduciary has not been and does not expect to be reimbursed by a third party, principal disbursements to which subsection (1) applies include:

(a) An amount chargeable to income but paid from principal because income is not sufficient; ~~the amount is unusually large.~~

(b) The cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, including a special assessment; ~~Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions.~~

(c) A disbursement made to prepare property for rental, including tenant allowances, leasehold improvements, and commissions; ~~Disbursements described in s. 738.702(1)(g)~~.

2321 (d) A periodic payment on an obligation secured by a
2322 principal asset, to the extent the amount transferred from
2323 income to principal for depreciation is less than the periodic
2324 payment; and
2325 (e) A disbursement described in s. 738.502(1).
2326 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives rise
2327 to a principal disbursement ~~the disbursements~~ becomes subject to
2328 a successive ~~income~~ interest after an income interest ends, the
2329 ~~a~~ fiduciary may ~~continue to~~ make transfers under ~~transfer~~
2330 ~~amounts from income to principal as provided in~~ subsection (1).
2331 ~~(4) To the extent principal cash is not sufficient to pay~~
2332 ~~the principal balance of payments due on mortgaged property,~~
2333 ~~income may be applied to such payment in order to avoid a~~
2334 ~~default on any mortgage or security interest securing the~~
2335 ~~property. Income shall be reimbursed for such payments out of~~
2336 ~~the first available principal cash. If the asset the ownership~~
2337 ~~of which gives rise to the disbursements described in this~~
2338 ~~subsection becomes subject to a successive income interest after~~
2339 ~~an income interest ends, all rights of the initial income~~
2340 ~~interest shall lapse, and amounts remaining due from principal~~
2341 ~~shall not be a lien on the assets of the trust.~~
2342 Section 41. Section 738.705, Florida Statutes, is
2343 transferred, renumbered as section 738.506, Florida Statutes,
2344 and amended to read:
2345 738.506 ~~738.705~~ Income taxes.—
2346 (1) A tax required to be paid by a fiduciary which is based
2347 on receipts allocated to income must ~~shall~~ be paid from income.
2348 (2) A tax required to be paid by a fiduciary which is based
2349 on receipts allocated to principal must ~~shall~~ be paid from

2350 principal, even if the tax is called an income tax by the taxing
2351 authority.
2352 (3) Subject to subsection (4) and ss. 738.504, 738.505, and
2353 738.507, a tax required to be paid by a fiduciary on a ~~the~~
2354 ~~trust's or estate's~~ share of an entity's taxable income in an
2355 accounting period must ~~shall~~ be paid from ~~proportionately~~:
2356 (a) ~~From~~ Income and principal proportionately to the
2357 allocation between income and principal of ~~to the extent~~
2358 receipts from the entity in the period ~~are allocated to income~~.
2359 (b) ~~From principal to the extent receipts from the entity~~
2360 ~~are allocated to principal.~~
2361 ~~(c) From~~ Principal to the extent that the tax exceeds the
2362 ~~income taxes payable by the trust or estate exceed the total~~
2363 receipts from the entity in the period.
2364 (4) After applying subsections (1), (2), and (3), a
2365 fiduciary shall adjust income or principal receipts, to the
2366 extent the taxes that the fiduciary pays are reduced because of
2367 a deduction for a payment made to a beneficiary.
2368 (5) Subject to the limitations and excluded assets provided
2369 under s. 736.08145, a reimbursement of state or federal income
2370 tax elected to be made by a fiduciary pursuant to s. 736.08145
2371 must be allocated and paid under paragraphs (3)(a) and (b) ~~After~~
2372 ~~applying subsections (1)-(3), the fiduciary shall adjust income~~
2373 ~~or principal receipts to the extent that the trust's or estate's~~
2374 ~~income taxes are reduced, but not eliminated, because the trust~~
2375 ~~or estate receives a deduction for payments made to a~~
2376 ~~beneficiary. The amount distributable to that beneficiary as~~
2377 ~~income as a result of this adjustment shall be equal to the cash~~
2378 ~~received by the trust or estate, reduced, but not below zero, by~~

2379 ~~the entity's taxable income allocable to the trust or estate~~
2380 ~~multiplied by the trust's or estate's income tax rate. The~~
2381 ~~reduced amount shall be divided by the difference between 1 and~~
2382 ~~the trust's or estate's income tax rate in order to determine~~
2383 ~~the amount distributable to that beneficiary as income before~~
2384 ~~giving effect to other receipts or disbursements allocable to~~
2385 ~~that beneficiary's interest.~~
2386 Section 42. Section 738.706, Florida Statutes, is
2387 transferred, renumbered as section 738.507, Florida Statutes,
2388 and amended to read:
2389 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal
2390 and income because of taxes.—
2391 (1) A fiduciary may make an adjustment ~~adjustments~~ between
2392 ~~principal and~~ income and principal to offset the shifting of
2393 economic interests or tax benefits between current income
2394 beneficiaries and successor ~~remainder~~ beneficiaries which arises
2395 ~~arise~~ from:
2396 (a) An election or decision ~~Elections and decisions, other~~
2397 ~~than those described in paragraph (b), that~~ the fiduciary makes
2398 ~~from time to time~~ regarding a tax matter, other than a decision
2399 to claim an income tax deduction to which subsection (2) applies
2400 ~~matters~~;
2401 (b) An income tax or ~~any~~ other tax ~~that is~~ imposed on ~~upon~~
2402 the fiduciary or a beneficiary as a result of a transaction
2403 involving the fiduciary or a distribution by ~~from~~ the fiduciary
2404 ~~estate or trust~~; ~~or~~
2405 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of an
2406 interest in an entity a part of whose taxable income, regardless
2407 of whether ~~or not~~ distributed, is includable in the taxable

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2408 income of the fiduciary ~~estate, trust,~~ or a beneficiary; or
2409 (d) An election or decision a fiduciary makes to reimburse
2410 any tax under s. 736.08145.
2411 (2) If the amount of an estate tax marital ~~deduction~~ or
2412 charitable ~~contribution~~ deduction is reduced because a fiduciary
2413 deducts an amount paid from principal for income tax purposes
2414 instead of deducting it ~~such amount~~ for estate tax purposes~~,~~
2415 and, as a result, estate taxes paid from principal are increased
2416 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~
2417 beneficiary are decreased, the fiduciary shall charge each
2418 ~~estate, trust, or~~ beneficiary that benefits from the decrease in
2419 income tax to ~~shall~~ reimburse the principal from which the
2420 increase in estate tax is paid. The total reimbursement must
2421 ~~shall~~ equal the increase in the estate tax, to the extent that
2422 the principal used to pay the increase would have qualified for
2423 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for
2424 the payment. The ~~proportionate~~ share of the reimbursement for
2425 each fiduciary ~~estate, trust,~~ or beneficiary whose income taxes
2426 are reduced must ~~shall~~ be the same as its ~~such estate's,~~
2427 ~~trust's, or beneficiary's proportionate~~ share of the total
2428 decrease in income tax. ~~An estate or trust shall reimburse~~
2429 ~~principal from income.~~
2430 (3) A fiduciary that charges a beneficiary under subsection
2431 (2) may offset the charge by obtaining payment from the
2432 beneficiary, withholding an amount from future distributions to
2433 the beneficiary, or adopting another method or combination of
2434 methods.
2435 Section 43. Section 738.508, Florida Statutes, is created
2436 to read:

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2437 738.508 Apportionment of property expenses between tenant
2438 and remainderman.—
2439 (1) For purposes of this section, the term:
2440 (a) "Remainderman" means the holder of the remainder
2441 interests after the expiration of a tenant's estate in property.
2442 (b) "Tenant" means the holder of an estate for life or term
2443 of years in real property or personal property, or both.
2444 (2) If a trust has not been created, expenses shall be
2445 apportioned between the tenant and remainderman as follows:
2446 (a) The following expenses are allocated to and shall be
2447 paid by the tenant:
2448 1. All ordinary expenses incurred in connection with the
2449 administration, management, or preservation of the property,
2450 including interest, ordinary repairs, regularly recurring taxes
2451 assessed against the property, and expenses of a proceeding or
2452 other matter that concerns primarily the tenant's estate or use
2453 of the property.
2454 2. Recurring premiums on insurance covering the loss of the
2455 property or the loss of income from or use of the property.
2456 3. Any of the expenses described in subparagraph (b)3.
2457 which are attributable to the use of the property by the tenant.
2458 (b) The following expenses are allocated to and shall be
2459 paid by the remainderman:
2460 1. Payments on the principal of a debt secured by the
2461 property, except to the extent that the debt is for expenses
2462 allocated to the tenant.
2463 2. Expenses of a proceeding or other matter that concerns
2464 primarily the title to the property, other than title to the
2465 tenant's estate.

2466 3. Except as provided in subparagraph (a)3., expenses
2467 related to environmental matters, including reclamation,
2468 assessing environmental conditions, remedying and removing
2469 environmental contamination, monitoring remedial activities and
2470 the release of substances, preventing future releases of
2471 substances, collecting amounts from persons liable or
2472 potentially liable for the costs of such activities, penalties
2473 imposed under environmental laws or regulations and other
2474 payments made to comply with those laws or regulations,
2475 statutory or common law claims by third parties, and defending
2476 claims based on environmental matters.
2477 4. Extraordinary repairs.
2478 (c) If the tenant or remainderman incurred an expense for
2479 the benefit of his or her own estate without consent or
2480 agreement of the other, he or she must pay such expense in full.
2481 (d) Except as provided in paragraph (c), the cost of, or
2482 special taxes or assessments for, an improvement representing an
2483 addition of value to property forming part of the principal
2484 shall be paid by the tenant if the improvement is not reasonably
2485 expected to outlast the estate of the tenant. In all other
2486 cases, only a part shall be paid by the tenant while the
2487 remainder shall be paid by the remainderman. The part payable by
2488 the tenant is ascertainable by taking that percentage of the
2489 total that is found by dividing the present value of the
2490 tenant's estate by the present value of an estate of the same
2491 form as that of the tenant, except that it is limited for a
2492 period corresponding to the reasonably expected duration of the
2493 improvement. The computation of present values of the estates
2494 shall be made by using the rate determined under s. 7520(a)(2)

2495 of the Internal Revenue Code then in effect and, in the case of
2496 an estate for life, the official mortality tables then in effect
2497 under s. 7520 of the Internal Revenue Code. Other evidence of
2498 duration or expectancy may not be considered.
2499 (3) This section does not apply to the extent that it is
2500 inconsistent with the instrument creating the estates, the
2501 agreement of the parties, or the specific direction of the
2502 Internal Revenue Code taxing or other applicable law.
2503 (4) The common law applicable to tenants and remaindermen
2504 supplements this section, except as modified by this section or
2505 other laws.
2506 Section 44. Section 738.601, Florida Statutes, is amended
2507 to read:
2508 (Substantial rewording of section. See
2509 s. 738.601, F.S., for present text.)
2510 738.601 Determination and distribution of net income.—
2511 (1) This section applies when:
2512 (a) The death of an individual results in the creation of
2513 an estate or trust; or
2514 (b) An income interest in a trust terminates, whether the
2515 trust continues or is distributed.
2516 (2) A fiduciary of an estate or trust with an income
2517 interest that terminates shall determine, under subsection (6)
2518 and ss. 738.401-738.508 and 738.701-738.703, the amount of net
2519 income and net principal receipts received from property
2520 specifically given to a beneficiary. The fiduciary shall
2521 distribute the net income and net principal receipts to the
2522 beneficiary who is to receive the specific property.
2523 (3) A fiduciary shall determine the income and net income

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2524 of an estate or income interest in a trust which terminates,
2525 other than the amount of net income determined under subsection
2526 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:
2527 (a) Including in net income all income from property used
2528 or sold to discharge liabilities.
2529 (b) Paying from income or principal, in the fiduciary's
2530 discretion, fees of attorneys, accountants, and fiduciaries;
2531 court costs and other expenses of administration; and interest
2532 on estate and inheritance taxes and other taxes imposed because
2533 of the decedent's death, but the fiduciary may pay the expenses
2534 from income of property passing to a trust for which the
2535 fiduciary claims an estate tax marital or charitable deduction
2536 under the Internal Revenue Code or comparable law of any state
2537 only to the extent that:
2538 1. The payment of the those expenses from income will not
2539 cause the reduction or loss of the deduction; or
2540 2. The fiduciary makes an adjustment under s. 738.507(2).
2541 (c) Paying from principal other disbursements made or
2542 incurred in connection with the settlement of the estate or the
2543 winding up of an income interest that terminates, including:
2544 1. To the extent authorized by the decedent's will, the
2545 terms of the trust, or applicable law, debts, funeral expenses,
2546 disposition of remains, family allowances, estate and
2547 inheritance taxes, and other taxes imposed because of the
2548 decedent's death; and
2549 2. Related penalties apportioned by the decedent's will,
2550 the terms of the trust, or applicable law to the estate or
2551 income interest that terminates.
2552 (4) If a decedent's will or the terms of a trust provide

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2553 for the payment of interest or the equivalent of interest to a
2554 beneficiary who receives a pecuniary amount outright, the
2555 fiduciary shall make the payment from net income determined
2556 under subsection (3) or from principal to the extent that net
2557 income is insufficient.
2558 (5) A fiduciary shall distribute net income remaining after
2559 payments required by subsection (4) in the manner described in
2560 s. 738.602 to all other beneficiaries, including a beneficiary
2561 who receives a pecuniary amount in trust, even if the
2562 beneficiary holds an unqualified power to withdraw assets from
2563 the trust or other presently exercisable general power of
2564 appointment over the trust.
2565 (6) A fiduciary may not reduce principal or income receipts
2566 from property described in subsection (2) because of a payment
2567 described in s. 738.501 or s. 738.502 to the extent that the
2568 decedent's will, the terms of the trust, or applicable law
2569 requires the fiduciary to make the payment from assets other
2570 than the property or that the fiduciary recovers or expects to
2571 recover the payment from a third party. The net income and
2572 principal receipts from the property must be determined by
2573 including the amount the fiduciary receives or pays regarding
2574 the property, whether the amount accrued or became due before,
2575 on, or after the date of the decedent's death or an income
2576 interest's terminating event, and making a reasonable provision
2577 for an amount the estate or income interest may become obligated
2578 to pay after the property is distributed.
2579 Section 45. Section 738.602, Florida Statutes, is amended
2580 to read:
2581 (Substantial rewording of section. See

2582 s. 738.602, F.S., for present text.)
2583 738.602 Distribution to successor beneficiary.—
2584 (1) Except to the extent that ss. 738.301-738.310 apply for
2585 a beneficiary that is a trust, each beneficiary described in s.
2586 738.601(5) is entitled to receive a share of the net income
2587 equal to the beneficiary's fractional interest in undistributed
2588 principal assets, using carrying values as of the distribution
2589 date. If a fiduciary makes more than one distribution of assets
2590 to beneficiaries to which this section applies, each
2591 beneficiary, including a beneficiary who does not receive part
2592 of the distribution, is entitled, as of each distribution date,
2593 to a share of the net income the fiduciary received after the
2594 decedent's death, an income interest's other terminating event,
2595 or the preceding distribution by the fiduciary.
2596 (2) In determining a beneficiary's share of net income
2597 under subsection (1), the following rules apply:
2598 (a) The beneficiary is entitled to receive a share of the
2599 net income equal to the beneficiary's fractional interest in the
2600 undistributed principal assets immediately before the
2601 distribution date.
2602 (b) The beneficiary's fractional interest under paragraph
2603 (a) must be calculated:
2604 1. On the aggregate carrying value of the assets as of the
2605 distribution date; and
2606 2. Reduced by:
2607 a. Any liabilities of the estate or trust;
2608 b. Property specifically given to a beneficiary under the
2609 decedent's will or the terms of the trust; and
2610 c. Property required to pay pecuniary amounts not in trust.

2611 (c) If a disproportionate distribution of principal is made
2612 to any beneficiary, the respective fractional interests of all
2613 beneficiaries in the undistributed principal assets must be
2614 recomputed by:
2615 1. Adjusting the carrying value of the principal assets to
2616 their fair market value before the distribution;
2617 2. Reducing the fractional interest of the recipient of the
2618 disproportionate distribution in the remaining principal assets
2619 by the fair market value of the principal distribution; and
2620 3. Recomputing the fractional interests of all
2621 beneficiaries in the remaining principal assets based upon the
2622 now restated carrying values.
2623 (d) The distribution date under paragraph (a) may be the
2624 date as of which the fiduciary calculates the value of the
2625 assets if that date is reasonably near the date on which the
2626 assets are distributed. All distributions to a beneficiary must
2627 be valued based on the assets' fair market value on the date of
2628 the distribution.
2629 (3) To the extent that a fiduciary does not distribute
2630 under this section all the collected but undistributed net
2631 income to each beneficiary as of a distribution date, the
2632 fiduciary shall maintain records showing the interest of each
2633 beneficiary in the net income.
2634 (4) If this section applies to income from an asset, a
2635 fiduciary may apply the requirements in this section to net gain
2636 or loss realized from the disposition of the asset after the
2637 decedent's date of death, an income interest's terminating
2638 event, or the preceding distribution by the fiduciary.
2639 (5) The carrying value or fair market value of trust assets

2640 shall be determined on an asset-by-asset basis and is conclusive
2641 if reasonable and determined in good faith. Determinations of
2642 fair market value based on appraisals performed within 2 years
2643 before or after the valuation date are presumed reasonable. The
2644 values of trust assets are conclusively presumed to be
2645 reasonable and determined in good faith unless proven otherwise
2646 in a proceeding commenced by or on behalf of a person interested
2647 in the trust within the time provided in s. 736.1008.
2648 Section 46. Section 738.701, Florida Statutes, is amended
2649 to read:
2650 (Substantial rewording of section. See
2651 s. 738.701, F.S., for present text.)
2652 738.701 When right to income begins and ends.—
2653 (1) An income beneficiary is entitled to net income in
2654 accordance with the terms of the trust from the date an income
2655 interest begins. The income interest begins on the date
2656 specified in the terms of the trust or, if no date is specified,
2657 on the date an asset becomes subject to:
2658 (a) The trust for the current income beneficiary; or
2659 (b) A successive interest for a successor beneficiary.
2660 (2) An asset becomes subject to a trust under paragraph
2661 (1)(a):
2662 (a) For an asset that is transferred to the trust during
2663 the settlor's life, on the date the asset is transferred;
2664 (b) For an asset that becomes subject to the trust because
2665 of a decedent's death, on the date of the decedent's death, even
2666 if there is an intervening period of administration of the
2667 decedent's estate; or
2668 (c) For an asset that is transferred to a fiduciary by a

2669 third party because of a decedent's death, on the date of the
2670 decedent's death.
2671 (3) An asset becomes subject to a successive interest under
2672 paragraph (1)(b) on the day after the preceding income interest
2673 ends, as determined under subsection (4), even if there is an
2674 intervening period of administration to wind up the preceding
2675 income interest.
2676 (4) An income interest ends on the day before an income
2677 beneficiary dies or another terminating event occurs, or on the
2678 last day of a period during which there is no beneficiary to
2679 which a fiduciary may or must distribute income.
2680 Section 47. Section 738.702, Florida Statutes, is amended
2681 to read:
2682 (Substantial rewording of section. See
2683 s. 738.702, F.S., for present text.)
2684 738.702 Apportionment of receipts and disbursements when
2685 decedent dies or income interest begins.—
2686 (1) A fiduciary shall allocate an income receipt or
2687 disbursement, other than a receipt to which s. 738.601(2)
2688 applies, to principal if its due date occurs before the date on
2689 which:
2690 (a) For an estate, the decedent died; or
2691 (b) For a trust or successive interest, an income interest
2692 begins.
2693 (2) If the due date of a periodic income receipt or
2694 disbursement occurs on or after the date on which a decedent
2695 died or an income interest begins, a fiduciary must allocate the
2696 receipt or disbursement to income.
2697 (3) If an income receipt or disbursement is not periodic or

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2698 has no due date, a fiduciary must treat the receipt or
2699 disbursement under this section as accruing from day to day. The
2700 fiduciary shall allocate to principal the portion of the receipt
2701 or disbursement accruing before the date on which a decedent
2702 died or an income interest begins, and shall allocate to income
2703 the balance.
2704 (4) A receipt or disbursement is periodic under subsections
2705 (2) and (3) if:
2706 (a) The receipt or disbursement must be paid at regular
2707 intervals under an obligation to make payments; or
2708 (b) The payor customarily makes payments at regular
2709 intervals.
2710 (5) An item of income or an obligation is due under this
2711 section on the date the payor is required to make a payment. If
2712 a payment date is not stated, there is no due date.
2713 (6) Distributions to shareholders or other owners from an
2714 entity to which s. 738.401 applies are due:
2715 (a) On the date fixed by or on behalf of the entity for
2716 determining the persons entitled to receive the distribution;
2717 (b) If no date is fixed, on the date of the decision by or
2718 on behalf of the entity to make the distribution; or
2719 (c) If no date is fixed and the fiduciary does not know the
2720 date of the decision by or on behalf of the entity to make the
2721 distribution, on the date the fiduciary learns of the decision.
2722 (7) Section 733.817 controls over any provision of this
2723 chapter to the contrary.
2724 Section 48. Section 738.703, Florida Statutes, is amended
2725 to read:
2726 (Substantial rewording of section. See

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2727 s. 738.703, F.S., for present text.)
2728 738.703 Apportionment when income interest ends.—
2729 (1) As used in this section, the term "undistributed
2730 income" means net income received on or before the date on which
2731 an income interest ends. The term does not include an item of
2732 income or expense which is due or accrued or net income that has
2733 been added or is required to be added to principal under the
2734 terms of the trust.
2735 (2) Except as otherwise provided in subsection (3), when a
2736 mandatory income interest of a beneficiary ends, the fiduciary
2737 shall pay the beneficiary's share of the undistributed income
2738 that is not disposed of under the terms of the trust to the
2739 beneficiary or, if the beneficiary does not survive the date the
2740 interest ends, to the beneficiary's estate.
2741 (3) If a beneficiary has an unqualified power to withdraw
2742 more than 5 percent of the value of a trust immediately before
2743 an income interest ends:
2744 (a) The fiduciary shall allocate to principal the
2745 undistributed income from the portion of the trust which may be
2746 withdrawn; and
2747 (b) Subsection (2) applies only to the balance of the
2748 undistributed income.
2749 (4) When a fiduciary's obligation to pay a fixed annuity or
2750 a fixed fraction of the value of assets ends, the fiduciary
2751 shall prorate the final payment as required to preserve income
2752 tax, gift tax, estate tax, or other tax benefits.
2753 Section 49. Section 738.801, Florida Statutes, is amended
2754 to read:
2755 (Substantial rewording of section. See

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2756 s. 738.801, F.S., for present text.)
2757 738.801 Uniformity of application and construction.—In
2758 applying and construing this act, consideration shall be given
2759 to the need to promote uniformity of the law with respect to its
2760 subject matter among states that enact it.
2761 Section 50. Section 738.802, Florida Statutes, is amended
2762 to read:
2763 (Substantial rewording of section. See
2764 s. 738.802, F.S., for present text.)
2765 738.802 Relation to Electronic Signatures in Global and
2766 National Commerce Act.—This chapter modifies, limits, or
2767 supersedes the Electronic Signatures in Global and National
2768 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
2769 limit, or supersede section 101(c) of that act, 15 U.S.C. s.
2770 7001(c), or authorize electronic delivery of any of the notices
2771 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This
2772 chapter does not modify, limit, or supersede s. 117.285.
2773 Section 51. Section 738.803, Florida Statutes, is amended
2774 to read:
2775 738.803 Severability.—If any provision of this chapter or
2776 its application to any person or circumstance is held invalid,
2777 the invalidity does ~~shall~~ not affect other provisions or
2778 applications of this chapter which can be given effect without
2779 the invalid provision or application, and to this end the
2780 provisions of this chapter are severable.
2781 Section 52. Section 738.804, Florida Statutes, is amended
2782 to read:
2783 738.804 Application.—Except as provided in the terms of the
2784 trust ~~instrument, the will,~~ or this chapter, this chapter shall

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2785 apply to any receipt or expense received or incurred and any
2786 disbursement made after January 1, 2025 ~~January 1, 2003~~, by any
2787 trust or ~~decedent's~~ estate, whether established before or after
2788 January 1, 2025 ~~January 1, 2003~~, and whether the asset involved
2789 was acquired by the trustee or personal representative before or
2790 after January 1, 2025 ~~January 1, 2003~~. Receipts or expenses
2791 received or incurred and disbursements made before January 1,
2792 2025, must ~~January 1, 2003, shall~~ be governed by the law of this
2793 state in effect at the time of the event, except as otherwise
2794 expressly provided in the ~~will or~~ terms of the trust or in this
2795 chapter.
2796 Section 53. This act shall take effect January 1, 2025.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1530

INTRODUCER: Senator Martin

SUBJECT: Unauthorized Public Camping and Public Sleeping

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	**Favorable**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 1530 generally requires counties and municipalities to prohibit individuals from sleeping or camping on public property, at public buildings, or on public rights-of-way within their jurisdictions. The bill, however, authorizes counties and municipalities to allow sleeping or camping on public property by issuing temporary permits, during a state of emergency declared by the Governor, or at designated areas of public property. These designated areas must have many of the characteristics of a homeless shelter, such as sanitary facilities, security, and behavioral health services and prohibitions against drugs and alcohol. The designated areas must also be located where other properties are not adversely affected.

The bill additionally permits a person or business to bring a civil action against a county or municipality to enjoin practices of allowing unlawful sleeping or camping on public property. A prevailing plaintiff may recover reasonable expenses incurred in bringing the action. Individuals who sleep or camp on public property without authorization are not subject to penalties under the bill.

The bill takes effect October 1, 2024.

II. Present Situation:

Estimates of Homeless Populations

According to the U.S. Department of Housing and Urban Development, on a single night in January 2023, approximately 653,104 people were homeless in the United States. This represents about 20 of every 10,000 people. Approximately 60 percent of those who were homeless were staying in shelters while 40 percent were unsheltered or staying in a location that was not

intended for humans to live.[1] The report estimated Florida's homeless population on a single night to be 30,756.[2]

Legislation Related to Homeless Encampments

Several states and local governments recently have heard or passed legislation related to homeless encampments on public property. Some of these efforts have been directed at banning or removing homeless encampments,[3] while others have moved toward creeating rights for homeless populations to camp on public property.[4]

Litigation Related to Homelessness

State and Federal Courts have opined on the constitutionality of these varied provisions on a case-by-case basis.[5] Significantly, the Ninth Circuit Court of Appeals found that an Oregon city's ordinance which precluded the use of bedding supplies when sleeping in public violated the Federal constitution's "cruel and unusual punishments" clause[6] as applied to individuals who were involuntarily experiencing homelessness and who lacked shelter in which to lawfully sleep.[7] On January 12, 2024, the U.S. Supreme Court agreed to take up the Oregon case to determine whether the enforcement of generally applicable laws regulating camping on public property is constitutional.[8]

In contrast to the Ninth Circuit, the Eleventh Circuit previously upheld similar restrictions in 2000. A homeless man challenged a municipal ordinance of the City of Orlando that prohibited any "camping" on public property. Among other findings, the court noted that "Homeless persons are not a suspect class, nor is sleeping out-of-doors a fundamental right."[9]

Local Legislation in Florida

Numerous local governments in Florida have passed local legislation banning camping. Miami Beach, for example, provides that it is unlawful for any person to engage in camping on any

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[1] The U.S. Department of Housing and Urban Development, Office of Community Planning and Development, *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*, 12 (Dec. 2023). https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf.

[2] *Id.*, at 16. Additionally, the Annual Report of Florida's Council on Homelessness estimated the population for one night in January to be 30,809. See the report, page 2, Florida's Council On Homelessness Annual Report *available at* Florida's Council On Homelessness Annual Report 2023.pdf (myflfamilies.com).

[3] *See e.g.*, 2023 Georgia Senate Bill No. 62, *available at* https://legiscan.com/GA/bill/SB62/2023#:~:text=A%20BILL%20to%20be%20entitled,Title%2050%20of%20the%20O.C.G.A.%2C; 2024 Kentucky House Bill No. 5, *available at* https://apps.legislature.ky.gov/record/24rs/hb5.html.

[4] *See e.g.*, 2017 Colorado House Bill No. 17-1314 *available at* https://leg.colorado.gov/sites/default/files/documents/2017A/bills/2017a_1314_01.pdf.

[5] *See e.g.*, 2022 Missouri House Bill No. 1606, available at https://house.mo.gov/billtracking/bills221/hlrbillspdf/3703H.08T.pdf ; *Frank v. City of St. Louis*, 458 F. Supp. 3d 1090, 1092 (E.D. Mo. 2020).

[6] U.S. CONST. amend. VIII.

[7] *Johnson v. City of Grants Pass*, 72 F.4th 868, 890 (9th Cir. 2023), cert. granted sub nom. *Grants Pass, OR v. Johnson*, No. 23-175, 2024 WL 133820 (Jan. 12, 2024).

[8] *Id.*

[9] *Joel v. City of Orlando*, 232 F.3d 1353, 1357 (11th Cir. 2000).

public place within the city unless specifically authorized for that purpose by the city manager or his designee.[10] The ordinance defines camping as:

- Sleeping in a temporary shelter out-of-doors or otherwise being in a temporary shelter out-of-doors; or
- Cooking over an open flame or fire out-of-doors or using non-city designated cooking facilities outdoors.

The Miami Beach ordinance is enforceable by requiring an offender to vacate the area. The willful refusal to vacate the area is punishable with a fine not exceeding $500 or by imprisonment for up to 60 days. If the official encounters a person camping who volunteers that he or she has no home or other permanent shelter, he or she must be given an opportunity to enter a homeless shelter or similar facility, if available. If no such facility is available, an arrest may not be made.

III. Effect of Proposed Changes:

The bill creates sections 125.0231 and 166.0453, F.S., to generally prohibit counties and municipalities from permitting individuals from sleeping or camping on public property, at public buildings, or on public rights-of-way. A county or municipality, however, may authorize sleeping or camping on public property within its jurisdiction with a "lawfully issued temporary permit," during a state of emergency declared by the Governor, or at designated areas of public property. Any area of public property designated by a county or municipality for sleeping or camping is subject to the following conditions, the sufficiency of which is to be determined by the Department of Children and Families:

- Minimum sanitation levels, including but not limited to access to clean and operable restrooms and running water;
- Security presence on site at all times;
- Access to behavioral health services, including, but not limited to substance abuse and mental health treatment;
- Drugs and alcohol are prohibited within the designated area; and
- The designated area may not be in a location where it adversely and materially affects the value or security of existing residential or commercial properties.

The bill additionally permits a person or business to bring a civil action in any court of competent jurisdiction against a county or municipality to enjoin practices of allowing unlawful sleeping or camping on public property. A successful plaintiff may recover reasonable expenses including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition costs.

The bill contains a finding of important state interest.

The bill takes effect October 1, 2024.

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[10] *See* section 70-45, Miami Beach Code of Ordinances, available at https://library.municode.com/fl/miami_beach/codes/code_of_ordinances?nodeId=SPAGEOR_CH70MIOF_ARTIIPUPL_DIV1GE_S70-45CAPR.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties and municipalities "to spend funds or to take an action requiring the expenditure of funds." A county or municipality may, in its discretion, designate certain public properties for public sleeping or public camping as provided in the limited circumstances stated in the bill and if it so chooses, then funds will likely be needed to meet the criteria in the bill.

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:

In other states where local governments appear to permit homeless encampments on public sidewalks outside of businesses, there have been many reports of businesses losing customers and having to close.[11] Conversely, businesses might benefit from the bill by retaining customers to the extent that the bill requires local governments to clear existing homeless encampments or to the extent that the bill will prevent the encampments from existing in the first instance. Likewise, businesses and others may avoid the costs of cleaning up refuse

[11] Genevieve Wong, *Shop owners across US take action as homeless camps threaten business, safety*, NEW YORK POST (Apr. 22, 2023), https://nypost.com/2023/04/22/us-shop-owners-take-action-as-homeless-camps-threaten-business/; NBC Los Angeles News 4, *Santa Monica's Third Street Promenade Battling Homeless Problem, Along With Economy* (Feb. 16, 2021), https://www.nbclosangeles.com/news/local/streets-of-shame/santa-monicas-third-street-promenade-battling-homeless-problem-along-with-economy/2528299/; Hannah Everman and Jeremy Harris, 'We're tired': 116-year-old Seattle business to close shop over encampment safety concerns, KomoNews (Feb. 3, 2023), https://komonews.com/news/local/seattle-homeless-crisis-116-year-old-business-closing-sodo-neighborhood-business-emmanuels-rug-and-upholstery-cleaners-relocating-unhoused-homelessness-rv-encampment-camp-concerns-mayor-bruce-harrell-safety-concerns-raw-sewage-campers.

commonly associated with homeless encampments and the costs of crime associated with homeless encampments. Moreover, the bill might result in increased property values for properties currently located near homeless encampments. On the other hand, property values might decline to the extent that the bill causes homeless encampments to move onto private properties.

C. Government Sector Impact:

Counties and municipalizes will likely incur additional costs to clear homeless encampments from public property to the extent that the bill requires additional efforts to clear encampments or prevent them from occurring.

