Tab 1	**CS/SB 276** by **AP, Hutson (CO-INTRODUCERS) Baxley**; (Identical to CS/H 00085) Voter Registration List Maintenance

Tab 2	**SB 522** by **Bean**; (Identical to H 00281) Incarcerated Parents

518080	A	S	RCS	RC, Bean	Delete L.64:	01/25 02:47 PM

Tab 3	**SB 560** by **Steube**; (Similar to CS/H 00439) Public Meetings and Records/Imminent Litigation

851136	A	S	RS	RC, Steube	Delete L.27 - 83:	01/25 02:51 PM
256718	SA	S	RCS	RC, Steube	Delete L.27 - 90:	01/25 02:51 PM
161932	A	S	RCS	RC, Steube	Delete L.38:	01/25 02:51 PM

Tab 4	**CS/SB 374** by **RI, Young**; (Similar to H 00223) Fantasy Contests

Tab 5	**CS/SB 566** by **JU, Young**; (Similar to CS/CS/H 00385) Unlawful Detention by a Transient Occupant

Tab 6	**SB 608** by **Passidomo**; Public Records/Identity Theft and Fraud Protection Act

Tab 7	**CS/SB 962** by **CM, Grimsley (CO-INTRODUCERS) Rouson**; (Identical to CS/H 01267) Telephone Solicitation

Tab 8	**SB 660** by **Brandes**; (Similar to CS/CS/H 01021) Florida Insurance Code Exemption for Nonprofit Religious Organizations

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, January 25, 2018
TIME: 1:30—3:30 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Braynon, Vice Chair; Senators Book, Bradley, Brandes, Flores, Galvano, Lee, Montford, Perry, Rodriguez, Simpson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 276** Appropriations / Hutson (Identical CS/H 85, Compare CS/H 87, Linked CS/S 278)	Voter Registration List Maintenance; Authorizing the Department of State to become a member of a nongovernmental entity to verify voter registration information; requiring the Department of Highway Safety and Motor Vehicles to provide specified information to the Department of State, etc. EE 11/07/2017 Favorable AP 12/06/2017 Fav/CS RC 01/25/2018 Favorable	Favorable Yeas 12 Nays 0
2	**SB 522** Bean (Identical H 281)	Incarcerated Parents; Requiring the Department of Children and Families to obtain specified information from a facility where a parent is incarcerated under certain circumstances; requiring that a parent who is incarcerated be included in case planning and provided with a copy of the case plan; specifying that the incarcerated parent is responsible for complying with facility procedures and policies to access services or maintain contact with his or her children as provided in the case plan, etc. CF 12/04/2017 Favorable JU 01/18/2018 Favorable RC 01/25/2018 Fav/CS	Fav/CS Yeas 12 Nays 0
3	**SB 560** Steube (Similar CS/H 439)	Public Meetings and Records/ Imminent Litigation ; Expanding an exemption from public meetings requirements to allow specified entities to meet in private with an attorney to discuss imminent litigation if certain conditions are met; requiring the transcript of a private meeting concerning imminent litigation to be made public upon the occurrence of a certain circumstance; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. JU 11/14/2017 Favorable GO 01/10/2018 Favorable RC 01/25/2018 Fav/CS	Fav/CS Yeas 10 Nays 2

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 374** Regulated Industries / Young (Similar H 223, Compare S 840)	Fantasy Contests; Exempting a fantasy contest from certain regulations, etc. RI 12/07/2017 Fav/CS RC 01/25/2018 Favorable	Favorable Yeas 9 Nays 2
5	**CS/SB 566** Judiciary / Young (Similar CS/H 385)	Unlawful Detention by a Transient Occupant; Revising factors that establish a person as a transient occupant of residential property; authorizing a former transient occupant, under certain circumstances, to bring a civil action for damages or recovery of personal belongings, etc. CM 12/04/2017 Favorable JU 01/10/2018 Fav/CS RC 01/25/2018 Favorable	Favorable Yeas 12 Nays 0
6	**SB 608** Passidomo	Public Records/Identity Theft and Fraud Protection Act; Citing this act as the “Identity Theft and Fraud Protection Act"; requiring an agency to review for information susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website; requiring an agency to establish a policy providing for requests to remove an image or a copy of a public record containing information susceptible to use for purposes of identity theft and fraud, etc. GO 01/10/2018 Favorable JU 01/18/2018 Favorable RC 01/25/2018 Favorable	Favorable Yeas 11 Nays 2
7	**CS/SB 962** Commerce and Tourism / Grimsley (Identical CS/H 1267)	Telephone Solicitation; Designating the “Florida Call-Blocking Act”; authorizing telecommunication providers to block certain calls; prohibiting the blocking of certain calls; authorizing telecommunication providers to rely upon caller identification service information to determine originating numbers for the purpose of blocking such calls, etc. CM 01/09/2018 Fav/CS RC 01/25/2018 Favorable	Favorable Yeas 12 Nays 0
8	**SB 660** Brandes (Similar CS/CS/H 1021)	Florida Insurance Code Exemption for Nonprofit Religious Organizations; Revising criteria under which a nonprofit religious organization that facilitates the sharing of contributions among its participants for financial or medical needs is exempt from requirements of the code, etc. BI 12/05/2017 Not Considered BI 01/10/2018 Favorable JU 01/18/2018 Favorable RC 01/25/2018 Favorable	Favorable Yeas 12 Nays 0

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

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 276
INTRODUCER:	Appropriations Committee and Senator Hutson and others
SUBJECT:	Voter Registration List Maintenance
DATE:	January 24, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	**Favorable**
2.	Wells/Hrdlicka	Hansen	AP	**Fav/CS**
3.	Carlton	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 276 authorizes the Department of State (DOS) to join a nongovernmental entity for the purpose of verifying voter registration information. The bill requires the Department of Highway Safety and Motor Vehicles to provide driver license or identification information to the DOS for the purpose of sharing and exchanging voter registration information with the nongovernmental entity. The bill allows the DOS to share confidential and exempt information pursuant to participation in a nongovernmental entity as long as there is agreement or a requirement to keep the information confidential.

The bill allows Florida to join a nongovernmental entity, designed to help states improve the accuracy of their voter rolls through data match identification of problematic registrations and to increase access to voter registration for all eligible citizens. The bill requires the Secretary of State, or his or her designee, be on the board of directors of any entity the DOS joins.

The actual expenses to the state are indeterminate. If the DOS joins a nongovernmental entity, then there may be costs to the state and local governments associated with using the information or data shared to verify voter registration information.

The DOS may incur costs related to the initial membership fee and annual user fees if the DOS elects to participate in a nongovernmental entity. For example, the one-time membership fee for a state to join the Electronic Registration Information Center (ERIC), a private, non-profit entity, is $25,000. In addition, each ERIC member pays annual dues which are determined by a formula

set by the ERIC board of directors, with larger states paying a bit more than smaller states. Any cost to the Department of Highway Safety and Motor Vehicles to provide the information is indeterminate.

Counties (supervisors of elections) may incur expenses related to any shared information and data received if the supervisor of elections uses such information and data to perform voter list maintenance activity, including outreach to voters to confirm addresses or eligibility. However, counties may also experience long-term cost savings due to more efficient processes and reliable sources of data to maintain the voter rolls. The actual expenses and cost savings to counties are indeterminate.

The bill will take effect on January 1, 2019.

II. Present Situation:

No complete national system currently exists to identify duplicate voter registrations across state lines. While there is no criminal or civil penalty for being registered in two states simultaneously, it is important to identify voters registered in multiple jurisdictions to ensure the accuracy of the voter rolls. However, being registered to vote in multiple jurisdictions does not mean that the voter is casting ballots in two states in the same election.[1]

The Florida Secretary of State, as the chief election officer, is responsible for the operation and maintenance of the statewide voter registration system[2] and each county's Supervisor of Elections is primarily responsible for the registration of voters and records maintenance activities, including removal of voters.[3] Supervisors of Elections are the only election officials with authority to register and remove voters from the registration rolls.

Florida Voter List Maintenance Information

The Florida Department of State's Division of Elections and county Supervisors of Elections offices perform ongoing records maintenance activities to protect the integrity of the electoral process by working to keep current and accurate records and ensure that only eligible voters are registered in the statewide voter registration system. Any maintenance program or activity must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.[4] As part of the records maintenance activities, the elections offices may receive and use information from a variety of sources, including other Florida state and local agencies, the federal government, and other states' elections officials, that may be useful in ensuring the accuracy of the registration system.

Currently in Florida there are two ways in which the state knows that a voter is registered in multiple jurisdictions: when the voter voluntarily notifies Florida election officials that he or she has moved and registered to vote in a new state; and when another state's voting officials notify

[1] Under s. 104.18, F.S., it is a third degree felony to willfully vote more than one ballot at any election.
[2] Implemented as part of the Help America Vote Act of 2002. Section 98.035, F.S.
[3] Section 98.015(3), F.S. *See also* ss. 98.045, 98.065, and 98.075, F.S.
[4] Section 98.065(1), F.S.

Florida election officials that the voter has registered in that other state.[5] There is no requirement that a registered voter must notify a state that he or she has moved out of the state and may have registered elsewhere.

When Florida election officials receive notice from another state's election officials that a Florida voter has registered in the other state, Florida law requires that notification to be treated as a request from the voter to have his or her name removed from the Florida voter registration system.[6] If the Division of Elections is notified that a Florida registered voter may have registered elsewhere, the information is processed and forwarded to the county Supervisor of Elections to take appropriate action to remove the voter. Sometimes the out-of-state cancellation information is forwarded directly to the county Supervisor of Elections.

If Florida election officials do not receive notice that the voter has moved, that voter will eventually be put into an inactive status pursuant to the county supervisors of elections biennial voter list maintenance efforts and culled from the state's rolls by the second subsequent general election.[7] Because of the timing of these efforts, a voter who has moved can remain on Florida's voter rolls for up to four years after moving.

Additionally, if a registered Florida voter indicates that he or she was previously registered in another state, then Florida will notify the other state within two weeks of registration to take appropriate action.[8]

Electronic Registration Information Center (ERIC)

The Electronic Registration Information Center, Inc., (ERIC) is a non-profit organization created to assist "states to improve the accuracy of America's voter rolls and increase access to voter registration for all eligible citizens."[9] "The ERIC provides sophisticated data matching services to the member states in order to improve a state's ability to identify inaccurate and out-of-date voter registration records, as well as eligible, but unregistered residents."[10]

The ERIC was formed in 2012 and is governed by states who choose to join.[11] As of July 2016, the ERIC had 20 state members, plus the District of Columbia, including: Alabama, Alaska, Colorado, Connecticut, Delaware, Louisiana, Illinois, Maryland, Minnesota, Nevada, New Mexico, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, West Virginia,

[5] A voter may voluntarily indicate on the voter registration application in the other state that he or she was previously registered elsewhere. Additionally, this information could be supplied by the voter at the initial registration or on subsequent registration updates.
[6] Section 98.045(2)(b), F.S.
[7] The biennial voter list maintenance efforts are based on procedures that rely upon change-of-address information, obtained from the U.S. Postal Service or through returned address confirmation requests sent to voters. *See* s. 98.065, F.S.
[8] Section 97.073(2), F.S.
[9] Electronic Registration Information Center, available at http://www.ericstates.org/ (last accessed November 13, 2017).
[10] ERIC, *Technology and Security Overview* (October 20, 2017), available at http://ericstates.org/images/documents/ERIC_Tech_and_Security_Brief_v2.2.pdf (last accessed November 9, 2017). *See also* ERIC, *Bylaws: Exhibit A Membership Agreement, whereas clauses* (updated December 16, 2016), available at http://www.ericstates.org/images/documents/ERIC_Bylaws_12-16-2016.pdf (last accessed November 28, 2017).
[10] Electronic Registration Information Center, available at http://www.ericstates.org/ (last accessed November 13, 2017).
[11] *Id*.

and Wisconsin.[12] Member states pay a one-time initial fee of $25,000 and annual dues, based upon a formula that includes voting age population as a factor.[13]

The first 20 states to join the ERIC make up the 20 voting members of its board of directors. Board members serve 2-year terms, and rotate off the board, with the most senior member rotating off first, which would allow for other states to have membership on the board, if additional states join.[14]

By joining the ERIC, each member state agrees to submit its voter registration and motor vehicle licensee data (which the state must update every 60 days), including voter names, addresses, dates of birth, and last four digits of social security numbers.[15] However, the ERIC does not require information such as race, religion, political party affiliation, or other information that can be used for purposes of discrimination and does not require records that are confidential or protected from disclosure by law or that are unrelated to voter eligibility (like a person's driving record). Sensitive, private data is anonymized by the state ("one-way hashing") and then transmitted to the ERIC, which anonymizes the data again for use in the data matching process.[16] The ERIC assures that all data received is collected, matched, and stored in an environment with state-of-the-art security. The ERIC Board of Directors appointed a 3-person Privacy and Technology Advisory Board made up of leading experts in the data security and encryption fields to advise and review the ERIC's security protections.[17]

From the data collected, the ERIC provides each member state with "reports that show voters who have moved within their state, voters who have moved out of state, voters who have died, duplicate registrations in the same state and individuals who are potentially eligible to vote but are not yet registered."[18] Using this information, supervisors of elections can confirm the eligibility of a voter and accuracy of the voter roll and, if necessary, either remove the voter or correct the inaccuracy on the roll, as appropriate (the ERIC does not purge voters from individual states' voter rolls); and the state can send voter registration forms to eligible voters before the voter registration closing date for the next federal election.[19]

III. Effect of Proposed Changes:

The bill authorizes the Department of State (DOS) to join a nongovernmental entity whose membership is composed entirely of state elections officials and the District of Columbia, to

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[12] *Id*. The most-recent census data indicates that the top states with residents immigrating to Florida include California, Georgia, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and Texas. US Census Bureau, *State-to-State Migration Flows* (2016), available at https://www.census.gov/data/tables/time-series/demo/geographic-mobility/state-to-state-migration.html (last accessed on November 13, 2017).