If a plaintiff prevails in a lawsuit against a county or municipality, then he or she is entitled to recover reasonable expenses against the local government. This cost is indeterminate and could have a fiscal impact on local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill leaves the terms “sleeping,” “camping,” and “lawfully issued permit” undefined. It is unclear whether the bill may interfere with existing local parks and recreation operations. While the bill contains an exception for states of emergency issued by the Governor, it is unclear whether the bill may interfere with local emergency management operations during scenarios that do not rise to a state of emergency, such as cold weather warnings.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 125.0231, 166.045.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Martin) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 125.0231, Florida Statutes, is created
6 to read:
7 125.0231 Unauthorized public camping and public sleeping.—
8 (1) As used in this section, the term:
9 (a) "Public camping" means lodging or residing overnight in
10 a temporary outdoor habitation used as a dwelling or living
11 space and evidenced by the erection of a tent or other temporary

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12 shelter, the presence of bedding or pillows, or the storage of
13 personal belongings. The term does not include lodging or
14 residing overnight in a motor vehicle that is registered,
15 insured, and located in a place where it may lawfully be.
16 (b) "Public sleeping" means lodging or residing overnight
17 in an outdoor space without a tent or other temporary shelter.
18 (2) Except as provided in subsection (3), a county may not
19 authorize or otherwise permit any person to regularly engage in
20 public camping or public sleeping on any public property, public
21 building, or public right-of-way under the county's
22 jurisdiction, unless such person has been lawfully issued a
23 temporary permit authorizing such activity by the county.
24 (3)(a) A county may, in its discretion, designate property
25 owned by the county to be used for a continuous period of no
26 longer than 1 year for the purpose of public camping or public
27 sleeping. A property designated for such purpose may not be
28 located in an area where such designation would adversely and
29 materially affect the property value or safety and security of
30 other existing residential or commercial property.
31 (b) Except as provided in paragraph (e), if a county
32 designates county property to be used for public camping or
33 public sleeping, it must establish and maintain minimum
34 standards and procedures related to the designated property for
35 the purposes of:
36 1. Ensuring the safety and security of the designated
37 property and the persons lodging or residing on such property.
38 2. Maintaining sanitation, which must include providing
39 access to clean and operable restrooms and running water.
40 3. Coordinating with the local continuum of care to provide

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41 access to behavioral health services, which must include
42 substance abuse and mental health treatment resources.
43 4. Prohibiting illegal drug use and alcohol use on the
44 designated property and enforcing such prohibition.
45 (c) Within 30 days of designating county property as
46 authorized in paragraph (a), the county must:
47 1. Provide notice to the Department of Children and
48 Families that property has been designated for such purpose and
49 provide the location of such property.
50 2. Post the minimum standards and procedures required under
51 paragraph (b) to the county's publicly accessible website. Such
52 policies and procedures must continue to be publicly available
53 as long as any county property remains designated for the
54 purpose authorized in paragraph (a).
55 (d) Within 90 days following the designation of county
56 property as authorized in paragraph (a), and at least once more
57 after 180 days if the property remains so designated, the
58 Department of Children and Families shall inspect the property
59 and issue a report to the county which may include
60 recommendations to assist the county in maintaining the minimum
61 standards and procedures required under paragraph (3)(b). A
62 county must post any inspection report issued pursuant to this
63 paragraph to the county's publicly accessible website within 5
64 business days of receiving the report.
65 (e) A fiscally constrained county is exempt from the
66 requirement to establish and maintain minimum standards and
67 procedures under subparagraphs (3)(b)1., 2., and 3. if the
68 governing board of the county makes a finding that compliance
69 with such requirements would result in a financial hardship.

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70 (4)(a) A resident of the county or an owner of a business
71 located in the county may bring a civil action in any court of
72 competent jurisdiction against the county to enjoin a violation
73 of subsection (2). If the resident or business owner prevails in
74 a civil action, the court may award reasonable expenses incurred
75 in bringing the civil action, including court costs, reasonable
76 attorney fees, investigative costs, witness fees, and deposition
77 costs.
78 (b) An application for injunction filed pursuant to this
79 subsection must be accompanied by an affidavit attesting that:
80 1. The applicant has provided written notice of the alleged
81 violation of subsection (2) to the governing board of the
82 county.
83 2. The applicant has provided the county with 5 business
84 days to cure the alleged violation.
85 3. The county has failed to cure the alleged violation
86 within 5 business days of receiving written notice of the
87 alleged violation.
88 (5) This section does not apply to a county during any time
89 period in which:
90 (a) The Governor has declared a state of emergency in the
91 county or another county immediately adjacent to the county.
92 (b) A state of emergency has been declared in the county
93 under chapter 870.
94 Section 2. Section 166.0453, Florida Statutes, is created
95 to read:
96 166.0453 Unauthorized public camping and public sleeping.—
97 (1) As used in this section, the term:
98 (a) “Public camping” means lodging or residing overnight in

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99 a temporary outdoor habitation used as a dwelling or living
100 space and evidenced by the erection of a tent or other temporary
101 shelter, the presence of bedding or pillows, or the storage of
102 personal belongings. The term does not include lodging or
103 residing overnight in a motor vehicle that is registered,
104 insured, and located in a place where it may lawfully be.
105 (b) "Public sleeping" means lodging or residing overnight
106 in an outdoor space without a tent or other temporary shelter.
107 (2) Except as provided in subsection (3), a municipality
108 may not authorize or otherwise permit any person to regularly
109 engage in public camping or public sleeping on any public
110 property, public building, or public right-of-way under the
111 municipality's jurisdiction, unless such person has been
112 lawfully issued a temporary permit authorizing such activity by
113 the municipality.
114 (3)(a) A municipality may, in its discretion, designate
115 property owned by the municipality to be used for a continuous
116 period of no longer than 1 year for the purpose of public
117 camping or public sleeping. A property designated for such
118 purpose may not be located in an area where such designation
119 would adversely and materially affect the property value or
120 safety and security of other existing residential or commercial
121 property.
122 (b) Except as provided in paragraph (e), if a municipality
123 designates municipal property to be used for public camping or
124 public sleeping, it must establish and maintain minimum
125 standards and procedures related to the designated property for
126 the purposes of:
127 1. Ensuring the safety and security of the designated

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128 property and the persons lodging or residing on such property.
129 2. Maintaining sanitation, which must include providing
130 access to clean and operable restrooms and running water.
131 3. Coordinating with the local continuum of care to provide
132 access to behavioral health services, which must include
133 substance abuse and mental health treatment resources.
134 4. Prohibiting illegal drug use and alcohol use on the
135 designated property and enforcing such prohibition.
136 (c) Within 30 days of designating municipal property as
137 authorized in paragraph (a), the municipality must:
138 1. Provide notice to the Department of Children and
139 Families that property has been designated for such purpose and
140 provide the location of such property.
141 2. Post the minimum standards and procedures required under
142 paragraph (b) to the municipality's publicly accessible website.
143 Such policies and procedures must continue to be publicly
144 available as long as any municipal property remains designated
145 for the purpose authorized in paragraph (a).
146 (d) Within 90 days following the designation of municipal
147 property as authorized in paragraph (a), and at least once more
148 after 180 days if the property remains so designated, the
149 Department of Children and Families shall inspect the property
150 and issue a report to the municipality which may include
151 recommendations to assist the municipality in maintaining the
152 minimum standards and procedures required under paragraph (b). A
153 municipality must post any inspection report issued pursuant to
154 this paragraph to the municipality's publicly accessible website
155 within 5 business days of receiving the report.
156 (e) A municipality located within a fiscally constrained

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157 county is exempt from the requirement to establish and maintain
158 minimum standards and procedures under subparagraphs (3)(b)1.,
159 2., and 3. if the governing board of the municipality makes a
160 finding that compliance with such requirements would result in a
161 financial hardship.
162 (4)(a) A resident of the municipality or an owner of a
163 business located in the municipality may bring a civil action in
164 any court of competent jurisdiction against the municipality to
165 enjoin a violation of subsection (2). If the resident or
166 business owner prevails in the civil action, the court may award
167 reasonable expenses incurred in bringing the civil action,
168 including court costs, reasonable attorney fees, investigative
169 costs, witness fees, and deposition costs.
170 (b) An application for injunction filed pursuant to this
171 subsection must be accompanied by an affidavit attesting that:
172 1. The applicant has provided written notice of the alleged
173 violation of subsection (2) to the governing board of the
174 municipality.
175 2. The applicant has provided the municipality with 5
176 business days to cure the alleged violation.
177 3. The municipality has failed to cure the alleged
178 violation within 5 business days of receiving written notice of
179 the alleged violation.
180 (5) This section does not apply to a municipality during
181 any time period in which:
182 (a) The Governor has declared a state of emergency in the
183 county in which the municipality is located or another county
184 immediately adjacent to the county in which the municipality is
185 located.

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186 (b) A state of emergency has been declared in the county in
187 which the municipality is located under chapter 870.
188 Section 3. The Legislature hereby determines and declares
189 that this act fulfills an important state interest.
190 Section 4. This act shall take effect October 1, 2024.
191
192 ========== T I T L E A M E N D M E N T ==========
193 And the title is amended as follows:
194 Delete everything before the enacting clause
195 and insert:
196 A bill to be entitled
197 An act relating to unauthorized public camping and
198 public sleeping; creating ss. 125.0231 and 166.0453,
199 F.S.; defining the terms "public camping" and "public
200 sleeping"; prohibiting counties and municipalities,
201 respectively, from authorizing or otherwise permitting
202 public sleeping or public camping on public property
203 without a specified permit; authorizing counties and
204 municipalities to designate certain public property
205 for such purpose for a specified time period;
206 requiring counties and municipalities to establish
207 specified standards and procedures relating to such
208 property; requiring the Department of Children and
209 Families to conduct inspections of such property at
210 specified intervals and to produce a report; providing
211 applicability; providing an exception to applicability
212 during specified emergencies; providing a declaration
213 of important state interest; providing an effective
214 date.

By Senator Martin

33-00804A-24 20241530__

A bill to be entitled

An act relating to unauthorized public camping and public sleeping; creating ss. 125.0231 and 166.0453, F.S.; prohibiting counties and municipalities, respectively, from permitting public sleeping or public camping on public property without a permit; authorizing counties and municipalities, respectively, to designate certain public property for such uses; providing requirements for such property; providing for enforcement actions; providing an exception for declared emergencies; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 125.0231, Florida Statutes, is created to read:

125.0231 Unauthorized public camping and public sleeping.—

(1) A county may not authorize or permit public sleeping or public camping on public property, at public buildings, or on public rights-of-way within the county's jurisdiction without a lawfully issued temporary permit. However, a county may, in its discretion, designate certain county property for public sleeping or public camping, subject to the following conditions, the sufficiency of which shall be determined by the Department of Children and Families:

(a) Minimum sanitation levels, which include, but are not limited to, access to clean and operable restrooms and running water.

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(b) Security present on site at all times.

(c) Access to behavioral health services, including, but not limited to, substance abuse and mental health treatment resources.

(d) Drugs and alcohol are prohibited within the designated area.

(e) The designated area may not be in a location where it adversely and materially affects the value or security of existing residential or commercial properties.

(2) A person or business may bring a civil action in any court of competent jurisdiction against any county to enjoin a violation of this section and may recover reasonable expenses incurred in any successful civil action brought pursuant to this section, including court costs, reasonable attorney fees, investigative costs, witness fees, and deposition costs.

(3) This section does not apply during a state of emergency issued by the Governor.

Section 2. Section 166.0453, Florida Statutes, is created to read:

166.0453 Unauthorized public camping and public sleeping.—

(1) A municipality may not authorize or permit public sleeping or public camping on public property, at public buildings, or on public rights-of-way within the municipality's jurisdiction without a lawfully issued temporary permit. However, a municipality may, in its discretion, designate certain municipal property for public sleeping or public camping, subject to the following conditions, the sufficiency of which shall be determined by the Department of Children and Families:

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

59 (a) Minimum sanitation levels, which include, but are not
60 limited to, access to clean and operable restrooms and running
61 water.
62 (b) Security present on site at all times.
63 (c) Access to behavioral health services, including, but
64 not limited to, substance abuse and mental health treatment
65 resources.
66 (d) Drugs and alcohol are prohibited within the designated
67 area.
68 (e) The designated area may not be in a location where it
69 adversely and materially affects the value or security of
70 existing residential or commercial properties.
71 (2) A person or business may bring a civil action in any
72 court of competent jurisdiction against any municipality to
73 enjoin a violation of this section and may recover reasonable
74 expenses incurred in any successful civil action brought
75 pursuant to this section, including court costs, reasonable
76 attorney fees, investigative costs, witness fees, and deposition
77 costs.
78 (3) This section does not apply during a state of emergency
79 issued by the Governor.
80 Section 3. The Legislature hereby determines and declares
81 that this act fulfills an important state interest.
82 Section 4. This act shall take effect October 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1618

INTRODUCER: Senator Martin

SUBJECT: Interception and Disclosure of Oral Communications

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Favorable**
2.	Bond	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 1618 creates a new exception to the prohibition located in s. 934.03(1), F.S., against a person intentionally intercepting, endeavoring to intercept, or procuring any other person to intercept or endeavor to intercept any wire, oral, or electronic communication.

The exception allows a parent or legal guardian of a child who is younger than 18 years of age to intercept and record an oral communication if the child is a party to the communication and the parent or guardian 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.

A recording authorized by the bill which captures a statement by a party that the party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against a child:

- Must be provided to a law enforcement agency and
- May be used for the purpose of evidencing the intent to commit or the commission of a crime specified in the bill against a child.

A parent or legal guardian who makes a recording authorized by the bill may not share or disseminate the recording with any person or entity other than a law enforcement agency.

The bill is effective upon becoming a law.

II. Present Situation:

Privacy in One's Oral Communication - Statutory Law

Chapter 934, F.S., governs the security of electronic and telephonic communications. Although most provisions in the chapter relate to law enforcement officers' and communication professionals' actions and limitations, some apply just as well to average citizens.

One such provision is s. 934.03(4), F.S., which contains criminal offenses and corresponding penalties for intercepting another's oral communication *unless* the chapter contains an exception.[1]

An exception is set forth in s. 934.03(2)(k), F.S., which provides that it is *lawful*:

- 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.[2]

The admissibility into evidence of an intercepted and recorded oral communication of another is not guaranteed. Section 934.06, F.S., provides: "Whenever any wire or oral communication has been intercepted, no part of the contents of such communication 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*."

"Oral communication" is defined as an 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.[3] Not all oral communication under s. 934.02(2), F.S., is spoken by a person who has a reasonable expectation of privacy in his or her communication. That question largely depends on the facts and circumstances of the utterance.

A person's expectation of privacy when the communication occurs in an open, public area does not necessarily amount to a reasonable expectation of privacy.[4] However, if the communication occurs in a private location and the interception and recording is done in a surreptitious manner,

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[1] The prohibition located in s. 934.03(1), F.S., against intentionally intercepting, endeavoring to intercept, or procuring any other person to intercept or endeavor to intercept any wire, oral, or electronic communication, is punishable as a third degree felony. Section 934.03(4), F.S. A third degree felony is punishable by up to 5 years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S. Note that s. 934.41, F.S., contains an alternative fine under limited circumstances.

[2] See also, s. 934.03(2)(l), F.S., for a similar exception for "a person who is protected under an active temporary or final injunction for repeat violence, sexual violence, or dating violence under s. 784.046; stalking under s. 784.0485; domestic violence under s. 741.30; or any other court-imposed prohibition of conduct toward the person to intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order."

[3] Section 934.02(2), F.S.

[4] *State v. Garcia*, 252 So. 3d 783 (Fla. 3d DCA 2018); *State v. Caraballo*, 198 So.3d 819 (Fla. 2d 2018).

the communication may be more likely to be protected from interception by the provisions in ch. 934, F.S.

Case Law, Legislative Creation of Exception

In *McDade v. State*,[5] a 2014 case before the Florida Supreme Court, the court decided that it was an error to receive into evidence at McDade's criminal trial recordings that his stepdaughter surreptitiously made when she was 16 years-old.

The recordings, which contained conversations between McDade and his stepdaughter in McDade's bedroom, were introduced at McDade's trial for various crimes involving sexual abuse of his stepdaughter. The recorded conversations included statements by McDade that supported his stepdaughter's testimony at trial that McDade had sexually abused her. McDade had objected to their introduction.

The question before the court in *McDade v. State*[6] was whether a *recording* of solicitation and confirmation of child sexual abuse *surreptitiously made by the child victim in the accused's bedroom* falls within the oral communication protections of ch. 934, F.S.

In late 2014, the court found that none of the exceptions to the prohibitions against the recording applied.[7] The court further concluded that the facts surrounding the conversations and the recording of those conversations indicated the recordings were prohibited and inadmissible under ch. 934, F.S.[8]

Soon after the *McDade* decision, in 2015, the Legislature passed the exception now found in s. 934.03(2)(k), F.S. It is *lawful*:

- 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.

III. Effect of Proposed Changes:

The bill creates a new exception to the prohibition located in s. 934.03(1), F.S., against a person intentionally intercepting, endeavoring to intercept, or procuring any other person to intercept or endeavor to intercept any wire, oral, or electronic communication.

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[5] 154 So.3d 292(Fla. 2014).
[6] *Id*.
[7] McDade did not consent to the conversations being recorded, and none of the other exceptions listed in s. 934.03(2), F.S., apply. *Id*. at 298.
[8] "The facts related to the recorded conversations support the conclusion that McDade's statements were 'uttered by a person exhibiting an expectation that [his] communication [was] not subject to interception' and that McDade made those statements 'under circumstances justifying' his expectation that his statements would not be recorded. § 934.02(2), Fla. Stat. (2010). The recordings were made surreptitiously. McDade did not consent to the conversations being recorded ...The recordings, therefore, were prohibited. Because the recordings impermissibly intercepted oral communications, the recordings are inadmissible under section 934.06, Florida Statutes (2010)." *Id*. at 298.

The exception allows a parent or legal guardian of a child who is younger than 18 years of age to intercept and record an oral communication if the child is a party to the communication and the parent or guardian 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.

This exception differs from the similar exception in current law.[9] The bill does not require the party who is recording the oral communication (a parent or legal guardian) be a party to the communication being intercepted and recorded.

A recording authorized by the bill which captures a statement by a party that the party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against a child:

- Must be provided to a law enforcement agency and
- May be used for the purpose of evidencing the intent to commit or the commission of a crime specified in the bill against a child.

Additionally, the bill prohibits the sharing or dissemination of a recording authorized by the bill except as expressly authorized by the bill.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

[9] Section 934.03(2)(k), F.S. See also s. 934.03(2)(l), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 934.03 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Martin

33-01612B-24 20241618__

A bill to be entitled

An act relating to interception and disclosure of oral communications; amending s. 934.03, F.S.; authorizing the interception and recording of an oral communication by the parent or legal guardian of a child under a specified age under certain circumstances; requiring that the recording be provided to a law enforcement agency; prohibiting any further dissemination or sharing of the recording; providing an effective date.

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

Section 1. Present paragraph (l) of subsection (2) of section 934.03, Florida Statutes, is redesignated as paragraph (m), and a new paragraph (l) is added to that subsection, to read:

934.03 Interception and disclosure of wire, oral, or electronic communications prohibited.—

(2)

(l)1. It is lawful under this section and ss. 934.04-934.09 for a parent or legal guardian of a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and the parent or legal guardian 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.

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2. A recording authorized under this paragraph which captures a statement by a party that the party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against a child must be provided to a law enforcement agency and may be used for the purpose of evidencing the intent to commit or the commission of a crime specified in subparagraph 1. against a child. A recording authorized under this paragraph may not be otherwise disseminated or shared.

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

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1616

INTRODUCER: Senator Calatayud

SUBJECT: Electronic Access to Official Records

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Pre-meeting**
2.			CA	
3.			AP	

I. Summary:

SB 1616 amends current law to make an official records search easier and more user-friendly for someone who is trying to identify adults against whom a protective injunction has been issued to protect a minor from domestic violence; repeat violence, sexual violence, or dating violence; or stalking. While the information is currently posted on "an Internet website for general public display" the information must now be posted more conspicuously on the homepage of the official website for each clerk of court.

Specifically, the respondent's identity and related case information must be viewable through a publicly searchable database that is available in a clear and conspicuous location on the homepage of the clerk's official website.

The bill requires that notice of the right of an affected party to request the addition of information to the searchable database must be displayed clearly and conspicuously on the clerk's official website. The notice must state that any person has a right to request that a clerk add the information to the searchable database on the clerk's official website if the information involves the identity of a respondent against whom a final judgment for an injunction for the protection of a minor has been issued.

The bill deletes all references to "each county recorder" throughout the bill. The original language in statute included references to "each county recorder or clerk of the court."

The bill takes effect July 1, 2024.

II. Present Situation:

Serena's Law

The Legislature unanimously passed "Serena's Law" in 2021.[1] Serena, from Collier County, was sexually assaulted as a child between the ages of 11 and 14. Although the perpetrator was not criminally prosecuted, a protective injunction[2] against sexual violence was obtained against him. At least two other injunctions were issued against the perpetrator for the protection of minors, but the injunctions did not show up in background searches when the perpetrator was vetted for volunteer activities involving children.[3]

Serena's law was created to remedy this information gap. The law allows members of the public to more easily access court records and identify people who have had a final judgment for an injunction issued against them for domestic violence, sexual violence, and stalking when the misconduct involves a minor. The law requires each county recorder or clerk of the court to publish on an Internet website the identity of the person who is named as a respondent in the protective injunction, as well as the fact that the injunction has been entered, unless the defendant or respondent is a minor.[4]

If the information described above was not made publicly available by the county recorder or clerk of the court on a publicly available Internet website before July 1, 2021, it had to be made available to the general public if the affected party, or victim, identified the information and requested that it be made available on the Internet website. The law provides a process for this request and for notifying an affected party of the right to make this request. Additionally, an affected party may petition the circuit court for an order directing the county recorder or clerk of court to comply with the previously described requirements.

Finally, the law requires that final judgments for injunctions for protection in chapters 741 and 784, F.S., be recorded in official records. Chapter 741 deals with domestic violence and chapter 784 deals with assault, battery, and culpable negligence.

Access to Electronic Court Records

Through administrative rule, the Florida Supreme Court adopted standards for access to electronic court records and an access security matrix.[5] There are different levels of permissible access depending on "the user's role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type,

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[1] Ch. 2021-131, s. 1, Laws of Fla.
[2] An injunction is a court order commanding someone to do a certain act or prohibiting them from doing a certain act. (BLACK'S LAW DICTIONARY (11th ed. 2019)). Under Florida law, protective injunctions are available for victims of domestic violence, repeat violence, sexual violence, dating violence, and stalking. See sections 741.30, 784.046, and 784.0485, F.S.
[3] The Florida Senate, *Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1508* (March 26, 2021) https://www.flsenate.gov/Session/Bill/2021/1508.
[4] Section 28.2221(2)(a), F.S.
[5] *In Re: Access to Electronic Court Records* (Administrative Order), No. 20-108 (Nov. 20, 2020) and *Standards for Access to Electronic Court Records* (Nov. 2020), Florida Supreme Court, *available at* https://www.floridasupremecourt.org/content/download/693366/7743882 (last visited March 18, 2021).

document type, or information contained within court records."[6] Under these standards, "remote electronic access may be more restrictive than in-person in-house electronic access that is provided at clerks' offices."[7]

Permitted access for the general public (without registration agreement) includes:

- All records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin., or made confidential by court order.
- No remote access to images of records in cases governed by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.[8]

There are no user security requirements in this "User Role 7." Anonymous web-based access is permitted.[9]

III. Effect of Proposed Changes:

The bill amends Serena's law to make the search to locate a respondent much easier and user-friendly. While the information is currently posted on "an Internet website for general public display" the information must now be posted more conspicuously on the homepage of the official website for each clerk of court.

The respondent's identity and the required information must be viewable through a searchable database that is available in a clear and conspicuous location on the homepage of the clerk's official website.

The bill requires that *notice* of the right of an affected party to request the addition of information to the searchable database must be displayed clearly and conspicuously on the clerk's official website. The notice must state that any person has a right to request that a clerk add the information to the searchable database on the clerk's official website if the information involves the identity of a respondent against whom a final judgment for an injunction for the protection of a minor has been issued.

The bill deletes all references to "each county recorder" throughout the bill. The original language in Serena's law included references to "each county recorder or clerk of the court."

The bill takes effect July 1, 2024.

[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Court Clerks and Comptrollers note that, if the intent of the legislation is for the clerks to create a new searchable database, it would result in additional workload. If a new searchable database is required, there would be an indeterminate negative fiscal impact created by the increased workload and the need for enhanced technology resources.[10]

VI. Technical Deficiencies:

The bill deletes the phrase "county recorder or" on lines 13, 28, 36-37, 47, 50, 55, and 63. According to the Florida Court Clerks & Comptrollers, deleting this phrase could create complications in Broward and Orange counties. In those locations, the county recorder is a

[10] Florida Court Clerks & Comptrollers, *Bill Analysis for HB 1443 and SB 1616* (Feb. 1, 2024) https://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=35759.

separate office from the clerk of the court. If the requirement that the county recorder provide this information and the references to the county recorder offices are deleted from statute, it could have the effect of exempting these counties from the original intent of Serena's law.[11]

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 28.2221 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

[11] *Id.*

By Senator Calatayud

38-01667-24 20241616__

A bill to be entitled

An act relating to electronic access to official records; amending s. 28.2221, F.S.; requiring the clerk of the court to make certain information available in a searchable database on the clerk's official website; providing an effective date.

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

Section 1. Subsection (8) of section 28.2221, Florida Statutes, is amended to read:

28.2221 Electronic access to official records.—

(8)(a) Each ~~county recorder or~~ clerk of the court must make the identity of each respondent against whom a final judgment for an injunction for the protection of a minor under s. 741.30, s. 784.046, or s. 784.0485 is entered, as well as the fact that a final judgment for an injunction for the protection of a minor under s. 741.30, s. 784.046, or s. 784.0485 has been entered against that respondent, publicly available on the clerk's official website, ~~an Internet website for general public display, which may include the Internet website required by this section,~~ unless the respondent is a minor. The identity and information required under this subsection must be viewable through a searchable database that is available in a clear and conspicuous location on the homepage of the clerk's official website and must be available for search by the general public.

(b) Any information specified in this subsection not made available by the ~~county recorder or~~ clerk of the court as provided in this subsection ~~on a publicly available Internet~~

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~~website for general public display~~ before July 1, 2024 ~~2021~~, must be made publicly available on the clerk of the court's official ~~an Internet~~ website if the affected party identifies the information and requests that such information be added ~~to a publicly available Internet website~~ for general public display. Such request must be in writing and delivered by mail, facsimile, or electronic transmission or in person to the ~~county recorder or~~ clerk of the court. The request must specify the case number assigned to the final judgment for an injunction for the protection of a minor under s. 741.30, s. 784.046, or s. 784.0485. A fee may not be charged for the addition of information pursuant to such request.

(c) No later than 30 days after July 1, 2024 ~~2021~~, notice of the right of any affected party to request the addition of information to the searchable database on the clerk of the court's official ~~a publicly available Internet~~ website pursuant to this subsection must ~~shall~~ be conspicuously and clearly displayed by the ~~county recorder or~~ clerk of the court on the clerk's official ~~publicly available Internet~~ website on which images or copies of the county's public records are placed and in the office of each ~~county recorder or~~ clerk of the court. Such notice must contain appropriate instructions for making the addition of information request in person, by mail, by facsimile, or by electronic transmission. The notice must state, in substantially similar form, that any person has a right to request that a ~~county recorder or~~ clerk of the court add information to the searchable database on the clerk of the court's official ~~a publicly available Internet~~ website if that information involves the identity of a respondent against whom a

59 final judgment for an injunction for the protection of a minor
60 under s. 741.30, s. 784.046, or s. 784.0485 is entered, unless
61 the respondent is a minor. Such request must be made in writing
62 and delivered by mail, facsimile, or electronic transmission or
63 in person to the ~~county recorder or~~ clerk of the court. The
64 request must specify the case number assigned to the final
65 judgment for an injunction for the protection of a minor under
66 s. 741.30, s. 784.046, or s. 784.0485. A fee may not be charged
67 for the addition of a document pursuant to such request.
68 (d) Any affected person may petition the circuit court for
69 an order directing compliance with this subsection.
70 Section 2. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1780

INTRODUCER: Senator Brodeur

SUBJECT: Defamation, False Light, and Unauthorized Publication of Name or Likenesses

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			ACJ	
3.			FP	

I. Summary:

SB 1780 amends and creates several statutes relating to defamation. Specifically, the bill:

- Consolidates several defamation-related terms (libel, slander, false light, invasion of privacy, and other torts) into a single term, "defamation or privacy tort."
- Provides that editing any form of media so that it attributes something false about a person may give rise to a defamation or privacy tort.
- Provides that, in connection with damages for defamation based on material published on the radio or television, venue is proper in any county where the material is accessed; and in connection with material published on the Internet, venue is proper in any county in the state.
- Provides that the fee-shifting provisions of the offer of judgment and demand for judgment statute do not apply to defamation or privacy tort claims.
- Provides that prevailing plaintiffs are entitled to reasonable costs and attorney fees.
- Limits judicial determinations on who may be deemed a public figure.
- Requires fact finders to infer actual malice if a defamatory allegation is fabricated, inherently implausible, or doubtful as to its veracity, or if the defendant willfully failed to corroborate it.
- Provides that allegations against a plaintiff that he or she has discriminated against others because of their race, sex, sexual orientation, or gender identity constitutes defamation per se.
- Provides that allegations against a plaintiff that he or she has discriminated against others because of their sexual orientation or gender identity cannot be defended based on the plaintiff's religious or scientific beliefs.
- Provides that prevailing plaintiffs in discrimination cases are, in addition to all other damages, entitled to statutory damages of at least $35,000.
- Provides that statements by anonymous sources are presumptively false, and in cases where a defendant refuses to identify the source of a defamatory statement, the plaintiff only needs to prove that the defendant acted negligently in making it.
- Provides that public figures do not need to show actual malice to prevail if the allegation does not relate to the reason for his or her public status.

- Subjects people who give publicity to a matter concerning someone else that places him or her in a false light to liability, if certain conditions are met.

The bill also:
- Provides that the journalist's privilege does not apply to defamation claims if the defendant is a professional journalist or media entity.
- Requires nonmoving parties, instead of prevailing parties, to be awarded attorney fees and costs if they prevail on a motion filed under the anti-SLAPP statute.

The bill takes effect on July 1, 2024.

II. Present Situation:

Defamation

Generally

Defamation is the unprivileged publication of false statements that naturally and proximately result in an injury to another.[1] It has also been described as a statement that tends to harm the reputation of another by lowering him or her in the estimation of the community or, more broadly stated, one that exposes a plaintiff to hatred, ridicule, or contempt, or injures his business, reputation, or occupation.[2]

The Florida Constitution provides that every person may speak, write, and publish sentiments on all subjects, but will be responsible for the abuse of that right.[3] The law of defamation embodies the public policy that individuals should be free to enjoy their reputations unimpaired by false and defamatory attacks. An action for defamation is based upon a violation of this right.[4]

Different states vary in their anti-defamation statutes; as such, courts in different states will interpret defamation laws differently, and defamation statutes will vary somewhat from state to state.[5] But generally, defamation may take one of three forms:
- Spoken words, commonly known as "slander."[6]
- A written statement, commonly known as "libel."[7]
- An implication, commonly known as "false light" invasion of privacy.[8]

Before 2008, Florida courts recognized separate causes of action for slander and libel premised upon spoken or written defamatory statements, but did not recognize a separate cause of action

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[1] *Hoch v. Loren*, 273 So. 3d 56, 57 (Fla. 4th DCA 2019) (internal citation omitted).
[2] *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1108-09 (Fla. 2008) (internal citation omitted).
[3] FLA. CONST. art. I, s. 4.
[4] 19 FLA. JUR. 2D s. 1 *Defamation and Privacy*.
[5] Cornell Law School Legal Information Institute, *Defamation*, https://www.law.cornell.edu/wex/defamation (last visited Jan. 26, 2024).
[6] *See Spears v. Albertson's, Inc.,* 848 So. 2d 1176, 1179 (Fla. 1st DCA 2003) (providing that "[s]lander may be defined as the speaking of base and defamatory words").
[7] *See Dunn v. Air Line Pilots Association*, 193 F.3d 1185, 1191 (11th Cir. 1999) (noting that under Florida law, libel is defined as the unprivileged written publication of false statements).
[8] *See* RESTATEMENT (SECOND) OF TORTS s. 652E.

for defamation itself.[9] However, in 2008, the Florida Supreme Court recognized a standalone tort of defamation,[10] and in doing so effectively subsumed all claims for slander and libel into that tort. Therefore, defamation now encompasses both libel and slander.[11] False light is not recognized as a separate cause of action in Florida, but like slander and libel, it is nearly identical to a form of defamation, known as "defamation by implication."[12]

Although libel is generally perpetrated by written communication, it also includes defamation through the publication of pictures or photographs.[13] Alteration of a photograph may support a defamation action.[14]

Cause of Action

In Florida, the five required elements of a claim for defamation are:

- Publication.
- Falsity.
- Knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.
- Actual damages.
- A defamatory statement.[15]

"Publication" is a required element because a defamatory statement does not become actionable until it is published or communicated to a third person.[16] Publication requires proof that the statement is exposed to the public so it may be read or heard by a third person, but not necessarily that it has in fact been read or heard by a third person.[17]

The element of "falsity" requires that the defamation be "of and concerning" the plaintiff,[18] and that the allegation or representation about the plaintiff be false.[19] The falsity may be premised upon untruthfulness, such as in the case of slander or libel, or from truthful statements that imply falsely, such as in the case of defamation by implication.[20]

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[9] *See Delacruz v. Peninsula State Bank,* 221 So. 2d 772, 775 (Fla. 2d DCA 1969) (explaining that there is no such legal cause of action as 'defamation' and "[l]ibel and slander may be Founded [sic] on defamation, but the right of action itself is libel or slander, depending upon whether it is written or oral").

[10] *See Jews for Jesus, Inc.,* 997 So. 2d at 1105-08 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida).

[11] *Norkin v. The Florida Bar,* 311 F. Supp. 3d 1299, 1303-04 (S.D. Fla. 2018) (internal citations omitted); *Klayman v. Judicial Watch, Inc.,* 22 F. Supp. 3d 1240, 1247 fn. 2 (S.D. Fla. 2014).

[12] *See Jews for Jesus, Inc.,* 997 So. 2d at 1108 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida); *but see* RESTATEMENT (SECOND) OF TORTS s. 652E (recognizing a separate tort of false light).

[13] 19 FLA. JUR. 2D *Defamation and Privacy* s. 15 (citing 50 AM. JUR. 2D *Libel and Slander* s. 153).

[14] 50 AM. JUR. 2D *Libel and Slander* s. 153 (internal citations omitted).

[15] *Jews for Jesus, Inc.,* 997 So. 2d at 1106.

[16] *American Airlines, Inc. v. Geddes,* 960 So. 2d 830, 833 (Fla. 3d DCA 2007).

[17] *Axiom Worldwide, Inc. v. Becerra,* 2009 WL 1347398, *7 (M.D. Fla. 2009) (citing *Rives v. Atlanta Newspapers, Inc.,* 220 Ga. 485, 139 S.E.2d 395, 398 (1964) (noting, in applying single publication rule to newspaper, that "whether or not it is read is immaterial once it is shown that it was exposed to public view")).

[18] *Thomas v. Jacksonville Television, Inc.,* 699 So. 2d 800, 805 (Fla. 1st DCA 1997).

[19] *See generally Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 23 (1990) (Brennan, J., dissenting) (noting that "only defamatory statements that are capable of being proved false are subject to liability under state libel law").

[20] *Jews for Jesus, Inc.,* 997 So. 2d at 1106-08.

An actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.[21] With respect to this element, case law has developed which purports to balance the interests of the First Amendment while also protecting people from being unjustly defamed.[22] Accordingly, courts apply an actual malice standard, which is addressed separately and in more detail below, to public figures, and a simple negligence standard to private individuals.[23] A private individual may recover actual damages from a media defendant that publishes false and defamatory statements and that fails to use reasonable care to determine their falsity.[24]

With respect to the element of actual damages, the recovery of actual damages depends upon whether the defamation was "per se" or "per quod." Defamation per se generally relieves plaintiffs of having to prove damages, because such statements are so inherently damaging that damages are typically presumed.[25] On the other hand, defamation per quod generally requires plaintiffs to provide supporting and extrinsic evidence in order to prove that the statement or publication was actually defamatory.[26]

Finally, the statements must actually be defamatory. To make this determination, courts consider allegedly defamatory statements in their totality. For example, they consider all the words, pictures, and illustrations as used and presented together, not just a particular phrase or sentence in isolation.[27] An allegedly defamatory statement should be considered in its natural sense without a forced or strained construction.[28] Courts also make threshold determinations regarding whether a claim should even be considered by a jury,[29] and whether a privilege applies.[30]

Defenses

In addition to general procedural and other defenses that may be available (*e.g.* a failure to allege and prove any of the elements of defamation), the following specific defenses are available in response to a claim of libel, slander, or defamation by implication:

- Statutory protections:
  - For radio and television broadcasters.[31]
  - For good faith reports of potential child abuse, abandonment, or neglect.[32]

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[21] *Id.* at 1106.
[22] Gleisy Sopena, *Attorney-Fee Shifting is the Solution to Slapping Meritless Claims Out of Federal Courts,* 16 FIU L. REV. 833, 842 (Spring 2022).
[23] *Jews for Jesus, Inc.,* 997 So. 2d at 1111.
[24] *Thomas,* 699 So. 2d at 804.
[25] *Wolfson v. Kirk,* 273 So. 2d 774, 776 (Fla. 4th DCA 1973); *Bass v. Rivera,* 826 So. 2d 534, 535 (Fla. 2d DCA 2002); *Delacruz,* 221 So. 2d at 775.
[26] *Boyles v. Mid-Florida Television Corp.,* 431 So. 2d 627, 633 (Fla. 5th DCA 1983) (quoting *Piplack v. Mueller,* 97 Fla. 440, 121 So. 459 (Fla. 1929)).
[27] *Byrd v. Hustler Magazine, Inc.,* 433 So. 2d 593, 595 (Fla. 4th DCA 1983).
[28] *Id.*
[29] *Id.; Wolfson,* 273 So. 2d at 778.
[30] *See Jews for Jesus, Inc.,* 997 So. 2d at 1111-12 (providing a list of cases that applied various privileges to defamatory statements)*; see also* s. 770.04, F.S. (regarding liability of radio or television broadcasters); *see also Wright v. Yurko,* 446 So. 2d 1162, 1164 (Fla. 5th DCA 1984) (holding privilege extends to communications made within lawsuits).
[31] *See generally* s. 770.04, F.S.
[32] *See generally* s. 39.203, F.S.

- Privilege:
  - Absolute immunity, for any act occurring during the course of a legislative, judicial, or quasi-judicial proceeding, so long as the act has some relation to the proceeding.[33]
  - Absolute immunity, for state executive officers[34] and public officials,[35] as long as their statements are made in connection with their duties and responsibilities.
  - Qualified immunity, when made in good faith and certain other conditions are met.[36]
- Immunity as an expression of pure opinion, which occurs when one makes a comment or opinion based on facts in an article or are otherwise known or available to the reader or listener as a member of the public.[37]

Actions for libel and slander must be brought within 2 years after the cause of action accrues.[38]

Actual Malice Standard

Private individuals only need to allege and prove simple negligence to recover in defamation actions, but public figures who sue for defamation actions are subject to a different standard known as the "actual malice" standard.[39]

As required by the landmark federal case *New York Times v. Sullivan*[40] and its progeny,[41] people who qualify as public figures must show actual malice by a publisher in order to maintain an action in defamation. The existence of actual malice must be proved by clear and convincing evidence.[42] Under the actual malice test, a public figure claimant must show that the disseminator of the information "either knew the alleged defamatory statements were false, or published them with reckless disregard despite awareness of their probable falsity."[43]

Because direct evidence of actual malice is rare, courts have permitted actual malice to be proved through inference and circumstantial evidence alone.[44] For example, actual malice may be found

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[33] *See Kidwell v. General Motors Corp.*, 975 So. 2d 503, 505 (Fla. 2d DCA 2007) (regarding judicial and quasi-judicial immunity); *see also Tucker v. Resha*, 634 So. 2d 756, 758 (Fla. 1st DCA 1994), *apprv'd,* 670 So. 2d 56 (Fla. 1996) (noting, with emphasis added, that "[t]he public interest requires that *statements made by officials of all branches of government in connection with their official duties* be absolutely privileged") (internal citations omitted).
[34] *Tucker*, 634 So. 2d at 758.
[35] *Hope v. National Alliance of Postal and Federal Employees, Jacksonville Local No. 320,* 649 So. 2d 897, 901 fn. 5 (Fla. 1st DCA 1995).
[36] *See Lundquist v. Alewine,* 397 So. 2d 1148, 1149 (Fla. 5th DCA 1981) (providing that the elements essential to the finding of a conditionally privileged publication are good faith; an interest to be upheld; a statement limited in its scope to this purpose; a proper occasion; and publication in a proper manner) (internal citations omitted).
[37] *Sepmeier v. Tallahassee Democrat, Inc.*, 461 So. 2d 193, 195 (Fla. 1st DCA 1984) (internal citation omitted); *Smith v. Taylor County Pub. Co., Inc.*, 443 So. 2d 1042, 1046-47 (Fla. 1st DCA 1983).
[38] *See* s. 95.11(4)(g), F.S. (providing a 2-year statute of limitations for libel or slander); *see also* s. 95.031(1), F.S. (providing that unless otherwise specified, the statute of limitations runs from the time the cause of action accrues).
[39] *Jews for Jesus, Inc.*, 997 So. 2d at 1105-06; *Mile Marker, Inc. v. Petersen Publishing, L.L.C.*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002) (citing *New York Times*).
[40] 376 U.S. 254 (1964).
[41] In *New York Times Co. v. Sullivan,* 376 U.S. 254, 279-84 (1964), the U.S. Supreme Court applied the actual malice standard to public *officials*. Three years after *New York Times,* the Court applied the same standard to public *figures* in *Curtis Pub. Co. v. Butts,* 388 U.S. 130, 164-65 (1967) (Warren, C.J., concurring in plurality opinion).
[42] *Lampkin-Asam v. Miami Daily News, Inc.*, 408 So. 2d 666, 668-69 (Fla. 3d DCA 1981).
[43] *Mile Marker, Inc.*, 811 So. 2d at 845 (citing *New York Times*).
[44] *Sindi v. El-Moslimany,* 896 F.3d 1, 16 (1st Cir. 2018).

where a publisher fabricates an account, makes inherently improbable allegations, relies on a source where there is an obvious reason to doubt its veracity, or deliberately ignores evidence that calls into question published statements.[45] Although motive alone cannot suffice to prove actual malice, it is a highly relevant consideration.[46] Reliance on an anonymous source for a defamatory statement constitutes actual malice only if the defendant had an obvious reason to doubt that source.[47]

Whether a person qualifies as a public figure is a question of law for courts to decide.[48] State and federal common law recognize two classes of public figures: "general public figures," who by reason of fame or notoriety in a community will in all cases be required to prove actual malice, and "limited public figures," who are individuals who have thrust themselves forward in a particular public controversy and are therefore required to prove actual malice only in regard to certain issues.[49]

Courts employ a three-part test to determine whether a claimant is a limited public figure.[50] First, the court must determine whether there is a public controversy. In determining whether a matter is a public controversy, the court determines whether a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution. Second, the court must determine whether the claimant played a sufficiently central role in the controversy. And third, the court must find that the alleged defamation was germane to the claimant's involvement in the controversy.[51]

Courts have found individuals to be public figures for purposes of a defamation action in many factual situations, including the following:

- A person defending himself against accusations.[52]
- A person granting an interview on a specific topic.[53]

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[45] *Id.; see also St. Amant v. Thompson,* 390 U.S. 727, 732 (1968) (remarking that publications are likely not made in good faith where "a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified anonymous telephone call[,]" or when the allegations "are so inherently improbable that only a reckless man would have put them into circulation[,]" or where there are "obvious reasons to doubt the veracity of the informant or the accuracy of his reports").

[46] *Sindi,* 896 F.3d at 16.

[47] *See Lorenz v. Donnelly,* 350 F.3d 1272, 1283-84 (D.C. Cir. 2003) (providing that a plaintiff must show that when the defendants published the alleged defamations they were subjectively aware that it was highly probable that the story was fabricated, so inherently improbable that only a reckless person would have put it in circulation, or based wholly on an unverified anonymous telephone call or some other source that appellees had obvious reasons to doubt).

[48] *Saro Corporation v. Waterman Broadcasting Corporation,* 595 So. 2d 87, 89 (Fla. 2d DCA 1992) (internal citation omitted).

[49] *Id.* (internal citation omitted)*; see also Mile Marker, Inc.,* 811 So. 2d at 845 (recognizing same at the state level); *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 350 (1974) (recognizing same at the federal level).

[50] *Della-Donna v. Gore Newspapers Company,* 489 So. 2d 72, 77 (Fla. 4th DCA 1986) (internal citations omitted).

[51] *Id.*

[52] *See Berisha v. Lawson,* 973 F.3d 1304, 1311 (11th Cir. 2020) (finding a person a public figure because he defended himself against accusations that he was involved in an arms-dealing scandal).

[53] *See Mile Marker, Inc.,* 811 So. 2d at 846 (finding a person a limited public figure because, among other things, he gave an interview).

- A person obtaining public employment in a capacity other than as an elected officeholder or appointee of an elected officeholder.[54]
- A person who has uploaded a video, image, or statement on the Internet which has reached a broad audience.[55]

Criticisms

In 1993, when U.S. Supreme Court Justice Elena Kagan was still a law professor at the University of Chicago, she wrote a book review wherein she noted that extending the actual malice standard to public figures was "questionable" and the Court has "increasingly lost contact with the case's premises and principles[.]"[56] She observed that "to the extent [*New York Times*] decreases the threat of libel litigation, it promotes not only true but also false statements of fact – statements that may themselves distort public debate[,]" and in this way "the legal standard adopted in [*New York Times*] may cut against the very values underlying the decision."[57]

In 2021, U.S. Supreme Court Justices Clarence Thomas and Neil Gorsuch issued dissenting opinions in *Berisha v. Lawson* which heavily criticized the Court's extension of the *New York Times'* actual malice standard to public figures.

Justice Thomas advocated for reconsideration of the *New York Times* actual malice standard for two basic reasons. First, he argued that requiring public figures to establish actual malice lacks historical support and bears "no relation to the text, history, or structure of the Constitution."[58] Second, setting aside the constitutional concerns, the doctrine has "real-world effects" that should also be considered, because "[p]ublic or private, lies impose real harm" and the actual malice standard, which is an "almost impossible" standard to meet, effectively "insulate[s] those who perpetrate lies from traditional remedies like libel suits[.]"[59]

Justice Gorsuch echoed many of Justice Thomas' criticisms but also expanded upon how changes in the media landscape since 1964, the year the Court formulated the actual malice standard in the *New York Times*, have resulted in a proliferation of disinformation. After surveying those changes (*e.g.* the fall of traditional news outlets and professional fact-checking, the rise of cable news and social media platforms, *etc.*), he concluded that "[w]hat started in 1964 with a decision to tolerate the occasional falsehood to ensure robust reporting by a comparative handful of print and broadcast outlets has evolved into an ironclad subsidy for the publication of falsehoods by means on a scale previously unimaginable."[60]

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[54] *See Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) (finding that the "'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs").
[55] *See Berisha v. Lawson*, 141 S. Ct. 2424, 2429 (Mem) (2021) (Gorsuch, J., dissenting) (recognizing that private citizens can become public figures "on social media overnight").
[56] Elena Kagan, "A Libel Story: *Sullivan* Then and Now (reviewing Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment* (1991))," 18 LAW AND SOCIAL INQUIRY 197, 209 (1993).
[57] *Id.* at 206-07.
[58] *Berisha*, 141 S. Ct. at 2424-25 (Thomas, J., dissenting) (citing *McKee v. Cosby*, 139 S. Ct. 675 (Mem) (2019) and quoting *Tah v. Global Witness Publishing, Inc.*, 991 F.3d 231, 251 (D.C. Cir. 2021) (Silberman, J., dissenting)).
[59] *Berisha*, 141 S. Ct. at 2425 (Thomas, J., dissenting) (listing several examples where defamatory statements caused real world harm).
[60] *Id.* at 2428 (Gorsuch, J., dissenting).

In his dissenting opinion, Justice Gorsuch also included a significant list of former U.S. Supreme Court Justices who have raised questions about various aspects of the *New York Times* case over the years.[61]

Journalist's Privilege

With respect to information that a professional journalist has obtained while actively gathering news, state law provides that the professional journalist may not be compelled to either be a witness concerning that information, or disclose that information, including the identity of any source.[62]

For purposes of the qualified privilege, a "professional journalist" means:

> a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section.[63]

"News" means information of public concern relating to local, statewide, national, or worldwide issues or events.[64]

The statute limits the privilege to information or eyewitness observations obtained within the normal scope of employment, with the exception that it does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes.[65]

The statute also provides that a party seeking to overcome this privilege must make a "clear and specific showing" that:

- The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;
- The information cannot be obtained from alternative sources; and
- A compelling interest exists for requiring disclosure of the information.[66]

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[61] *Id.* at 2429-30 (Gorsuch, J., dissenting) (citing to several opinions and articles by past and present U.S. Supreme Court members).
[62] Section 90.5015(2), F.S.
[63] Section 90.5015(1)(b), F.S.
[64] Section 90.5015(1)(a), F.S.
[65] Section 90.5015(2), F.S.
[66] Section 90.5015(2)(a)-(c), F.S.

Offers of Judgment and Demands for Judgment

State law[67] provides for attorney fees where a party's offer to settle a case has been rejected. The statute states, in part:

> In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him … if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer…. If a plaintiff files a demand for judgment which is not accepted by the defendant within 30 days and the plaintiff recovers a judgment in an amount at least 25 percent greater than the offer, she or he shall be entitled to recover reasonable costs and attorney's fees….[68]

An offer must:

- Be in writing and state that it is being made pursuant to this section.
- Name the party making it and the party to whom it is being made.
- State with particularity the amount offered to settle a claim for punitive damages, if any.
- State its total amount.[69]

The court may disallow an award of costs and attorney fees to the prevailing party if it is determined the prevailing party did not make the offer in good faith.[70] When determining the reasonableness of an award of attorney fees, the court must consider the following factors along with other relevant criteria:

- The then-apparent merit or lack of merit in the claim.
- The number and nature of offers made by the parties.
- The closeness of questions of fact and law at issue.
- Whether the person making the offer had unreasonably refused to furnish information necessary to evaluate the reasonableness of such offer.
- Whether the suit was in the nature of a test case presenting questions of far-reaching importance affecting nonparties.

The amount of the additional delay cost and expense that the person making the offer reasonably would be expected to incur if the litigation should be prolonged.[71]

Strategic Lawsuits against Public Participation

A strategic lawsuit against public participation (SLAPP) is one ostensibly brought to redress a wrong, such as an invasion of privacy, a business tort, or an interference with a contract or an economic advantage, but actually brought to silence one or more critics.[72]

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[67] Section 768.79, F.S.
[68] Section 768.79(1), F.S.
[69] Section 768.79(2), F.S.
[70] Section 768.79(8)(a), F.S.
[71] Section 768.79(8)(b), F.S.
[72] *See, e.g.,* The Florida Senate Committee on Judiciary, *Issue Brief 2009-332, Strategic Lawsuits Against Public Participation* (Oct. 2008), https://flsenate.gov/UserContent/Committees/Publications/InterimWorkProgram/2009/pdf/2009-332ju.pdf; Cornell Law School Legal Information Institute, *SLAPP suit,* https://www.law.cornell.edu/wex/slapp_suit (last

Because of the variety of nominal bases for a SLAPP suit, laws to prevent them, known as anti-SLAPP laws, are phrased in terms of rights to be protected. Florida's anti-SLAPP statute[73] protects the following rights:

- The right to exercise the rights of free speech in connection with public issues.
- The right to peacefully assemble.
- The right to instruct representatives.
- The right to petition for redress of grievances before the various governmental entities of the state as protected by the First Amendment to the U.S. Constitution and section 5, article I of the State Constitution.[74]

Specifically, the statute prohibits a person or governmental entity from filing or causing to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity, without merit and primarily because such person or entity has exercised any of the above-listed rights.[75]

The statute also provides a right to an expeditious resolution of a claim that a suit has been filed in violation of the statute.[76] The person or entity sued by a governmental entity or another person may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. As soon as practicable, the court must set a hearing on the motion, which must be held at the earliest possible time after the filing of the claimant's or the governmental entity's response. If the person or entity prevails, the court may award actual damages arising from the governmental entity's violation of the statute. The court must award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of the anti-SLAPP statute.[77]

State law also contains a similar but separate anti-SLAPP statute specific to homeowners' associations.[78] Among other things, it also provides for the expeditious resolution of a claim that the suit is in violation of the rights protected under the statute.[79]

III. Effect of Proposed Changes:

SB 1780 creates and amends several statutes relating to defamation causes of action. Most significantly, the bill sets the burdens of proof for a party to prevail in a defamation action, matters not addressed in the current defamation statutes. The burdens of proof in the bill appear to make the actual malice standard, set by the United States Supreme Court in *New York Times v.*

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visited Jan. 26, 2024); Public Participation Project, *What is a SLAPP?*, https://anti-slapp.org/what-is-a-slapp (last visited Jan. 26, 2024); The Free Dictionary, *Legal Dictionary: Strategic Lawsuits against Public Participation*, http://legal-dictionary.thefreedictionary.com/Strategic+Lawsuits+against+Public+Participation (last visited Jan. 26, 2024); Reporters Committee for Freedom of the Press, *Understanding Anti-SLAPP laws*, https://www.rcfp.org/resources/anti-slapp-laws/ (last visited Jan. 26, 2024).

[73] Section 768.295(1), F.S.

[74] *Id.*

[75] Section 768.295(3), F.S.

[76] Section 768.295(4), F.S.

[77] *Id.*

[78] *See generally* s. 720.304, F.S.

[79] Section 720.304(4)(c), F.S.

Sullivan[80] and other cases, apply to fewer people and in fewer circumstances than in the Court's interpretations of the First Amendment. By setting the burdens of proof in statute, the bill may lead to appeals of decisions in defamation actions. These appeals may eventually provide the U.S. Supreme Court with additional opportunities to reconsider whether the First Amendment requires certain plaintiffs to prove that a defendant acted with actual malice in making a defamatory statement. For the most part, lowering the burden of proof set forth in the bill will not apply to elected officials who bring defamation actions.

Evidence Code

Section 1 of the bill amends s. 90.5015, F.S., regarding the journalist's privilege, to provide that it does not apply to defamation claims brought under the defamation statute when the defendant is a professional journalist or media entity. This privilege, under current law, provides a professional journalist a "qualified privilege not to be a witness concerning, and not to disclose the information, including the identity of any source, that the professional journalist has obtained while actively gathering news."

Accordingly, in a defamation action against a professional journalist, the privilege "has the effect of making proof of actual malice impossible because establishing what the publisher knew or did not know at the time of the publication depends on the kind and quality of the information and identity of the sources at hand when the publication was made."[81]

Defamation Statute

Section 2 of the bill amends s. 770.05, F.S., regarding limitations to the choice of venue, to subsume all of the following torts under the one term "defamation or privacy tort," for which persons may have only one choice of venue for damages:

- Libel.
- Slander.
- False light.
- Invasion of privacy.
- Any other tort founded upon any single publication, exhibition, or utterance, such as:
  - Any one edition of a newspaper, book, or magazine.
  - Any one presentation to an audience.
  - Any one broadcast over radio or television.
  - Any one exhibition of a motion picture.
  - Any one publication, exhibition, or utterance on the Internet.

This provision is a codification of case law and not a change in Florida law.[82]

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[80] 376 U.S. 254 (1964).

[81] *News-Journal Corp. v. Carson*, 741 So. 2d 572, 576 (Fla. 5th DCA 1999) (recognizing further that "some state shield laws are made inapplicable in defamation suits where bad faith or malice are alleged or where the media defendant raises a confidential source as a defense," and citing Carl C. Monk, *Evidentiary Privilege for Journalists' Sources: Theory and Statutory Protection*, 51 MO. L. REV. 1, 8 (1986), in support).

[82] *See Jews for Jesus, Inc.*, 997 So. 2d at 1108 (finding that defamation by implication is subsumed within the tort of defamation).

The bill also provides that editing any form of media so that it attributes something false or leads a reasonable viewer to believe something false about a plaintiff may give rise to a defamation claim or privacy tort. This provision is a codification of case law and not a change in Florida law.

However, the bill also provides that notwithstanding any other provision of the defamation statute, or any other statute providing for venue, when:

- Damages for defamation are based on material published through the radio or television, venue is proper in any county where the material is accessed.
- Damages for defamation are based on material published through the Internet, venue is proper in any county in the state.[83]

Section 3 of the bill renames s. 770.08, F.S., from "limitation on recovery of damages" to "limitation on venue," and amends it to provide that except in the case of defamation based on material published through the radio or television, a person may not have more than one choice of venue for any defamation or privacy tort founded upon a single publication, exhibition, or utterance.

Section 4 of the bill creates s. 770.09, F.S, entitled "Application of costs and attorney fees in defamation cases," providing that the fee-shifting provisions of the offer of judgment and demand for judgment statute[84] do not apply to defamation or privacy tort claims. Notwithstanding any other provision of law, a prevailing plaintiff on a defamation or privacy tort claim is entitled to an award of reasonable costs and attorney fees.

Section 5 of the bill creates s. 770.105, F.S., entitled "Limitations on judicial determination of a public figure," providing that a person may not be considered a public figure for purposes of establishing a defamation or privacy tort claim if his or her fame or notoriety arises solely from one or more of the following:

- Defending him or herself publicly against accusations.[85]
- Granting an interview on a specific topic.[86]
- Public employment other than elected office or appointment by an elected official.[87]
- A video, image, or statement uploaded on the Internet that has reached a broad audience.[88]

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[83] These provisions of the bill appear to codify state common law on this issue. *See Lowery v. McBee,* 322 So. 3d 110, 115-16 (Fla. 4th DCA 2021) (concluding that Palm Beach County was an appropriate venue in a defamation action, because the defamatory Facebook post at issue was accessed in that county).
[84] Section 768.79, F.S.
[85] Compare to *Berisha,* 141 S.Ct. at 2429 (Gorsuch, J., dissenting) (stating that "[l]ower courts have even said that an individual can become a limited purpose public figure simply by defending himself from a defamatory statement"); *McKee v. Cosby,* 139 S.Ct. 675 (2019) (Thomas, J., concurring) (explaining that the court of appeals "concluded that, by disclosing her accusation to a reporter, McKee had 'thrust' herself to the 'forefront' of the public controversy over 'sexual assault allegations implicating Cosby' and was therefore a 'limited-purpose public figure'").
[86] Compare to *Mile Marker, Inc.,* 811 So. 2d at 846 (showing that the plaintiff became a public figure because he gave an interview among other things).
[87] Compare to *Rosenblatt,* 383 U.S. at 86 (explaining that the public official designation for purposes of the actual malice standard applies to government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs).
[88] Compare to *Berisha,* 141 S.Ct. at 2429 (Gorsuch, J., dissenting) (stating that "private citizens can become 'public figures' on social media overnight").

The provisions above are inconsistent with court opinions defining whether a person is a public figure and making the actual malice standard applicable to public figures.

Section 6 of the bill creates s. 770.11, F.S., entitled "Clarifying defamation standards," providing for the inference of actual malice in defamation actions; defamation per se in connection with allegations of discrimination; and associated statutory damages.

The bill requires fact finders to infer actual malice for purposes of a defamation action when:

- The defamatory allegation is fabricated by the defendant, is the product of his or her imagination, or is based wholly on an unverified anonymous report.[89]
- An allegation is so inherently implausible that only a reckless person would have put it into circulation.[90]
- There are obvious reasons to doubt the veracity of the defamatory allegation or the accuracy of an informant's reports.[91] There are obvious reasons to doubt the veracity of a report when:
  - There is sufficient contrary evidence that was known or should have been known to the defendant after a reasonable investigation;[92] or
  - The report is inherently improbable or implausible on its face.[93]
- The defendant willfully failed to validate, corroborate, or otherwise verify the defamatory allegation.

The provisions above codify case law describing acts constituting actual malice.

The bill also provides that an allegation that the plaintiff has discriminated against another person or group because of their race, sex, sexual orientation, or gender identity constitutes defamation per se. Moreover, the bill provides that:

- A defendant cannot prove the truth of an allegation of discrimination with respect to sexual orientation or gender identity by citing a plaintiff's constitutionally protected religious expression or beliefs.
- A defendant cannot prove the truth of an allegation of discrimination with respect to sexual orientation or gender identity by citing a plaintiff's scientific beliefs.
- A plaintiff prevailing against such allegations of discrimination, in addition to all other damages, is entitled to statutory damages of at least $35,000.

Section 7 of the bill creates s. 770.12, F.S., entitled "Presumption regarding anonymous sources," to provide that a statement by an anonymous source is presumptively false for purposes of a defamation action. In cases where a defendant to a defamation action refuses to identify the source of a defamatory statement, the plaintiff only needs to prove that the defendant acted negligently in making the defamatory statement.

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[89] *St. Amant,* 390 U.S. at 732 (explaining that actual malice likely exists if "a publisher's allegations are so inherently improbable that only a reckless man would have put them in circulation").
[90] *Id.*
[91] *Id.*
[92] *McFarlane v. Sheridan Square Press, Inc.,* 91 F.3d 1501, 1511 (D.C. Cir. 1996) (explaining that "actual malice may be inferred from an author's or publisher's inability to corroborate a story only when, in attempting to corroborate, he encounters persuasive evidence that contradicts the allegation").
[93] *St. Amant,* 390 U.S. at 732 (explaining that recklessness for purposes of the actual malice standard "may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports").

This provision may require a person who does not disclose the identity of the person who provided the information for the defamatory statement to be subject to the lower negligence standard in a defamation action. With respect to public figures, the provision conflicts with case law that would subject a public figure to the higher actual malice standard.

Section 8 of the bill creates s. 770.13, F.S., entitled "Actual malice for public figures in defamation cases," to provide that a public figure does not need to show actual malice to prevail in a defamation cause of action when the allegation does not relate to the reason for his or her public status.

Current case law does not appear to create exceptions from the actual malice standard for persons who are deemed public figures.

Section 9 of the bill creates s. 770.15, F.S., entitled "Invasion of privacy; place person before public in false light."

The bill provides that any person who gives publicity to a matter concerning a natural person that places that person before the public in a false light is subject to liability if:

- The false light in which the person was placed would be highly offensive to a reasonable person.
- The defendant had knowledge of or acted in reckless disregard as to the false implications of the publicized matter.

According to the bill, this new section incorporates the standards set forth under the defamation statute for defamation causes of action to whatever extent necessary. Moreover, editing any form of media so that it attributes something false or leads a reasonable viewer to believe something false about a plaintiff may give rise to a defamation claim for false light.

Anti-SLAPP Statutes

Sections 10 and 11 of the bill amend ss. 720.304 and 768.295, F.S., respectively, to require courts in anti-SLAPP cases to award the nonmoving party (instead of the prevailing party, as is currently the case) reasonable attorney fees and costs in connection with a claim that an action was filed in violation of the anti-SLAPP statute, if the nonmoving party prevails on a motion filed under it.

Severability

Section 12 of the bill provides that if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provision or application, and to this end the provisions of the bill are severable.

Effective Date

Section 13 states that the bill takes effect on July 1, 2024.

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 following provisions in the bill potentially conflict with *New York Times* and its progeny, which construe defamation standards in light of First Amendment protections:

- A person is not a public figure for purposes of a defamation action if the person acquires fame or notoriety from one or more of the following:
  - Defending him or herself publicly against accusations.
  - Granting an interview on a specific topic.
  - Public employment other than elected office or appointment by an elected official.
  - A video, image, or statement uploaded on the Internet that has reached a broad audience.
- A public figure does not need to show actual malice to prevail in a defamation cause of action when the allegation does not relate to the reason for his or her public status.
- In cases where a defendant to a defamation action refuses to identify the source of a defamatory statement, the plaintiff only needs to prove that the defendant acted negligently in making the defamatory statement.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill may ultimately make it easier for private plaintiffs to sue for defamation, it is anticipated that defendants in such cases may have to pay more in awards (to satisfy meritorious defamation claims), claim settlements, and additional legal fees and costs. On the other hand, persons held to higher standards to avoid making defamatory statements may incur additional costs for conducting investigations before making potentially defamatory statements.

C. Government Sector Impact:

Because the bill may ultimately make it easier for private plaintiffs to sue for defamation, it is anticipated that such suits will increase court caseloads to some degree, and the costs associated with maintaining same.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 90.5015, 770.05, 770.08, 720.304, and 768.295.

This bill creates the following sections of the Florida Statutes: 770.09, 770.105, 770.11, 770.12, 770.13, and 770.15.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Brodeur) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:
Section 1. Section 770.02, Florida Statutes, is amended to read:
770.02 Correction, apology, or retraction by newspaper or broadcast station.—
(1) If it appears upon the trial that said article or broadcast was published in good faith; that its falsity was due to an honest mistake of the facts; that there were reasonable

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grounds for believing that the statements in said article or broadcast were true; and that, within the period of time specified in subsection (2), a full and fair correction, apology, or retraction was, in the case of a newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared and in as conspicuous place and type as said original article or, in the case of a broadcast, the correction, apology, or retraction was broadcast at a comparable time, then the plaintiff in such case shall recover only actual damages. For purposes of this section, if such an article or a broadcast has been published on the Internet, the article or broadcast must be permanently removed from the Internet within the time period provided in paragraph (2)(a) in order to limit recovery to actual damages as provided in this section.

(2) Full and fair correction, apology, or retraction shall be made:

(a) In the case of a broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice.~~;~~

(b) In the case of a newspaper or periodical published semimonthly, within 20 days after service of notice.~~;~~

(c) In the case of a newspaper or periodical published monthly, within 45 days after service of notice.~~; and~~

(d) In the case of a newspaper or periodical published less frequently than monthly, in the next issue, provided notice is served no later than 45 days prior to such publication.