[13] The dues are determined by the Board of Directors. The annual budget for ERIC in their FY 2016-2017 was about $785,000. ERIC, *Bylaws: Article II, s. 4*. ERIC, *Frequently Asked Questions*, available at http://www.ericstates.org/faq (last accessed November 28, 2017).

[14] ERIC, *Bylaws: Article III*.

[15] ERIC, *Bylaws: Exhibit A Membership Agreement, s. 2.b.* and *Exhibit B*. A member can apply to submit an "alternative data source" for the motor vehicle licensing data if it can prove to ERIC that the data is equivalent or better.

[16] ERIC, *Technology and Security Overview*. ERIC, *Bylaws: Exhibit A Membership Agreement, s. 2.b.*

[17] ERIC, *Technology and Security Overview*.

[18] ERIC, *Frequently Asked Questions*.

[19] ERIC, *Bylaws: Exhibit A Membership Agreement, s. 5.a. and b*.

share information or data with other states in order to verify voter registration information. The entity cannot be operated or controlled by the federal government, or any entity acting on the federal government's behalf, and Florida must be allowed to withdraw from the entity at any time.

If the DOS decides to join a nongovernmental entity, the Secretary of State, or his or her designee, must serve as a full, voting member on the board of directors of the entity within 12 months of Florida's joining the entity.[20]

The bill requires the Department of Highway Safety and Motor Vehicles to provide driver license or identification information to the DOS for the purpose of sharing and exchanging voter registration information pursuant the membership in the nongovernmental entity. The DOS must enter into an agreement with the Department of Highway Safety and Motor Vehicles for such purposes.

The bill allows the DOS to share confidential and exempt information pursuant to the membership in a nongovernmental entity if either of the following occurs:

- All states that are members of the nongovernmental entity agree to maintain the confidentiality of the information or data.
- The bylaws of the nongovernmental entity require member states and the entity to maintain the confidentiality of the information as required by the laws of the state providing the information.

The bill requires the DOS to provide an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that describes the membership and provides information on the number of registered voters removed from the Florida Voter Registration system as a result of participation in the nongovernmental entity, as well as the reasons for the removals.

The bill takes effect on January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill permits the Department of State to share confidential and exempt information under certain circumstances. Under Florida law, most voter registration information is public record pursuant to ch. 119, F.S. The social security number, the driver license

[20] Pursuant to ERIC's bylaws, the Board of Directors currently has 20 members serving two year terms on a rotating basis. This provision may require ERIC to amend its bylaws to allow for Florida's Secretary of State, or his or her designee, to serve on the board. However, the bylaws currently allow for the Board of Directors to vote to expand the number of seats available. Additionally, as with any other corporation, corporate bylaws can be changed by the Board of Directors at any time.

number or state identification card number, where the voter submitted his or her registration information, and whether the voter declined to register or update voter registration information are exempt from public disclosure.[21] Additionally, while a voter's signature can be viewed or inspected, it cannot be copied.[22] Further, personal information of certain current and former government employees and their spouses and children may be exempt from public records, such as addresses, phone numbers, and dates of birth.[23] Additionally, the names, addresses, and telephone numbers of actual or threatened victims who participate in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence are exempt from public records.[24] The confidentiality and disclosure of such information must be maintained if the state becomes a member of a nongovernmental entity as permitted by this bill.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill allows the DOS to join a nongovernmental entity to share information or data with other states in order to verify voter registration information. If the DOS joins a nongovernmental entity, then there may be costs associated with using the information or data shared to verify voter registration information.

Local Government Expenditures

Counties (supervisors of elections) may incur expenses related to any shared information and data received when the supervisor of elections uses such information and data to perform voter list maintenance activity, especially if such information triggers a significant amount of activity that needs to be processed including outreach to voters to confirm addresses or eligibilities. However, the counties may also incur long-term cost savings due to more efficient processes and reliable sources of data helping to maintain the voter rolls. The extent of the potential costs and savings is currently indeterminate.

[21] Section 97.0585, F.S.
[22] *Id.*
[23] Section 119.071(4)(d)1., F.S.
[24] Section 741.4651, F.S.

For example, if Florida joins the ERIC, the ERIC's membership agreement encourages member states to "establish a regular schedule for requesting ERIC data with a minimum of one request every calendar year." If the state fails to make a request for 425 days, then the ERIC will automatically send data to the state and require the state to use the data as discussed above in the Present Situation.

State Government

The DOS may incur expenses related to working with the data sets provided through a membership in a nongovernmental entity.

Further, participation may require the payment of fees or membership dues by the DOS. For example, the ERIC charges a one-time membership fee of $25,000 to join and annual dues. The precise amount of annual dues is indeterminate and will vary from year-to-year. If other states join the ERIC after Florida, that could affect the cost for annual dues.

Any costs to the Department of Highway Safety and Motor Vehicles is indeterminate at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 278 is tied to this bill (effective upon the date that this bill or similar legislation is effective) and creates an exemption from the public records disclosure and inspection requirements for voter registration information received by the DOS pursuant membership in a nongovernmental entity.

VIII. Statutes Affected:

This bill substantially amends section 98.075 of the Florida Statutes.

IX. Additional Information:

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

CS by Appropriations on December 6, 2017:
The committee substitute:

- Requires that any nongovernmental entity that the DOS chooses must be made up of other states *and the District of Columbia.*
- Removes the ability of the state to enter into an interstate agreement ot share and exchange information in order to verify voter registration information.

B. Amendments:

None.

By the Committee on Appropriations; and Senators Hutson and Baxley

576-01823-18 2018276c1

A bill to be entitled

An act relating to voter registration list maintenance; amending s. 98.075, F.S.; authorizing the Department of State to become a member of a nongovernmental entity to verify voter registration information; establishing requirements for such memberships; requiring the Department of Highway Safety and Motor Vehicles to provide specified information to the Department of State; establishing reporting requirements; providing an effective date.

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

Section 1. Subsection (2) of section 98.075, Florida Statutes, is amended to read:

98.075 Registration records maintenance activities; ineligibility determinations.—

(2) DUPLICATE REGISTRATION.—

(a) The department shall identify those voters who are registered more than once within the state or those applicants whose registration applications within the state would result in duplicate registrations. The most recent application shall be deemed an update to the voter registration record.

(b)1. The department may become a member of a nongovernmental entity whose membership is composed solely of election officials of state governments and the District of Columbia if the sole purpose of the membership is to share and exchange information in order to verify voter registration information. If the department intends to become a member of

576-01823-18 2018276c1

such a nongovernmental entity, the agreement to join the entity must require that the Secretary of State, or his or her designee, serve as a full member with voting rights on the nongovernmental entity's board of directors within 12 months after joining the entity.

2. The department may share confidential and exempt information after becoming a member of a nongovernmental entity as provided in subparagraph 1. if:

a. Each member of the nongovernmental entity agrees to maintain the confidentiality of such information as required by the laws of the jurisdiction providing the information; or

b. The bylaws of the nongovernmental entity require member jurisdictions and the entity to maintain the confidentiality of information as required by the laws of the jurisdiction providing the information.

3. The department may only become a member of a nongovernmental entity as provided in subparagraph 1. if the entity is controlled and operated by the participating jurisdictions. The entity may not be operated or controlled by the Federal Government or any other entity acting on behalf of the Federal Government. The department must be able to withdraw at any time from any such membership entered into.

4. If the department becomes a member of a nongovernmental entity as provided in subparagraph 1., the Department of Highway Safety and Motor Vehicles must, pursuant to a written agreement with the department, provide driver license or identification card information to the department for the purpose of sharing and exchanging voter registration information with the nongovernmental entity.

5. If the department becomes a member of a nongovernmental entity as provided in subparagraph 1., the department must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year. The report must describe the terms of the nongovernmental entity membership and provide information on the total number of voters removed from the voter registration system as a result of the membership and the reasons for their removal.

Section 2. This act shall take effect January 1, 2019.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 8, 2018

I respectfully request that **Senate Bill #276**, relating to Voter Registration List Maintenance, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Travis Hutson
Florida Senate, District 7

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/2018
Meeting Date

276
Bill Number (if applicable)

Topic VOTER LIST MAINTENANCE

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title ATTORNEY

Address 120 S. MONROE ST.
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TALLAHASSEE FL 32301
City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA SUPERVISORS OF ELECTIONS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 522
INTRODUCER:	Rules Committee and Senator Bean
SUBJECT:	Incarcerated Parents
DATE:	January 26, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Favorable**
2.	Tulloch	Cibula	JU	**Favorable**
3.	Preston	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 522 requires that the Department of Children and Families include incarcerated parents of dependent children in the case planning process. The case planning process is the statutory process requiring that DCF meet with and obtain input from all parties involved in a child dependency case in order to determine the ultimate goal for the child's permanent living arrangement (permanency goal) and the steps the parties must take (complete certain tasks or receive certain services) by certain dates to achieve the child's permanency goal. Based on input from all parties involved, DCF prepares a written document called a case plan reflecting the permanency goal and the steps to achieve the permanency goal.

Specifically, the bill requires that:

- DCF must develop case plans with incarcerated parents, giving consideration to limitations posed by the correctional facility where the parent is incarcerated;
- DCF must determine what services and resources may be available to incarcerated parents and, if reunification with a child is the goal, proactively assist the parent in arranging for services from within jail or prison. If reunification is not the goal, DCF must still attach a list of services available from within jail or prison to the parent's case plan; and
- DCF must amend case plans if appropriate when parents either become incarcerated or are released from incarceration.
- The incarcerated parent is responsible for complying with case plan requirements and the requirements of their correctional facilities.

II. Present Situation:

Overview

Although the number of children and youth placed in foster care nationally as a result of the incarceration of a parent is not clearly identified through current data collection systems, estimates suggest that tens of thousands of children in foster care may have incarcerated parents.[1] In Florida, legal complications have arisen when an incarcerated parent's parental rights have been terminated for non-compliance with a case plan, even though he or she has been given no meaningful opportunity to participate in the case planning process. The result of these legal complications is a delay in the permanent placement of a child.

Harmonizing the Goals for Dependent Children with the Rights of Parents

The purpose of Florida's dependency system (foster care) is to protect children from abuse, neglect, and abandonment, while simultaneously working with parents to keep families intact when possible.[2] Once a child is deemed dependent and comes under the supervision of the Department of Children and Families, the goal is to achieve "permanency" or a stable living arrangement for the child (i.e., "permanency goal")[3] as soon as possible.[4] The preferred permanency goals for the child are either reunification with the parent(s) or adoption.[5] When removal of the child from the home is necessary, the permanency goal also aims to ensure the child is not "in foster care longer than 1 year."[6] The Florida Statutes affirm that "[t]ime is of the essence for permanency of children in the dependency system."[7]

For parents, courts recognize a constitutional, fundamental liberty interest in being a parent to a child which is not dependent on the parent's behavior (including criminal behavior leading to incarceration) or loss of custody of the child.[8] Although a parent's fundamental right to be a parent is not unlimited, the parent's rights are *not automatically terminated* if a parent is

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[1] U.S. Department of Health and Human Services, Children's Bureau, Child Welfare Information Gateway: Child Welfare Practice With Families Affected by Parental Incarceration (Oct. 2015), https://www.childwelfare.gov/pubPDFs/parental_incarceration.pdf.