Section 2. Section 770.04, Florida Statutes, is amended to read:

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41 770.04 Civil liability of certain media outlets ~~radio or~~
42 ~~television broadcasting stations~~; care to prevent publication or
43 utterance required.—
44 (1) The owner, licensee, or operator of a radio or
45 television broadcasting station or a newspaper, and the agents
46 or employees of any such owner, licensee, or operator, shall not
47 be liable for any damages for any defamatory statement published
48 or uttered in or as a part of a radio or television broadcast or
49 newspaper article, by one other than such owner, licensee, or
50 operator, or general agent or employees thereof, unless it is
51 ~~shall be~~ alleged and proved by the complaining party~~,~~ that such
52 owner, licensee, operator, general agent, or employee~~,~~ has
53 failed to exercise due care to prevent the publication or
54 utterance of such statement in such broadcasts or newspaper
55 articles, provided, however, the exercise of due care shall be
56 construed to include the bona fide compliance with any federal
57 law or the regulation of any federal regulatory agency.
58 (2) When an owner, a licensee, or an operator described in
59 subsection (1) publishes a defamatory statement on the Internet
60 with no knowledge of falsity of the statement and thereafter
61 receives notice that such statement has been found in a judicial
62 proceeding to be false, or receives notice of facts that would
63 cause a reasonable person to conclude that such statement was
64 false, and the owner, licensee, or operator fails to take
65 reasonable steps to permanently remove the statement and any
66 related report from the Internet, the continued appearance of
67 such statement or report on the Internet after the notice shall
68 be a new publication for purpose of the statute of limitations,
69 and the owner, licensee, or operator shall not be entitled to a

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70 fair reporting privilege for such new publication.
71 Section 3. Section 770.05, Florida Statutes, is amended to
72 read:
73 770.05 Limitation of choice of venue.—
74 (1) As used in this chapter, the term "defamation or
75 privacy tort" means libel, slander, invasion of privacy, or any
76 other tort founded upon any single publication, exhibition, or
77 utterance, such as any one edition of a newspaper, book, or
78 magazine, any one presentation to an audience, any one broadcast
79 over radio or television, any one exhibition of a motion
80 picture, or any one publication, exhibition, or utterance on the
81 Internet.
82 (2) A ~~No~~ person may not ~~shall~~ have more than one choice of
83 venue for damages for a defamation or privacy tort ~~libel or~~
84 ~~slander, invasion of privacy, or any other tort founded upon any~~
85 ~~single publication, exhibition, or utterance, such as any one~~
86 ~~edition of a newspaper, book, or magazine, any one presentation~~
87 ~~to an audience, any one broadcast over radio or television, or~~
88 ~~any one exhibition of a motion picture~~. Recovery in any action
89 shall include all damages for any such tort suffered by the
90 plaintiff in all jurisdictions.
91 (3) Notwithstanding any other provision of this chapter, or
92 any other statute providing for venue, when:
93 (a) Damages for a defamation or privacy tort are based on
94 material broadcast over radio or television, venue is proper in
95 any county in which the material was accessed.
96 (b) Damages for a defamation or privacy tort are based on
97 material published, exhibited, or uttered on the Internet, venue
98 is proper in any county in the state.

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99 Section 4. Section 770.107, Florida Statutes, is created to
100 read:
101 770.107 Veracity hearings in defamation or privacy tort
102 actions.—
103 (1) Upon motion by any party to a cause of action brought
104 under this chapter, the court shall conduct an evidentiary
105 hearing to determine:
106 (a) Whether a statement is a statement of fact or an
107 opinion.
108 (b) The veracity of any statement of fact that constitutes
109 the basis for the cause of action.
110 (2) Unless otherwise agreed to by the parties, the court
111 shall hear the motion within 60 days after service of the
112 motion.
113 (3) The court’s review of the motion shall be limited
114 solely to determining whether a statement is a statement of fact
115 or an opinion and the veracity of the statement of fact at issue
116 in the underlying cause of action.
117 (4) In ruling upon a motion for determination of veracity,
118 the court shall issue no findings regarding the following
119 matters at issue in the underlying cause of action:
120 (a) Whether the statement of fact constitutes defamation
121 per se, defamation per quod, or a privacy tort;
122 (b) Whether the plaintiff in the cause of action qualifies
123 as a public figure or limited public figure; or
124 (c) Whether the defendant in the cause of action acted
125 negligently, recklessly, intentionally, or with actual malice.
126 (5) The court shall assess against the nonprevailing party
127 the reasonable attorney fees and costs associated with the

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128 hearing.
129 (6) This section applies only to actions against a
130 newspaper or a periodical, whether in print or electronic
131 format; a broadcast station; or an employee, an agent, or a
132 contractor of such an entity that routinely publishes news or
133 information of a public character or interest or value.
134 Section 5. Section 770.11, Florida Statutes, is created to
135 read:
136 770.11 Presumption regarding anonymous sources when the
137 statement made about a public figure is false.—If a public
138 figure plaintiff can establish that a published statement is
139 false and that the publisher relied on an anonymous source for
140 the statement, there is a rebuttable presumption that the
141 publisher acted with actual malice in publishing the statement.
142 Section 6. Section 770.15, Florida Statutes, is created to
143 read:
144 770.15 Using artificial intelligence to place person in
145 false light.—
146 (1) As used in this section, the term "artificial
147 intelligence" means the theory and development of computer
148 systems that are designed to simulate human intelligence through
149 machine learning and perform tasks that would normally require
150 human involvement, such as visual perception, speech
151 recognition, decisionmaking, and translation between languages.
152 (2) A person who uses artificial intelligence to create or
153 edit any form of media so that it attributes something false to
154 or leads a reasonable viewer to believe something false about
155 another person is subject to liability if all of the following
156 apply:

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157 (a) The media is published, distributed, or otherwise
158 placed before the public.
159 (b) The false light in which the other person was placed
160 would be highly offensive to a reasonable person.
161 (c) The person had knowledge of or acted in reckless
162 disregard as to the false implications of the media.
163 (3) This section incorporates the standards set forth under
164 this chapter for defamation causes of action to the extent
165 necessary.
166 Section 7. For the purpose of incorporating the amendment
167 made by this act to section 770.05, Florida Statutes, in a
168 reference thereto, section 770.06, Florida Statutes, is
169 reenacted to read:
170 770.06 Adverse judgment in any jurisdiction a bar to
171 additional action.—A judgment in any jurisdiction for or against
172 the plaintiff upon the substantive merits of any action for
173 damages founded upon a single publication or exhibition or
174 utterance as described in s. 770.05 shall bar any other action
175 for damages by the same plaintiff against the same defendant
176 founded upon the same publication or exhibition or utterance.
177 Section 8. For the purpose of incorporating the amendment
178 made by this act to section 770.05, Florida Statutes, in a
179 reference thereto, section 770.07, Florida Statutes, is
180 reenacted to read:
181 770.07 Cause of action, time of accrual.—The cause of
182 action for damages founded upon a single publication or
183 exhibition or utterance, as described in s. 770.05, shall be
184 deemed to have accrued at the time of the first publication or
185 exhibition or utterance thereof in this state.

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186 Section 9. For the purpose of incorporating the amendment
187 made by this act to section 770.05, Florida Statutes, in a
188 reference thereto, section 770.08, Florida Statutes, is
189 reenacted to read:
190 770.08 Limitation on recovery of damages.—No person shall
191 have more than one choice of venue for damages for libel founded
192 upon a single publication or exhibition or utterance, as
193 described in s. 770.05, and upon his or her election in any one
194 of his or her choices of venue, then the person shall be bound
195 to recover there all damages allowed him or her.
196 Section 10. If any provision of this act or its application
197 to any person or circumstance is held invalid, the invalidity
198 does not affect other provisions or applications of this act
199 which can be given effect without the invalid provision or
200 application, and to this end the provisions of this act are
201 severable.
202 Section 11. This act shall take effect July 1, 2024.
203
204 ========== T I T L E A M E N D M E N T ==========
205 And the title is amended as follows:
206 Delete everything before the enacting clause
207 and insert:
208 A bill to be entitled
209 An act relating to defamation, false light, and
210 unauthorized publication of name or likenesses;
211 amending s. 770.02, F.S.; requiring that certain
212 articles or broadcasts be removed from the Internet
213 within a specified period to limit damages for
214 defamation; amending s. 770.04, F.S.; providing

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215 persons in certain positions relating to newspapers
216 with immunity for defamation if such persons exercise
217 due care to prevent publication or utterance of such a
218 statement; requiring removal of defamatory statements
219 from the Internet in certain circumstances; amending
220 s. 770.05, F.S.; defining the term “defamation or
221 privacy tort”; providing venue for damages for a
222 defamation or privacy tort based on material broadcast
223 over radio or television; providing venue for damages
224 for a defamation or privacy tort based on material
225 published, exhibited, or uttered on the Internet;
226 creating s. 770.107, F.S.; requiring the court to
227 conduct an evidentiary hearing upon motion by any
228 party to a cause of action; specifying determinations
229 to be made on such a motion; providing the timeframe
230 for a hearing on such motions; limiting the court’s
231 review of such a motion; specifying that a certain
232 finding may not be made in ruling on such a motion;
233 requiring the court to assess against the
234 nonprevailing party reasonable attorney fees and costs
235 for such hearing; providing applicability; creating s.
236 770.11, F.S.; providing a rebuttable presumption that
237 a publisher of a false statement acted with actual
238 malice in certain circumstances; creating s. 770.15,
239 F.S.; defining the term “artificial intelligence”;
240 providing that a person who uses artificial
241 intelligence to create or edit any form of media in a
242 certain manner is subject to liability in certain
243 circumstances; incorporating certain standards;

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244 reenacting ss. 770.06, 770.07, and 770.08, F.S.,
245 relating to adverse judgment in any jurisdiction as a
246 bar to additional action, cause of action and time of
247 accrual, and limitation on recovery of damages,
248 respectively, to incorporate the amendment made to s.
249 770.05, F.S., in references thereto; providing for
250 severability; providing an effective date.

By Senator Brodeur

A bill to be entitled

An act relating to defamation, false light, and unauthorized publication of name or likenesses; amending s. 90.5015, F.S.; providing that provisions concerning journalist's privilege do not apply to defamation claims when the defendant is a professional journalist or media entity; amending s. 770.05, F.S.; defining the term "defamation or privacy tort"; revising provisions concerning venue for certain actions; amending s. 770.08, F.S.; revising provisions limiting the choice of venue in specified actions; creating s. 770.09, F.S.; exempting certain claims from specified provisions concerning offers of judgment and demands for judgment in civil actions; providing for award of attorney fees and costs to prevailing plaintiffs in such actions; creating s. 770.105, F.S.; specifying that certain persons may not be considered public figures for purposes of certain actions; creating s. 770.11, F.S.; specifying that a fact finder may infer actual malice in certain circumstances; providing that certain allegations are defamatory per se; providing statutory damages to prevailing plaintiffs who are the subject of such allegations; creating s. 770.12, F.S.; creating a presumption that a statement by an anonymous source is presumptively false for purposes of a defamation action; providing requirements if a defendant in a defamation action refuses to identify an anonymous source; creating s. 770.13, F.S.; providing that a

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public figure does not need to show actual malice to prevail in a defamation action in certain circumstances; creating s. 770.15, F.S.; providing that a person who gives publicity to a matter concerning a natural person that places that person before the public in a false light may be liable for damages in certain circumstances; amending s. 720.304, F.S.; revising a provision on award of attorney fees in certain actions by property owners; amending s. 768.295, F.S.; revising a provision on award of attorney fees in strategic lawsuits against public participation; providing for severability; providing an effective date.

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

Section 1. Subsection (9) is added to section 90.5015, Florida Statutes, to read:

90.5015 Journalist's privilege.—

(9) This section does not apply to defamation claims brought under chapter 770 when the defendant is a professional journalist or media entity.

Section 2. Section 770.05, Florida Statutes, is amended to read:

770.05 Limitation of choice of venue.—

(1) As used in this chapter, the term "defamation or privacy tort" refers to libel, slander, false light, invasion of privacy, or any other tort founded upon any single publication, exhibition, or utterance, such as any one edition of a

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59 newspaper, book, or magazine, any one presentation to an
60 audience, any one broadcast over radio or television, any one
61 exhibition of a motion picture, or any one publication,
62 exhibition, or utterance on the Internet. Editing any form of
63 media so that it attributes something false or leads a
64 reasonable viewer to believe something false about a plaintiff
65 may give rise to a defamation claim or privacy tort.
66 (2) A ~~No~~ person may not ~~shall~~ have more than one choice of
67 venue for damages for any defamation or privacy tort ~~libel or~~
68 ~~slander, invasion of privacy, or any other tort founded upon any~~
69 ~~single publication, exhibition, or utterance, such as any one~~
70 ~~edition of a newspaper, book, or magazine, any one presentation~~
71 ~~to an audience, any one broadcast over radio or television, or~~
72 ~~any one exhibition of a motion picture~~. Recovery in any action
73 shall include all damages for any such tort suffered by the
74 plaintiff in all jurisdictions.
75 (3) Notwithstanding any other provision of this chapter, or
76 any other statute providing for venue, when:
77 (a) Damages for defamation are based on material published
78 through the radio or television, venue is proper in any county
79 where the material was accessed.
80 (b) Damages for defamation are based on material published
81 through the Internet, venue is proper in any county in the
82 state.
83 Section 3. Section 770.08, Florida Statutes, is amended to
84 read:
85 770.08 Limitation on venue ~~recovery of damages~~.~~—~~Except as
86 provided in s. 770.05(3)(a), a ~~No~~ person may not ~~shall~~ have more
87 than one choice of venue for any defamation or privacy tort

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88 ~~damages for libel~~ founded upon a single publication or
89 exhibition or utterance, as described in s. 770.05.~~, and~~ Upon
90 his or her election in any one of his or her choices of venue,
91 then the person shall be bound to recover there all damages
92 allowed him or her.
93 Section 4. Section 770.09, Florida Statutes, is created to
94 read:
95 770.09 Application of costs and attorney fees in defamation
96 cases.—The fee-shifting provisions of s. 768.79 do not apply to
97 defamation or privacy tort claims. Notwithstanding any other
98 provision of law, a prevailing plaintiff on a defamation or
99 privacy tort claim is entitled to an award of reasonable costs
100 and attorney fees.
101 Section 5. Section 770.105, Florida Statutes, is created to
102 read:
103 770.105 Limitations on judicial determination of a public
104 figure.—A person may not be considered a public figure for
105 purposes of establishing a defamation or privacy tort claim if
106 his or her fame or notoriety arises solely from one or more of
107 the following:
108 (1) Defending him or herself publicly against accusations.
109 (2) Granting an interview on a specific topic.
110 (3) Public employment other than elected office or
111 appointment by an elected official.
112 (4) A video, image, or statement uploaded on the Internet
113 that has reached a broad audience.
114 Section 6. Section 770.11, Florida Statutes, is created to
115 read:
116 770.11 Clarifying defamation standards.—

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117 (1) A fact finder shall infer actual malice for purposes of
118 a defamation action when:
119 (a) The defamatory allegation is fabricated by the
120 defendant, is the product of his or her imagination, or is based
121 wholly on an unverified anonymous report;
122 (b) An allegation is so inherently implausible that only a
123 reckless person would have put it into circulation;
124 (c) There are obvious reasons to doubt the veracity of the
125 defamatory allegation or the accuracy of an informant's reports.
126 There are obvious reasons to doubt the veracity of a report
127 when:
128 1. There is sufficient contrary evidence that was known to
129 or should have been known to the defendant after a reasonable
130 investigation; or
131 2. The report is inherently improbable or implausible on
132 its face; or
133 (d) The defendant willfully failed to validate,
134 corroborate, or otherwise verify the defamatory allegation.
135 (2) An allegation that the plaintiff has discriminated
136 against another person or group because of their race, sex,
137 sexual orientation, or gender identity constitutes defamation
138 per se.
139 (a) A defendant cannot prove the truth of an allegation of
140 discrimination with respect to sexual orientation or gender
141 identity by citing a plaintiff's constitutionally protected
142 religious expression or beliefs.
143 (b) A defendant cannot prove the truth of an allegation of
144 discrimination with respect to sexual orientation or gender
145 identity by citing a plaintiff's scientific beliefs.

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146 (c) A prevailing plaintiff for allegations under this
147 subsection is, in addition to all other damages, entitled to
148 statutory damages of at least $35,000.
149 Section 7. Section 770.12, Florida Statutes, is created to
150 read:
151 770.12 Presumption regarding anonymous sources.—
152 (1) A statement by an anonymous source is presumptively
153 false for purposes of a defamation action.
154 (2) In a case where a defendant in a defamation action
155 refuses to identify the source of a defamatory statement, the
156 plaintiff need only prove that the defendant acted negligently
157 in making the defamatory statement.
158 Section 8. Section 770.13, Florida Statutes, is created to
159 read:
160 770.13 Actual malice for public figures in defamation
161 cases.-A public figure does not need to show actual malice to
162 prevail in a defamation cause of action when the allegation does
163 not relate to the reason for his or her public status.
164 Section 9. Section 770.15, Florida Statutes, is created to
165 read:
166 770.15 Invasion of privacy; place person before public in
167 false light.—
168 (1) Any person who gives publicity to a matter concerning a
169 natural person that places that person before the public in a
170 false light is subject to liability if:
171 (a) The false light in which the person was placed would be
172 highly offensive to a reasonable person; and
173 (b) The defendant had knowledge of or acted in reckless
174 disregard as to the false implications of the publicized matter.

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175 (2) This section incorporates the standards set forth under
176 this chapter for defamation causes of action to whatever extent
177 necessary.
178 (3) Editing any form of media so that it attributes
179 something false or leads a reasonable viewer to believe
180 something false about a plaintiff may give rise to a defamation
181 claim for false light.
182 Section 10. Paragraph (c) of subsection (4) of section
183 720.304, Florida Statutes, is amended to read:
184 720.304 Right of owners to peaceably assemble; display of
185 flags; SLAPP suits prohibited.—
186 (4) It is the intent of the Legislature to protect the
187 right of parcel owners to exercise their rights to instruct
188 their representatives and petition for redress of grievances
189 before the various governmental entities of this state as
190 protected by the First Amendment to the United States
191 Constitution and s. 5, Art. I of the State Constitution. The
192 Legislature recognizes that "Strategic Lawsuits Against Public
193 Participation" or "SLAPP" suits, as they are typically called,
194 have occurred when members are sued by individuals, business
195 entities, or governmental entities arising out of a parcel
196 owner's appearance and presentation before a governmental entity
197 on matters related to the homeowners' association. However, it
198 is the public policy of this state that government entities,
199 business organizations, and individuals not engage in SLAPP
200 suits because such actions are inconsistent with the right of
201 parcel owners to participate in the state's institutions of
202 government. Therefore, the Legislature finds and declares that
203 prohibiting such lawsuits by governmental entities, business

204 entities, and individuals against parcel owners who address
205 matters concerning their homeowners' association will preserve
206 this fundamental state policy, preserve the constitutional
207 rights of parcel owners, and assure the continuation of
208 representative government in this state. It is the intent of the
209 Legislature that such lawsuits be expeditiously disposed of by
210 the courts.
211 (c) A parcel owner sued by a governmental entity, business
212 organization, or individual in violation of this section has a
213 right to an expeditious resolution of a claim that the suit is
214 in violation of this section. A parcel owner may petition the
215 court for an order dismissing the action or granting final
216 judgment in favor of that parcel owner. The petitioner may file
217 a motion for summary judgment, together with supplemental
218 affidavits, seeking a determination that the governmental
219 entity's, business organization's, or individual's lawsuit has
220 been brought in violation of this section. The governmental
221 entity, business organization, or individual shall thereafter
222 file its response and any supplemental affidavits. As soon as
223 practicable, the court shall set a hearing on the petitioner's
224 motion, which shall be held at the earliest possible time after
225 the filing of the governmental entity's, business organization's
226 or individual's response. The court may award the parcel owner
227 sued by the governmental entity, business organization, or
228 individual actual damages arising from the governmental
229 entity's, individual's, or business organization's violation of
230 this section. A court may treble the damages awarded to a
231 prevailing parcel owner and shall state the basis for the treble
232 damages award in its judgment. The court shall award the

nonmoving ~~prevailing~~ party reasonable attorney ~~attorney's~~ fees and costs incurred in connection with a claim that an action was filed in violation of this section if the nonmoving party prevails on a motion filed under this section.

Section 11. Subsection (4) of section 768.295, Florida Statutes, is amended to read:

768.295 Strategic Lawsuits Against Public Participation (SLAPP) prohibited.—

(4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the nonmoving ~~prevailing~~ party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section if the nonmoving party prevails on a motion filed under this section.

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Section 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 13. This act shall take effect July 1, 2024.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1788

INTRODUCER: Senator Grall and Senator Garcia

SUBJECT: Age Verification for Social Media Platform Accounts

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			FP	

I. Summary:

SB 1788 requires social media platforms, as defined in the bill, to perform reasonable age verification before permitting users to access their platforms. The age verification method used must be conducted by an independent third party not affiliated with the social media platform.

The bill prohibits minors younger than 16 from creating or maintaining accounts on social media platforms. With respect to existing accounts belonging to minors younger than 16, the bill requires social media platforms to terminate them, and also allows the account holders or their parents or guardians to terminate them. Social media platforms must permanently delete all personal information held by them relating to terminated accounts unless otherwise required by law to maintain the personal information.

Minors who are 16 or 17 years of age are allowed to create and maintain accounts, but social media platforms are required to provide them certain disclosures, disclaimers, and other information identified in the bill.

The bill does not apply to certain websites identified in the bill, including those whose predominant function is email, messaging, or texts; streaming services; news, sports, or entertainment; or online shopping or gaming.

Any violation of the bill's regulations is deemed to be an unfair and deceptive trade practice, actionable only by the Department of Legal Affairs under the Florida Deceptive and Unfair Trade Practices Act. The bill also provides a private cause of action against social media platforms for failing to timely delete the account of a minor younger than 16 after receiving a request to delete the account.

The bill authorizes the department to adopt rules to implement the bill.

The bill takes effect on July 1, 2024.

II. Present Situation:

Social Media Platforms

The term "social media" includes "forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, videos, personal messages, and other content."[1] Today, an estimated 4.9 billion people use social media across the world.[2] In 2005, the year Facebook started, just 5 percent of American adults used social media platforms. By 2011, that share had risen to half of all Americans; and by 2021, 72 percent of the public used some type of social media.[3]

Approximately 38 percent of children between the ages of 8 and 12, and 84 percent of teenagers between the ages of 13 and 18, are using social media.[4] More than one in three teens, ages 13 to 17, report that they use social media "almost constantly."[5] To comply with federal requirements, some social media companies already prohibit kids younger than 13 from creating accounts on their platforms, but children can easily get around such bans, regardless of whether they have their parents' consent.[6]

In less than a generation, social media has evolved from a direct electronic information exchange to a virtual gathering place, retail platform, and marketing tool. What began as a desktop or laptop experience has largely shifted to mobile phones and tablets. With the advent of social media apps that run on smartphones, end users can now take their communities with them wherever they go and use social media at any time.[7]

Addictive Designs and Deceptive Patterns

In general, "addictive designs" or "deceptive patterns," also called "dark patterns," are deceptive user experiences that take advantage of how people habitually use websites, to get them to do things that they may not normally do, such as impulse purchasing, giving away personal information, or spending excessive time on websites.[8] Examples of dark patterns include "autoplay," when a video website automatically plays new videos in succession as a default

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[1] Meriam-Webster, *Dictionary, Definition: Social Media,* https://www.merriam-webster.com/dictionary/social%20media (last visited Jan. 17, 2024).
[2] Belle Wong, *Top Social Media Statistics And Trends Of 2024*, Forbes Advisor, May 18, 2023, https://www.forbes.com/advisor/business/social-media-statistics/.
[3] Pew Research Center, *Social Media Fact Sheet,* Apr. 7, 2021, https://www.pewresearch.org/internet/fact-sheet/social-media/.
[4] Shiv Sudhakar, *Age 13 and younger is 'too early' for kids to be on social media, surgeon general admits,* Fox News, Feb. 10, 2023, https://www.foxnews.com/lifestyle/age-13-too-early-kids-social-media-surgeon-general.
[5] The Annie E. Casey Foundation, *Social Media's Concerning Effect on Teen Mental Health,* Aug. 10, 2023, https://www.aecf.org/blog/social-medias-concerning-effect-on-teen-mental-health#:~:text=Numerous%20studies%20show%20that%20higher,poor%20body%20image%2C%20eating%20disorder.
[6] Barbara Ortutay, *Car seats and baby formula are regulated. Is social media next?,* The Associated Press, May, 23, 2023, https://apnews.com/article/surgeon-general-kids-social-media-teens-tiktok-instagram-443530d9baa3f91386bf9fbfb313bbaf.
[7] Maryville University, *The Evolution of Social Media: How Did It Begin, and Where Could It Go Next?,* May 28, 2020, https://online.maryville.edu/blog/evolution-social-media/.
[8] Brad Bartlett, *Dark Design Patterns: Teach Kids to Recognise Them,* Kidslox, Feb. 7, 2023, https://kidslox.com/guide-to/dark-design-patterns/.

setting;[9] and "infinite scroll," when a website allows users to scroll endlessly through content, rather than clicking through pages.[10]

In 2022, the Federal Trade Commission issued a report outlining the ways that companies are increasingly using dark patterns to manipulate consumers into buying products or forfeiting their privacy.[11] Common dark pattern tactics include:

- Disguising ads by designing advertisements to look like independent editorial content.
- Claiming to be neutral, but actually ranking companies in exchange for compensation.
- Using countdown timers designed to make consumers believe they only have a limited time to purchase a product or service, even though the offer is not actually time-limited.
- Making it difficult to cancel subscriptions or charges, which involves tricking someone into paying for goods or services without consent.
- Burying key terms and junk fees, which involves hiding or obscuring material information from consumers that they do not see before making a purchase.
- Tricking consumers into sharing data, which involves falsely giving consumers choices about privacy settings or sharing data, but instead steering them toward the option that gives away the most personal information.[12]

Recently, the commission has filed complaints against several companies for using dark patterns as a deceptive trade practice.[13] For example, it has taken action against Twitter (now X), alleging it deceptively used account security information to sell targeted advertisements.[14] Additionally, the commission filed a complaint against Amazon, alleging the use of dark patterns to deceive users into subscribing to a premium service.[15] Both cases are still pending.

Effects on Children

Social media has become an important aspect of the digital interactions of minors, who use social media for entertainment and communication purposes.[16] Adolescents are constantly in touch with their peers via social media accounts. However, social media has the potential to have both

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[9] René Otto, *Autoplay and infinite scroll,* Medium, Jan. 26, 2021, https://rene-otto.medium.com/autoplay-and-infinite-scroll-8607abe52bb7#:~:text=nobody%20asked%20for%20autoplay%20video,%3A%20stealing%20your%20attention%20back.%E2%80%9D.

[10] Erin Rupp, *The Infinite Scroll: Why It's So Addictive and How to Break Free,* Freedom.to, Feb. 28, 2022, https://freedom.to/blog/infinite-scroll/.

[11] Federal Trade Commission (FTC), *FTC Report Shows Rise in Sophisticated Dark Patterns Designed to Trick and Trap Consumers,* Sep. 15, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/09/ftc-report-shows-rise-sophisticated-dark-patterns-designed-trick-trap-consumers.

[12] *Id.*

[13] Frank Gorman et al., *FTC Targets "Dark Patterns" in Actions Against Amazon and Publishers Clearing House,* WilmerHale, Aug. 14, 2023, https://www.wilmerhale.com/insights/client-alerts/20230814-ftc-targets-dark-patterns-inactions-against-amazon-and-publishers-clearing-house.

[14] FTC, *FTC Charges Twitter with Deceptively Using Account Security Data to Sell Targeted Ads,* May 25, 2022, https://www.ftc.gov/news-events/news/press-releases/2022/05/ftc-charges-twitter-deceptively-using-account-security-data-sell-targeted-ads.

[15] FTC, *FTC Takes Action Against Amazon for Enrolling Consumers in Amazon Prime Without Consent and Sabotaging Their Attempts to Cancel,* Jun. 21, 2023, https://www.ftc.gov/news-events/news/press-releases/2023/06/ftc-takes-action-against-amazon-enrolling-consumers-amazon-prime-without-consent-sabotaging-their.

[16] Andrea Irmer & Florian Schmiedek, *Associations between youth's daily social media use and well-being are mediated by upward comparisons,* 1 COMMUN. PSYCHOL. 12 (Aug. 22, 2023), available at https://doi.org/10.1038/s44271-023-00013-0.

positive and negative effects on their health.[17] Some 80 percent of teenagers say social media allows them to feel more connected to their peers, according to a 2022 Pew Research Center survey of U.S. teens ages 13 to 17. Overall, one in three said that social media has had a mostly positive effect on them, while 59 percent said that it had neither a positive nor a negative effect.[18] On the other hand, many teens' use, and overuse, of social media has raised questions about its effect on their physical and mental health by distracting them, disrupting their sleep, and exposing them to bullying, rumor spreading, unrealistic views of other people's lives, and peer pressure.[19]

In May 2023, U.S. Surgeon General Dr. Vivek Murthy released an advisory to call attention to the effects of social media on youth mental health. The advisory noted that at crucial periods of adolescent brain development, social media use is predictive of decreases in life satisfaction, as well as additional concerns around body image, sleep issues, and much more.[20] He also concluded that 13 years old is "too early" for children to use social media, despite most social media companies allowing 13-year-olds to use their platforms, because in early adolescence, kids are still "developing their identity, their sense of self."[21]

Other experts, such as David Greenfield, a psychologist, agree and assert the platforms lure users with powerful tactics. One such tactic is "intermittent reinforcement," which refers to a reward scheme in which the user receives rewards inconsistently and unpredictably. While adults are susceptible, young people are particularly at risk because the brain regions that are involved in resisting temptation and reward are not nearly as developed in children and teenagers as in adults.[22]

Based on their preparation and review of studies and other scientific research, many experts have called for the regulation of social media, and specifically, regulation of the use of social media by children. Dr. Mary Alvord, a member of the American Psychological Association social media advisory panel, has stated that just because social media is here to stay, it does not mean the dangers have to be accepted. "Just as we decide when kids are old enough to drive, and we teach them to be good drivers, we can establish guidelines and teach children to use social media safely." [23]

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[17] Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps,* Investopedia.com, Aug. 31, 2023, https://www.investopedia.com/terms/s/social-media.asp.
[18] Monica Anderson et al., *Connection, Creativity, and Drama: Teen Life on Social Media in 2022,* Pew Research Center, Nov. 16, 2022, https://www.pewresearch.org/internet/2022/11/16/connection-creativity-and-drama-teen-life-on-social-media-in-2022/.
[19] Mayo Clinic, *Tween and teen health,* https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437 (last visited Jan. 17, 2024).
[20] U.S. Department of Health and Human Services, Office of the Surgeon General, *Social Media and Youth Mental Health: The U.S. Surgeon General's Advisory* (2023), available at https://www.ncbi.nlm.nih.gov/books/NBK594761/.
[21] Lauraine Langreo, *Surgeon General: Kids Under 14 Should Not Use Social Media,* EducationWeek, Feb. 2, 2023, https://www.edweek.org/leadership/surgeon-general-kids-under-14-should-not-use-social-media/2023/02.
[22] Matt Richtel, *Is Social Media Addictive? Here's What the Science Says.*, The New York Times, Oct. 25, 2023, https://www.nytimes.com/2023/10/25/health/social-media-addiction.html.
[23] Kirsten Weir, *Social media brings benefits and risks to teens. Here's how psychology can help identify a path forward,* American Psychological Association, Sept. 1, 2023, https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media.

Safety Measures and Parental Controls

Providing children with information regarding how to more safely use social media could reduce or eliminate harms. Having conversations with them about social media, its benefits, and its risks, could promote positive social media usage.[24] Parental controls can also protect children from inappropriate content, cyberbullying, and other online safety issues.[25] Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, using location tracking, and disabling Wi-Fi.[26]

However, two 2018 studies found that parental control apps may actually be counterproductive because they harm the trust between a parent and child and reduce the child's ability to respond to online threats. In one of the studies, children believed that the apps were overly restrictive and prevented them from doing everyday tasks, such as homework assignments. Additionally, a researcher stated that "parental involvement and direct supervision were both associated with fewer peer problems and less online victimization for teens, but neither of these factors correlated with the use of parental control apps."[27]

Lawsuits

Evidence exists that social media platforms have intentionally created algorithms and other functions that are deliberately designed to hold users' attention as long as possible, tapping into psychological biases and vulnerabilities relating to the human desire for validation and fear of rejection. The platforms continue to use these algorithms and functions even though they are aware that too much passive use of social media can be unhealthy.[28]

On October 24, 2023, a group of 41 states, including Florida, and the District of Columbia, filed suit against Meta,[29] contending that the company knowingly uses features on its platforms to cause children to use them compulsively, even as the company says that its social media sites are safe for young people.[30] The complaint alleges that Meta took actions which qualify as a deceptive or unfair trade practice and which violate the federal Children's Online Privacy Protection Act.[31]

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[24] WebMD Editorial Contributors, *How to Talk to Your Kids About Social Media*, WebMD.com, https://www.webmd.com/parenting/how-to-talk-to-kids-about-social-media (last visited Jan. 17, 2024).
[25] Internetmatters.org, *Parental Controls*, https://www.internetmatters.org/parental-controls/ (last visited Jan. 17, 2024).
[26] Caroline Knorr, *Parents' Ultimate Guide to Parental Controls,* Commonsensemedia.org, Mar. 9, 2021, https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls.
[27] Barbara Abney & Zenaida Kotala, *Apps to Keep Children Safe Online May be Counterproductive,* UCF Today, Apr. 2, 2018, https://www.ucf.edu/news/apps-keep-children-safe-online-may-counterproductive/.
[28] R. Kraut et al., *Internet paradox: a social technology that reduces social involvement and psychological well-being?,* 53 AM. PSYCHOL. 9, at 1017-31 (Sept. 1998), available at https://pubmed.ncbi.nlm.nih.gov/9841579/ (finding that greater use of the Internet was associated with declines in participants' communication with family members in the household, declines in the size of their social circle, and increases in their depression and loneliness).
[29] *State of Florida v. Meta Platforms, Inc., Instagram, LLC,* Case No. 8:23-cv-02412 (M.D. Fla.); *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al,* Case No. 4:23-cv-05448 (N.D. Cal.). The cases have merged, and are still pending.
[30] *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al,* Case No. 4:23-cv-05448 (N.D. Cal.); Matt Richtel, *Is Social Media Addictive? Here's What the Science Says*., The New York Times, Oct. 25, 2023, https://www.nytimes.com/2023/10/25/health/social-media-addiction.html.
[31] *See generally* Complaint, *State of Florida v. Meta Platforms, Inc., Instagram, LLC,* Case No. 8:23-cv-02412 (M.D. Fla.), available at https://www.myfloridalegal.com/sites/default/files/2023-10/oag-v.-meta.pdf; *see also* Complaint, *State of*

The complaint also alleges that "Meta has harnessed powerful and unprecedented technologies to entice, engage and ultimately ensnare youth and teens." Its motive is profit, and "in seeking to maximize its financial gains, Meta has repeatedly misled the public about the substantial dangers of its Social Media Platforms" and "has concealed the ways in which these Platforms exploit and manipulate its most vulnerable consumers: teenagers and children."[32]

Regarding the motivation for the suit, Florida Attorney General Ashley Moody stated that "Meta has gone unchecked for too long, and our children are suffering the consequences of these unlawful practices . . . . I took action to stop Meta from targeting minors with addictive features to keep them online for hours, collecting their data and other unlawful actions that harm teens' mental health,"[33] and "[i]t's no surprise to parents that children cannot stay off their phones. This has been shown to be very addictive to children across the United States. It's caused mental health problems and sleep problems."[34]

Additionally, New York Attorney General Letitia James stated "Meta has profited from children's pain by intentionally designing its platforms with manipulative features that make children addicted to their platforms while lowering their self-esteem. Social media companies, including Meta, have contributed to a national youth mental health crisis and they must be held accountable."[35]

Social Media Laws for Children

State Requirements for Social Media and Phones in Schools

State law requires students in grades 6 through 12 to receive instruction on the social, emotional, and physical effects of social media. The instructional materials must be available online, and district school boards must notify parents of the material's availability.[36]

State law also prohibits students from using wireless communication devices at school during instructional time, except when expressly directed by a teacher solely for educational purposes, and requires a teacher to designate an area for wireless communications devices during instructional time.[37]

Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al, Case No. 4:23-cv-05448 (N.D. Cal.), available at https://www.washingtonpost.com/documents/b68f2951-2a4b-4822-b0fb-04238703c039.pdf?itid=lk_inline_manual_5.

[32] Complaint ¶ 1, *State of Arizona, et al. v Meta Platforms, Inc., Instagram LLC, Meta Payments, Inc., et al,* Case No. 4:23-cv-05448 (N.D. Cal. Oct. 24, 2023), available at https://www.washingtonpost.com/documents/b68f2951-2a4b-4822-b0fb-04238703c039.pdf?itid=lk_inline_manual_5.

[33] Press Release, Office of Attorney General Ashley Moody, *Attorney General Moody Takes Legal Action Against Meta to Protect Children,* Oct. 24, 2023, https://www.myfloridalegal.com/newsrelease/attorney-general-moody-takes-legal-action-against-meta-protect-children.

[34] CBS, *Florida Attorney General Ashley Moody targets Meta over negative impacts on kids,* Oct. 25, 2023, https://www.cbsnews.com/miami/news/florida-attorney-general-ashley-moody-targets-meta-negative-impacts-kids/.

[35] Press Release, New York State Attorney General, *Attorney General James and Multistate Coalition Sue Meta for Harming Youth,* Oct. 24, 2023, https://ag.ny.gov/press-release/2023/attorney-general-james-and-multistate-coalition-sue-meta-harming-youth.

[36] Section 1003.42(2)(o)5., F.S.

[37] Sections 1006.07(2)(f) and 1003.32(1)(a), F.S.

State Protection of Children in Online Spaces Act

State law provides that any online service, product, game, or feature likely to be predominantly accessed by children under 18 years of age may not, except under certain situations:

- Process the personal information of any child if the platform has actual knowledge or willfully disregards that the processing may result in substantial harm or privacy risk to children.
- Profile a child.
- Collect, sell, share, or retain any personal information that is not necessary to provide an online service, product, or feature with which a child is actively and knowingly engaged.
- Use a child's personal information for any unstated reason.
- Collect, sell, or share any precise geolocation of data of children.
- Use dark patterns to:
  - Lead or encourage children to provide personal information beyond what personal information would otherwise be reasonably expected to be provided for that online service, product, game or feature.
  - Forego privacy protections.
  - Take any action that the online platform has actual knowledge of or willfully disregards that may result in substantial harm or privacy risk to children.
- Use collected information to estimate age or age range for any other purpose or retain that personal information longer than necessary to estimate age.[38]

Social Media Laws for Children in Other States

In March 2023, Utah became the first state to adopt laws regulating minors' access to social media.[39] Louisiana, Texas, Arkansas, and Ohio soon followed.[40] Connecticut and Ohio, have introduced similar bills.[41]

According to the Utah law, effective March 1, 2024, a social media company must:[42]

- Verify the age of a Utah resident seeking to maintain or open an account.
- Obtain parental consent before minors under 18 can open or maintain their current account.
- Deny access to existing users who do not verify their age within 14 days after attempting to access their account.
- Give a minor's parents or guardians access to all posts, messages, and responses.
- Not display advertising to minors.
- Not allow minors to engage in direct messaging to individuals outside their platform friend group.
- Prohibit minors from accessing their accounts between 10:30 p.m. and 6:30 a.m.

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[38] Section 501.1735, F.S.
[39] *See* ch. 498, Laws of Utah (2023), codifying UTAH CODE s. 13-63.
[40] Act No. 440 (H.B. 61), Laws of La. (2023), codifying LSA-R.S. 9:2717.1; Tex. H.B. 18 (2023), codifying TEX. BUS. & COMM. CODE ss. 509.001 et seq.; Ark. Acts 689 (S.B. 396) (2023), codifying ARK. CODE ss. 4-88.1101 et seq.; Ohio H.B. 33 (2023), codifying OHIO REV. CODE ss. 1349.09 et seq.
[41] Lisa Thomas et al., *The Beehive State Joins the Buzz Around Minors and Social Media*, Dec. 26, 2023, https://www.natlawreview.com/article/beehive-state-joins-buzz-around-minors-and-social-media.
[42] *Id.*

The law has recently been challenged on First Amendment grounds.[43] NetChoice, LLC, an Internet trade association whose members include Facebook, Instagram, Twitter, TikTok, Snapchat, Pinterest, and Nextdoor, claims the provisions amount to an "unconstitutional attempt to regulate both minors' and adults' access to – and ability to engage in – protected expression." The case is still pending.[44]

A case challenging a similar law in Arkansas resulted in the law being preliminarily enjoined, meaning it is not in effect, pending an appeal.[45] The court found that the law placed too high a burden on adults and children attempting to access protected content, and was impermissibly vague as to whom it applies.[46]

Child-Focused Online Privacy Laws

Federal Children's Online Privacy Protection Act (COPPA)

COPPA,[47] and its related rules,[48] regulate websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.[49]

For purposes of COPPA, children are individuals under the age of 13.[50] A covered entity may not collect personal information from a child under the age of 13 without the prior, verifiable consent of his or her parent.[51]

COPPA defines personal information as individually identifiable information about an individual that is collected online, including:[52]

- First and last name.
- A home or other physical address including street name and name of a city or town.
- Online contact information.
- A screen or user name that functions as online contact information.
- A telephone number.
- A social security number.
- A persistent identifier that can be used to recognize a user over time and across different websites or online services.

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[43] *NetChoice, LLC v. Reyes*, Case No. 2:23-cv-00911 (D. Utah December 18, 2023).
[44] Complaint ¶ 2, *NetChoice, LLC v. Reyes*, Case No. 2:23-cv-00911 (D. Utah December 18, 2023), available at https://netchoice.org/wp-content/uploads/2023/12/NetChoice-v-Reyes_Official-Complaint_FINAL-Filed.pdf; *see also* Mack Degeurin, *Tech trade group sues over 'unconstitutional' Utah teen social media curfew law*, Popular Science, Dec. 20, 2023, https://www.popsci.com/technology/lawsuit-utah-teen-social-media-curfew/.
[45] *NetChoice v. Griffin*, 2023 WL 5660155 (W.D. Ark. Aug. 31, 2023).
[46] *Id.*
[47] 15 U.S.C. ss. 6501-6505.
[48] 16 C.F.R. pt. 312.
[49] Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions (last visited Jan. 18, 2024).
[50] *Id.*
[51] 15 U.S.C. §§ 6502(a)-(b).
[52] Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions (last visited Jan. 18, 2024).

- A photograph, video, or audio file, where such file contains a child's image or voice.
- Geolocation information sufficient to identify street name and name of a city or town.
- Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.[53]

Operators covered by the rule must:[54]

- Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children.
- Provide direct notice to parents and obtain verifiable parental consent, with limited exceptions, before collecting personal information online from children.
- Give parents the choice of consenting to the operator's collection and internal use of a child's information, but prohibiting the operator from disclosing that information to third parties (unless disclosure is integral to the site or service, in which case, this must be made clear to parents).
- Provide parents access to their child's personal information to review or have the information deleted.
- Give parents the opportunity to prevent further use or online collection of a child's personal information.
- Maintain the confidentiality, security, and integrity of information they collect from children, including by taking reasonable steps to release such information only to parties capable of maintaining its confidentiality and security.
- Retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use.
- Not condition a child's participation in an online activity on the child providing more information than is reasonably necessary to participate in that activity.[55]

Violations of COPPA are deemed an unfair or deceptive act or practice and are therefore prosecuted by the Federal Trade Commission.[56] While there is no criminal prosecution or private right of action under COPPA, the act authorizes state attorneys general to enforce violations that affect residents of their states.[57]

In 2019, Google and its subsidiary YouTube agreed to pay a $170 million settlement for lawsuits brought by the commission and the state of New York for violations of COPPA for collecting personal information from children without consent. Specifically, it was alleged that YouTube tracked cookies[58] from viewers of child-directed channels, without first notifying parents and

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[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *See id.; see also* 15 U.S.C. s. 6502(c); 16 C.F.R. s. 312.9.
[57] *See* Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions (last visited Jan. 18, 2024).
[58] Cookies are bits of data that are sent to and from a user's browser to identify the user. When the user opens a website, the user's browser sends a piece of data to the web server hosting that website. This data usually appears as strings of numbers and letters in a text file. Every time the user accesses a website, a cookie is created and placed in a temporary folder on the user's device. From here, cookies try to match the user's preferences for what the user wants to read, see, or purchase.

obtaining their consent. YouTube earned millions of dollars by using the identifiers to deliver targeted ads to viewers of these channels.[59]

California Age-Appropriate Design Code Act

In 2022, California passed a combination social media and data privacy law that prohibits social media platforms from showing children advertising. California adopted the California Age-Appropriate Design Code Act (CAADCA)[60] legislation modeled on the United Kingdom's Age Appropriate Design Code,[61] which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.[62] CAADCA covers children under 18 years of age and will be effective July 1, 2024.[63]

More specifically, CAADCA requires certain businesses that provide an online service, product, or feature that is likely to be accessed by children to comply with several new requirements and restrictions, including prohibitions on using:

- Personal information of any child in a way that it knows or has reason to know is materially detrimental to a child's physical or mental health or wellbeing.
- Dark patterns to manipulate children into providing unnecessary personal information.[64]

The law has recently been challenged on several grounds, including on First Amendment and Supremacy Clause grounds, and has been preliminarily enjoined.[65] A similar law has since been adopted in Utah.[66]

European Union - Social Media and Data Privacy Laws for Children

In 2015, the European Union (E.U.) passed a law to require member states to require parental consent for a child to access social media. The E.U. mandates that at a minimum, such parental consent requirements apply to children 13 years of age or younger, and may apply to children 16 years of age or younger.[67]

Additionally, in 2023, the E.U. passed the Digital Services Act (DSA), which became effective on January 1, 2024 and currently applies to 19 of the largest Internet companies, including Meta,

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Microsoft, *Everything you need to know about Internet cookies*, Apr. 25, 2023, https://www.microsoft.com/en-us/edge/learning-center/what-are-cookies?form=MA13I2.

[59] Federal Trade Commission, *Google and YouTube Will Pay Record $170 Million for Alleged Violations of Children's Privacy Law*, Sep. 4, 2019, https://www.ftc.gov/news-events/news/press-releases/2019/09/google-youtube-will-pay-record-170-million-alleged-violations-childrens-privacy-law.

[60] CAL. CIVIL CODE § 1798.99.28-.35.

[61] 5Rights Foundation, *California follows UK lead as child data protection law is passed*, Aug. 30, 2022, https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html.

[62] Press Release, Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, Sept. 15, 2022, https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/.

[63] CAL. CIVIL CODE § 1798.99.28-.35.

[64] Briana Kelly, Nelson Mullins Riley & Scarborough LLP, *State of California Passes Bill to Protect Children Online*, Jan. 26, 2023, https://www.lexology.com/library/detail.aspx?g=e4c49600-b850-4d8f-a68a-117acf89972f.

[65] *NetChoice, LLC v. Bonta*, 2023 WL 6135551 (N.D. Cal 2023).

[66] Ch. 477, Laws of Utah (2023), codifying amendments to UTAH CODE s. 13-63.

[67] Diana Graber, *Europeans Teach Us a Lesson About Banning Teens From Social Media*, HuffPost, Dec. 21, 2015, https://www.huffpost.com/entry/europeans-teach-us-a-less_b_8854802.

Apple, TikTok, and Google. The DSA requires, in part, such companies to prevent harmful content from spreading on their platforms and to share certain internal data with regulators and associated researchers.[68] It also compels them to set up new policies and procedures to remove flagged hate speech, terrorist propaganda, and other material defined as illegal by countries within the E.U.[69]

Age-Verification Mechanisms

Many industries are currently required to use online age-verification methods, including:

- Alcohol and tobacco.[70]
- Gambling.
- Adult websites.
- Firearms.[71]

Adult websites in the U.S. generally use checkboxes for users to confirm that they are at least 18 years of age. Recently, however, several states and the United Kingdom have enacted laws requiring adult websites to use age-verification measures to block adult content from being accessed by minors.[72]

Additionally, some social media platforms ask for age-identifying information to create new accounts, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate to confirm that they are at least 13 years old. Meta is currently testing new ways to verify age, including through the use of biometrics and online interviews.[73]

There are several ways that Internet companies can verify, or attempt to verify, age. Options include using:[74]

- Government identity documents, which generally require users to submit government documents to a third-party company for review.
- Phone records, which generally check users' phones for parental controls.
- Credit score databases, which generally require the user to enter identifying information that is subsequently confirmed through a credit check agency.

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[68] Martin Coulter, *Big Tech braces for EU Digital Services Act regulations,* Reuters, Aug. 24, 2023, https://www.reuters.com/technology/big-tech-braces-roll-out-eus-digital-services-act-2023-08-24/.

[69] Adam Satariano, *E.U. Takes Aim at Social Media's Harms With Landmark New Law,* The New York Times, Apr. 22, 2022, https://www.nytimes.com/2022/04/22/technology/european-union-social-media-law.html.

[70] The U.S. Food and Drug Administration (FDA) recommends using independent, third -party age- and identity-verification services that compare customer information against third-party data sources for online sellers of tobacco. FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)* (April 2020), at 7, available at https://www.fda.gov/media/133880/download.

[71] Jan Stepnov, *What Is an Age Verification System and Why Incorporate It Into Your Business,* Regula, Apr. 21, 2023, https://regulaforensics.com/blog/age-verification-system/.

[72] Masha Borak, *UK introduces Online Safety Bill mandating age verification,* Oct. 27, 2023, https://www.biometricupdate.com/202310/uk-introduces-online-safety-bill-mandating-age-verification; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.

[73] Meta, *Introducing New Ways to Verify Age on Instagram,* Jun. 23, 2022, https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/.

[74] The Age Verification Providers Association, *How do you check age online?,* https://avpassociation.com/avmethods/ (last visited Jan. 18, 2024).

- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires users to supply credit card information for validation.
- Open banking, which generally requires users to log into their own online banking system and give approval for date of birth information to be supplied to a bank-approved, third-party age-verification provider.
- Algorithmic profiling, which generally assesses the likely ages of users based on their online behavior.
- Self-declaration, which generally requires users to check a box or enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to privacy servers and securely share encrypted, anonymous "proofs" of age to a company, through a process called "hashing," without actually transmitting the identity documents to the company.[75]

When verifying age online, people usually share personal information, including:
- Full name and location.
- Email or phone number (when using two-factor authorization).
- Home address.

Identity theft is a potential risk when users reveal this information, and websites can collect information revealed through age-verification processes, and combine it with other data for targeted advertisements or data-sharing with third parties.[76]

However, there are numerous minimally invasive verification techniques that do not require sharing any age-verification information with social media platforms. For example, a trusted third-party could verify the age of a user, and provide a QR code or similar device, to an age-restricted website, thereby establishing the user's age without the platform ever seeing the age-verification documents or the user's identity.[77] Experts assert that age-verification systems have progressed considerably from a generation ago.[78]

Age fabrication is also a widespread issue. For example, underage customers in the U.S. consumed 11.73 percent of all alcoholic drinks sold in the U.S. market in 2016, and 49.8 percent of tobacco and vape shops in California failed to check the identification of underage decoys in 2018.[79]

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[75] Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities,* Blockworks, Oct. 26, 2023, https://blockworks.co/news/zkdecentralized-identity-verification.
[76] John Reynolds, *Don't risk identity fraud just to play that video game – do this instead,* Aleo, Dec. 28, 2023, https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/.
[77] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation,* Aug. 7, 2023, https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation.
[78] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media,* Nov. 20, 2023, https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/.
[79] Persona, *Age verification system: How to add it into your business,* https://withpersona.com/blog/incorporate-age-verification-intobusiness (last visited Jan. 18, 2024).

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.[80] FDUTPA was modeled after the Federal Trade Commission Act.[81]

The Department of Legal Affairs or the state attorney's office in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.[82] The state attorney's office may enforce violations of FDUTPA if the violations take place within its jurisdiction. The department has enforcement authority when: the violation is multi-jurisdictional; the state attorney defers to the department in writing; or the state attorney fails to act within 90 days after a written complaint is filed.[83] In certain circumstances, consumers may also file suit through private actions.[84]

The department and the state attorney's office have powers to investigate FDUTPA claims, which include:[85]

- Administering oaths and affirmations.
- Subpoenaing witnesses or matter.
- Collecting evidence.

The department and the state attorney's office may seek the following remedies:[86]

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to $10,000 per willful violation.

FDUTPA may not be applied to certain entities in certain circumstances, including:[87]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services.
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

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[80] Section 501.202, F.S.
[81] *See* 15 U.S.C. s. 45; *see also* D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[82] Sections 501.203(2) and 501.207(1)(c) and (2), F.S.; *see also* David J. Federbush, *FDUTPA for Civil Antitrust Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. BAR J. 52 (Dec. 2002), available at https://www.floridabar.org/the-florida-bar-journal/fdutpa-for-civil-antitrust-additional-conduct-party-and-geographic-coverage-state-actions-for-consumer-restitution/ (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida).
[83] Section 501.203(2), F.S.
[84] Section 501.211, F.S.
[85] Section 501.206(1), F.S.
[86] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.
[87] Section 501.212(4), F.S.

III. Effect of Proposed Changes:

The bill creates s. 501.1736, F.S., entitled "Age verification for social media platform accounts."

Definitions

The bill defines the following terms as used in the bill:

- "Account holder" means a resident of this state who has or opens an account or creates a profile or other form of identification to use or access a social media platform.
- "Department" means the Department of Legal Affairs.
- "Reasonable age-verification method" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

Additionally, the bill defines "Social media platform" to mean an online forum offered by an entity which has the ability to track the activity of an account holder or user, if such online forum allows an account holder or user to do all of the following:

- Create or use a profile, account, or other form of identification.
- Upload content or view the content or activity of other account holders.
- Interact with or track other account holders or users.

However, the term "social media platform" does not include an online service, website, or application where the predominant or exclusive function is:

- E-mail.
- Direct messaging consisting of text, photos, or videos that are sent between devices by electronic means where messages are shared between the sender and the recipient only, visible to the sender and the recipient, and are not posted publicly.
- A streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service.
- News, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided incidental to, directly related to, or dependent upon provision of the content.
- Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews or display lists or collections of goods for sale or wish lists, or other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders.
- Interactive gaming, virtual gaming, or an online service that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content.
- Photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting.
- A professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic.
- Single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content.

- To provide career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services.
- Business-to-business software.
- A teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real-time communication.
- Shared document collaboration.
- Cloud computing services, which may include cloud storage and shared document collaboration.
- To provide access to or interacting with data visualization platforms, libraries, or hubs.
- To permit comments on a digital news website, if the news content is posted only by the provider of the digital news website.
- To provide or obtain technical support for a platform, product, or service.
- Academic, scholarly, or genealogical research where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider's content.
- A classified ad service that only permits the sale of goods and prohibits the solicitation of personal services or that is used by and under the direction of an educational entity, including:
  - A learning management system.
  - A student engagement program.
  - A subject or skill-specific program.

Regulations

Reasonable Age Verification Requirement

The bill requires social media platforms to use reasonable age-verification methods to verify the age of each account holder on the social media platform at the time a new account is created.

- If an account holder fails to verify his or her age, the social media platform must deny the account. The reasonable age-verification method must be conducted by an independent third party not affiliated with the social media platform.
- Personal identifying information used to verify age may not be retained once the age of an account holder or a person seeking an account has been verified. Any personal identifying information collected to verify age may not be used for any other purpose.

Prohibition on Account Holders under 16 Years of Age

The bill requires social media platforms to prohibit minors who are under 16 years of age from creating new accounts. Moreover, with respect to existing accounts, social media platforms must:

- Terminate any account that is reasonably known by the social media platform to be held by a minor under 16 years of age, and provide a minimum of 90 days for an account holder to dispute such termination by verifying his or her age.
- Allow an existing account holder under 16 years of age to request to terminate the account. Termination must be effective within 5 business days after such request.

- Allow the confirmed parent or guardian of an existing account holder under 16 years of age to request the minor's account be terminated. Termination must be effective within 10 business days after such request.
- Permanently delete all personal information held by the social media platform relating to the terminated account, unless there are legal requirements to maintain such information.

Account Holders between 16 and 17 Years of Age

The bill provides that if a social media platform allows minors under 18 years of age to create an account on the platform, the platform must, on its Internet homepage or platform user login page or through a clearly labeled, conspicuous, and readily accessible link on such homepage or login page:

- Disclose the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are under 18 years of age likely to routinely access the platform without unrelated, confusing, or contradictory materials:
  - The content moderation policies the social media platform uses for content on the platform.
  - Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.
  - Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.
  - Whether the social media platform considers the best interests of platform users who are under 18 years of age when designing, developing, and providing services.
  - The methodology the social media platform uses to consider the best interests of platform users who are under the age of 18 when designing, developing, and providing services.
  - The policies and protections the social media platform uses to protect platform users who are under 18 years of age against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
  - Whether the social media platform collects or sells personal information of platform users who are under 18 years of age, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.
- Provide clear access to the following:
  - Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.
  - Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
- At the time of log-in, and before obtaining access to the platform, require platform users who are under 18 years of age to read and accept a disclaimer which must be in substantially the following form:

  > This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by ...insert platform name... or others for your viewing. This

application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

Enforcement

The bill provides that any violation of the bill's regulations is an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act, solely by the Department of Legal Affairs against the social media platform. If the department has reason to believe that a social media platform is in violation of any of the regulations described in the bill, the department, as the enforcing authority, may bring an action against such platform for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to the bill, the sections of the Act providing for individual remedies under the Act,[88] and for application of the Act,[89] do not apply. In addition to other remedies under the Act, the department may collect a civil penalty of up to $50,000 per violation.

The bill also provides that any social media platform that violates the provisions requiring the termination of "under 16" accounts within a specified time, after being notified to do so by the minor account holder or a confirmed parent or guardian,[90] is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this subsection must be brought within one year after the violation.

Any action brought under either the Act or the previous paragraph may only be brought on behalf of a Florida minor. Additionally, for purposes of bringing an action in accordance with the Act or the previous paragraph, a social media platform that allows a Florida minor under 16 years of age to create an account on the platform is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or carrying on a business, and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

Other Available Remedies at Law or Equity

The bill does not preclude any other available remedy at law or equity.

Authorization to Adopt Rules

The department may adopt rules to implement the bill.

Effective Date

The bill takes effect on July 1, 2024.

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[88] Section 501.211, F.S.
[89] Section 501.212, F.S.
[90] *See* proposed ss. 501.1736(2)(c)2. (within five business days when requested by an account holder under 16 years of age) and (c)3., F.S. (within 10 business days when requested by the confirmed parent or guardian of an account holder under 16 years of age).

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:

Requiring social media platforms and their users to use age-verification presents a complex issue that raises several constitutional concerns. The language in the bill may implicate consideration of a number of constitutional protections.

First Amendment Right to Freedom of Speech

The First Amendment to the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."[91] Generally, "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[92] The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.[93]

In most circumstances, these protections "are no less applicable when government seeks to control the flow of information to minors"[94] as states do not possess "a free-floating power to restrict the ideas to which children may be exposed."[95]

Many of the questions regarding the constitutionality of age-verification laws may concern whether such laws are sufficiently narrow to avoid inhibiting more speech than necessary. The degree of tailoring required may vary depending on whether a given law is content-based or content-neutral. In both circumstances, a law's constitutionality depends on several factors, including the:

- Strength of the government's interest.
- Amount of protected speech that the law directly or indirectly restricts.

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[91] U.S. CONST. amend. I.
[92] *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).
[93] U.S. CONST. amend. XIV; *see also* FLA. CONST., art. I.
[94] *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 (1975).
[95] *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 794 (2011).

- Availability of less speech-restrictive alternatives.[96]

Content-neutral regulations on free speech are legitimate if they advance important governmental interests that are not related to suppression of free speech, do so in a way that is substantially related to those interests, and do not substantially burden more speech than necessary to further those interests.[97]

The U.S. Supreme Court regards content-based laws, which limit communication because of the message it conveys, as presumptively unconstitutional.[98] Such a law may be justified only if the government shows that the law is required to promote a compelling state interest and that the least restrictive means have been chosen to further that articulated interest.[99]

In general, the U.S. Supreme Court has held that requiring adults to prove their age to access certain content is an unconstitutional, content-based limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.[100]

According to Justice O'Connor's *Reno* dissent, because technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the age verification provision was viewed as ultimately unconstitutional; however, she contemplated the possibility that future technological advances may allow for a constitutionally sound age-verification law.[101]

Experts assert that age-verification systems have progressed considerably from a generation ago when the U.S. Supreme Court held that age-verification methods often failed and were too burdensome for law-abiding adults.[102] Currently, there are numerous minimally invasive verification techniques that do not require sharing any age-verification information at all with social media platforms.[103]

Additionally, in determining whether laws requiring age-verification to access social media platforms unconstitutionally restrict free speech, courts have found that even if "the state has the power to enforce parental prohibitions it does not follow that the state

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[96] Eric N. Holmes, Congressional Research Service, *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022, August 17, 2023), available at https://crsreports.congress.gov/product/pdf/LSB/LSB11022.
[97] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).
[98] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).
[99] *Sable Commc's of California, Inc. vs. F.C.C.*, 492 U.S. 115, 126 (1989).
[100] *Reno v. Am. C. L. Union*, 521 U.S. 844, 874 (1997); *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 666 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.
[101] *Reno*, 521 U.S. at 886-91 (O'Connor concurring in part and dissenting in part). The court also considered overbreadth and vagueness arguments, and determined that the Communications Decency Act of 1996 was too broad and vague. *Id.* at 883-84.
[102] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media*, Nov. 20, 2023, https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/; *Reno*, 521 U.S. at 886 (1997); *Ashcroft*, 542 U.S. at 666.
[103] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation*, Aug. 7, 2023, https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation.

has the power to prevent children from hearing or saying anything without their parents' prior consent."[104] Moreover:

> [A]ge-verification requirements are more restrictive than policies enabling or encouraging users (or their parents) to control their own access to information, whether through user-installed devices and filters or affirmative requests to third-party companies. "Filters impose selective restrictions on speech at the receiving end, not universal restrictions at the source." And "[u]nder a filtering regime, adults ... may gain access to speech they have a right to see without having to identify themselves[.]" Similarly, the State could always "act to encourage the use of filters ... by parents" to protect minors.[105]

Contracts Clause

Article I, Section 10 of the U.S. Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts. However, the reach of these protections is "limited to preexisting contracts, unlike due process, which extends to future contracts as well."[106]

State Authority to Regulate to Protect Minors

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[107] In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.[108]

Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[109]

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[104] *NetChoice, LLC v. Yost*, 2024 WL 104336, *8 (S.D. Ohio Jan. 9, 2024) (internal citations and quotations omitted).
[105] *NetChoice, LLC v. Griffin*, 2023 WL 5660155, *21 (W.D. Ark. Aug. 31, 2023) (internal citations omitted).
[106] *Woodstone Ltd. Partn. v. City of Saint Paul, Minnesota*, 2023 WL 3586077, *6 (D. Minnesota May 22, 2023).
[107] *Sable Commc's of California, Inc.*, 492 U.S. at 126.
[108] *Ashcroft*, 542 U.S. at 666; *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004); *but see Erznoznik*, 422 U.S. at 213 (determining that the city's regulation was overly broad).
[109] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Jan. 17, 2024).

Section 230 of the federal Communications Decency Act, in part, specifies that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"[110] and specifically prohibits all inconsistent causes of action and liability imposed under any state or local law.[111]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will result in increased costs for companies operating social media platforms, which will now be required to implement new procedures for age verification, including the use of third-party verification services and the creation of certain disclosures.

C. Government Sector Impact:

The bill may result in an increase in civil penalties collected by the Department of Legal Affairs. It may also result in an increase of regulatory costs to the department, which has been tasked with enforcing the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 501.1736 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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[110] 47 U.S.C. s. 230(c)(1).
[111] 47 U.S.C. s. 230(e)(3).