[2] Section 39.001(1)(a), (b), (e), (f), F.S.

[3] Section 39.01(53), F.S. (defining "permanency goal" as "the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child.").

[4] Section 39.001(1) (h), F.S.

[5] *Id.*

[6] Section 39.001(1)(f)-(h), F.S.

[7] Section 39.806(1)(e)1., F.S.

[8] *See Santosky v. Kramer*, 455 U.S. 745, 753, 787, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) ("The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs."); *S.M. v. Florida Dept. of Children & Families*, 202 So. 3d 769, 777–78 (Fla. 2016) ("Likewise, this fundamental right is equally as strong, if not stronger, under the Florida Constitution. This Court, in *Padgett*, explained: 'Florida courts have long recognized this fundamental parental right ... to enjoy the custody, fellowship and companionship of [their] offspring. This rule is older than the common law itself.'") (quoting *Dep't of Health and Rehab. Serv's v. Padgett,* 577 So. 2d 565, 570 (Fla. 1991), citing *Santosky*, 455 U.S. at 753, 102 S.Ct. 1388. 577 So.2d at 570)).

incarcerated and loses custody of a child.[9] In recognition of a parent's fundamental liberty interest in being a parent, the strict procedures set forth in chapter 39, F.S., affording the parent due process must be followed before the parent's rights can be terminated without consent.[10]

Case Planning

Under both Florida and federal law, the tool DCF is required to use to determine the permanency goal for the child is the case plan.[11] DCF is required to develop a case plan in every dependency case in Florida with the input of all parties involved.[12] The ultimate goal of the case plan is to set out in writing the specific steps to be taken by all parties involved, including the parents, to reach the child's permanency goal.[13] If the permanency goal is reunification for example, the case plan must be designed with specific tasks to be completed and services to be rendered to the child or parent (such as counseling or rehabilitative services[14]) to ensure the child's safe return home. [15]

DCF is also required to follow certain procedures in the case planning process:

- Meet face-to-face with a parent to develop the case plan and determine the permanency goal for the child;[16]
- When a parent is not available or unable to participate, document these circumstances in the case plan, along with the efforts made to find or include the parent.[17]
- Ensure the case plan is written in clear language and signed by all parties (except that the child's signature may be waived).[18]
- Ensure that copies of the case plan are provided to all parties.[19]

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[9] *Id. See also* s. 39.806(d), F.S. (setting out circumstances when parental rights may be terminated due to incarceration: 1. Incarceration period is significant portion of child's minority; 2. Parent is a violent career criminal, habitual violent felony offender, committed a capitol felony, etc.; or 3. The court determines by clear and convincing evidence that relationship with incarcerated parent will harm the child considering several factors).

[10] *Id. See also Fahey v. Fahey*, 213 So. 3d 999, 1001 (Fla. 1st DCA 2016) ("Under Florida law, parental rights may only be terminated through adoption or the strict procedures set forth in chapter 39, Florida Statutes").

[11] Section 39.01(11), F.S. ("'Case plan' means a document, as described in s. 39.6011, prepared by the department with input from all parties."). Sections 39.6011 & .6012, F.S.; 42 U.S.C. s. 671(a)(16) (requiring development of case plan where child removed from home); 45 C.F.R. s. 1356.21(g)(2).

[12] Sections 39.01(11) and 39.6011, F.S.

[13] Section 39.01(53), F.S. ("The permanency goal is also the case plan goal.") *See also Case Planning to Support Family Change, 5-1. Purpose*, Family Assessment and Case Planning, Department of Children and Families Operating Procedure No. 170-9, Ch. 5, p. 5-1 (May 11, 2016), http://eww.dcf.state.fl.us/asg/pdf/r170-9c5.pdf .

[14] Section 39.01(68), F.S. ("'Reunification services' means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, developmental, mental, and emotional health and a safe, stable, living environment; shall promote family autonomy; and shall strengthen family life, whenever possible.").

[15] *Id.;* s. 39.6012(1)(a), F.S. *See also Case Planning to Support Family Change, 5-1. Purpose*, Family Assessment and Case Planning, Department of Children and Families Operating Procedure No. 170-9, Ch. 5, p. 5-1 (May 11, 2016), http://eww.dcf.state.fl.us/asg/pdf/r170-9c5.pdf.

[16] Section 39.6011(1)(a), F.S. This meeting may also include the guardian ad litem if appointed, and the custodian of the child and even the child if appropriate. *Id.* The parent may also receive assistance from any person, including an attorney or social service agency, in developing the case plan. s. 39.6011(1)(c), F.S.

[17] Section 39.6011(1)(d), F.S.

[18] Section 39.6011(2), F.S.

[19] *See* n. 16, *supra*.

Because incarcerated parents are *not* automatically unavailable nor are their rights automatically terminated by virtue of incarceration,[20] the procedural case planning requirements DCF must follow also apply to incarcerated parents.[21] In some cases, however, an incarcerated parent has been overlooked in the case planning process.

Legal Consequences of Overlooking the Incarcerated Parent in the Case Planning Process

Under chapter 39, F.S., when DCF seeks to terminate a parent's rights for substantial non-compliance with the parent's case plan, the parent's rights can be terminated only if DCF has made "reasonable efforts to reunify the parent and the child.[22] Likewise, several appellate court decisions have held that, in recognition of a parent's fundamental right to parent his or her child, when an incarcerated parent of a dependent child[23] has not been given any assistance by DCF or given a meaningful chance to participate in the case planning process from prison, the incarcerated parent's parental rights *cannot* later be terminated for case plan non-compliance without violating the parent's right of due process.[24] In those cases, the trial courts' decisions terminating the incarcerated parents' rights were reversed and presumably remanded so that the incarcerated parent could be given the opportunity to go through the case planning process.[25]

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[20] "[A] parent's incarceration alone does not constitute abuse, neglect, or abandonment. Incarceration is merely a factor that the circuit court may consider in determining whether a child has been abandoned." *In re C.N.*, 51 So. 3d 1224, 1231–32 (Fla. 2d DCA 2011). *See also In re J.L.*, 15 So. 3d 866, 870 (Fla. 2d DCA 2009) (Altenbernd, J., concurring). ("[T]here sometimes seems to be a presumption in the trial courts that, merely because a parent is unlikely to become an adequate custodial parent, the parent's rights should be terminated[.]"). *See also* n. 9, *supra*.

[21] *See* Dep't of Children & Families, *Agency Legislative Bill Analysis* (Nov. 10, 2017).

[22] Section 39.806(1)(e)1.-3., F.S. (setting out circumstances when parental rights may be terminated for failure to substantially comply with a case plan: 1. Within 12 months if the child also continues to be abused, neglected, or abandoned, unless the parent did not have the financial resources or DCF failed to make reasonable reunification efforts; 2. The parent(s) have materially breached the case plan and DCF can show the parent(s) are unlikely or unable to substantially comply before the case plan expires; or 3. The child has been in foster care for any 12 of the last 22 months and parents have not substantially complied with the case plan so as to permit reunification unless the parent did not have the financial resources or DCF failed to make reasonable reunification efforts). In *J.L.*, although the trial court reasoned that the incarcerated parent breached his case plan under s. 39.806(1)(e)2., F.S., and that provision does not require DCF to have made a reasonable effort like subparagraph (1)(e)1. or subparagraph (1)(e)3., the Second District rejected this reasoning, concluding that "[g]iven [DCF's] failure to take any meaningful steps to assist the Father in complying with his case plan, we find [DCF] did not establish by clear and convincing evidence that the Father materially breached his case plan." 15 So. 3d at 869.

[23] Generally, a dependent child is a child under the supervision of DCF.

[24] "'Where a court is terminating parental rights based on a parent's failure to comply with a case plan or a performance agreement, it is axiomatic that the parent must have the substantial ability to comply with the plan or agreement.'" *In re J.L.*, 15 So. 3d at 868–69 (quoting *Hutson v. State*, 687 So. 2d 924, 925 (Fla. 2d DCA 1997) (holding that the father's rights could not be terminated because he had no meaningful opportunity to participate in the case plan; noting that the court was troubled by DCF's failure to make any effort to visit the father in jail to review the terms of the case plan with him, DCF's failure to respond to the father's letters or otherwise attempt to contact him, and DCF's admitted delay in sending the father information). *See also In re G.M., Jr.*, 71 So. 3d 924, 927 (Fla. 2d DCA 2011) (reversing termination of incarcerated father's parental rights where DCF failed to either send him a copy of his case plan or communicate with him about it, noting the signature space for the father on the case plan was left blank; DCF ignored father's written requests for assistance holding that incarcerated father; but the father attempted to improve himself by seeking a transfer to a facility to participating in parenting classes); *T.M. v. Department of Children and Families*, 905 So. 2d 993 (Fla. 4th DCA 2005) (holding that incarcerated father's parental rights could not be terminated for case plan non-compliance without DCF first showing reasonable efforts were made to help him secure the services needed to comply while in prison).

[25] "Accordingly, we reverse the final judgment terminating the Father's parental rights to his son and remand for further proceedings." *In re J.L.*, 15 So. 3d at 870.

The problem, however, is that affording the incarcerated parent his or her due process means delay for the dependent child's permanency goal. Notwithstanding that there is an expedited process for termination of parental rights cases in the courts,[26] by the time an appellate court reverses a trial court's determination to terminate the incarcerated parent's parental rights and DCF begins the case planning process anew with the incarcerated parent, the permanency and stability of the child in dependent care is further delayed. While the delay may be constitutionally necessary to preserve the parent's rights, it is also in tension with the public policy underlying Florida's dependency system, to bring stability to the child as soon as possible.[27]

Logistical Issues in Case Planning with Incarcerated Parents

Many of the tasks parents are asked to complete as part of the case planning process involve courses or counseling in parenting, substance abuse treatment, anger management, and the like. The Florida Department of Corrections (DOC), which has 148 facilities statewide that houses approximately 98,000 inmates, provides access for inmates to a range of educational and vocational services that may help an incarcerated parent meet some of his or her case plan goals, including substance abuse treatment, anger management programs, and parenting classes. Annually, the DOC publishes the list of services available at each facility in its annual report and on the facility's website.[28]

Similarly, county jail facilities also provide many of the same services to inmates. Generally, these services are listed in the county jail's "Inmate Handbook" which should be distributed to the inmate upon arrival. Some jail facilities have also published the Inmate Handbook on the jail's website.[29]

The primary problem is that many of these programs and services are provided on a first come, first serve basis, meaning some inmates may encounter problems completing case plan tasks within certain timeframes while incarcerated.[30] However, according to the DOC, they have been willing to approve transfers when appropriate for incarcerated parents to facilities that meet the inmate's programming needs, as well as allow the incarcerated parent to have routine visits with

[26] *See* Fl. R. App. P. 9.146.
[27] "Time is of the essence" in dependency cases. *See* n. 7, *supra*.
[28] Florida Department of Corrections, *Introduction to Information on Florida Prison Facilities*, http://www.dc.state.fl.us/facilities/ciindex.html (last visited Jan. 15, 2018). For example, Bay Correctional Facility offers substance abuse programs, including prevention/education and intensive outpatient. *See* Bay Correctional Facility page, Florida Department of Corrections, http://www.dc.state.fl.us/facilities/region1/112.html (last visited Jan. 15, 2018).
[29] *See, e.g.*, Leon County Sheriff's Office, *Leon County Detention Facility Inmate Handbook: Rules, Regulations and General Information*, "Programs, pp. 38-43 (Sept. 2017), http://www.leoncountyso.com/docs/default-source/jail-documents/jail-inmate-handbook-2017.pdf?sfvrsn=0 (noting that 16 educational programs are currently offered to inmates); Broward Sheriff's Office, *Department of Detention and Community Control Inmate Handbook*, "Programs, p. 17 (Rev. 2012), http://sheriff.org/DOD/Documents/Inmate_Handbook.pdf (noting that there are substance abuse, like skills, and mental health programs available to inmates).
[30] *See* n. 28, *Leon County* at p. 38 ("Most programs have a waiting list and new members are added on a first come, first serve basis. Maximum capacity for each program is 15 inmates per class. Inmates are to send one request per program you wish to attend. Attendance is expected and those missing two classes will be removed from the list to make way for those waiting."); *Broward* at 17 ("Inmates who volunteer for programs will be recruited by program staff as bed space is available. Whether participating voluntarily or by court order, your participation is contingent upon meeting classification criteria for placement into a program housing unit.").

his or her children, when appropriate. Additionally, the DOC cooperates with DCF by allowing DCF staff access to inmates for relevant meetings and interviews.[31] Likewise, in the county jails, the "Inmate Handbook" reflects that inmates may have visitors, including children.[32]

III. Effect of Proposed Changes:

Section 1 creates a new provision under chapter 39, F.S., (proceedings involving children) requiring that the Department of Children and Families include or make an effort to include an incarcerated parent in the statutory case planning process requiring that DCF meet with and obtain input from all parties involved in a child dependency case in order to determine the ultimate goal for the child's permanent living arrangement (permanency goal) and the steps the parties must take (complete certain tasks or receive certain services) by certain dates to achieve the child's permanency goal. An incarcerated parent must be included in case planning regardless of the ultimate permanency goal, *and* DCF must ensure that the incarcerated parent receives a copy of the written case plan.