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

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Grall) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 501.1736, Florida Statutes, is created to read:

501.1736 Social media use for minors.—

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

(a) "Account holder" means a resident of this state who opens an account or creates a profile or is permitted to use any other form of identification to use or access a social media

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12 platform.
13 (b) "Department" means the Department of Legal Affairs.
14 (c) "Reasonable age verification method" means any
15 commercially reasonable method regularly used by government
16 agencies or businesses for the purpose of age and identity
17 verification.
18 (d) "Social media platform:"
19 1. Means an online forum, website, or application offered
20 by an entity that does all of the following:
21 a. Allows the social media platform to track the activity
22 of the account holder.
23 b. Allows an account holder to upload content or view the
24 content or activity of other account holders.
25 c. Allows an account holder to interact with or track other
26 account holders.
27 d. Utilizes addictive, harmful, or deceptive design
28 features, or any other feature that is designed to cause an
29 account holder to have an excessive or compulsive need to use or
30 engage with the social media platform.
31 e. Allows the utilization of information derived from the
32 social media platform's tracking of the activity of an account
33 holder to control or target at least part of the content offered
34 to the account holder.
35 2. Does not include an online service, website, or
36 application where the predominant or exclusive function is:
37 a. Electronic mail.
38 b. Direct messaging consisting of text, photos, or videos
39 that are sent between devices by electronic means where messages
40 are shared between the sender and the recipient only, visible to

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41 the sender and the recipient, and are not posted publicly.
42 c. A streaming service that provides only licensed media in
43 a continuous flow from the service, website, or application to
44 the end user and does not obtain a license to the media from a
45 user or account holder by agreement to its terms of service.
46 d. News, sports, entertainment, or other content that is
47 preselected by the provider and not user generated, and any
48 chat, comment, or interactive functionality that is provided
49 incidental to, directly related to, or dependent upon provision
50 of the content.
51 e. Online shopping or e-commerce, if the interaction with
52 other users or account holders is generally limited to the
53 ability to upload a post and comment on reviews or display lists
54 or collections of goods for sale or wish lists, or other
55 functions that are focused on online shopping or e-commerce
56 rather than interaction between users or account holders.
57 f. Interactive gaming, virtual gaming, or an online
58 service, that allows the creation and uploading of content for
59 the purpose of interactive gaming, edutainment, or associated
60 entertainment, and the communication related to that content.
61 g. Photo editing that has an associated photo hosting
62 service, if the interaction with other users or account holders
63 is generally limited to liking or commenting.
64 h. A professional creative network for showcasing and
65 discovering artistic content, if the content is required to be
66 non-pornographic.
67 i. Single-purpose community groups for public safety if the
68 interaction with other users or account holders is generally
69 limited to that single purpose and the community group has

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70 guidelines or policies against illegal content.
71 j. To provide career development opportunities, including
72 professional networking, job skills, learning certifications,
73 and job posting and application services.
74 k. Business to business software.
75 l. A teleconferencing or videoconferencing service that
76 allows reception and transmission of audio and video signals for
77 real time communication.
78 m. Shared document collaboration.
79 n. Cloud computing services, which may include cloud
80 storage and shared document collaboration.
81 o. To provide access to or interacting with data
82 visualization platforms, libraries, or hubs.
83 p. To permit comments on a digital news website, if the
84 news content is posted only by the provider of the digital news
85 website.
86 q. To provide or obtain technical support for a platform,
87 product, or service.
88 r. Academic, scholarly, or genealogical research where the
89 majority of the content that is posted or created is posted or
90 created by the provider of the online service, website, or
91 application and the ability to chat, comment, or interact with
92 other users is directly related to the provider’s content.
93 s. A classified ad service that only permits the sale of
94 goods and prohibits the solicitation of personal services or
95 that is used by and under the direction of an educational
96 entity, including:
97 (I) A learning management system;
98 (II) A student engagement program; and

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99 (III) A subject or skill-specific program.
100 (2) A social media platform shall do all of the following:
101 (a) Prohibit a minor who is younger than 16 years of age
102 from entering into a contract with a social media platform to
103 become an account holder.
104 (b)1. Use reasonable age verification methods to verify the
105 age of each account holder on the social media platform at the
106 time a new account is created. If an account holder fails to
107 verify his or her age, the social media platform must deny the
108 account. The reasonable age verification method must be
109 conducted by a nongovernmental, independent third party that is
110 not affiliated with the social media platform and is organized
111 under the laws of a state of the United States and has its
112 principal place of business in a state of the United States.
113 2. Personal identifying information used to verify age may
114 not be retained once the age of an account holder or a person
115 seeking an account has been verified. Any personal identifying
116 information collected to verify age may not be used for any
117 other purpose.
118 (c) For existing accounts:
119 1. Terminate any account that is reasonably known by the
120 social media platform to be held by a minor younger than 16
121 years of age and provide a minimum of 90 days for an account
122 holder to dispute such termination by verifying his or her age.
123 2. Allow an account holder younger than 16 years of age to
124 request to terminate the account. Termination must be effective
125 within 5 business days after such request.
126 3. Allow the confirmed parent or guardian of an account
127 holder younger than 16 years of age to request the minor’s

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128 account be terminated. Termination must be effective within 10
129 business days after such request.
130 4. Permanently delete all personal information held by the
131 social media platform relating to the terminated account, unless
132 there are legal requirements to maintain such information.
133 (3) Any violation of subsection (2) is an unfair and
134 deceptive trade practice actionable under part II of this
135 chapter solely by the department against a social media
136 platform. If the department has reason to believe that a social
137 media platform is in violation of subsection (2), the
138 department, as the enforcing authority, may bring an action
139 against such platform for an unfair or deceptive act or
140 practice. For the purpose of bringing an action pursuant to this
141 section, ss. 501.211 and 501.212 do not apply. In addition to
142 other remedies under part II of this chapter, the department may
143 collect a civil penalty of up to $50,000 per violation.
144 (4)(a) A social media platform that violates subparagraph
145 (2)(c)2. or subparagraph (2)(c)3. for failing to terminate an
146 account within the required time after being notified to do so
147 by the minor account holder or a confirmed parent or guardian is
148 liable to such Florida minor for such access, including court
149 costs and reasonable attorney fees as ordered by the court.
150 Claimants may be awarded up to $10,000 in damages.
151 (b) A civil action for a claim under this subsection must
152 be brought within 1 year after the violation.
153 (5) Any action brought under subsection (3) or subsection
154 (4) may only be brought on behalf of a Florida minor.
155 (6) For purposes of bringing an action in accordance with
156 subsections (3) and (4), a social media platform that allows a

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157 Florida minor younger than 16 years of age to create an account
158 on such platform is considered to be both engaged in substantial
159 and not isolated activities within this state and operating,
160 conducting, engaging in, or carrying on a business, and doing
161 business in this state and is therefore subject to the
162 jurisdiction of the courts of this state.
163 (7) If a social media platform allows the account holder to
164 use the social media platform, the parties have entered into a
165 contract.
166 (8) This section does not preclude any other available
167 remedy at law or equity.
168 (9) The department may adopt rules to implement this
169 section.
170 Section 2. This act shall take effect July 1, 2024.
171
172 ========== T I T L E A M E N D M E N T ==========
173 And the title is amended as follows:
174 Delete everything before the enacting clause
175 and insert:
176 A bill to be entitled
177 An act relating to social media use for minors;
178 creating s. 501.1736, F.S.; providing definitions;
179 requiring social media platforms to prohibit certain
180 minors from creating new accounts, to terminate
181 certain accounts and provide additional options for
182 termination of such accounts, and to use reasonable
183 age verification methods to verify the ages of account
184 holders; authorizing the Department of Legal Affairs
185 to bring actions for violations under the Florida

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186 Deceptive and Unfair Trade Practices Act; providing
187 penalties; providing for private causes of actions;
188 providing that certain social media platforms are
189 subject to the jurisdiction of state courts; providing
190 that if a social media platform allows an account
191 holder to use such platform, the parties have entered
192 into a contract; providing construction; authorizing
193 the department to adopt rules; providing an effective
194 date.

By Senator Grall

29-01310B-24 20241788__

A bill to be entitled

An act relating to age verification for social media platform accounts; creating s. 501.1736, F.S.; defining terms; requiring social media platforms to prohibit certain minors from creating new accounts, use reasonable age-verification methods to verify the ages of account holders, to terminate certain accounts and provide additional options for termination of such accounts, and to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing the Department of Legal Affairs to bring actions for violations under the Florida Deceptive and Unfair Trade Practices Act; providing penalties; providing for private causes of actions; providing that certain social media platforms are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 501.1736, Florida Statutes, is created to read:

501.1736 Age verification for social media platform accounts.—

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

(a) "Account holder" means a resident of this state who has or opens an account or creates a profile or other form of identification to use or access a social media platform.

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

29-01310B-24 20241788__

(b) "Department" means the Department of Legal Affairs.

(c) "Reasonable age-verification method" means any commercially reasonable method regularly used by government agencies or businesses for the purpose of age and identity verification.

(d) "Social media platform":

1. Means an online forum offered by an entity which has the ability to track the activity of an account holder or user, if such online forum allows an account holder or user to do all of the following:

a. Create or use a profile, account, or other form of identification.

b. Upload content or view the content or activity of other account holders.

c. Interact with or track other account holders or users.

2. Does not include an online service, website, or application where the predominant or exclusive function is:

a. E-mail.

b. Direct messaging consisting of text, photos, or videos that are sent between devices by electronic means where messages are shared between the sender and the recipient only, visible to the sender and the recipient, and are not posted publicly.

c. A streaming service that provides only licensed media in a continuous flow from the service, website, or application to the end user and does not obtain a license to the media from a user or account holder by agreement to its terms of service.

d. News, sports, entertainment, or other content that is preselected by the provider and not user generated, and any chat, comment, or interactive functionality that is provided

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

incidental to, directly related to, or dependent upon provision of the content.

e. Online shopping or e-commerce, if the interaction with other users or account holders is generally limited to the ability to upload a post and comment on reviews or display lists or collections of goods for sale or wish lists, or other functions that are focused on online shopping or e-commerce rather than interaction between users or account holders.

f. Interactive gaming, virtual gaming, or an online service that allows the creation and uploading of content for the purpose of interactive gaming, edutainment, or associated entertainment, and the communication related to that content.

g. Photo editing that has an associated photo hosting service, if the interaction with other users or account holders is generally limited to liking or commenting.

h. A professional creative network for showcasing and discovering artistic content, if the content is required to be non-pornographic.

i. Single-purpose community groups for public safety if the interaction with other users or account holders is generally limited to that single purpose and the community group has guidelines or policies against illegal content.

j. To provide career development opportunities, including professional networking, job skills, learning certifications, and job posting and application services.

k. Business-to-business software.

l. A teleconferencing or videoconferencing service that allows reception and transmission of audio and video signals for real time communication.

m. Shared document collaboration.

n. Cloud computing services, which may include cloud storage and shared document collaboration.

o. To provide access to or interacting with data visualization platforms, libraries, or hubs.

p. To permit comments on a digital news website, if the news content is posted only by the provider of the digital news website.

q. To provide or obtain technical support for a platform, product, or service.

r. Academic, scholarly, or genealogical research where the majority of the content that is posted or created is posted or created by the provider of the online service, website, or application and the ability to chat, comment, or interact with other users is directly related to the provider's content.

s. A classified ad service that only permits the sale of goods and prohibits the solicitation of personal services or that is used by and under the direction of an educational entity, including:

(I) A learning management system;

(II) A student engagement program; and

(III) A subject or skill-specific program.

(2) A social media platform shall do all of the following:

(a) Prohibit a minor who is under 16 years of age from creating a new account on the social media platform.

(b) Use reasonable age-verification methods to verify the age of each account holder on the social media platform at the time a new account is created.

1. If an account holder fails to verify his or her age, the

117 social media platform must deny the account. The reasonable age-
118 verification method must be conducted by an independent, third
119 party not affiliated with the social media platform.
120 2. Personal identifying information used to verify age may
121 not be retained once the age of an account holder or a person
122 seeking an account has been verified. Any personal identifying
123 information collected to verify age may not be used for any
124 other purpose.
125 (c) For existing accounts:
126 1. Terminate any account that is reasonably known by the
127 social media platform to be held by a minor under 16 years of
128 age, and provide a minimum of 90 days for an account holder to
129 dispute such termination by verifying his or her age.
130 2. Allow an existing account holder under 16 years of age
131 to request to terminate the account. Termination must be
132 effective within 5 business days after such request.
133 3. Allow the confirmed parent or guardian of an existing
134 account holder under 16 years of age to request the minor's
135 account be terminated. Termination must be effective within 10
136 business days after such request.
137 4. Permanently delete all personal information held by the
138 social media platform relating to the terminated account, unless
139 there are legal requirements to maintain such information.
140 (d) If the social media platform allows minors under 18
141 years of age to create an account on the platform, the platform
142 must, on its Internet homepage or platform user login page or
143 through a clearly labeled, conspicuous, and readily accessible
144 link on such homepage or login page:
145 1. Disclose the following social media platform policies in

146 a manner that is clearly, concisely, prominently, and
147 understandably written using language suited to the age of users
148 who are under 18 years of age likely to routinely access the
149 platform without unrelated, confusing, or contradictory
150 materials:
151 a. The content moderation policies the social media
152 platform uses for content on the platform.
153 b. Whether the social media platform uses or allows the use
154 of addictive design or deceptive pattern features, including
155 autoplay or infinite scroll.
156 c. Whether the social media platform allows manipulated
157 photographs or digital images to be shared on the platform.
158 d. Whether the social media platform considers the best
159 interests of platform users who are under 18 years of age when
160 designing, developing, and providing services.
161 e. The methodology the social media platform uses to
162 consider the best interests of platform users who are under the
163 age of 18 when designing, developing, and providing services.
164 f. The policies and protections the social media platform
165 uses to protect platform users who are under 18 years of age
166 against harmful behaviors, such as bullying, harassment, and
167 threats of violence or self-harm.
168 g. Whether the social media platform collects or sells
169 personal information of platform users who are under 18 years of
170 age, including personal identifiers, biometrics, and geolocation
171 data. If such personal information is collected, the platform
172 must disclose the type of personal information collected and the
173 purpose of such collection. If such personal information is
174 sold, the platform must disclose to whom the information is

175 sold.
176 2. Provide clear access to the following:
177 a. Zip code-based references to local resources for law
178 enforcement, suicide prevention, and domestic violence
179 prevention services.
180 b. Reporting mechanisms related to harmful behaviors, such
181 as bullying, harassment, and threats of violence or self-harm.
182 3. At the time of log-in, and before obtaining access to
183 the platform, require platform users who are under 18 years of
184 age to read and accept a disclaimer which must be in
185 substantially the following form:
186
187 This application may be harmful to your mental health
188 and may use design features that have addictive
189 qualities or present unverified information or that
190 may be manipulated by ...insert platform name... or
191 others for your viewing. This application may also
192 collect your personal data to further manipulate your
193 viewable content and may share your personal data with
194 others.
195
196 (3) Any violation of subsection (2) is an unfair and
197 deceptive trade practice actionable under part II of this
198 chapter solely by the department against a social media
199 platform. If the department has reason to believe that a social
200 media platform is in violation of subsection (2), the
201 department, as the enforcing authority, may bring an action
202 against such platform for an unfair or deceptive act or
203 practice. For the purpose of bringing an action pursuant to this

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204 section, ss. 501.211 and 501.212 do not apply. In addition to
205 other remedies under part II of this chapter, the department may
206 collect a civil penalty of up to $50,000 per violation.
207 (4)(a) A social media platform that violates subparagraph
208 (2)(c)2. or subparagraph (2)(c)3. for failing to terminate an
209 account within the required time after being notified to do so
210 by the minor account holder or a confirmed parent or guardian is
211 liable to such Florida minor for such access, including court
212 costs and reasonable attorney fees as ordered by the court.
213 Claimants may be awarded up to $10,000 in damages.
214 (b) A civil action for a claim under this subsection must
215 be brought within 1 year after the violation.
216 (5) Any action brought under subsection (3) or subsection
217 (4) may only be brought on behalf of a Florida minor.
218 (6) For purposes of bringing an action in accordance with
219 subsections (3) and (4), a social media platform that allows a
220 Florida minor under 16 years of age to create an account on such
221 platform is considered to be both engaged in substantial and not
222 isolated activities within this state and operating, conducting,
223 engaging in, or carrying on a business, and doing business in
224 this state and is therefore subject to the jurisdiction of the
225 courts of this state.
226 (7) This section does not preclude any other available
227 remedy at law or equity.
228 (8) The department may adopt rules to implement this
229 section.
230 Section 2. This act shall take effect July 1, 2024.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1790

INTRODUCER: Senator Grall

SUBJECT: Public Records/Investigations by the Department of Legal Affairs

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			FP	

I. Summary:

SB 1790 exempts from public records copying and inspection requirements certain information received by the Department of Legal Affairs in connection with its enforcement obligations under SB 1788[1] or similar legislation during the 2024 Regular Session.

Specifically, the bill exempts, from the public records requirements in s. 119.07(1), F.S. and Art. I, s. 24(a) of the State Constitution, all information received by the department, either pursuant to a notification of violation of the new statute created by SB 1788,[2] or pursuant to an investigation by the department or a law enforcement agency of a violation of the new statute, until such time as the investigation is completed or ceases to be active.

The bill provides that during an active investigation, certain information made confidential and exempt by the bill may be disclosed by the department. It also provides that upon completion of an investigation, or once an investigation ceases to be active, certain information received by the department must remain confidential and exempt from the public disclosure requirements, including the "proprietary information" of social media platforms as defined in the bill.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on the same date that SB 1788 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

[1] The purpose of SB 1788 is to regulate social media platforms and their use by minors.
[2] Section 501.1736, F.S.

II. Present Situation:

Access to Public Records – Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[3] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[4]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.[5] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[6] Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[7]

Section 119.011(12), F.S., defines "public records" to include:

> [a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[8]

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[3] FLA. CONST. art. I, s. 24(a).
[4] *Id*. *See also*, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).
[5] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).
[6] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[7] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[8] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[11] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[12]

General exemptions from the public records requirements are contained in the Public Records Act.[13] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[14]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[15] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[16] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[17]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[18] (the Act), prescribe a legislative review process for newly created or substantially amended[19] public records or open meetings exemptions, with specified exceptions.[20] The Act requires the repeal of

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[9] Section 119.07(1)(a), F.S.
[10] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[11] FLA. CONST. art. I, s. 24(c).
[12] *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[13] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[14] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[15] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[16] *Id.*
[17] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[18] Section 119.15, F.S.
[19] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[20] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[21]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[22] An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[23]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[24] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[25]

The Act also requires specified questions to be considered during the review process.[26] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.[27] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[28]

Public Records Exemptions for Active Criminal Intelligence Information and Criminal Investigative Information

Provisions in s. 119.071(2)(c), F.S., exempt from public disclosure active criminal intelligence information and criminal investigative information.

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[21] Section 119.15(3), F.S.
[22] Section 119.15(6)(b), F.S.
[23] Section 119.15(6)(b)1., F.S.
[24] Section 119.15(6)(b)2., F.S.
[25] Section 119.15(6)(b)3., F.S.
[26] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[27] *See generally* s. 119.15, F.S.
[28] Section 119.15(7), F.S.

"Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.[29] Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.[30]

"Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.[31] Criminal intelligence information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.[32]

Additionally, criminal intelligence and criminal investigative information are considered "active" while such information is directly related to pending prosecutions or appeals,[33] but not if relating to cases which are barred from prosecution under an applicable statute of limitation.[34]

Six categories of criminal intelligence and criminal investigative information are expressly excluded from the exemption.[35] These categories are:[36]

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime, except as otherwise provided.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided, and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the enumerated provision[37] until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments, except[38] as provided.

[29] Section 119.011(3)(a), F.S.
[30] Section 119.011(3)(d)1., F.S.
[31] Section 119.011(3)(b), F.S.
[32] Section 119.011(3)(d)2., F.S.
[33] *Id.*
[34] *See, e.g.,* s. 775.15, F.S.
[35] *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683, 686 (S.D. Fla. 1990).
[36] Section 119.011(3)(c), F.S.
[37] Section 119.07(1), F.S.
[38] Section 905.26, F.S.

Under the Public Records Act, public records of a governmental entity do not transform into protected criminal investigative information merely because they have been transferred to a law enforcement agency.[39]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 501.1736, F.S., as created by SB 1788 or similar legislation during the 2024 Regular Session, to include a new subsection (9) exempting all information received by the Department of Legal Affairs, either pursuant to a notification of violation of s. 501.1736, F.S., or pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.1736, F.S., from the public disclosure requirements[40] until such time as the investigation is completed or ceases to be active. This exemption must be construed in conformity with s. 119.071(2)(c), F.S.

The bill provides that during an active investigation, information made confidential and exempt pursuant to the bill may be disclosed by the department:

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast, if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or an improper use or disposal of customer records, except that information made confidential and exempt by the following paragraph may not be released pursuant to this paragraph.
- To another governmental entity in the furtherance of its official duties and responsibilities.

The bill also provides that upon completion of an investigation, or once an investigation ceases to be active, the following information received by the department must remain confidential and exempt from the public disclosure requirements:

- All information to which another public records exemption applies.
- Personal information.
- A computer forensic report.
- Information that would otherwise reveal weaknesses in the data security of a social media platform.
- Information that would disclose the proprietary information of a social media platform.

For purposes of s. 501.1736(9), F.S., the term "proprietary information" means information that:

- Is owned or controlled by the social media platform.
- Is intended to be private and is treated by the social media platform as private because disclosure would harm the social media platform or its business operations.
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.
- Includes:

[39] *State Attorney's Office of Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205, 212 (Fla. 4th DCA 2018).
[40] *See* s. 119.07(1), F.S.; FLA. CONST. art I, s. 24(a).

- Trade secrets as defined in state law.[41]
- Competitive interests, the disclosure of which would impair the competitive advantage of the social media platform which is the subject of the information.

The bill provides that s. 501.1736, F.S.,[42] is subject to the Open Government Sunset Review Act[43] and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill provides the public necessity statement, as required by the State Constitution.

The statement provides that it is a public necessity that all information received by the department pursuant to a notification of a violation of s. 501.1736, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, be made confidential and exempt from the public disclosure requirements for the following reasons:

- A notification of a violation of s. 501.1736, F.S., may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer the statute. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.
- Release of information to which another public records exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.
- An investigation of a violation of s. 501.1736, F.S., is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.
- Notices received by the department and information received during an investigation of a violation of s. 501.1736, F.S., are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the social media platform. Release of such information could give business competitors an unfair advantage.
- Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a social media platform. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the social media platform and be used to harm the social media platform and clients.

[41] Section 688.002, F.S.
[42] *See* s. VI. Technical Deficiencies, *infra.*
[43] *See* s. 119.15, F.S.

- The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of a violation of s. 501.1736, F.S., could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3 of the bill provides that it takes effect on the same date that SB 1788 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1788 takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for all information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1736, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as the investigation is completed or ceases to be active; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the new law is to regulate social media platforms and their use by minors. This bill exempts only information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1736, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as related investigations are completed or

cease to be active, from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may have a minimal negative fiscal impact on the Department of Legal Affairs personnel, because staff responsible for complying with public record requests may require training related to the new public record exemption. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

The final paragraph in Section 1 of the bill, which is paragraph (e) (lines 72-75 of the bill), provides that "[t]his section" is subject to the Open Government Sunset Review Act; however, this provision should reference the subsection (*i.e.*, subsection (9)), not the entire section (*i.e.*, s. 501.1736, F.S.).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.1736 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Grall

29-01311B-24 20241790__

A bill to be entitled

An act relating to public records; amending s. 501.1736, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; defining the term "proprietary information"; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (9) is added to section 501.1736, Florida Statutes, as created by SB 1788 or similar legislation, 2024 Regular Session, to read:

501.1736 Age verification for social media platform accounts.—

(9)(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be

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disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of a social media platform.

5. Information that would disclose the proprietary information of a social media platform.

(d) For purposes of this section, the term "proprietary information" means information that:

1. Is owned or controlled by the social media platform.

2. Is intended to be private and is treated by the social

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media platform as private because disclosure would harm the social media platform or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the social media platform who is the subject of the information.

(e) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1736, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1736, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart

the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1736, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information to which another public records exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.

(3) An investigation of a violation of s. 501.1736, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.1736, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the social media platform. Release of such information could give business competitors an unfair advantage.

117 (5) Information received by the department may contain a
118 computer forensic report or information that could reveal
119 weaknesses in the data security of a social media platform. The
120 release of this information could result in the identification
121 of vulnerabilities in the cybersecurity system of the social
122 media platform and be used to harm the social media platform and
123 clients.
124 (6) The harm that may result from the release of
125 information received by the department pursuant to a
126 notification or investigation by the department or a law
127 enforcement agency of a violation of s. 501.1736, Florida
128 Statutes, could impair the effective and efficient
129 administration of the investigation and thus, outweighs the
130 public benefit that may be derived from the disclosure of the
131 information.
132 Section 3. This act shall take effect on the same date that
133 SB 1788 or similar legislation takes effect, if such legislation
134 is adopted in the same legislative session or an extension
135 thereof and becomes a law.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 476

INTRODUCER: Senator Grall

SUBJECT: Civil Liability

DATE: Febuary 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			FP	
3.			RC	

I. Summary:

SB 476 expands Florida's Wrongful Death Act to allow the parents of an unborn child to recover noneconomic damages for mental pain and suffering from a person who is responsible for the death of the unborn child. The parents may also recover medical and funeral expenses unless the death was the result of medical negligence.

The bill is effective July 1, 2024.

II. Present Situation:

Most of the state's tort law is derived from the common law. At common law, there was no right to recover for the negligent wrongful death of another person.[1] Over time, however, the Legislature authorized recoveries for wrongful death and expanded the types of damages recoverable and the classes of survivors entitled to recover. "Because wrongful death actions did not exist at common law, all claims for wrongful death are created and limited by Florida's Wrongful Death Act."[2]

History of Wrongful Death Actions

The early versions of the state's wrongful death laws limited the right to recover damages to a surviving spouse, surviving children if there was no surviving spouse, those dependent upon the decedent for support if there was no one belonging to the prior two classes, and finally the executor of the decedent's estate if there was no one belonging to the prior three classes.[3] In order to show dependence on the decedent, a claimant had to show that he or she was a minor,

[1] *Louisville & Nashville Railroad Co. v. Jones*, 45 Fla. 407, 416 (Fla. 1903).
[2] *Chinghina v. Racik*, 647 So. 2d 289, 290 (Fla. 4th DCA 1994).
[3] *Duval v. Hunt*, 34 Fla. 85 (Fla. 1894) (discussing a wrongful death statute enacted in 1883).

physically or mentally disabled, or elderly.[4] Adults who were mentally and physically capable of providing for themselves could not recover despite having been supported by the decedent.[5] Any damages recoverable were limited to a form of economic damages.

The wrongful death law was substantially re-written in 1972.[6] That law created the Florida Wrongful Death Act, which provides the framework for current law. One of the major changes made by this law was to consolidate or merge survival and wrongful death actions.[7] A survival action is a legal action allowed under the survival statute to continue notwithstanding the plaintiff's death. As merged, the 1972 law allowed the statutory survivors to recover damages for their pain and suffering as a substitute for recoveries for the decedent's pain and suffering under the survival statute.[8]

The type of damages that a survivor is entitled to, under the 1972 law, depends upon the classification of the survivor. The 1972 law allows all survivors to recover the value of lost support and services, a type of economic damages. A surviving spouse may also recover loss of marital companionship and pain and suffering, types of noneconomic damages. Minor children, then defined as under age 21[9] and unmarried, may also recover loss of parental companionship and pain and suffering. The parents of a deceased minor child may also recover pain and suffering. Any survivor who paid them may recover final medical, funeral and burial expenses. The estate of the decedent may recover lost earnings from date of injury to date of death, plus net accumulations, which is essentially an estimate of the present value of the future estate that would have been available for inheritance.

A 1981 act expanded the definition of "minor children" to include all children of the decedent under age 25, regardless of whether such child is married or dependent.[10] The statutes did not authorize a wrongful death action by a nondependent, adult child for the loss of a parent or an action by a parent for the loss of an adult child.[11]

In 1990, the Legislature generally expanded the class of survivors entitled to recover damages for pain and suffering for a wrongful death.[12] As expanded, a decedent's adult children may recover damages for pain and suffering if there is no surviving spouse. The parents of an adult decedent may also recover damages for pain and suffering if there is no surviving spouse or surviving minor or adult children.[13]

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[4] *Id.* at 101-102.
[5] The Court interpreted the dependency requirement in the statute as requiring a person to have a genuine inability to support himself or herself based on the view that strong, healthy adults who are capable of earning a livelihood should not be content to "live in idleness upon the fruits of [another's] labor." *Id.* at 101.
[6] Chapter 72-35, Laws of Fla.
[7] *Sheffield v. R.J. Reynolds Tobacco Co*., 329 So. 3d 114, 121 (Fla. 2021).
[8] *Martin v. United Sec. Services, Inc.*, 314 So. 2d 765, 767 (Fla. 1975).
[9] Florida changed the age of majority from 21 to 18 in the following year, but that act did not change the reference to age 21 in the wrongful death law. Section 743.07, F.S.; chapter 73-21, Laws of Florida.
[10] Chapter 81-183, Laws of Fla.
[11] *Mizrahi v. North Miami Medical Center, Ltd.*, 761 So. 2d 1040, 1042 (Fla. 2000).
[12] Chapter 90-14, Laws of Fla.
[13] *Id.* (amending s. 768.18(3) and (4), F.S.). The adult children were also authorized by the 1990 law to recover noneconomic damages for lost parental companionship, instruction, and guidance.

Wrongful Death Actions for the Death of an Unborn Child

In 1978 the Florida Supreme Court held that an unborn fetus is not a "person" for purposes of Florida's Wrongful Death Act (Act).[14] Thus, when a person causes the death of an unborn child, the child's parents cannot recover civil damages under the Act for the death.[15]

In 1997 the Florida Supreme Court reiterated that "there is no cause of action under Florida's Wrongful Death Act for the death of a stillborn fetus."[16] However, in that same case, the Court recognized a common law action for "negligent stillbirth." The Court emphasized that the damages recoverable in such action are limited to mental pain and anguish and medical expenses incurred incident to the pregnancy, and that such legal action is different from an action under the Wrongful Death Act, as follows:

> A suit for negligent stillbirth is a direct common law action by the parents which is different in kind from a wrongful death action. The former is directed toward the death of a fetus while the latter is applicable to the death of a living person. As contrasted to the damages recoverable by parents under the wrongful death statute, the damages recoverable in an action for negligent stillbirth would be limited to mental pain and anguish and medical expenses incurred incident to the pregnancy.[17]

Therefore, Florida allows a limited recovery of damages for negligent stillbirth, but it does not recognize a cause of action for wrongful death based on the death of an unborn child.

Florida remains one of six states, including California and New York,[18] that currently do not recognize a cause of action for the wrongful death of an unborn child.[19] Forty-three states currently have some form of cause of action for the wrongful death of an unborn child. These statutes condition recovery based on the viability[20] of the child in question.[21]

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[14] *Duncan v. Flynn*, 358 So. 2d 178 (Fla. 1978).
[15] *Singleton v. Ranz*, 534 So. 2d 847 (Fla. 5th DCA 1988)(citing *Duncan v. Flynn*, 358 So. 2d 178 (Fla. 1978)).
[16] *Tanner v. Hartog*, 696 So. 2d 705, 706 (Fla. 1997).
[17] *Tanner*, 696 So. 2d at 708-09.
[18] *Rosales v. Northeast Community Clinic*, B276465, 2018 WL 1633068, at *2 (Cal. Ct. App. Apr. 5, 2018); *Endresz v. Friedberg*, 24 N.Y. 2d 478, 484 (N.Y. 1969).
[19] *Stern v. Miller*, 348 So. 2d 303, 307–08 (Fla. 1977); The three other states include Iowa, Maine, and New Jersey. *Dunn v. Rose Way, Inc.*, 333 N.W. 2d 830, 831 (Iowa 1983); *Shaw v. Jendzejec*, 717 A.2d 367, 371 (Me. 1998); *Giardina v. Bennett*, 111 N.J. 412, 421–25 (N.J. 1988).
[20] "Viability" is the ability of a developing fetus to survive independent of a pregnant woman's womb. Elizabeth Chloe Romanis, *Is "viability" viable? Abortion, conceptual confusion and the law in England and Wales and the United States*, 7 J. Law. Biosci. (Jan.-Dec. 2020).
[21] Only Wyoming remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.

Fifteen states afford a cause of action for the wrongful death of an unborn child at any stage of development.[22] Several of these states, however, provide an exception so that the mother cannot be sued for the wrongful death of her unborn child.[23]

Three states, including Connecticut,[24] Georgia,[25] and Mississippi,[26] allow a wrongful death action to be brought on behalf of an unborn child if the quickening standard is met, which requires fetal movement to have been detected prior to death.[27]

Twenty-five states allow a cause of action for the wrongful death of an unborn child under a viability standard, which examines whether an unborn child can exist independently outside of the mother's womb.[28] Of these 25 states, one state, Indiana, expressly prohibits a wrongful death action if the death of an unborn child is the result of a lawful abortion.[29]

Finally, one state, Wyoming, remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.[30]

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[22] Alabama (*Hamilton v. Scott*, 97 So. 3d 728 (Ala. 2012); *Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011)); Alaska (Alaska Stat. Ann. § 09.55.585); Arkansas (Ark. Code Ann. § 15-62-102); Illinois (740 Ill. Comp. Stat. Ann. 180/2.2); Kansas (Kan. Stat. Ann. § 60-1901); Louisiana (Louisiana Civil Code Art. 26); Michigan (Mich. Comp. Laws Ann. § 600.2922a); Missouri (Mo. Ann. Stat. § 1.205); Nebraska (Neb. Rev. Stat. § 30-809); Oklahoma (12 Okl. St. Ann. § 1053, OK ST T. 12 § 1053; *Pino v. United States*, 2008 OK 26, 183 P.3d 1001); South Dakota (S.D. Codified Laws §21-5-1); Texas (Tex. Civ. Prac. & Rem. Code § 71.002); Utah (*Carranza v. United States*, 2011 UT 80, 267 P.3d 912); Virginia (Va. Code. Ann. §§8.01-50); West Virginia (*Farley v. Sarti*, 195 W. Va. 671, 681 (1995)).

[23] *See* Kan. Stat. Ann. § 60-1901; Tex. Civ. Prac. & Rem. Code § 71.003.

[24] *Elderkin v. Mahoney*, No. No. CV156056191, 2017 WL 5178583 (Conn. Super. Ct. Sept. 28, 2017).

[25] *Porter v. Lassiter*, 91 Ga. App. 712 (1955); *Shirley v. Bacon*, 154 Ga. App. 203 (1980).

[26] Miss. Code Ann. § 11-7-13 (2018).

[27] Romanis, *supra*, note 20.