The bill provides two levels of assistance DCF must provide during the case planning process to an incarcerated parent depending on the permanency goal:

- When reunification between the incarcerated parent and the child is the permanency goal, DCF must proactively obtain information from the parent's prison facility to determine how the parent may complete the case plan and receive services while in prison.
- However, if reunification is not the goal, DCF must only ensure that consideration is given to the available services and regulations at the parent's prison facility in developing the case plan, and attach a list of those services to the case plan.

The bill also addresses several other scenarios:

- If a parent becomes incarcerated *after the case plan is developed*, the parties must make a motion to modify the case plan if the parent's incarceration impacts the permanency goal.
- If an incarcerated parent *is released before expiration of the case plan*, the case plan, if appropriate, must include a contingency plan of tasks and services to be completed or received outside the prison.
- If an incarcerated parent *does not participate* in the preparation of the case plan, DCF must document the circumstances and its efforts to include the incarcerated parent in the case plan.

The bill also contains several express caveats:

- DOC and its facilities have *no* new or additional obligations or duties to perform.
- The incarcerated parent is ultimately responsible to comply with the case plan while in prison.

Section 2 provides for an effective date of July 1, 2018.

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[31] Dep't of Corrections, *Agency Legislative Bill Analysis for HB 281* (Nov. 1, 2017) (identical to SB 522) (on file with Senate Judiciary Committee) ("FDC currently assists DCF by allowing DCF representatives access to inmates for interviews, meetings, etc.; by approving transfers, when appropriate, for incarcerated parents to facilities which meet the inmate's programming needs; and by allowing incarcerated parents to have routine visits with their children, when appropriate.").

[32] *See* n. 28, *Leon County*, "Visitation" at p. 38 (permitting inmates five (5) thirty minute visitation sessions each week not exceed 2.5 hours, and permitting children to visit with an adult); *Broward*, "Visitation" at 14 (permitting inmates up to two (2) hours visitation each week, and permitting children when accompanied by a parent of legal guardian).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will not likely have a fiscal impact to the state for several reasons. First, DCF currently includes incarcerated parents in case planning for dependent children. Second, the bill states that it is not the intent to require additional obligations to the Department of Corrections beyond what is currently provided to inmates who are parents. Services such as substance abuse treatment, anger management, and parenting classes are available to inmates; however, demand for these services exceeds their availability. During FY 2015-2016, for example, 12,234 inmates received institutional-based substance abuse treatment, which represents approximately 20 percent of the inmate population assessed as needing treatment.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Children and Families is currently required to include incarcerated parents in the dependency case planning process. With the exception of specifically requiring the department to attach a list of services available at a correctional facility, all other provisions in the bill mirror provisions in current law.[33] The department is required to explain a parent's

[33] Section 39.602, F.S.

nonparticipation in case planning and that could include an explanation that services are unavailable at the parent's correctional facility.

VIII. Statutes Affected:

This bill creates section 39.6021 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Rules Committee on January 25, 2018:
The amendment specifies that if an incarcerated parent is released before expiration of the case plan, the case plan must include a contingency plan of tasks and services to be completed or received outside the prison only when it's appropriate to do so.

B. Amendments:

None.

518080

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2018	.	
	.	
	.	
	.	

The Committee on Rules (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete line 64

and insert:

plan expires, the case plan must, if appropriate, include tasks that must be

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

And the title is amended as follows:

Delete line 19

and insert:

518080

parent is released before it expires and if appropriate; requiring the

By Senator Bean

4-00372A-18 2018522__

A bill to be entitled

An act relating to incarcerated parents; creating s. 39.6021, F.S.; requiring the Department of Children and Families to obtain specified information from a facility where a parent is incarcerated under certain circumstances; providing an exception; requiring that a parent who is incarcerated be included in case planning and provided with a copy of the case plan; providing requirements for case plans; specifying that the incarcerated parent is responsible for complying with facility procedures and policies to access services or maintain contact with his or her children as provided in the case plan; requiring the parties to the case plan to move to amend the case plan if a parent becomes incarcerated after a case plan has been developed and the parent's incarceration has an impact on permanency for the child; requiring that the case plan include certain information if the incarcerated parent is released before it expires; requiring the department to include certain information in the case plan if the incarcerated parent does not participate in its preparation; providing construction; providing an effective date.

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

Section 1. Section 39.6021, Florida Statutes, is created to read:

39.6021 Case planning when parents are incarcerated or

4-00372A-18 2018522__

become incarcerated.—

(1) In a case in which the parent is incarcerated, the department shall obtain information from the facility where the parent is incarcerated to determine how the parent can participate in the preparation and completion of the case plan and receive the services that are available to the parent at the facility. This subsection does not apply if the department has determined that a case plan for reunification with the incarcerated parent will not be offered.

(2) A parent who is incarcerated must be included in case planning and must be provided a copy of any case plan that is developed.

(3) A case plan for a parent who is incarcerated must comply with ss. 39.6011 and 39.6012 to the extent possible, and must give consideration to the regulations of the facility where the parent is incarcerated and to services available at the facility. The department shall attach a list of services available at the facility to the case plan. If the facility does not have a list of available services, the department must note the unavailability of the list in the case plan.

(4) The incarcerated parent is responsible for complying with the facility's procedures and policies to access services or maintain contact with his or her children as provided in the case plan.

(5) If a parent becomes incarcerated after a case plan has been developed, the parties to the case plan must move to amend the case plan if the parent's incarceration has an impact on permanency for the child, including, but not limited to:

(a) Modification of provisions regarding visitation and

contact with the child;

(b) Identification of services within the facility; or

(c) Changing the permanency goal or establishing a concurrent case plan goal.

(6) If an incarcerated parent is released before the case plan expires, the case plan must include tasks that must be completed by the parent and services that must be accessed by the parent upon the parent's release.

(7) If the parent does not participate in preparation of the case plan, the department must include in the case plan a full explanation of the circumstances surrounding his or her nonparticipation and must state the nature of the department's efforts to secure the incarcerated parent's participation.

(8) This section does not prohibit the department or the court from revising a permanency goal after a parent becomes incarcerated or from determining that a case plan with a goal of reunification may not be offered to a parent. This section may not be interpreted as creating additional obligations for a facility which do not exist in the statutes or regulations governing that facility.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 21, 2018

I respectfully request that **Senate Bill # 522**, relating to Incarcerated Parent, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/18
Meeting Date

522
Bill Number (if applicable)

Topic INCARACERATED PARENTS.

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644 Phone 813.264.2977
Street

TAMPA FL 33694 Email
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-25-2018
Meeting Date

522
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Incarcerated Parents

Name Erin Choy

Job Title Immediate Past President

Address 404 E. Sixth Avenue
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City *State* *Zip*

Phone 5616354168

Email erin.choy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/18
Meeting Date

522
Bill Number (if applicable)

Topic Incarceration Bill

Amendment Barcode (if applicable)

Name Alan Abramowitz

Job Title Director - GAL Program

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Street

Tallahassee FL
City *State* *Zip*

Phone 850-241-7252

Email alan.abramowitz@gal.fl.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 560
INTRODUCER:	Rules Committee and Senator Steube
SUBJECT:	Public Meetings and Records/Imminent Litigation
DATE:	January 25, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.	Brown	Caldwell	GO	**Favorable**
3.	Davis	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 560 expands a public meeting exemption that presently allows certain individuals of a governmental entity to discuss litigation pending before a court or administrative agency. More specifically, the current exemption authorizes board and commission members and the chief administrative or executive officer of the entity to conduct a private meeting about pending litigation with the attorney of the entity.

The bill broadens the exemption to additionally authorize a private meeting with the entity's attorney for the purpose of discussing imminent litigation. Litigation is imminent when the entity has received notice of a claim or demand by a party threatening litigation before a court or administrative agency.

The bill also broadens the exemption to permit the designee of the chief administrative or executive officer of the governmental entity and the entity's technical experts to attend the meeting with the attorney to discuss the imminent litigation.

As a prerequisite to private discussions about imminent litigation between a government entity and its attorney, the name of the potential claimant must be identified at a public meeting, unless the person's name is confidential or exempt from disclosure. Additionally, the public necessity statement makes clear that the transcript of the meeting is exempt from the public records requirements.

The bill subjects the parties involved in discussions of imminent litigation to the same standards that apply to private discussions of pending litigation.

Therefore:

- The attorney must advise the entity at a public meeting that he or she is seeking advice about the litigation.
- The subject matter at the private meeting is limited to settlement negotiations or strategy sessions related to legal expenses.
- The entire session must be recorded by a certified court reporter.
- The entity must provide reasonable public notice of the time and date of the attorney-client session, and other information related to the process.

If the imminent litigation does not proceed, the transcript of the private meeting must be made part of the public record the earlier of within a reasonable time or when the underlying statute of limitations expires.

These new provisions are subject to review under the Open Government Sunset Review Act and repeal October 2, 2023, unless reviewed and saved from repeal by legislative reenactment.

The bill expands a public record and public meeting exemption and therefore requires a two-thirds vote of each house of the Legislature for passage, pursuant to Article I, s. 24(c) of the State Constitution.

II. Present Situation:

Public Records Law

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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.[3] Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.[4] The Public Records Act states that

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

[1] FLA. CONST., art. I, s. 24(a).
[2] FLA. CONST., art. I, s. 24(a).
[3] The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
[4] Public records laws are found throughout the Florida Statutes.
[5] Section 119.01(1), F.S.

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.[9] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[10] A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.[11]

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

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.[14] Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or

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

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

[8] 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] FLA. CONST., art. I, s. 24(c).

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

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

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

[14] FLA. CONST., art. I, s. 24(b).

discussed.[15] This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.[16]

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the "Government in the Sunshine Law,"[17] or the "Sunshine Law,"[18] requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.[19] The board or commission must provide the public reasonable notice of such meetings.[20] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[21] Minutes of a public meeting must be promptly recorded and open to public inspection.[22] Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[23] A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.[24]

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.[25] The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.[26] A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.[27]

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

[15] FLA. CONST., art. I, s. 24(b).
[16] FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: "The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."
[17] *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).
[18] *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).
[19] Section 286.011(1)-(2), F.S.
[20] *Id.*
[21] Section 286.011(6), F.S.
[22] Section 286.011(2), F.S.
[23] Section 286.011(1), F.S.
[24] Section 286.011(3), F.S.
[25] FLA. CONST., art. I, s. 24(c).
[26] FLA. CONST., art. I, s. 24(c).
[27] *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

meetings exemptions.[28] The OGSR provides that an exemption automatically repeals 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.[29] In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.[30] An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[31]
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[32] or
- It protects trade or business secrets.[33]

The OGSR also requires specified questions to be considered during the review process.[34] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[35] If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[36]

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[28] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

[29] Section 119.15(3), F.S.

[30] Section 119.15(6)(b), F.S.

[31] Section 119.15(6)(b)1., F.S.

[32] Section 119.15(6)(b)2., F.S.

[33] Section 119.15(6)(b)3., F.S.

[34] 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?

[35] FLA. CONST. art. I, s. 24(c).

[36] Section 119.15(7), F.S.

Exemption for Private Meetings with an Attorney

In 1993, the Legislature created an exemption to the public meeting requirements by allowing a private meeting between a governmental entity and its attorney.[37] Specifically, a board or commission of a state agency or other specified authority[38] and the chief administrative or executive officer of the entity may meet in private with the entity's attorney to discuss *pending litigation* that the entity is *presently* a party to, before a court or administrative agency.

To qualify as an exempt meeting:

- The entity's attorney must advise the entity at a public meeting that he or she desires advice concerning the litigation.
- The subject matter of the meeting must be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- The entire session must be recorded by a certified court reporter during which no portion of the session may be off the record and the notes must be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.
- The entity must give reasonable public notice of the time and date of the attorney-client session and name all persons who will be attending. The session must begin at an open meeting where it is announced by the chair the beginning and estimated length of the meeting and the names of the people attending. When the session ends, the meeting must be reopened and the chair must announce the termination of the session.
- The transcript must be made part of the public record when the litigation is concluded.

In 1998, the Attorney General rendered an opinion clarifying when litigation is pending.[39] The opinion stated that the exemption for *pending litigation* does not apply "if no lawsuit has been filed even though the parties involved believe that litigation is inevitable." The opinion concluded that the Legislature, had it intended, could have extended the exemption to include impending or imminent litigation.

As a result of this interpretation, governmental entities may not use this exemption to discuss settlement options or strategies tied to litigation that is *imminent* but not formally initiated by the filing of a complaint or petition. Even when a demand letter has been presented to a government entity who will soon be a defendant, the attorney may not meet privately with his or her governmental client. As a result, this inability to have preliminary discussions may have an adverse impact on a governmental entity because the opportunity to settle the case, reduce the issues to be litigated, and potentially reduce upcoming legal fees and costs is prohibited.

III. Effect of Proposed Changes:

This bill expands a public meeting exemption that allows certain individuals of a governmental entity to discuss litigation pending before a court or administrative agency. The current exemption authorizes board and commission members and the chief administrative or executive

[37] Section 286.011(8), F.S., Ch. 93-232, s. 1, L.O.F.
[38] Section 286.011(8), F.S., also lists other entities to include "any agency or authority of any county, municipal corporation, or political subdivision."
[39] AGO 98-21; AGO 2004-35.

officer of the entity to conduct a private meeting about pending litigation with the attorney of the entity.

The bill broadens the exemption to additionally authorize a private meeting for the purpose of discussing imminent litigation. Litigation is considered imminent when the entity has received notice of a claim or demand by a party threatening litigation before a court or administrative agency.

The bill also broadens the exemption to permit the designee of the chief administrative or executive officer of the governmental entity and the entity's technical experts to attend the private meeting with the attorney to discuss the imminent litigation.

Before a governmental entity may have private discussions with its attorney about imminent litigation, the bill requires that the name of the potential claimant be identified at a public meeting, unless the person's name is confidential or exempt from disclosure.

The bill subjects the parties involved in discussions of imminent litigation to the same standards that apply to discussions of pending litigation. Therefore:

- The attorney must advise the entity at a public meeting that he or she is seeking advice about the litigation.
- The subject matter at the private meeting is limited to settlement negotiations or strategy sessions related to legal expenses.
- The entire session must be recorded by a certified court reporter.
- The entity must provide reasonable public notice of the time and date of the attorney-client session, and other information related to the process.

If the imminent litigation does not proceed, the transcript of the private meeting must be made part of the public record the earlier of when it becomes apparent to the governmental entity that any litigation will not occur or when the underlying statute of limitations expires.

Because the public meetings bill expands an existing exemption, a statement of public necessity is required. The statement provides that the exemption is expanded to include meetings when the designee of the chief administrative or executive officer of the governmental entity is present, and when technical experts of the entity are present to discuss imminent litigation. The Legislature also finds that it is a public necessity to exempt the transcript of the exempt meetings from public records requirements. The statement of public necessity notes that the private meeting is necessary to privately prepare for threatened litigation by obtaining legal advice, exploring and developing relevant facts, and considering an early settlement or other options to make decisions that are better informed. The public necessity statement provides that the bill is also needed to facilitate that governmental entities receive fair treatment during judicial and administrative processes.

These new provisions are subject to review under the Open Government Sunset Review Act and will be repealed on October 2, 2023, unless reviewed and saved from repeal by reenactment of the Legislature.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill expands an exemption to the public record and public meeting law, a favorable two-thirds vote of each house of the Legislature is required for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By allowing individuals of a government entity to privately meet with the attorney of the entity to discuss imminent litigation, private parties may financially benefit from early settlement, such as through reduced billable hours and other costs of litigation.

C. Government Sector Impact:

The bill may reduce a governmental entity's legal fees by allowing claims to be resolved before they turn into lawsuits and are more costly.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 286.011 of the Florida Statutes and creates an undesignated section of law.

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 Rules on January 25, 2018:
The committee substitute adds a designee of a chief administrative or executive officer of a governmental entity and the entity's technical experts to the group of people who may participate in the private meeting to address imminent litigation. Language is added to clarify that the identity of a potential claimant or litigant will not be disclosed if that information is confidential or exempt under existing law. Finally, the statement of public necessity provides that the transcript of the private meeting is exempt from public records requirements.

B. Amendments:

None.

851136

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/25/2018	.	
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	.	

The Committee on Rules (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 83

and insert:

officer of the governmental entity or his or her designee, is exempt from this section and s. 24(b), Art. I of the State Constitution for the limited purpose of meeting ~~may meet~~ in private with the entity's attorneys and technical experts ~~attorney~~ to discuss imminent or pending litigation to which the entity is or may in the foreseeable future be ~~presently~~ a party before a court or administrative agency, provided that the

851136

following conditions are met:

1.~~(a)~~ The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the imminent or pending litigation. For imminent litigation, the entity's attorney shall identify the name of the potential claimant or litigant.

2.~~(b)~~ The subject matter of the meeting must ~~shall~~ be confined to settlement negotiations or strategy sessions related to litigation expenditures.

3.~~(c)~~ The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session may ~~shall~~ be off the record. The court reporter's notes must ~~shall~~ be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

4.~~(d)~~ The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must ~~shall~~ commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting must ~~shall~~ be reopened, and the person chairing the meeting shall announce the termination of the session.

5.~~(e)~~ The transcript must ~~shall~~ be made part of the public record upon conclusion of the litigation. If imminent litigation does not commence, the transcript must be made part of the


851136

public record within a reasonable time after the matter underlying the imminent litigation is resolved or upon the expiration of the statute of limitations applicable to the matter underlying the imminent litigation, whichever occurs first.

(b) Litigation is considered imminent when the entity has received notice of a claim or demand by a party threatening litigation before a court or administrative agency.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to expand the exemption from public meetings requirements currently applicable to meetings at which any board or commission of any state agency or authority, or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity meet in private with the entity's attorneys to discuss pending litigation to which the entity is presently a party before a court or administrative agency. The exemption is expanded to include such meetings when the designee of the chief administrative or executive officer of the governmental entity is present, when technical experts of the entity are present, and when such meetings are related to certain imminent litigation.

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

And the title is amended as follows:

851136

Delete line 5

and insert:

entities to meet in private with attorneys and technical experts to

256718

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2018	.	
	.	
	.	
	.	

The Committee on Rules (Steube) recommended the following:

Senate Substitute for Amendment (851136) (with title amendment)

Delete lines 27 - 90

and insert:

officer of the governmental entity or his or her designee, is exempt from this section and s. 24(b), Art. I of the State Constitution for the limited purpose of meeting ~~may meet~~ in private with the entity's attorneys and technical experts ~~attorney~~ to discuss imminent or pending litigation to which the entity is or may in the foreseeable future be ~~presently~~ a party

256718

before a court or administrative agency, provided that the following conditions are met:

1.~~(a)~~ The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the imminent or pending litigation. For imminent litigation, the entity's attorney shall identify the name of the potential claimant or litigant.

2.~~(b)~~ The subject matter of the meeting must ~~shall~~ be confined to settlement negotiations or strategy sessions related to litigation expenditures.

3.~~(c)~~ The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session may ~~shall~~ be off the record. The court reporter's notes must ~~shall~~ be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

4.~~(d)~~ The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must ~~shall~~ commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting must ~~shall~~ be reopened, and the person chairing the meeting shall announce the termination of the session.

5.~~(e)~~ The transcript must ~~shall~~ be made part of the public record upon conclusion of the litigation. If imminent litigation

256718

does not commence, the transcript must be made part of the public record within a reasonable time after the matter underlying the imminent litigation is resolved or upon the expiration of the statute of limitations applicable to the matter underlying the imminent litigation, whichever occurs first.

(b) Litigation is considered imminent when the entity has received notice of a claim or demand by a party threatening litigation before a court or administrative agency.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to expand the exemption from public meetings requirements currently applicable to meetings at which any board or commission of any state agency or authority, or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity meet in private with the entity's attorneys to discuss pending litigation to which the entity is presently a party before a court or administrative agency. The exemption is expanded to include such meetings when the designee of the chief administrative or executive officer of the governmental entity is present, when technical experts of the entity are present, and when such meetings are related to certain imminent litigation. In addition, the Legislature finds that it is a public necessity to exempt the transcript of such exempt meetings from public records requirements. These public

256718

meetings and public records exemptions are necessary to allow a governmental entity to privately prepare for threatened litigation by obtaining legal advice, exploring and developing relevant facts, and considering an early settlement or discussing other possible resolutions in order to make better-informed decisions. The Legislature also finds that these public meetings and public records exemptions will help ensure that governmental entities receive

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

And the title is amended as follows:

Delete line 5

and insert:

entities to meet in private with attorneys and technical experts to

161932

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/25/2018	.	
	.	
	.	
	.	

The Committee on Rules (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete line 38

and insert:

claimant or litigant unless the identity of the potential claimant or litigant is confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution.

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

And the title is amended as follows:

Delete line 9

161932

and insert:

meeting; providing an exception; requiring the transcript of a private meeting

By Senator Steube

23-00772-18 2018560__

A bill to be entitled

An act relating to public meetings and records; amending s. 286.011, F.S.; expanding an exemption from public meetings requirements to allow specified entities to meet in private with an attorney to discuss imminent litigation if certain conditions are met; requiring the entity's attorney to identify the name of the potential claimant or litigant at a public meeting; requiring the transcript of a private meeting concerning imminent litigation to be made public upon the occurrence of a certain circumstance; specifying when litigation is considered imminent; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (8) of section 286.011, Florida Statutes, is amended to read:

286.011 Public meetings and records; public inspection; criminal and civil penalties.—

(8)(a) Notwithstanding ~~the provisions of~~ subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, is exempt from this section and s. 24(b), Art. I of the State Constitution for the limited purpose of meeting ~~may meet~~ in private with the entity's

23-00772-18 2018560__

attorney to discuss imminent or pending litigation to which the entity is or may in the foreseeable future be ~~presently~~ a party before a court or administrative agency, provided that the following conditions are met:

1.~~(a)~~ The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the imminent or pending litigation. For imminent litigation, the entity's attorney shall identify the name of the potential claimant or litigant.

2.~~(b)~~ The subject matter of the meeting must ~~shall~~ be confined to settlement negotiations or strategy sessions related to litigation expenditures.

3.~~(c)~~ The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session may ~~shall~~ be off the record. The court reporter's notes must ~~shall~~ be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

4.~~(d)~~ The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session must ~~shall~~ commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting must ~~shall~~ be reopened, and the person chairing the meeting shall announce the termination of the session.

5.~~(c)~~ The transcript must ~~shall~~ be made part of the public record upon conclusion of the litigation. If imminent litigation does not commence, the transcript must be made part of the public record within a reasonable time after the matter underlying the imminent litigation is resolved or upon the expiration of the statute of limitations applicable to the matter underlying the imminent litigation, whichever occurs first.