[28] Arizona (*Summerfield v. Superior Ct. in and for Maricopa County*, 144 Ariz. 467 (Ariz. 1985)); Colorado (*Gonzales v. Mascarenas*, 190 P. 3d 826 (Colo. App. 2008)); Delaware (*Worgan v. Greggo & Ferrera, Inc.*, 50 Del. 258 (Del. Super. Ct. 1956)); Hawaii (*Hawaii Castro v. Melchor*, 137 Hawai'i 179 (Haw. Ct. App. 2016); Idaho (*Volk v. Baldazo*, 103 Idaho 570 (Idaho 1982); Indiana (Ind. Code Ann. §34-23-2-1(b)); Kentucky (*Stevens v. Flynn*, No. 2010-CA-00196-MR, 2011 WL 3207952 (Ky. Ct. App. July 29,2011); Maryland (*Brown v. Contemporary OB/GYN Assocs.*, 143 Md. App. 199 (Md. Ct. Spec. App. 2002); Md. Code Ann., Cts. & Jud. Proc. §§ 3-902, 3-904); Massachusetts (*Thibert v. Milka*, 419 Mass. 693 (Mass. 1995)); Minnesota (*Pehrson v. Kistner*, 301 Minn. 299 (Minn. 1974)); Montana (*Blackburn v. Blue Mt. Women's Clinic*, 286 Mont. 60 (Mont.1997)); Nevada (*White v. Yup*, 85 Nev. 527 (Nev. 1969)); New Hampshire (*Wallace v. Wallace*, 120 N.H. 675 (N.H. 1980)); New Mexico (*Miller v. Kirk*, 120 N.M. 654 (N.M. 1995)); North Carolina (*DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489 (1987)); North Dakota (*Hopkins v. McBane*, 359 N.W. 2d 862 (N.D. 1984); Ohio (*Griffiths v. Doctor's Hosp.*, 150 Ohio App. 3d 234, 2002-Ohio-6173, 780 N.E.2d 603 (2002)); Oregon (*LaDu v. Oregon Clinic*, P.C., 165 Or. App. 687 (Or. Ct. App. 2000)); Pennsylvania (*Coveleski v. Bubnis*, 535 Pa.166 (Pa. 1993)); Rhode Island (*Miccolis v. AMICA*, 587 A. 2d 67 (R.I. 1991)); South Carolina (*Crosby v. Glasscock Trucking*, 340 S.C. 626 (S.C. 2000)); Tennessee (Tenn. Code Ann. § 2 0-5-106(c)); Vermont (*Vaillancourt v. Med. Ctr. Hosp. Vt., Inc.*, 139 Vt. 38 (Vt. 1980)): Washington (*Baum v. Burrington*, 119 Wash. App.36 (Wash. Ct. App. 2003)); Wisconsin (*Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 34 Wis. 2d 14 (Wis. 1967).

[29] Ind. Code Ann. §34-23-2-1.

[30] Wyoming has not determined whether an unborn child is a "person" under the state's Wrongful Death Act. But, the Court has held that an unborn child is not a "minor" for whom guardianship statutes authorize the appointment of a guardian. *Matter of Guardianship of MKH*, 2016 WY 103, 382 P.3d 1096 (Wyo. 2016).

III. Effect of Proposed Changes:

The bill expands Florida's Wrongful Death Act to allow the parents of an unborn child to recover noneconomic damages through the act for mental pain and suffering from a person who is responsible for the death of their unborn child. Thus, the parents of the unborn child will not be limited in their recovery of mental pain and suffering for the time related to the lost pregnancy under the current cause of action for negligent stillbirth. The damages authorized by the bill are the full measure of wrongful death case damages, including damages for mental pain and suffering related to the death, and the future mental pain and suffering of the parents based on the life expectancy of the parents and the child. The parents may also recover medical and funeral expenses unless the wrongful death was the result of medical negligence.

The bill is effective July 1, 2024.

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 apparent.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may increase private insurance rates to the extent that this bill provides for tort claim recoveries that are not paid under current law.

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: 768.18, 768.21.

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.

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LEGISLATIVE ACTION

Senate	.	House
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The Committee on Judiciary (Grall) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 768.18, Florida Statutes, is reordered and amended to read:

768.18 Definitions.—As used in ss. 768.16-768.26:

(1) ~~(2)~~ "Minor children" means children under 25 years of age, notwithstanding the age of majority.

(2) ~~(5)~~ "Net accumulations" means the part of the decedent's expected net business or salary income, including pension

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12 benefits, that the decedent probably would have retained as
13 savings and left as part of her or his estate if the decedent
14 had lived her or his normal life expectancy. “Net business or
15 salary income” is the part of the decedent’s probable gross
16 income after taxes, excluding income from investments continuing
17 beyond death, that remains after deducting the decedent’s
18 personal expenses and support of survivors, excluding
19 contributions in kind.
20 (3) ~~(4)~~ “Services” means tasks, usually of a household
21 nature, regularly performed by the decedent that will be a
22 necessary expense to the survivors of the decedent. These
23 services may vary according to the identity of the decedent and
24 survivor and shall be determined under the particular facts of
25 each case.
26 (4) ~~(3)~~ “Support” includes contributions in kind as well as
27 money.
28 (5) ~~(1)~~ “Survivors” means the decedent’s spouse, children,
29 parents, and, when partly or wholly dependent on the decedent
30 for support or services, any blood relatives and adoptive
31 brothers and sisters. It includes the child born out of wedlock
32 of a mother, but not the child born out of wedlock of the father
33 unless the father has recognized a responsibility for the
34 child’s support. It also includes the parents of an unborn
35 child.
36 Section 2. Section 768.19, Florida Statutes, is amended to
37 read:
38 768.19 Right of action.—
39 (1) When the death of a person is caused by the wrongful
40 act, negligence, default, or breach of contract or warranty of

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41 any person, including those occurring on navigable waters, and
42 the event would have entitled the person injured to maintain an
43 action and recover damages if death had not ensued, the person
44 or watercraft that would have been liable in damages if death
45 had not ensued shall be liable for damages as specified in this
46 act notwithstanding the death of the person injured, although
47 death was caused under circumstances constituting a felony.
48 (2) Notwithstanding any other provision of this act, a
49 wrongful death action for the death of an unborn child may not
50 be brought against the mother of the unborn child.
51 Section 3. Subsection (4) and paragraph (a) of subsection
52 (6) of section 768.21, Florida Statutes, are amended to read:
53 768.21 Damages.—All potential beneficiaries of a recovery
54 for wrongful death, including the decedent's estate, shall be
55 identified in the complaint, and their relationships to the
56 decedent shall be alleged. Damages may be awarded as follows:
57 (4) Each parent of a deceased minor child or an unborn
58 child may also recover for mental pain and suffering from the
59 date of injury. Each parent of an adult child may also recover
60 for mental pain and suffering if there are no other survivors.
61 (6) The decedent's personal representative may recover for
62 the decedent's estate the following:
63 (a) Loss of earnings of the deceased from the date of
64 injury to the date of death, less lost support of survivors
65 excluding contributions in kind, with interest. Loss of the
66 prospective net accumulations of an estate, which might
67 reasonably have been expected but for the wrongful death,
68 reduced to present money value, may also be recovered:
69 1. If the decedent's survivors include a surviving spouse

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70 or lineal descendants; or
71 2. If the decedent is not a minor child as defined in s.
72 768.18 ~~s. 768.18(2)~~, there are no lost support and services
73 recoverable under subsection (1), and there is a surviving
74 parent.
75
76 Evidence of remarriage of the decedent's spouse is admissible.
77 Section 4. This act shall take effect July 1, 2024.
78
79 ========== T I T L E A M E N D M E N T ==========
80 And the title is amended as follows:
81 Delete everything before the enacting clause
82 and insert:
83 A bill to be entitled
84 An act relating to civil liability for the wrongful
85 death of an unborn child; reordering and amending s.
86 768.18, F.S.; revising the definition of the term
87 "survivors" to include the parents of an unborn child;
88 amending s. 768.19, F.S.; prohibiting a right of
89 action against the mother for the wrongful death of an
90 unborn child; amending s. 768.21, F.S.; authorizing
91 parents of an unborn child to recover certain damages;
92 conforming a cross-reference; providing an effective
93 date.

By Senator Grall

29-00469-24 2024476__

A bill to be entitled

An act relating to civil liability; reordering and amending s. 768.18, F.S.; revising the definition of the term "survivors" to include the parents of an unborn child; amending s. 768.21, F.S.; authorizing parents of an unborn child to recover certain damages; providing an effective date.

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

Section 1. Section 768.18, Florida Statutes, is reordered and amended to read:

768.18 Definitions.—As used in ss. 768.16-768.26:

(5) ~~(1)~~ "Survivors" means the decedent's spouse, children, parents, and, when partly or wholly dependent on the decedent for support or services, any blood relatives and adoptive brothers and sisters. It includes the child born out of wedlock of a mother, but not the child born out of wedlock of the father unless the father has recognized a responsibility for the child's support. It also includes the parents of an unborn child.

(1) ~~(2)~~ "Minor children" means children under 25 years of age, notwithstanding the age of majority.

(4) ~~(3)~~ "Support" includes contributions in kind as well as money.

(3) ~~(4)~~ "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and

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

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survivor and shall be determined under the particular facts of each case.

(2) ~~(5)~~ "Net accumulations" means the part of the decedent's expected net business or salary income, including pension benefits, that the decedent probably would have retained as savings and left as part of her or his estate if the decedent had lived her or his normal life expectancy. "Net business or salary income" is the part of the decedent's probable gross income after taxes, excluding income from investments continuing beyond death, that remains after deducting the decedent's personal expenses and support of survivors, excluding contributions in kind.

Section 2. Subsections (4) and (5) of section 768.21, Florida Statutes, are amended to read:

768.21 Damages.—All potential beneficiaries of a recovery for wrongful death, including the decedent's estate, shall be identified in the complaint, and their relationships to the decedent shall be alleged. Damages may be awarded as follows:

(4) Each parent of a deceased minor child or an unborn child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.

(5) Medical or funeral expenses due to the decedent's injury or death may be recovered by a survivor who has paid them. Except for claims brought under chapter 766, each parent of an unborn child may recover for medical or funeral expenses.

Section 3. This act shall take effect July 1, 2024.

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1792

INTRODUCER: Senator Grall and Senator Garcia

SUBJECT: Online Access to Materials Harmful to Minors

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			FP	

I. Summary:

SB 1792 requires commercial entities that knowingly and intentionally publish or distribute material harmful to minors on a website or application to prohibit access to such material by any person younger than 18 years of age, if their website or application contains a substantial portion of material that is harmful to minors.

The bill requires commercial entities to perform reasonable age-verification methods to verify that the age of a person attempting to access the material is 18 years of age or older. The reasonable age-verification method must be conducted by an independent third party not affiliated with the commercial entity, and any information used to verify age must be deleted once the age is verified.

The bill requires commercial entities to provide an easily accessible link or function on their homepage, landing page, or age-verification page to allow a minor user or the confirmed parent or guardian of the minor to report unauthorized or unlawful access. Commercial entities must then prohibit or block future access by the minor within five days after receiving such a report.

The bill does not apply to news or news-gathering organizations. It also does not apply to internet service providers, search engines, or cloud service providers that merely provide access to websites or other systems not under their control.

Any violation of the bill's regulations is deemed to be an unfair and deceptive trade practice, actionable only by the Department of Legal Affairs under the Florida Deceptive and Unfair Trade Practices Act. The bill also provides a private cause of action against commercial entities that fail to prohibit or block a minor from future access to material harmful to minors, after a report of unauthorized or unlawful access.

The bill authorizes the department to adopt rules to implement the bill. It takes effect on July 1, 2024.

II. Present Situation:

Effects of Harmful Content on Children

Internet usage and mobile technology have become mainstream, especially among teens and young adults.[1]

> Because the Internet is not subject to regulations, it has emerged as a vehicle for circulation of pornography. Pornographic images are available for consumption in the privacy of one's home via the Internet rather than in public adult bookstores or movie theaters. Therefore, the accessibility, affordability, and anonymity have attracted a wider audience. Research in the United States has shown that 66% of men and 41% of women consume pornography on a monthly basis. An estimated 50% of all Internet traffic is related to sex. These percentages illustrate that pornography is no longer an issue of minority populations but a mass phenomenon that influences our society.[2]

Many users come across pornography on the Internet who are not seeking it, and others seek it out.[3] Adult websites such as Xvideos and Pornhub are among the most visited in the U.S., receiving an average of 693.5 million and 639.6 million monthly visitors, respectively. Of the top 20 most visited websites, four are classified as pornographic.[4]

Seventy percent of teens accidentally stumble upon pornography online,[5] with trends showing teens are generally experiencing an increase in unwanted exposure to pornographic content online.[6] A sample of U.S. high school students in 2021 found that 56 percent viewed pornography in 2020.[7]

Research suggests that adolescents who view pornography tend to have more sexually permissive attitudes; have more sexual partners in their lifetime; are more likely to have engaged

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[1] Eric W. Owens et al., *The Impact of Internet Pornography on Adolescents: A Review of the Research,* 19(1-2) SEXUAL ADDICTION & COMPULSIVITY, J. TREATMENT & PREV. 99, 99-122 (2012), available at https://www.tandfonline.com/doi/abs/10.1080/10720162.2012.660431; Amanda Lenhart, *Teens, Social Media & Technology Overview 2015,* Pew Research Center, Apr. 9, 2015, https://www.pewresearch.org/internet/2015/04/09/teens-social-media-technology-2015/.

[2] Simone Kühn & Jurgen Gallinat, *Brain Structure and Functional Connectivity Associated With Pornography Consumption: The Brain on Porn,* 71 JAMA PSYCHIATRY 7, 827-34 (Jul. 2014), available at https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874574.

[3] Barna, *Porn in the Digital Age: New Research Reveals 10 Trends,* Apr. 6, 2016, https://www.barna.com/research/porn-in-the-digital-age-new-research-reveals-10-trends/.

[4] Joel Khalili, *These are the most popular websites right now – and they might just surprise you (October 2023 edition),* TechRadarPro, Oct. 31, 2023, https://www.techradar.com/news/porn-sites-attract-more-visitors-than-netflix-and-amazon-youll-never-guess-how-many.

[5] The Kaiser Family Foundation, *Generation Rx.com: How Young People Use the Internet for Health Information* (Dec. 2001), at 12, available at https://www.kff.org/wp-content/uploads/2001/11/3202-genrx-report.pdf.

[6] Kimberly J. Mitchell et al., *Trends in Youth Reports of Sexual Solicitations, Harassment and Unwanted Exposure to Pornography on the Internet,* 40 J. ADOLESCENT HEALTH 2, 116, 124 (2006), available at https://www.unh.edu/ccrc/sites/default/files/media/2022-03/trends-in-youth-reports-of-unwanted-sexual-solicitations-harassment-and-unwanted-exposure-to-pornography-on-the-internet.pdf.

[7] Amanda Giordano, *What to Know About Adolescent Pornography Exposure,* Psychology Today, Feb. 27, 2022, https://www.psychologytoday.com/us/blog/understanding-addiction/202202/what-know-about-adolescent-pornography-exposure.

in certain sexual acts;[8] and are more likely to display aggression.[9] Due to the correlational nature of these findings, researchers debate whether these characteristics are precursors to pornography use or a consequence of it; however, pornography use does appear to be a strong exacerbating factor in individuals who have preexisting markers for sexual aggression.[10]

Adolescents who view pornography report feeling insecure about their ability to perform sexually and how they look, and tend to decrease their pornography use as their self-confidence increases or they develop positive relationships with friends and family.[11] Additionally, studies have shown that problematic or excessive pornography use actually changes the reward circuitry in people's brains, which can lead to a loss of self-control and addiction.[12]

Eight states have recently passed laws to require websites with pornography to verify the age of a visitor and block access to minors: Louisiana,[13] Utah, Arkansas, Mississippi, Montana, North Carolina, Texas, and Virginia.[14]

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[8] Debra K. Braun-Corville & Mary Rojas, *Exposure to Sexually Explicit Web Sites and Adolescent Sexual Attitudes and Behaviors*, 45 J. ADOLESCENT HEALTH 2, 156-62 (2009), available at https://www.jahonline.org/article/S1054-139X(08)00658-7/fulltext; Jane D. Brown & Kelly L. L'Engle, *X-Rated Sexual Attitudes and Behaviors Associated With U.S. Early Adolescents' Exposure to Sexually Explicit Media,* 36 J. OF GERIATRIC PSYCHIATRY & NEUROLOGY 1 (Feb. 2009), available at https://www.researchgate.net/publication/23654736_X-Rated_Sexual_Attitudes_and_Behaviors_Associated_With_US_Early_Adolescents'_Exposure_to_Sexually_Explicit_Media.

[9] Eileen M. Alexy et al., *Pornography as a Risk Marker for an Aggressive Pattern of Behavior among Sexually Reactive Children and Adolescents,* 14 J. AM. PSYCHIATR. NURSES ASS'N 6, 442-53 (2009), available at https://journals.sagepub.com/doi/10.1177/1078390308327137.

[10] Michele L. Ybarra et al., *X-rated material and perpetration of sexually aggressive behavior among children and adolescents: is there a link?,* 37 AGGRESSIVE BEHAVIOR 1 (Jan./Feb. 2011), available at https://onlinelibrary.wiley.com/doi/10.1002/ab.20367; Paul J. Wright, *A MetaAnalysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies,* 66 J. COMM. 1, 183-205 (Feb. 2016), available at https://academic.oup.com/joc/article-abstract/66/1/183/4082427?redirectedFrom=fulltext.

[11] Lotta Lofgren-Martenson & Sven-Axel Mason, *Lust, Love, and Life: A Qualitative Study of Swedish Adolescents' Perceptions and Experiences with Pornography,* 47 J. SEX RSCH. 6, 568-79 (2010), available at https://www.tandfonline.com/doi/abs/10.1080/00224490903151374; Thomas Lickona, *Should We Teach Kids About Porn's Harms? Yes, and Here's How,* Psychology Today, Nov. 18, 2019, https://www.psychologytoday.com/ca/blog/raising-kind-kids/201911/should-we-teach-kids-about-porns-harms-yes-and-heres-how; Liang Li et al., *Family Functioning and problematic internet pornography use among adolescents: a moderated mediation model,* Front. Public Health, Jun. 15, 2023, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10307975/.

[12] Simone Kuhn & Jurgen Gallinat, *Brain Structure and Functional Connectivity Associated with Pornography Consumption,* 71 JAMA PSYCHIATRY 7, 827-34 (Jul. 2014), available at https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1874574.

[13] The personal story of pop-singer Billie Eilish inspired the law in Louisiana which blocks access to pornography for minors. Eilish reported that she watched a lot of porn when she was about 11 years old. Eilish believes that the pornography had a drastic effect on her brain and feels "incredibly devastated that I was exposed to so much porn." The author of the bill, a sex addiction therapist, said "I just thought how courageous it was. … It just sort of re-emphasized to me what a problem this is, especially for our children." The Guardian, *Billie Eilish says watching porn as a child 'destroyed my brain,'* Dec. 14, 2021, https://www.theguardian.com/music/2021/dec/15/billie-eilish-says-watching-porn-gave-her-nightmares-and-destroyed-my-brain; Marc Novicoff, *A Simple Law Is Doing the Impossible. It's Making the Online Porn Industry Retreat,* Politico Magazine, Aug. 8, 2024, https://www.politico.com/news/magazine/2023/08/08/age-law-online-porn-00110148.

[14] Los Angeles Blade, *Pornhub blocks access as new age verification laws take effect,* Jan. 7, 2024, https://www.losangelesblade.com/2024/01/07/pornhub-blocks-access-as-new-age-verification-laws-take-effect/; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.

Obscenity

Sexual expression which is indecent, but not obscene, is protected by the First Amendment.[15] Material that is obscene does not enjoy the same constitutional protections.[16] In determining whether sexual expression is obscene and therefore outside the protection of the First Amendment, courts may apply the *Miller*[17] test, which evaluates whether:

- The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[18]

The Florida Supreme Court has determined that the applicable community standard to be used in determining obscenity is the local county standard, explaining that such a standard "permits maximum protection of materials acceptable in cosmopolitan areas while not forcing more conservative areas to accept public depiction of conduct they find obscene."[19]

Material Harmful to Minors

State Definitions

Under state law, "harmful to minors" means any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest.
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors.
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.[20]

"Sexual conduct" means any actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.[21]

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[15] *Simmons v. State,* 944 So. 2d 317, 323 (Fla. 2006).
[16] *Id.*
[17] *Miller v. California,* 413 U.S. 15, 24 (1973).
[18] *Id.; see also 2025 Emery Hwy, L.L.C. v. Bibb County, Georgia,* 377 F. Supp. 2d 1310, 1332 (M.D. Georgia 2005) (applying the *Miller* test); s. 847.001(12), F.S. (providing that a mother's breastfeeding of her baby is not under any circumstance obscene).
[19] *Johnson v. State,* 351 So. 2d 10, 11 (Fla. 1977).
[20] Section 847.001(7), F.S.
[21] Section 847.001(19), F.S. A mother's breastfeeding of her baby does not under any circumstances constitute "sexual conduct." *Id.*

"Sexual excitement" means the condition of the human male or female genitals when in a state of sexual stimulation or arousal.[22]

The Florida Supreme Court has found that images in the aid of legitimate scientific or educational purposes, such as a depiction of Michelangelo's *David* transmitted for an art history class, and an illustration of human genitalia intended for a sex education or biology class, are not materials harmful to minors.[23]

Associated Laws

State law prohibits a person from knowingly transmitting, or believing that he or she was transmitting, an image, information, or data that is harmful to minors via an electronic mail to a specific individual known by the defendant to be a minor.[24]

Additionally, several federal laws prohibit access or distribution of harmful or obscene material to a minor:

- Schools and libraries that receive discounts for internet access or internal connections through an E-rate program must:
  - "Certify that they block or filter [i]nternet access" to pictures that are obscene, child pornography, and harmful to minors on computers accessed by minors; and
  - Implement an internet safety policy.[25]
- It is a crime to knowingly use a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors.[26]
- It is a crime to knowingly embed words or digital images into the source code of a website with the intent to deceive a minor into viewing material that is harmful to minors.[27]
- It is a crime to knowingly make any internet communication for commercial purposes that is available to any minor and that includes any material harmful to minors.[28]

Age Verification

Mechanisms

Many industries are currently required to use online age-verification methods, including:

- Alcohol and tobacco.[29]
- Gambling.

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[22] Section 847.001(20), F.S.
[23] *Simmons*, 944 So. 2d at 323.
[24] Section 847.0138, F.S.
[25] Federal Communications Commission, *Children's Internet Protection Act (CIPA),* https://www.fcc.gov/consumers/guides/childrens-internet-protection-act (last visited Jan. 25, 2024).
[26] 18 U.S.C. s. 2252B(b). The definition of "harmful to minors" parallels the *Miller* test for obscenity, as applied to minors. *See* 18 U.S.C. s. 2252B(d).
[27] 18 U.S.C. s. 2252C.
[28] 47 U.S.C. s. 231.
[29] The U.S. Food and Drug Administration (FDA) recommends using independent, third -party age- and identity-verification services that compare customer information against third-party data sources for online sellers of tobacco. FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)* (April 2020), at 7, available at https://www.fda.gov/media/133880/download.

- Firearms.[30]

Adult websites in the U.S. generally use checkboxes for users to confirm that they are at least 18 years of age. Recently, however, several states and the United Kingdom have enacted laws requiring adult websites to use age-verification measures to block adult content from being accessed by minors.[31]

Additionally, some social media platforms ask for age-identifying information to create new accounts, but such information is not always verified. For example, Facebook requires new users to self-report a birthdate to confirm that they are at least 13 years old. Meta is currently testing new ways to verify age, including through the use of biometrics and online interviews.[32]

There are several ways that internet companies can verify, or attempt to verify, age. Options include using:[33]

- Government identity documents, which generally require users to submit government documents to a third-party company for review.
- Phone records, which generally check users' phones for parental controls.
- Credit score databases, which generally require the user to enter identifying information that is subsequently confirmed through a credit check agency.
- Biometric age estimation, which generally requires a facial analysis to estimate age.
- Credit cards, which generally requires users to supply credit card information for validation.
- Open banking, which generally requires users to log into their own online banking system and give approval for date of birth information to be supplied to a bank-approved, third-party age-verification provider.
- Algorithmic profiling, which generally assesses the likely ages of users based on their online behavior.
- Self-declaration, which generally requires users to check a box or enter a birthdate.
- Zero knowledge proofs, which generally enables users to upload identity documents to privacy servers and securely share encrypted, anonymous "proofs" of age to a company, through a process called "hashing," without actually transmitting the identity documents to the company.[34]

When verifying age online, people usually share personal information, including:

- Full name and location.
- Email or phone number (when using two-factor authorization).

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[30] Jan Stepnov, *What Is an Age Verification System and Why Incorporate It Into Your Business,* Regula, Apr. 21, 2023, https://regulaforensics.com/blog/age-verification-system/.

[31] Masha Borak, *UK introduces Online Safety Bill mandating age verification,* Oct. 27, 2023, https://www.biometricupdate.com/202310/uk-introduces-online-safety-bill-mandating-age-verification; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.

[32] Meta, *Introducing New Ways to Verify Age on Instagram,* Jun. 23, 2022, https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram/.

[33] The Age Verification Providers Association, *How do you check age online?,* https://avpassociation.com/avmethods/ (last visited Jan. 18, 2024).

[34] Bessie Liu, *Aleo blockchain adds zPass, a ZK protocol for verifying identities,* Blockworks, Oct. 26, 2023, https://blockworks.co/news/zkdecentralized-identity-verification.

- Home address.

Identity theft is a potential risk when users reveal this information, and websites can collect information revealed through age-verification processes, and combine it with other data for targeted advertisements or data-sharing with third parties.[35]

However, there are numerous minimally invasive verification techniques that do not require sharing any age-verification information with social media platforms. For example, a trusted third-party could verify the age of a user, and provide a QR code or similar device, to an age-restricted website, thereby establishing the user's age without the platform ever seeing the age-verification documents or the user's identity.[36] Experts assert that age-verification systems have progressed considerably from a generation ago, when the U.S. Supreme Court held that age-verification methods often failed at that task and were too burdensome for law-abiding adults.[37]

Age fabrication is also a widespread issue. For example, underage customers in the U.S. consumed 11.73 percent of all alcoholic drinks sold in the U.S. market in 2016, and 49.8 percent of tobacco and vape shops in California failed to check the identification of underage decoys in 2018.[38]

Laws

As noted earlier, Louisiana, Utah, Arkansas, Mississippi, Montana, North Carolina, Texas, and Virginia have all recently passed legislation to require websites that host obscene material or other material harmful to minors to verify the ages of visitors and block access to minors.[39]

For example, Utah requires a commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on the Internet through a website that contains a substantial portion of such material to perform reasonable age-verification methods to verify the age of an individual attempting to access the material. A commercial entity that violates this provision is liable for damages resulting from a minor's accessing the material, including court costs and reasonable attorney fees.[40]

Some of these state laws have recently been challenged on First Amendment grounds. The law in Texas has been preliminarily enjoined, although the litigation is ongoing; but the suits

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[35] John Reynolds, *Don't risk identity fraud just to play that video game – do this instead,* Aleo, Dec. 28, 2023, https://aleo.org/post/dont-risk-identity-fraud-to-play-that-video-game/.
[36] The Federalist Society, *Age Verification for Social Media: A Constitutional and Reasonable Regulation,* Aug. 7, 2023, https://fedsoc.org/commentary/fedsoc-blog/age-verification-for-social-media-a-constitutional-and-reasonable-regulation.
[37] Broadband Breakfast, *Improved Age Verification Allows States to Consider Restricting Social Media,* Nov. 20, 2023, https://broadbandbreakfast.com/2023/11/improved-age-verification-allows-states-to-consider-restricting-social-media/.
[38] Persona, *Age verification system: How to add it into your business,* https://withpersona.com/blog/incorporate-age-verification-intobusiness (last visited Jan. 18, 2024).
[39] Los Angeles Blade, *Pornhub blocks access as new age verification laws take effect,* Jan. 7, 2024, https://www.losangelesblade.com/2024/01/07/pornhub-blocks-access-as-new-age-verification-laws-take-effect/; Dmytro Sashchuk, *Age verification regulations in the United States of America,* Veriff, Nov. 15, 2023, https://www.veriff.com/fraud/learn/age-verification-legalization-in-the-united-states-of-america.
[40] UTAH CODE s. 78B-3-1002.

challenging the laws in Utah and Louisiana have been dismissed for lack of jurisdiction, as the laws rely on private enforcement, not state enforcement.[41]

Unlike past legislative efforts to curb online pornography by declaring the websites a danger to public health, the recent laws have had a demonstrable effect against such websites. Pornhub, a large pornography website, has more global users than Amazon or Netflix. In 2019, the last year Pornhub released its data, the site was visited 42 billion times, or 115 million times each day.[42] In response to these bills, Pornhub has prohibited access to all users, including both minors and adults, in Montana, North Carolina, Utah, Arkansas, Mississippi, and Virginia.[43]

Constitutionality of Age Verification

In 1996, the Communications Decency Act (CDA) was enacted by Congress "to protect minors from 'indecent' and 'patently offensive' communications on the Internet" by prohibiting "the knowing transmission of obscene or indecent messages." It allowed websites to defend themselves by either making good faith efforts to restrict such communications to adults, or implementing age-verification measures.[44]

In 1997, in *Reno v. American Civil Liberties Union*,[45] the U.S. Supreme Court held that the provision of the CDA prohibiting the transmission of indecent messages[46] was an unconstitutional, content-based restriction of First Amendment free speech rights. The court also held that requiring adults to prove their age to access certain content was an unconstitutional limit on free speech because there were less restrictive means to curb access to minors, such as filters and parental controls.[47]

In Justice O'Connor's partial dissent, she found that since technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the CDA was unconstitutional. However, she contemplated the possibility that future technological advances may allow for a constitutionally sound age-verification law.[48]

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[41] *See Free Speech Coalition Inc. v. LeBlanc,* No. 2:23-cv-2123 (E.D. La.); *41 Free Speech Coalition, Inc. v. Anderson,* 2023 WL 4899509 (D. Utah 2023); *Free Speech Coalition, Inc. v. Colmenero,* 2023 WL 5655712 (W.D. Texas 2023); Christopher Brown, *Porn Industry Group Loses Challenge to Louisiana Age-Check Law,* Bloomberg Law, Oct. 5, 2023, https://news.bloomberglaw.com/privacy-and-data-security/porn-industry-group-loses-challenge-to-louisiana-age-check-law.

[42] Marc Novicoff, *A Simple Law Is Doing the Impossible. It's Making the Online Porn Industry Retreat,* Politico Magazine, Aug. 8, 2024, https://www.politico.com/news/magazine/2023/08/08/age-law-online-porn-00110148.

[43] Wes Davis, *Pornhub blocks North Carolina and Montana as porn regulation spreads,* The Verge, Jan. 2, 2024, https://www.theverge.com/2024/1/2/24022539/pornhub-blocked-montana-north-carolina-age-verification-law-protest.

[44] Ronald Kahn, *Reno v. American Civil Liberties Union (1997),* Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.

[45] 521 U.S. 844 (1997).

[46] It is still illegal to transmit obscene messages to minors. U.S. Department of Justice, Criminal Division, *Obscenity,* https://www.justice.gov/criminal/criminal-ceos/obscenity (last visited Jan. 25, 2024).

[47] *Ashcroft v. American Civil Liberties Union,* 542 U.S. 656, 666-68 (2004); Ronald Kahn, *Reno v. American Civil Liberties Union (1997),* Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.

[48] *Reno,* 521 U.S. at 886-91 (O'Connor concurring in part and dissenting in part). The court also considered overbreadth and vagueness arguments, and determined that the Communications Decency Act of 1996 was too broad and vague. *Id.* at 883-84.

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

FDUTPA is a consumer and business protection measure that prohibits unfair methods of competition, and unconscionable, deceptive, or unfair acts or practices in the conduct of trade or commerce.[49] FDUTPA was modeled after the Federal Trade Commission Act.[50]

The Department of Legal Affairs or the state attorney's office in the judicial circuit affected or where the violation occurs may bring actions on behalf of consumers or governmental entities when it serves the public interest.[51] The state attorney's office may enforce violations of FDUTPA if the violations take place within its jurisdiction. The department has enforcement authority when: the violation is multi-jurisdictional; the state attorney defers to the department in writing; or the state attorney fails to act within 90 days after a written complaint is filed.[52] In certain circumstances, consumers may also file suit through private actions.[53]

The department and the state attorney's office have powers to investigate FDUTPA claims, which include:[54]

- Administering oaths and affirmations.
- Subpoenaing witnesses or matter.
- Collecting evidence.

The department and the state attorney's office may seek the following remedies:[55]

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to $10,000 per willful violation.

FDUTPA may not be applied to certain entities in certain circumstances, including:[56]

- Any person or activity regulated under laws administered by the Office of Insurance Regulation or the Department of Financial Services.
- Banks, credit unions, and savings and loan associations regulated by the Office of Financial Regulation or federal agencies.

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[49] Section 501.202, F.S.
[50] *See* 15 U.S.C. s. 45; *see also* D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. MIAMI L. REV. 1083 (Summer 2011).
[51] Sections 501.203(2) and 501.207(1)(c) and (2), F.S.; *see also* David J. Federbush, *FDUTPA for Civil Antitrust Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. BAR J. 52 (Dec. 2002), available at https://www.floridabar.org/the-florida-bar-journal/fdutpa-for-civil-antitrust-additional-conduct-party-and-geographic-coverage-state-actions-for-consumer-restitution/ (analyzing the merits of FDUPTA and the potential for deterrence of anticompetitive conduct in Florida).
[52] Section 501.203(2), F.S.
[53] Section 501.211, F.S.
[54] Section 501.206(1), F.S.
[55] Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.
[56] Section 501.212(4), F.S.

III. Effect of Proposed Changes:

The bill creates s. 501.1737, F.S., entitled "Age verification for online access to materials harmful to minors."