(b) Litigation is considered imminent when the entity has received notice of a claim or demand by a party threatening litigation before a court or administrative agency.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to expand the exemption from public meetings requirements currently applicable to meetings at which any board or commission of any state agency or authority, or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity meet in private with the entity's attorneys to discuss pending litigation to which the entity is presently a party before a court or administrative agency to include such meetings related to certain imminent litigation. Expanding this exemption is necessary to allow a governmental entity to privately prepare for threatened litigation by obtaining legal advice, exploring and developing relevant facts, and considering an early settlement or discussing other possible

resolutions in order to make better-informed decisions. The Legislature also finds that expanding this public meetings exemption will help ensure that governmental entities receive fair treatment during the judicial and administrative processes.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Pre-K - 12 Education
Children, Families, and Elder Affairs
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE
23rd District

January 10, 2018

The Honorable Lizbeth Benacquisto
Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing this letter because my bill, SB 560 – Public Meetings and Records/Imminent Litigation, has been referred to the Senate Rules Committee. This bill is on the last committee of reference. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

W. Gregory Steube, District 23

REPLY TO:
☐ 6230 University Parkway, Suite 202, Sarasota, Florida 34240 (941) 342-9162
☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/18
Meeting Date

SB 560
Bill Number (if applicable)

Topic Public Meetings + Records

Amendment Barcode (if applicable)

Name Cari Roth

Job Title

Address 215 S. Monroe St Suite 815
Street

Phone 850/591-1094

Tallahassee FL 32301
City *State* *Zip*

Email croth@deanmead.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Charlotte County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25
Meeting Date

560
Bill Number (if applicable)

Topic SB 568

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Senior Legislative Advocate

Address PO Box 1757
Street

Phone 850 701 3701

Tallahassee FL 32312
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

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 Rules

BILL:	CS/SB 374
INTRODUCER:	Regulated Industries Committee and Senator Young
SUBJECT:	Fantasy Contests
DATE:	January 24, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	**Fav/CS**
2.	Kraemer	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 374 creates s. 546.13, F.S. to authorize certain fantasy contests in which participants must pay an entry fee. Fantasy contest operators and their employees and agents may not be participants in a fantasy contest. Prizes and awards must be established and disclosed before the contest. Winning outcomes must reflect knowledge and skill of participants and be determined predominantly by statistical results of performances of individuals, including athletes in sporting events. No winning outcome may be based on performances in collegiate, high school, or youth sporting events.

The bill also provides that the Department of Business and Professional Regulation may not regulate and certain gambling laws set forth in Ch. 849, F.S., do not apply to a fantasy contest conducted by a fantasy contest operator or a commissioner who participates in fewer than ten contests each calendar year and distributes all contest entry fees as prizes.

CS/SB 374 may have a significant negative fiscal impact on state government, if fantasy contests are gaming, constitute Class III gaming under federal law, and constitute, under the 2010 Gaming Compact between the Seminole Tribe of Florida and the State of Florida, *new* Class III gaming not in operation as of February 1, 2010, in Florida. See Section V, Fiscal Impact Statement.

The bill provides an effective date of October 1, 2018.

II. Present Situation:

Background

The operation of fantasy sports activities in Florida has recently received significant publicity, much like the operation of internet cafes in recent years. Many states are now evaluating the status of fantasy gaming activities in their jurisdictions,[1] as there are millions of participants.[2]

A fantasy game typically has multiple players who select and manage imaginary teams whose players are actual professional sports players. Fantasy game players compete against one another in various formats, including weekly leagues among friends and colleagues, season-long leagues, and on-line contests (daily and weekly) entered by using the Internet through personal computers or mobile telephones and other communications devices. There are various financial arrangements among players and game operators. The term "commissioner" has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, publishes league standings, or selects the Internet service for publication of league standings.[3]

Florida law does not specifically address fantasy contests. Section 849.14, F.S.,[4] provides that a person who wagers any "thing of value" upon the result of a contest of skill or endurance of human or beast, or who receives any money wagered, or who knowingly becomes the custodian of money or other thing of value that is wagered, is guilty of a second degree misdemeanor.[5]

In 2013, Spectrum Gaming Group, as part of a Gambling Impact Study prepared for the Florida Legislature, analyzed data related to participation by adults in selected activities.[6] Based on 2012 U.S. Census data, participation in fantasy sports leagues in the prior 12 months (nearly nine million adults), and those who participate two or more times weekly (nearly three million adults), was greater than attendance at horse races in the prior 12 months (6,654,000 adults) with 159,000 attending two or more times weekly.[7]

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[1] *See* Marc Edelman, *A Short Treatise on Fantasy Sports and the Law: How America Regulates its New National Pastime*, Journal of Sports & Entertainment Law, Harvard Law School Vol. 3 (Jan. 2012) (Edelman Treatise), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1907272 (last visited Nov. 27, 2017), and Jonathan Griffin, *The Legality of Fantasy Sports*, National Conference of State Legislatures Legisbrief (Sep. 2015) (on file with the Committee on Regulated Industries).

[2] According to the Fantasy Sports Trade Association, which states it represents the interests of 57 million fantasy sports players, fantasy sports leagues were originally referred to as "rotisserie leagues" with the development of Rotisserie League Baseball in 1980, by magazine writer/editor Daniel Okrent, who met and played it with friends at a New York City restaurant La Rotisserie Francaise. *See* http://fsta.org/about/history-of-fsta/ (last visited Nov. 27, 2017).

[3] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Nov. 27, 2017).

[4] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Nov. 27, 2017).

[5] A conviction for a second degree misdemeanor may subject the violator to a definite term of imprisonment not exceeding 60 days, and a fine not exceeding $500. *See* ss. 775.082 and 775.083, F.S.

[6] *See* Spectrum Gaming Group Gambling Impact Study (Gambling Impact Study), at http://www.leg.state.fl.us/gamingstudy/docs/FGIS_Spectrum_28Oct2013.pdf (Oct. 28, 2013) (last visited Nov. 27, 2017).

[7] *Id.*, Figure 22 at page 67.

In general, gambling is illegal in Florida.[8] Chapter 849, F.S., prohibits keeping a gambling house,[9] running a lottery,[10] or the manufacture, sale, lease, play, or possession of slot machines.[11] However, the following gaming activities are authorized by law and regulated by the state:

- Pari-mutuel[12] wagering at licensed greyhound and horse tracks and jai alai frontons;[13]
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[14] and
- Cardrooms[15] at certain pari-mutuel facilities.[16]

A license to offer pari-mutuel wagering, slot machine gambling, or a cardroom at a pari-mutuel facility is a privilege granted by the state.[17]

The 1968 State Constitution states that "[l]otteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution . . ." are prohibited.[18] A constitutional amendment approved by the voters in 1986 authorized state-operated lotteries. Net proceeds are paid by the lottery to the Educational Enhancement Trust Fund (EETF) for uses pursuant to annual appropriations by the Legislature. Lottery operations are self-supporting and function as an entrepreneurial business enterprise.[19]

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[20] bingo,[21] charitable drawings, game promotions (sweepstakes),[22] and bowling

[8] *See* s. 849.08, F.S.
[9] *See* s. 849.01, F.S.
[10] *See* s. 849.09, F.S.
[11] Section 849.16, F.S., defines slot machines for purposes of ch. 849, F.S. Section 849.15(2), F.S., provides an exemption to the transportation of slot machines for the facilities that are authorized to conduct slot machine gaming under ch. 551, F.S.
[12] Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.
[13] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.
[14] *See* ch. 551, F.S., relating to the regulation of slot machine gaming at pari-mutuel locations.
[15] Section 849.086, F.S. Section 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."
[16] The Department of Business and Professional Regulation (DBPR) has issued licenses to permitholders with 2017-2018 Operating Licenses to operate 26 cardrooms. *See* http://www.myfloridalicense.com/dbpr/pmw/PMW-PermitholderOperatingLicenses--2017-2018.html (last visited Nov. 27, 2017).
[17] *See* s. 550.1625(1), F.S., "…legalized pari-mutuel betting at dog tracks is a privilege and is an operation that requires strict supervision and regulation in the best interests of the state." *See also Solimena v. State*, 402 So.2d 1240, 1247 (Fla. 3d DCA 1981), *review denied*, 412 So.2d 470, which states "Florida courts have consistently emphasized the special nature of legalized racing, describing it as a privilege rather than as a vested right," citing *State ex rel. Mason v. Rose*, 122 Fla. 413, 165 So. 347 (1936).
[18] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution, as revised in 1968, include horseracing, greyhound racing, and jai alai games. The revision was ratified by the electorate on November 5, 1968.
[19] The Department of the Lottery is authorized by s. 15, Art. X, Florida Constitution. Chapter 24, F.S., was enacted by ch. 87-65, Laws of Fla., to establish the state lottery. Section 24.102, F.S., states the legislative purpose and intent for the operations of the state lottery.
[20] *See* s. 849.085, F.S.
[21] *See* s. 849.0931, F.S.
[22] *See* s. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

tournaments.[23] The Family Amusement Games Act was enacted in 2015 and authorizes skill-based amusement games and machines at specified locations.[24]

Florida Attorney General Opinions on Fantasy Sports Leagues and Contests Involving Skill

In 1991, Florida Attorney General Robert A. Butterworth issued a formal opinion[25] evaluating the legality of groups of football fans (contestants) paying for the right to manage a team under certain specified conditions. The Attorney General stated:

> You ask whether the formation of a fantasy football league by a group of football fans in which contestants pay $100 for the right to "manage" one of eight teams violates the state's gambling laws. You state that these teams are created by contestants by "drafting" players from all current eligible National Football League (NFL) members. Thus, these fantasy teams consist of members of various NFL teams.
>
> According to your letter, each week the performance statistics of the players in actual NFL games are evaluated and combined with the statistics of the other players on the fantasy team to determine the winner of the fantasy game and their ranking or standing in the fantasy league. No games are actually played by the fantasy teams; however, all results depend upon performance in actual NFL games. Following completion of the season, the proceeds are distributed according to the performance of the fantasy team.

In the contest described in the opinion, each contestant paid $100 to participate in the fantasy football league and manage one of eight teams. The resulting $800 in proceeds were used for prizes. The prizes were based upon the performance of the individual professional football players in actual games. Attorney General Butterworth determined the proceeds qualified as a "stake, bet or wager" on the result of a contest of skill and, as a result, the operation of the fantasy sports leagues violated s. 849.14, F.S., relating to unlawful betting on the result of a trial or contest of skill.[26]

The 1991 opinion cited *Creash v. State*, 179 So. 149, 152 (Fla. 1938). In *Creash*, the Florida Supreme Court held:

> In gamblers' lingo, 'stake, bet or wager' are synonymous and refer to the money or other thing or value put up by the parties thereto with the understanding that one or the other gets the whole for nothing but on the turn of a card, the result of a race, or some trick of magic. A 'purse, prize, or premium' has a broader significance. *If offered by one (who in no way competes for it) to the successful contestant in a [feat] of mental or physical skill, it is not generally condemned as*

[23] *See* s. 849.141, F.S.
[24] *See* s. 546.10, F.S.
[25] *See* Fla. AGO 91-03 (Jan. 8, 1991), at http://myfloridalegal.com/. . . 91-03 (last visited Nov. 27, 2017).
[26] *Id*.

> *gambling*, while if contested for in a game of cards or other games of chance, it is so considered. [Citation omitted.] *It is also banned as gambling if created as in this case by paying admissions to the game, purchasing certificates, or otherwise contributing to a fund from which the 'purse, prize, or premium' contested for is paid*, and wherein the winner gains, and the other contestants lose all.[27] [Emphasis added.]

However, in a 1990 opinion, Attorney General Butterworth, again citing *Creash v. State*, determined that a contest of skill (such as a hole-in-one golf contest) "where the contestant pays an entry fee, which *does not make up* (i.e., create) *the prize*, for the opportunity to win a valuable prize by the exercise of skill, *did not violate the gambling laws of [Florida]*."[28] (Emphasis in original.) That 1990 opinion reasoned, "[t]hus, the payment of an entry fee to participate in a contest of skill when the sponsor of the contest does not participate in the contest of skill and where the prize money does not consist of entry fees would *not* appear to be a 'stake, bet or wager'" in violation of s. 849.14, F.S., relating to gambling. (Emphasis added.)[29]

Gaming Compact with Seminole Tribe of Florida

In 2010, a gaming compact (2010 Gaming Compact) between the Seminole Tribe of Florida (Seminole Tribe) and the State of Florida (State) was ratified by the Legislature.[30] Pursuant to Chapter 285, F.S., it is not a crime for a person to participate in raffles, drawings, slot machine gaming, or banked card games (e.g., blackjack or baccarat) at a tribal facility operating under the 2010 Gaming Compact.[31]

The 2010 Gaming Compact provides for revenue sharing in consideration for the exclusive authority granted to the Seminole Tribe to offer banked card games on tribal lands and to offer slot machine gaming outside Miami-Dade and Broward counties. The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (DBPR) carries out the State's oversight responsibilities under the 2010 Gaming Compact.[32]

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[27] *See Creash v. State*, 179 So. 149, 152 (Fla. 1938). Because CS/SB 374 requires entry fees (rather than a bet or wager) be paid by fantasy contest participants, the *Creash* case suggests that such fantasy contests do not constitute gaming.
[28] *See* Fla. AGO 90-58 (Jul. 27 1990) (last visited Nov. 27, 2017).
[29] *Id.*
[30] The 2010 Gaming Compact was executed by the Governor and the Seminole Tribe on April 7, 2010, ratified by the Legislature, effective April 28, 2010, and approved by U.S. Secretary of the Interior, pursuant to the Indian Gaming Regulatory Act of 1988, on June 24, 2010. It took effect when published in the Federal Register on July 6, 2010. The 20-year term of the 2010 Gaming Compact expires July 31, 2030, unless renewed. Section 285.710(1)(f), F.S., designates the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation as the "state compliance agency" having authority to carry out the state's oversight responsibilities under the 2010 Gaming Compact. *See* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 25, 2018).
[31] *See* s. 285.710, F.S., especially subsections (3), (13), and (14). The seven tribal locations where gaming is authorized by the 2010 Gaming Compact are: (1) Seminole Hard Rock Hotel & Casino—Hollywood (Broward); (2) Seminole Indian Casino—Coconut Creek (Broward); (3) Seminole Indian Casino—Hollywood (Broward); (4) Seminole Hard Rock Hotel & Casino—Tampa (Hillsborough); (5) Seminole Indian Casino—Immokalee (Collier); (6) Seminole Indian Casino—Brighton (Glades); and (7) Seminole Indian Casino—Big Cypress (Hendry).
[32] *See* s. 285.710(1)(f), F.S.

Except for gaming facilities operating in accordance with the 2010 Gaming Compact with the Seminole Tribe, free-standing, commercial casinos are not authorized, and gaming activity, other than what is expressly authorized, is illegal.

Litigation Concerning the 2010 Compact and Banked Card Games

The State and the Seminole Tribe were parties to litigation in federal court relating to the offering of table games by the Seminole Tribe after July 31, 2015. Separate lawsuits were filed by each party against the other, and the cases were consolidated. The Seminole Tribe alleged in its complaint that:

- It had authority to conduct banked card games for the 2010 Gaming Compact's full 20-year term; and
- The State breached its duty to negotiate with the Seminole Tribe in good faith.

The State alleged that the Seminole Tribe's:

- Conduct of banked card games violated the 2010 Gaming Compact; and
- Conducting the games violated the Indian Gaming Regulatory Act (IGRA) though this claim was later dropped by the State.

On November 9, 2016, U.S. District Court Judge Robert L. Hinkle issued an Opinion on the Merits,[33] which held:

- The Seminole Tribe may operate banked card games at all seven of its facilities (rather than the five facilities at which banked card games had been allowed since 2010) through the entire 20-year term of the 2010 Gaming Compact (i.e., until 2030) because the State permitted others to offer banked card games (i.e., pari-mutuel cardrooms);
- Sovereign immunity barred the court from considering whether the State had failed to negotiate in good faith as to: 1) authorizing roulette and craps; and 2) extending the 2010 Gaming Compact beyond its 20-year term; and
- A ruling on the issue of whether electronic forms of blackjack are also a banked card game is unnecessary, as the issue was too close to resolve when a ruling was not essential to the outcome of the case.

Settlement of the Litigation and Establishment of Forbearance Period

Subsequent to the DBPR's appeal of Judge Hinkle's decision,[34] on July 5, 2017, the Seminole Tribe and the DBPR entered into a Settlement Agreement and Stipulation (2017 Settlement).[35] The parties agreed to undertake certain actions.

The State agreed to dismiss the pending appeal, and upon issuance of the final order of dismissal of the appeal, the Seminole Tribe agreed to release the State from all claims by the Tribe for past

[33] *See Seminole Tribe of Florida v. State of Florida,* 219 F.Supp. 3d 1177 (N.D. Fla. Nov. 9, 2016), Case No.: 4:15-cv-516-RH/CAS, Document 103.
[34] *See Seminole Tribe of Florida v. State of Florida*, 219 F.Supp. 3d 1177 (N.D. Fla. Jan. 19, 2017), Case No.: 4:15-cv-516-RH/CAS, Document 120.
[35] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).

Revenue Share Payments,[36] based on the operation of player-banked games which use a designated player (Designated Player Games) or electronic forms of blackjack (Electronic Table Games) in Florida.

The Seminole Tribe also agreed it would not seek the return of funds associated with tribal gaming paid to and segregated by the State during the pendency of the federal litigation, granting the State unencumbered use of the segregated funds.[37]

As to the continued operation of banked card games (i.e., Designated Player Games operated as described in Judge Hinkle's decision), the Seminole Tribe agreed to delay taking certain actions until after the last day of the month that the Legislature adjourns[38] its 2018 legislative session (the Forbearance Period). The Seminole Tribe agreed not to:

- Suspend Revenue Share Payments; or
- Deposit Revenue Share Payments into an escrow account in accordance with Part XII of the 2010 Gaming Compact.

The Seminole Tribe also agreed not to initiate an action asserting that it is entitled, based on the continued operation of Designated Player Games or Electronic Table Games in the State, to deposit Revenue Share Payments into an escrow account in accordance with Part XII of the 2010 Gaming Compact, provided:

> the State takes aggressive enforcement action [Aggressive Enforcement Requirement] against the continued operation of banked card games, including Designated Player Games that are operated in a banked game manner, as described in [Judge Hinkle's decision], and no other violations of the Tribe's exclusivity occur during the Forbearance Period.[39]

The Aggressive Enforcement Requirement is also imposed upon the State respecting Revenue Share Payments made by the Seminole Tribe during the Forbearance Period. The deposit of such payments into the General Revenue Fund, allowing unencumbered use by the State without the Seminole Tribe seeking the return of such payments, is contingent upon meeting the Aggressive Enforcement Requirement.[40]

The 2017 Settlement does not define the term "aggressive enforcement action." The DBPR has filed five administrative complaints against cardroom operators alleging the violation of s. 849.086(12)(a), F.S., due to the operation of a banking game or a game not specifically

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[36] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017).

[37] *See* the 2017 Settlement at page 6.

[38] Should the 2018 legislative session be adjourned as anticipated on March 9, 2018, the Forbearance Period will end on March 31, 2018.

[39] The Seminole Tribe agreed to follow the process set forth in paragraph A of Part XII of the 2010 Gaming Compact, to address any new violation of the Tribe's exclusivity occurring during the Forbearance Period, due to a court decision or administrative agency ruling or decision. *See* the 2017 Settlement at page 7.

[40] *See* the 2017 Settlement at page 7.

authorized by Florida law.[41] In each case, the parties have temporarily delayed pursuit of administrative hearings in favor of informal conferences to resolve the pending enforcement actions.[42]

Internet Gaming under the 2010 Gaming Compact and the Proposed 2015 Gaming Compact

The 2010 Gaming Compact provides that any change in state law to allow internet/on-line gaming (or any functionally remote gaming system that permits gaming from a home or any other location other than a casino or other commercial gaming facility) could impact the payment of certain guaranteed revenue sharing payments.[43] However, the guaranteed revenue sharing payments of $1 billion due under the 2010 Gaming Compact have been paid in full by the Seminole Tribe. Therefore, a change in state law to allow internet/on-line gaming results in no financial impact to the State under the 2010 Gaming Compact.

A proposed gaming compact transmitted by the Governor in 2015 for consideration by the Legislature (the Proposed 2015 Gaming Compact) has not been ratified.[44] However, if fantasy contests are classified as internet/on-line gaming, authorizing fantasy contests in Florida would trigger an impact to the payment of guaranteed revenue sharing amounts in accordance with the 2015 Proposed Gaming Compact.[45]

The term "internet" is not defined in either the 2010 Gaming Compact or the Proposed 2015 Gaming Compact; however, the term "Internet" is defined in the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) (discussed below).[46]

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[41] The respondent, filing date, and DBPR Case No. for each complaint are: 1) Pensacola Greyhound Park, LLP (8.17.2017; Case No. 2017-040490); 2) Sarasota Kennel Club, Inc. (8.24.2017; Case No. 2017-041784); 3) Tampa Bay Downs, Inc. (9.15.2017; Case No. 2017-044518); 4) Dania Entertainment Center, LLC (9.25.2017; Case No. 2017-045538); and 5) Investment Corporation of Palm Beach (10.25.2017; Case No. 2017-050956) (on file with the Committee on Regulated Industries).

[42] E-mail from J. Morris, Legislative Affairs Director, DBPR, to R. McSwain, Staff Director, Committee on Regulated Industries (Nov. 2, 2017) (on file with the Committee on Regulated Industries).

[43] Enactment of state law to allow internet or on-line gaming could have impacted the $1 billion guaranteed revenue sharing payable through Year 5 of the 2010 Gaming Compact, if the Seminole Tribe's Net Win at all of its casinos dropped more than five percent (5%) below its Net Win from the previous twelve-month period, unless the decline in Net Win was due to acts of God, war, terrorism, fires, floods, or accidents causing damage to or destruction of one or more of the tribal casinos, or the Seminole Tribe was authorized by law to offer internet/on-line gaming. *See* paragraph B.3. of Part XI of the 2010 Gaming Compact at http://www.flsenate.gov/. . . RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017).

[44] *See* s. 285.712, F.S. The Governor is the designated state officer responsible for negotiating and executing tribal-state gaming compacts with federally recognized Indian tribes. To be effective, a proposed gaming compact must be ratified by the Senate and by the House, by a majority vote of the members present. *See* s. 285.712(3), F.S. The Proposed 2015 Gaming Compact, comparison chart, and transmittal letter from Governor Scott, are available for review on the Florida Senate Regulated Industries Committee website. *See* http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 25, 2018).

[45] Paragraph C.10. of Part XII of the proposed 2015 Gaming Compact states that the Seminole Tribe would instead would make payments based on the percentages set forth in paragraph B.1.(c) of Part XI. Such financial consequences to the State would not apply if the Tribe offers internet gaming to players in Florida that permits a person to game from home or any other location that is remote from any of the Tribe's facilities, as an authorized Class III gaming activity or as authorized by Florida law.

[46] UIGEA defines the term "Internet" as the international computer network of interoperable packet switched data networks. *See* 31 U.S.C. s. 5362(5).

The Gaming Compacts and Class III Gaming under the Indian Gaming Regulatory Act

Fantasy contests, if classified as Class III gaming, also could impact the revenue sharing provisions of both the 2010 Gaming Compact[47] and the Proposed 2015 Gaming Compact.[48] Under both compacts if fantasy contests are a form of new Class III gaming in Florida, payments due to the State under the compacts would cease.[49]

Gambling on Indian lands is regulated by the Indian Gaming Regulatory Act of 1988 (IGRA).[50] The 2010 Gaming Compact authorizes the Seminole Tribe to conduct specified Class III gaming activities at its seven tribal facilities in Florida.[51]

Under IGRA, gaming is categorized in three classes:

- **Class I** gaming means social games for minimal value or traditional forms of Indian gaming engaged in by individuals for tribal ceremonies or celebrations;
- **Class II** gaming includes bingo and pull-tabs, lotto, punch boards, tip jars, instant bingo, other games similar to bingo, and certain non-banked card games if not explicitly prohibited by the laws of the state and if played in conformity with state law; and
- **Class III** gaming includes all forms of gaming that are not Class I or Class II gaming, such as banked card games (such as baccarat, chemin de fer, and blackjack(21), casino games such as craps and roulette, electronic or electromechanical facsimiles of games of chance, slot machines, and pari-mutuel wagering.[52]

If fantasy contests are gaming, constitute Class III gaming under federal law, and constitute, under the 2010 Gaming Compact and the Proposed 2015 Gaming Compact, *new* Class III gaming not in operation as of February 1, 2010, or July 1, 2015, respectively, in Florida, authorizing fantasy contests in Florida (i.e., additional Class III gaming) would violate the exclusivity provisions in the 2010 Gaming Compact and the Proposed 2015 Gaming Compact. As a result, certain revenue sharing requirements would not apply and the Tribe would be authorized to offer similar internet/on-line gaming.