Definitions

The bill defines the following terms as used in the bill:

- "Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, and any other legally recognized entity.
- "Department" means the Department of Legal Affairs.
- "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.
- "Material harmful to minors" means any material that:
  - The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
  - Depicts or describes, in a patently offensive way, sexual conduct as defined in state law;[57] and
  - Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.
- "News-gathering organization" means any of the following:
  - A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and includes an employee who can provide documentation of such employment.
  - A radio broadcast station, television broadcast station, cable television operator, or wire service, and includes an employee who can provide documentation of such employment.
- "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.
- "Reasonable age verification methods" means any commercially reasonable method regularly used by government agencies and businesses for the purpose of age and identity verification.
- "Substantial portion" means more than 33.3 percent of total material on a website or application.

Regulations

The bill requires any commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application, if such website or application contains a substantial portion of material harmful to minors, to:

- Perform reasonable age verification methods to verify that the age of a person attempting to access the material is 18 years of age or older, and prevent access to such material by a person under 18 years of age. The reasonable age verification method must be conducted by an independent third party not affiliated with the commercial entity.
- Provide an easily accessible link or function on its homepage, landing page, or age verification page to allow a minor user or the confirmed parent or guardian of a minor user to

[57] Section 847.001(19), F.S.

report unauthorized or unlawful access. Within 5 days after such report, the commercial entity must prohibit or block future access by such minor.

The bill provides that a commercial entity or third party that performs reasonable age verification methods may not retain any personal identifying information of the person seeking online access to material harmful to minors any longer than is reasonably necessary to verify the age of the person. Any personal identifying information collected for age verification may not be used for any other purpose.

The bill does not apply to any bona fide news or public interest broadcast, website video, report, or event, and does not affect the rights of news-gathering organizations. Additionally, an internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider does not violate the bill solely for providing access or connection to or from a website or other information or content on the Internet or a facility, system, or network not under the provider's control. This includes transmission, downloading, intermediate storage, or access software, to the extent the provider is not responsible for the creation of the content of the communication which constitutes material harmful to minors.

Enforcement

The bill provides that any violation of the bill's regulations is an unfair and deceptive trade practice actionable under the Florida Deceptive and Unfair Trade Practices Act, solely by the Department of Legal Affairs on behalf of a Florida minor against a commercial entity. If the department has reason to believe that a commercial entity is in violation of any of the regulations described in the bill, the department, as the enforcing authority, may bring an action against the commercial entity for an unfair or deceptive act or practice. For the purpose of bringing an action pursuant to the bill, the sections of the Act providing for individual remedies under the Act,[58] and for application of the Act,[59] do not apply. In addition to other remedies under the Act, the department may collect a civil penalty of up to $50,000 per violation.

The bill also provides that any commercial entity that violates the bill by failing to prohibit or block a minor from future access to material harmful to minors, after a report of unauthorized or unlawful access,[60] is liable to the minor for such access, including court costs and reasonable attorney fees as ordered by the court. Claimants may be awarded up to $10,000 in damages. A civil action for a claim under this paragraph must be brought within one year after the violation.

Any action under the bill may only be brought on behalf of, or by, a Florida minor. Additionally, for purposes of bringing an action in accordance with the previous paragraph, a commercial entity that publishes or distributes material harmful to minors on a website or application, if such website or application contains a substantial portion of material harmful to minors and such website or application is available to be accessed in Florida, is considered to be both engaged in substantial and not isolated activities within this state and operating, conducting, engaging in, or

[58] Section 501.211, F.S.
[59] Section 501.212, F.S.
[60] *See* proposed s. 501.1737(2)(b), F.S. (providing that the commercial entity must prohibit or block, within five days after receiving a report from the minor or his or her confirmed parent or guardian, future access by the minor having unauthorized or unlawful access).

carrying on a business and doing business in this state, and is therefore subject to the jurisdiction of the courts of this state.

Other Available Remedies at Law or Equity

The bill does not preclude any other available remedy at law or equity.

Authorization to Adopt Rules

The department may adopt rules to implement the bill.

Effective Date

The bill takes effect on July 1, 2024.

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:

Requiring commercial entities and their users to use age verification to view certain harmful content presents a complex issue that raises several constitutional concerns. The language in the bill may implicate consideration of a number of constitutional protections.

First Amendment Right to Freedom of Speech

The First Amendment to the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."[61] Generally, "government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."[62]

[61] U.S. CONST. amend. I.
[62] *Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.[63]

Many of the questions regarding the constitutionality of age-verification laws may concern whether such laws are sufficiently narrow to avoid inhibiting more speech than necessary. The degree of tailoring required may vary depending on whether a given law is content-based or content-neutral. In both circumstances, a law's constitutionality depends on several factors, including the:

- Strength of the government's interest.
- Amount of protected speech that the law directly or indirectly restricts.
- Availability of less speech-restrictive alternatives.[64]

Content-neutral regulations on free speech are legitimate if they advance important governmental interests that are not related to suppression of free speech, do so in a way that is substantially related to those interests, and do not substantially burden more speech than necessary to further those interests.[65]

The U.S. Supreme Court regards content-based laws, which limit communication because of the message it conveys, as presumptively unconstitutional.[66] Such a law may be justified only if the government shows that the law is required to promote a compelling state interest and that the least restrictive means have been chosen to further that articulated interest.[67]

As discussed above, sexual expression which is indecent, but not obscene, is protected by the First Amendment.[68] Material that is obscene does not enjoy the same constitutional protections.[69] In determining whether sexual expression is obscene and therefore outside the protection of the First Amendment, courts may apply the *Miller*[70] test, which evaluates whether:

- The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.
- The work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law.
- The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.[71]

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[63] U.S. CONST. amend. XIV; *see also* FLA. CONST., art. I.
[64] Eric N. Holmes, Congressional Research Service, *Online Age Verification (Part III): Select Constitutional Issues* (CRS Report No. LSB11022, August 17, 2023), available at https://crsreports.congress.gov/product/pdf/LSB/LSB11022.
[65] *Turner Broadcasting System, Inc. v. F.C.C.*, 520 U.S. 180,189 (U.S. 1997).
[66] *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).
[67] *Sable Communications of California, Inc. vs. F.C.C.*, 492 U.S. 115, 126 (1989).
[68] *Simmons*, 944 So. 2d at 323.
[69] *Id.*
[70] *Miller*, 413 U.S. at 24.
[71] *Id.; see also 2025 Emery Hwy, L.L.C.*, 377 F. Supp. 2d at 1332 (applying the *Miller* test); s. 847.001(12), F.S. (providing that a mother's breastfeeding of her baby is not under any circumstance obscene).

In general, the U.S. Supreme Court has held that requiring adults to prove their age to access certain content is an unconstitutional, content-based limit on free speech, when there are less restrictive means to curb access to minors, such as filters and parental controls.[72]

According to Justice O'Connor's *Reno* dissent, because technology was insufficient for ensuring that minors could be excluded while still providing adults full access to protected content, the age verification provision was viewed as ultimately unconstitutional; however, she contemplated the possibility that future technological advances may allow for a constitutionally sound age-verification law.[73]

Additionally, in determining whether laws requiring age-verification to access materials harmful to minors online unconstitutionally prohibits free speech, one federal court has noted that while it is:

> uncontested that pornography is generally inappropriate for children,[74] and [that] the state may regulate a minor's access to pornography, ... [any] material that is sexual will likely satisfy [the *Miller*] test, because it is inappropriate for minors, even though it is not obscene for adults. [As such, a]ny prurient material risks being regulated, because it will likely be offensive to minors and lack artistic or scientific value to them. Although this may be permissible when someone knowingly sells material to a minor … it is constitutionally problematic applied to online speech, where the speech is necessarily broadcast widely.[75]

Supremacy Clause

Article VI, Paragraph 2 of the U.S. Constitution, commonly referred to as the Supremacy Clause, establishes that the federal constitution, and federal law generally, take precedence over state laws and constitutions. The Supremacy Clause also prohibits states from interfering with the federal government's exercise of its constitutional powers and from assuming any functions that are exclusively entrusted to the federal government. It does not, however, allow the federal government to review or veto state laws before they take effect.[76]

Section 230 of the federal Communications Decency Act, in part, specifies that "[n]o provider ... of an interactive computer service shall be treated as the publisher or speaker

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[72] *Reno*, 521 U.S. at 874 (1997); *Ashcroft*, 542 U.S. at 666-68; Ronald Kahn, *Reno v. American Civil Liberties Union (1997)*, Free Speech Center at Middle Tennessee State University, Dec. 15, 2023, https://firstamendment.mtsu.edu/article/reno-v-american-civil-liberties-union/.

[73] *Reno*, 521 U.S. at 886-91 (O'Connor concurring in part and dissenting in part). The court also considered overbreadth and vagueness arguments, and determined that the Communications Decency Act of 1996 was too broad and vague. *Id.* at 883-84.

[74] To be obscene, pornography must, at a minimum, "depict or describe patently offensive 'hard core' sexual conduct." *Miller*, 413 U.S. at 27.

[75] *Free Speech Coalition, Inc.*, 2023 WL 5655712 at *10-*13 (W. D. Texas 2023).

[76] Cornell Law School, Legal Information Institute, *Supremacy Clause*, https://www.law.cornell.edu/wex/supremacy_clause (last visited Jan. 17, 2024).

of any information provided by another information content provider"[77] and specifically prohibits all inconsistent causes of action and liability imposed under any state or local law.[78]

State Authority to Regulate to Protect Minors

The U.S. Supreme Court has determined that the state has a "compelling interest in protecting the physical and psychological well-being of minors," which "extends to shielding minors from the influence of literature that is not obscene by adult standards."[79] In doing so, however, the means must be narrowly tailored to achieve that end so as not to unnecessarily deny adults access to material which is constitutionally protected indecent material.[80]

Contracts Clause

Article I, Section 10 of the U.S. Constitution prohibits a state from passing any law impairing the obligation of contracts. Article I, Section 10 of the Florida Constitution also prohibits the passage of laws impairing the obligation of contracts. However, the reach of these protections is "limited to preexisting contracts, unlike due process, which extends to future contracts as well."[81]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will result in increased costs for commercial entities operating websites or applications containing a substantial portion of material that is harmful to minors. Such entities will now be required to implement new procedures for age verification, including the use of third-party verification services.

C. Government Sector Impact:

The bill may result in an increase in civil penalties collected by the Department of Legal Affairs. It may also result in an increase of regulatory costs to the department, which has been tasked with enforcing the bill.

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[77] 47 U.S.C. s. 230(c)(1).
[78] 47 U.S.C. s. 230(e)(3).
[79] *Sable Communications of California, Inc.*, 492 U.S. at 126.
[80] *Ashcroft*, 542 U.S. at 666; *Cashatt v. State*, 873 So. 2d 430, 434 (Fla. 1st DCA 2004); *but see Erznoznik*, 422 U.S. at 213 (determining that the city's regulation was overly broad).
[81] *Woodstone Ltd. Partn. v. City of Saint Paul, Minnesota*, 2023 WL 3586077, *6 (D. Minnesota May 22, 2023).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 501.1737 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

940812

LEGISLATIVE ACTION

Senate	.	House
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	.	

The Committee on Judiciary (Grall) recommended the following:

1 **Senate Amendment (with title amendment)**
2
3 Delete everything after the enacting clause
4 and insert:
5 Section 1. Section 501.1737, Florida Statutes, is created
6 to read:
7 501.1737 Age verification for online access to materials
8 harmful to minors.—
9 (1) As used in this section, the term:
10 (a) "Commercial entity" includes a corporation, limited
11 liability company, partnership, limited partnership, sole

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12 proprietorship, and any other legally recognized entity.
13 (b) "Department" means the Department of Legal Affairs.
14 (c) "Distribute" means to issue, sell, give, provide,
15 deliver, transfer, transmit, circulate, or disseminate by any
16 means.
17 (d) "Material harmful to minors" means any material that:
18 1. The average person applying contemporary community
19 standards would find, taken as a whole, appeals to the prurient
20 interest;
21 2. Depicts or describes, in a patently offensive way,
22 sexual conduct as specifically defined in s. 847.001(19); and
23 3. When taken as a whole, lacks serious literary, artistic,
24 political, or scientific value for minors.
25 (e) "News-gathering organization" means any of the
26 following:
27 1. A newspaper, news publication, or news source, printed
28 or published online or on a mobile platform, engaged in
29 reporting current news and matters of public interest, and an
30 employee thereof who can provide documentation of such
31 employment.
32 2. A radio broadcast station, television broadcast station,
33 cable television operator, or wire service, and an employee
34 thereof who can provide documentation of such employment.
35 (f) "Publish" means to communicate or make information
36 available to another person or entity on a publicly available
37 website or application.
38 (g) "Reasonable age verification methods" means any
39 commercially reasonable method regularly used by government
40 agencies or businesses for the purpose of age and identity

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41 verification.
42 (h) "Substantial portion" means more than 33.3 percent of
43 total material on a website or application.
44 (2) A commercial entity that knowingly and intentionally
45 publishes or distributes material harmful to minors on a website
46 or application, if the website or application contains a
47 substantial portion of material harmful to minors, must:
48 (a) Perform reasonable age verification methods to verify
49 the age of a person attempting to access the material is 18
50 years of age or older and prevent access to the material by a
51 person younger than 18 years of age. The reasonable age
52 verification method must be conducted by a nongovernmental,
53 independent, third-party not affiliated with the commercial
54 entity.
55 (b) Provide an easily accessible link or function on its
56 homepage, landing page, or age verification page to allow a
57 minor user or the confirmed parent or guardian of a minor user
58 to report unauthorized or unlawful access. Within 5 days after
59 such report, the commercial entity must prohibit or block future
60 access by such minor.
61 (3) A commercial entity or third party that performs
62 reasonable age verification methods may not retain any personal
63 identifying information of the person seeking online access to
64 material harmful to minors any longer than is reasonably
65 necessary to verify the age of the person. Any personal
66 identifying information collected for age verification may not
67 be used for any other purpose.
68 (4)(a) This section does not apply to any bona fide news or
69 public interest broadcast, website video, report, or event and

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70 does not affect the rights of a news-gathering organization.
71 (b) An Internet service provider or its affiliates or
72 subsidiaries, a search engine, or a cloud service provider does
73 not violate this section solely for providing access or
74 connection to or from a website or other information or content
75 on the Internet or a facility, system, or network not under the
76 provider's control, including transmission, downloading,
77 intermediate storage, or access software, to the extent the
78 provider is not responsible for the creation of the content of
79 the communication which constitutes material harmful to minors.
80 (5)(a) Any violation of subsection (2) or subsection (3) is
81 an unfair and deceptive trade practice actionable under part II
82 of this chapter solely by the department on behalf of a Florida
83 minor against a commercial entity. If the department has reason
84 to believe that a commercial entity is in violation of
85 subsection (2) or subsection (3), the department, as the
86 enforcing authority, may bring an action against the commercial
87 entity for an unfair or deceptive act or practice. For the
88 purpose of bringing an action pursuant to this section, ss.
89 501.211 and 501.212 do not apply. In addition to any other
90 remedy under part II of this chapter, the department may collect
91 a civil penalty of up to $50,000 per violation of this section.
92 (b) A commercial entity that violates subsection (2) for
93 failing to prohibit or block a minor from future access to
94 material harmful to minors after a report of unauthorized or
95 unlawful access is liable to the minor for such access,
96 including court costs and reasonable attorney fees as ordered by
97 the court. Claimants may be awarded up to $10,000 in damages. A
98 civil action for a claim under this paragraph must be brought

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99 within 1 year after the violation.
100 (c) Any action under this subsection may only be brought on
101 behalf of or by a Florida minor.
102 (6) For purposes of bringing an action under subsection
103 (5), a commercial entity that publishes or distributes material
104 harmful to minors on a website or application, if the website or
105 application contains a substantial portion of material harmful
106 to minors and such website or application is available to be
107 accessed in Florida, is considered to be both engaged in
108 substantial and not isolated activities within this state and
109 operating, conducting, engaging in, or carrying on a business
110 and doing business in this state, and is therefore subject to
111 the jurisdiction of the courts of this state.
112 (7) This section does not preclude any other available
113 remedy at law or equity.
114 (8) The department may adopt rules to implement this
115 section.
116 Section 2. This act shall take effect July 1, 2024.
117
118 ========== T I T L E A M E N D M E N T ==========
119 And the title is amended as follows:
120 Delete everything before the enacting clause
121 and insert:
122 A bill to be entitled
123 An act relating to online access to materials harmful
124 to minors; creating s. 501.1737, F.S.; providing
125 definitions; requiring a commercial entity that
126 publishes or distributes material harmful to minors on
127 a website or application that contains a substantial

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128 portion of such material to perform reasonable age
129 verification methods, prevent access to such material
130 by minors, and provide methods for reporting
131 unauthorized or unlawful access; prohibiting the
132 retention of certain personal identifying information;
133 providing applicability and construction; authorizing
134 the Department of Legal Affairs to bring an action for
135 violations under the Florida Deceptive and Unfair
136 Trade Practices Act; providing civil penalties;
137 providing for private causes of action; providing that
138 certain commercial entities are subject to the
139 jurisdiction of state courts; providing construction;
140 authorizing the department to adopt rules; providing
141 an effective date.

By Senator Grall

29-01312B-24 20241792__

A bill to be entitled

An act relating to online access to materials harmful to minors; creating s. 501.1737, F.S.; defining terms; requiring a commercial entity that knowingly and intentionally publishes or distributes material harmful to minors on a website or application that contains a substantial portion of such material to perform reasonable age verification methods and methods for reporting unauthorized or unlawful access; prohibiting the retention of certain personal identifying information; providing applicability and construction; authorizing the Department of Legal Affairs to bring an action for violations under the Florida Deceptive and Unfair Trade Practices Act; providing civil penalties; providing for private causes of action; providing that certain commercial entities are subject to the jurisdiction of state courts; providing construction; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Section 501.1737, Florida Statutes, is created to read:

501.1737 Age verification for online access to materials harmful to minors.—

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

(a) "Commercial entity" includes a corporation, limited

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

29-01312B-24 20241792__

liability company, partnership, limited partnership, sole proprietorship, and any other legally recognized entity.

(b) "Department" means the Department of Legal Affairs.

(c) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(d) "Material harmful to minors" means any material that:

1. The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

2. Depicts or describes, in a patently offensive way, sexual conduct as defined in s. 847.001; and

3. Taken as a whole, lacks serious literary, artistic, political, or scientific value for minors.

(e) "News-gathering organization" means any of the following:

1. A newspaper, news publication, or news source, printed or published online or on a mobile platform, engaged in reporting current news and matters of public interest, and includes an employee who can provide documentation of such employment.

2. A radio broadcast station, television broadcast station, cable television operator, or wire service, and includes an employee who can provide documentation of such employment.

(f) "Publish" means to communicate or make information available to another person or entity on a publicly available website or application.

(g) "Reasonable age verification methods" means any commercially reasonable method regularly used by government

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

59 agencies and businesses for the purpose of age and identity
60 verification.
61 (h) "Substantial portion" means more than 33.3 percent of
62 total material on a website or application.
63 (2) A commercial entity that knowingly and intentionally
64 publishes or distributes material harmful to minors on a website
65 or application, if such website or application contains a
66 substantial portion of material harmful to minors, must:
67 (a) Perform reasonable age verification methods to verify
68 that the age of a person attempting to access the material is 18
69 years of age or older, and prevent access to such material by a
70 person under 18 years of age. The reasonable age verification
71 method must be conducted by an independent third party not
72 affiliated with the commercial entity.
73 (b) Provide an easily accessible link or function on its
74 homepage, landing page, or age verification page to allow a
75 minor user or the confirmed parent or guardian of a minor user
76 to report unauthorized or unlawful access. Within 5 days after
77 such report, the commercial entity must prohibit or block future
78 access by such minor.
79 (3) A commercial entity or third party that performs
80 reasonable age verification methods may not retain any personal
81 identifying information of the person seeking online access to
82 material harmful to minors any longer than is reasonably
83 necessary to verify the age of the person. Any personal
84 identifying information collected for age verification may not
85 be used for any other purpose.
86 (4)(a) This section does not apply to any bona fide news or
87 public interest broadcast, website video, report, or event and

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88 does not affect the rights of a news-gathering organization.
89 (b) An Internet service provider or its affiliates or
90 subsidiaries, a search engine, or a cloud service provider does
91 not violate this section solely for providing access or
92 connection to or from a website or other information or content
93 on the Internet or a facility, system, or network not under the
94 provider's control, including transmission, downloading,
95 intermediate storage, or access software, to the extent the
96 provider is not responsible for the creation of the content of
97 the communication which constitutes material harmful to minors.
98 (5)(a) Any violation of subsection (2) or subsection (3) is
99 an unfair and deceptive trade practice actionable under part II
100 of this chapter solely by the department on behalf of a Florida
101 minor against a commercial entity. If the department has reason
102 to believe that a commercial entity is in violation of
103 subsection (2) or subsection (3), the department, as the
104 enforcing authority, may bring an action against the commercial
105 entity for an unfair or deceptive act or practice. For the
106 purpose of bringing an action pursuant to this section, ss.
107 501.211 and 501.212 do not apply. In addition to any other
108 remedy under part II of this chapter, the department may collect
109 a civil penalty of up to $50,000 per violation of this section.
110 (b) A commercial entity that violates subsection (2) for
111 failing to prohibit or block a minor from future access to
112 material harmful to minors after a report of unauthorized or
113 unlawful access is liable to the minor for such access,
114 including court costs and reasonable attorney fees as ordered by
115 the court. Claimants may be awarded up to $10,000 in damages. A
116 civil action for a claim under this paragraph must be brought

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117 within 1 year after the violation.
118 (c) Any action under this subsection may only be brought on
119 behalf of or by a Florida minor.
120 (6) For purposes of bringing an action under subsection
121 (5), a commercial entity that publishes or distributes material
122 harmful to minors on a website or application, if such website
123 or application contains a substantial portion of material
124 harmful to minors and such website or application is available
125 to be accessed in Florida, is considered to be both engaged in
126 substantial and not isolated activities within this state and
127 operating, conducting, engaging in, or carrying on a business
128 and doing business in this state, and is therefore subject to
129 the jurisdiction of the courts of this state.
130 (7) This section does not preclude any other available
131 remedy at law or equity.
132 (8) The department may adopt rules to implement this
133 section.
134 Section 2. This act shall take effect July 1, 2024.

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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1794

INTRODUCER: Senator Grall

SUBJECT: Public Records/Investigations by the Department of Legal Affairs

DATE: February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			FP	

I. Summary:

SB 1794 exempts from public records copying and inspection requirements certain information received by the Department of Legal Affairs in connection with its enforcement obligations under SB 1792[1] or similar legislation during the 2024 Regular Session.

Specifically, the bill exempts, from the public records requirements in s. 119.07(1), F.S. and Art. I, s. 24(a) of the State Constitution, all information received by the department, either pursuant to a notification of violation of the new statute created by SB 1792,[2] or pursuant to an investigation by the department or a law enforcement agency of a violation of the new statute, until such time as the investigation is completed or ceases to be active.

The bill provides that during an active investigation, certain information made confidential and exempt by the bill may be disclosed by the department. It also provides that upon completion of an investigation, or once an investigation ceases to be active, certain information received by the department must remain confidential and exempt from the public disclosure requirements, including the "proprietary information" of commercial entities as defined in the bill.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on the same date that SB 1792 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

[1] The purpose of SB 1792 is to prevent persons younger than 18 from accessing material harmful to minors on websites or applications.

[2] Section 501.1737, F.S.

II. Present Situation:

Access to Public Records – Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[3] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.[4]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.[5] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[6] Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[7]

Section 119.011(12), F.S., defines "public records" to include:

> [a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[8]

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[3] FLA. CONST. art. I, s. 24(a).
[4] *Id*. *See also*, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).
[5] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).
[6] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[7] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[8] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[9] A violation of the Public Records Act may result in civil or criminal liability.[10]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[11] The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[12]

General exemptions from the public records requirements are contained in the Public Records Act.[13] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[14]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[15] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[16] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[17]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act[18] (the Act), prescribe a legislative review process for newly created or substantially amended[19] public records or open meetings exemptions, with specified exceptions.[20] The Act requires the repeal of

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[9] Section 119.07(1)(a), F.S.
[10] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[11] FLA. CONST. art. I, s. 24(c).
[12] *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).
[13] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).
[14] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).
[15] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).
[16] *Id.*
[17] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).
[18] Section 119.15, F.S.
[19] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.
[20] Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[21]

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[22] An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[23]
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[24] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[25]

The Act also requires specified questions to be considered during the review process.[26] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.[27] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.[28]

Public Records Exemptions for Active Criminal Intelligence Information and Criminal Investigative Information

Provisions in s. 119.071(2)(c), F.S., exempt from public disclosure active criminal intelligence information and criminal investigative information.

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[21] Section 119.15(3), F.S.
[22] Section 119.15(6)(b), F.S.
[23] Section 119.15(6)(b)1., F.S.
[24] Section 119.15(6)(b)2., F.S.
[25] Section 119.15(6)(b)3., F.S.
[26] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

[27] *See generally* s. 119.15, F.S.
[28] Section 119.15(7), F.S.

"Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.[29] Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.[30]

"Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.[31] Criminal intelligence information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.[32]

Additionally, criminal intelligence and criminal investigative information are considered "active" while such information is directly related to pending prosecutions or appeals,[33] but not if relating to cases which are barred from prosecution under an applicable statute of limitation.[34]

Six categories of criminal intelligence and criminal investigative information are expressly excluded from the exemption.[35] These categories are:[36]

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime, except as otherwise provided.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided, and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the enumerated provision[37] until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness and impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments, except[38] as provided.

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[29] Section 119.011(3)(a), F.S.
[30] Section 119.011(3)(d)1., F.S.
[31] Section 119.011(3)(b), F.S.
[32] Section 119.011(3)(d)2., F.S.
[33] *Id.*
[34] *See, e.g.,* s. 775.15, F.S.
[35] *City of Miami v. Metropolitan Dade County*, 745 F. Supp. 683, 686 (S.D. Fla. 1990).
[36] Section 119.011(3)(c), F.S.
[37] Section 119.07(1), F.S.
[38] Section 905.26, F.S.

Under the Public Records Act, public records of a governmental entity do not transform into protected criminal investigative information merely because they have been transferred to a law enforcement agency.[39]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 501.1737, F.S., as created by SB 1792 to include a new subsection (8) exempting all information received by the Department of Legal Affairs, either pursuant to a notification of violation of s. 501.1737, F.S., or pursuant to an investigation by the department or a law enforcement agency of a violation of s. 501.1737, F.S., from the public disclosure requirements[40] until such time as the investigation is completed or ceases to be active. This exemption must be construed in conformity with s. 119.071(2)(c), F.S.

The bill provides that during an active investigation, information made confidential and exempt pursuant to the bill may be disclosed by the department:

- In the furtherance of its official duties and responsibilities.
- For print, publication, or broadcast, if the department determines that such release would assist in notifying the public or locating or identifying a person that the department believes to be a victim of a data breach or an improper use or disposal of customer records, except that information made confidential and exempt by the following paragraph may not be released pursuant to this paragraph.
- To another governmental entity in the furtherance of its official duties and responsibilities.

The bill also provides that upon completion of an investigation, or once an investigation ceases to be active, the following information received by the department must remain confidential and exempt from the public disclosure requirements:

- All information to which another public records exemption applies.
- Personal information.
- A computer forensic report.
- Information that would otherwise reveal weaknesses in the data security of a commercial entity.
- Information that would disclose the proprietary information of a commercial entity.

For purposes of s. 501.1737(8), F.S., the term "proprietary information" means information that:

- Is owned or controlled by the commercial entity.
- Is intended to be private and is treated by the commercial entity as private because disclosure would harm the commercial entity or its business operations.
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.
- Includes:

[39] *State Attorney's Office of Seventeenth Judicial Circuit v. Cable News Network, Inc.*, 251 So. 3d 205, 212 (Fla. 4th DCA 2018).
[40] *See* s. 119.07(1), F.S.; FLA. CONST. art I, s. 24(a).

- Trade secrets as defined in state law.[41]
- Competitive interests, the disclosure of which would impair the competitive advantage of the commercial entity which is the subject of the information.

The bill provides that s. 501.1737(8), F.S., is subject to the Open Government Sunset Review Act[42] and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 of the bill provides the public necessity statement, as required by the State Constitution.

The statement provides that it is a public necessity that all information received by the department pursuant to a notification of a violation of s. 501.1737, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, be made confidential and exempt from the public disclosure requirements for the following reasons:

- A notification of a violation of s. 501.1737, F.S., may result in an investigation of such violation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer the statute. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.
- Release of information to which another public records exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.
- An investigation of a violation of s. 501.1737, F.S., is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.
- Notices received by the department and information received during an investigation of a violation of s. 501.1737, F.S., are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the commercial entity. Release of such information could give business competitors an unfair advantage.
- Information received by the department may contain a computer forensic report or information that could reveal weaknesses in the data security of a commercial entity. The release of this information could result in the identification of vulnerabilities in the cybersecurity system of the commercial entity and be used to harm the commercial entity and clients.
- The harm that may result from the release of information received by the department pursuant to a notification or investigation by the department or a law enforcement agency of

[41] Section 688.002, F.S.
[42] *See* s. 119.15, F.S.

a violation of s. 501.1737, F.S., could impair the effective and efficient administration of the investigation and thus, outweighs the public benefit that may be derived from the disclosure of the information.

Section 3 of the bill provides that it takes effect on the same date that SB 1792 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. SB 1792 takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for all information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1737, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as the investigation is completed or ceases to be active; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the new law is to prevent persons younger than 18 from accessing material harmful to minors on websites or applications. This bill exempts only information received by the Department of Legal Affairs pursuant to a notification of violation of the new law, s. 501.1737, F.S., or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of the new law, until such time as related investigations are completed or cease to be active, from the

public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill may have a minimal negative fiscal impact on the Department of Legal Affairs personnel, because staff responsible for complying with public record requests may require training related to the new public record exemption. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 501.1737 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

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

By Senator Grall

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A bill to be entitled

An act relating to public records; amending s. 501.1737, F.S.; providing an exemption from public records requirements for information relating to investigations by the Department of Legal Affairs and law enforcement agencies of certain data privacy violations; providing a definition; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Present subsection (8) of section 501.1737, Florida Statutes, as created by SB 1792 or similar legislation, 2024 Regular Session, is redesignated as subsection (9), and a new subsection (8) is added to that section, to read:

501.1737 Age verification for online access to materials harmful to minors.—

(8)(a) All information received by the department pursuant to a notification of a violation under this section, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of this section, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with s. 119.071(2)(c).

(b) During an active investigation, information made confidential and exempt pursuant to paragraph (a) may be

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disclosed by the department:

1. In the furtherance of its official duties and responsibilities;

2. For print, publication, or broadcast if the department determines that such release would assist in notifying the public or locating or identifying a person who the department believes to be a victim of a data breach or an improper use or disposal of customer records, except that information made confidential and exempt by paragraph (c) may not be released pursuant to this subparagraph; or

3. To another governmental entity in the furtherance of its official duties and responsibilities.

(c) Upon completion of an investigation or once an investigation ceases to be active, the following information received by the department shall remain confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. All information to which another public records exemption applies.

2. Personal information.

3. A computer forensic report.

4. Information that would otherwise reveal weaknesses in the data security of a commercial entity.

5. Information that would disclose the proprietary information of a commercial entity.

(d) For purposes of this subsection, the term "proprietary information" means information that:

1. Is owned or controlled by the commercial entity.

2. Is intended to be private and is treated by the

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commercial entity as private because disclosure would harm the commercial entity or its business operations.

3. Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.

4. Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the department.

5. Includes:

a. Trade secrets as defined in s. 688.002.

b. Competitive interests, the disclosure of which would impair the competitive advantage of the commercial entity who is the subject of the information.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all information received by the Department of Legal Affairs pursuant to a notification of a violation of s. 501.1737, Florida Statutes, or received by the department pursuant to an investigation by the department or a law enforcement agency of a violation of that section, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for the following reasons:

(1) A notification of a violation of s. 501.1737, Florida Statutes, may result in an investigation of such violation. The premature release of such information could frustrate or thwart

the investigation and impair the ability of the department to effectively and efficiently administer s. 501.1737, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

(2) Release of information to which another public records exemption applies once an investigation is completed or ceases to be active would undo the specific statutory exemption protecting that information.

(3) An investigation of a violation of s. 501.1737, Florida Statutes, is likely to result in the gathering of sensitive personal information, including identification numbers, unique identifiers, professional or employment-related information, and personal financial information. Such information could be used for the purpose of identity theft. The release of such information could subject possible victims of data privacy violations to further harm.

(4) Notices received by the department and information received during an investigation of a violation of s. 501.1737, Florida Statutes, are likely to contain proprietary information. Such information, including trade secrets, derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons who might obtain economic value from its disclosure or use. Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the commercial entity. Release of such information could give business competitors an unfair advantage.

117 (5) Information received by the department may contain a
118 computer forensic report or information that could reveal
119 weaknesses in the data security of a commercial entity. The
120 release of this information could result in the identification
121 of vulnerabilities in the cybersecurity system of the commercial
122 entity and be used to harm the commercial entity and clients.
123 (6) The harm that may result from the release of
124 information received by the department pursuant to a
125 notification or investigation by the department or a law
126 enforcement agency of a violation of s. 501.1737, Florida
127 Statutes, could impair the effective and efficient
128 administration of the investigation and, thus, outweighs the
129 public benefit that may be derived from the disclosure of the
130 information.
131 Section 3. This act shall take effect on the same date that
132 SB 1792 or similar legislation takes effect, if such legislation
133 is adopted in the same legislative session or an extension
134 thereof and becomes a law.

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