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[47] *See* paragraph A of Part XII of the 2010 Gaming Compact at http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017).
[48] *See* paragraph A of Part XII of the 2015 Gaming Compact at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/RI/Links/2015_Gaming_Compact,_Chart,_and_Letter_from_Governor_Scott.pdf (last visited Jan. 25, 2018).
[49] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017).
[50] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*
[51] *See* paragraph F of Part III of the 2010 Gaming Compact at http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017). The Tribe has three gaming facilities in Broward County (The Seminole Indian Casinos at Coconut Creek and Hollywood, and the Seminole Hard Rock Hotel & Casino-Hollywood), and gaming facilities in Collier County (Seminole Indian Casino-Immokalee), Glades County (Seminole Indian Casino-Brighton), Hendry County (Seminole Indian Casino-Big Cypress), and Hillsborough County (Seminole Hard Rock Hotel & Casino-Tampa). The 2010 Gaming Compact was approved by the U.S. Department of the Interior effective July 6, 2010. *See* 75 Fed. Reg. 38833-38834 at https://www.gpo.gov/fdsys/pkg/FR-2010-07-06/pdf/2010-16213.pdf (last visited Nov. 27, 2017). *See* http://www.flsenate.gov/. . .RI/Links/Gaming Compact between The Seminole Tribe of Florida and the State of Florida.pdf (last visited Nov. 27, 2017).
[52] *See* Pub. L. 100-497, 102 Stat. 2467, codified at 18 U.S.C. ss. 1166-1168 and 25 U.S.C. s. 2701 *et seq.*

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[53] Jim Shore, General Counsel for the Seminole Tribe, indicated:

> The Tribe believes the games permitted by these bills [HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming)] would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. By providing this notice, the Tribe hopes to avoid a situation where the State enacts legislation that inadvertently violates the Tribe's exclusivity. That said, the Tribe and the State have discussed the issue of fantasy sports contests in previous compact negotiations and the Tribe remains willing to do so now. However, federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State. Without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by these bills.

The National Indian Gaming Commission (commission) issued an opinion dated March 13, 2001,[54] relating to a sports betting game proposed for future play in Arizona and California via the Internet. In that sports betting game, players could wager upon various sporting *events*, including NFL football, baseball, golf, and the Olympics. The commission determined that game to be Class III gaming because it was not included within the definitions of Class I or Class II gaming under IGRA.

The Professional and Amateur Sports Protection Act of 1992 (PASPA)

In 1992, the U.S. Congress enacted the Professional and Amateur Sports Protection Act (PASPA),[55] which provides that it is unlawful for a governmental entity or any person to sponsor, operate, advertise, or promote:

> a lottery, sweepstakes, or other betting, gambling, or wagering scheme based . . . on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.[56]

The prohibited activity is generally known as "sports betting." Governmental entities are also prohibited from licensing such activities or authorizing them by law or compact.[57] However,

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[53] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).
[54] *See* https://www.nigc.gov/images/uploads/game-opinions/WIN%20Sports%20Betting%20Game-Class%20III.pdf (last visited Nov. 27, 2017).
[55] *See* 28 U.S.C. ss. 3701-3704 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[56] *See* 28 U.S.C. s. 3702 (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[57] *Id*.

PASPA does not apply to pari-mutuel animal racing or jai alai games.[58] It does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering conducted by a governmental entity between January 1, 1976, and August 31, 1990.[59]

The prohibition against sports betting also does not apply to a lottery, sweepstakes, or other betting, gambling, or wagering lawfully conducted, where such activity was authorized by law on October 2, 1991, and was conducted in a state or other governmental entity at any time between September 1, 1989, and October 2, 1991.[60]

In a case pending before the United States Supreme Court, the State of New Jersey has challenged the constitutionality of PASPA, on the basis that PASPA "commandeers" or impermissibly controls the regulatory power of states relating to the legalization of sports betting, thereby violating the Tenth Amendment to the U.S. Constitution.[61] The respondents (the National Collegiate Athletic Association, the National Basketball Association, the National Football League, the National Hockey League, and the Office of the Commissioner of Baseball) defend PASPA's pre-emption of state laws that authorize sports gambling as a valid exercise of congressional power to regulate commerce.[62] The Court's decision in the case is anticipated no later than June 29, 2018.

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA)[63] was signed into law by President George W. Bush on October 13, 2006.[64] Internet gambling is not determined to be legal in a state, nor illegal. Instead, UIGEA targets financial institutions in an attempt to prevent the flow of money from an individual to an internet gaming company. Congress found that enforcement of gambling laws through new mechanisms "are necessary because traditional law enforcement mechanisms are often inadequate for enforcing gambling prohibitions or regulations on the Internet, especially where such gambling crosses State or national borders."[65] UIGEA expressly states that none of its provisions "shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling within the United States."[66]

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[58] *See* 28 U.S.C. s. 3704(a)(4) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[59] *See* 28 U.S.C. s. 3704(a)(1) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[60] *See* 28 U.S.C. s. 3704(a)(2) (2015), at https://www.govinfo.gov/content/pkg/USCODE-2015-title28/html/USCODE-2015-title28.htm (last visited Nov. 27, 2017).
[61] *See Christie v. National Collegiate Athletic Association,* Docket No. 16-476, (*Christie*) at http://www.scotusblog.com/case-files/cases/christie-v-national-collegiate-athletic-association-2/ (last visited Nov. 27, 2017). Oral argument in the case was held on December 4, 2017.
[62] *See* the respondents' Brief in Opposition at http://www.scotusblog.com/wp-content/uploads/2016/12/16-476-16-477-BIO.pdf at page 17 (last visited Nov. 27, 2017).
[63] *See* https://www.gpo.gov/fdsys/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIV-chap53.pdf, (UIGEA online) at page 46 (last visited Nov. 27, 2017).
[64] The provisions of UIGEA were adopted in Conference Committee as an amendment to H.R. 4954 by Representative Daniel E. Lungren (CA-3), "The SAFE Ports Act of 2006."
[65] *See* 31 U.S.C. s. 5361(a)(4), UIGEA online, at page 46.
[66] *See* 31 U.S.C. s. 5361(b).

"Unlawful internet gambling" prohibited by UIGEA includes the placement, receipt, or transmission of certain bets or wagers.[67] However, the definition of the term "bet or wager" specifically excludes any fantasy game or contest in which a fantasy team is not based on the current membership of a professional or amateur sports team, and:

- All prizes and awards are established and made known to the participants in advance of the game or contest;
- Prize amounts are not based on the number of participants or the amount of entry fees;
- Winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals or athletes in multiple "real-world sporting or other events;" and
- No winning outcome is based:
  - On the score, point-spread, or any performance or performances of any single "real-world" team or combination of teams; or
  - Solely on any single performance of an individual athlete in any single "real-world sporting or other event."[68]

While UIGEA excludes bets or wagers of participants in certain fantasy sports games and contests,[69] it does not, however, authorize fantasy contests and activities in Florida.

III. Effect of Proposed Changes:

CS/SB 374 creates s. 546.13, F.S. to authorize certain fantasy contests in which participants must pay an entry fee. Section 546.13(1), F.S., provides requirements for fantasy contests and associated definitions.

"Entry fee" means cash or a cash equivalent required to be paid by a person for the ability to participate in a fantasy contest offered by a fantasy contest operator.

"Fantasy contest operator" means a person or entity, including any employee or agent, that offers fantasy contests with an entry fee for a cash prize, but is not a participant in the fantasy contest. The term does not include an individual who serves as the commissioner of no more than 10 fantasy contests in a calendar year. The term "commissioner" is not defined in the bill, but has been used in the context of fantasy baseball leagues to denote a person who manages a fantasy baseball league, establishes league rules, resolves disputes over rule interpretations, and publishes league standings or selects the Internet service for publication of league standings.[70]

A "fantasy contest" is a fantasy or simulated game in which:

- The value of all prizes and awards offered to winning participants must be established and disclosed to the participants in advance of the contest;

[67] *See* 31 U.S.C. s. 5362(10), UIGEA online, at page 48.
[68] *See* 31 U.S.C. s. 5362(E)(ix), UIGEA online, at page 47.
[69] *Id*.
[70] *See* Bernhard & Eade, *Gambling in a Fantasy World: An Exploratory Study of Rotisserie Baseball Games*, 9 UNLV Gaming Research & Review Journal Issue 1, at 30, at http://digitalscholarship.unlv.edu/grrj/vol9/iss1/3/, (last visited Nov. 27, 2017).

- All winning outcomes reflect the relative knowledge and skill of contest participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events; and
- No winning outcome is based:
    - On the score, point spread, or any performance or performances of any single actual team or combination of teams;
    - Solely on any single performance of an individual athlete or player in any single actual event; or
    - On the performances of participants in collegiate, high schools, or youth sporting events.

The bill provides that the Department of Business and Professional Regulation may not regulate and the offenses in ss. 849.01, 849.08, 849.09, 849.11, 849.14, or 849.25, F.S., relating to gambling, lotteries, games of chance, contests of skill, or bookmaking do not apply to a fantasy contest operated or conducted by:

- A fantasy contest operator; or
- A natural person who is a participant in the fantasy contest, serves as the commissioner of not more than ten contests in a calendar year, and distributes all contest entry fees as prizes or awards to the participants in that fantasy contest.

The bill provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 374 authorizes certain fantasy contests to be offered by fantasy contest operators, who will retain amounts participants pay as entry fees to participate in fantasy contests. Persons who pay entry fees to participate in fantasy contests have the opportunity to win prizes and awards.

C. Government Sector Impact:

CS/SB 374 could impact the Revenue Share Payments[71] required to be paid by the Seminole Tribe of Florida under the 2010 Gaming Compact. If fantasy contests permitted under the bill constitute gaming, are considered Class III gaming under federal law, and constitute, under the 2010 Gaming Compact, *new* Class III gaming in Florida, the payments due to the State under the 2010 Gaming Compact could end when fantasy contests begin to be offered for public or private use.[72]

In a letter to Senator Travis Hutson and Representative Mike La Rosa dated December 5, 2017,[73] Jim Shore, General Counsel for the Seminole Tribe, indicated:

> The Tribe believes the games permitted by these bills [HB 223 and SB 374 (Fantasy Contests), and SB 840 (Gaming)] would violate the Tribe's exclusivity, as set forth in Part XII of the 2010 Gaming Compact between the State and Tribe. By providing this notice, the Tribe hopes to avoid a situation where the State enacts legislation that inadvertently violates the Tribe's exclusivity. That said, the Tribe and the State have discussed the issue of fantasy sports contests in previous compact negotiations and the Tribe remains willing to do so now. However, federal law requires that any reduction in the Tribe's exclusivity must be balanced by some additional consideration from the State. Without such an agreement, the 2010 Gaming Compact would allow the Tribe to cease all revenue sharing payments to the State based on the expanded gaming contemplated by these bills.

The Revenue Estimating Conference (REC) estimates that the revenue that will be received from the Seminole Tribe associated with the 2010 Gaming Compact during Fiscal Year 2017-2018 will be $276 million, of which $272 million will accrue to the General Revenue Fund and $3.5 million will be distributed to local governments as required by s. 285.710(10), F.S. During Fiscal Year 2018-2019, the REC estimates revenue associated with the 2010 Gaming Compact will be $288.6 million, of which $280.1 million will accrue to the General Revenue Fund and $8.6 million will be distributed to local governments. The REC estimates the revenue associated with the 2010 Gaming Compact will increase to $307 million for Fiscal Year 2025-2026.[74]

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[71] Revenue Share Payments are the periodic payments to the State by the Seminole Tribe, based on the Tribe's Net Win. Net Win is defined as total receipts from the play of authorized tribal gaming in Florida, less all prizes, free play, or promotional credits. *See* paragraphs U and X of Part III of the 2010 Gaming Compact at page 11 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017).

[72] *See* paragraph A of Part XII of the 2010 Gaming Compact at pages 39-40 at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last visited Nov. 27, 2017); the Revenue Share Payments and the required annual donation of $750,000 to the Florida Council on Compulsive Gaming must resume when the new Class III gaming is no longer operated.

[73] *See* Letter from Jim Shore, General Counsel for the Seminole Tribe, to Senator Travis Hutson and Representative La Rosa (Dec. 5, 2017) (on file with the Senate Committee on Regulated Industries).

[74] *See* the estimates for multiple fiscal years in the *Conference Results, Indian Gaming Revenues* at http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingResults.pdf (last visited Nov. 27, 2017).

The REC currently classifies all future Revenue Share Payments to be paid by the Seminole Tribe to the State as nonrecurring revenue because the terms of the Settlement Agreement and Stipulation entered on July 5, 2017, by the Seminole Tribe and the Department of Business and Professional Regulation on behalf of the State,[75] required the parties to take certain actions "that cannot be anticipated with sufficient certainty."[76]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 546.13 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on December 7, 2017:
The committee substitute:

- Revises the definition of "fantasy contest" to provide that a winning outcome may not be based on the performances of participants in collegiate, high school, or youth sporting events.
- Revises the definition of "fantasy contest operator" to:
  - Include the employees or agents of the individuals or entities that offer or conduct fantasy contests; and
  - Require that a fantasy contest operator not participate in the fantasy contest.
- Clarifies that the Department of Business and Professional Regulation may not regulate and the gambling laws do not apply to a fantasy contest conducted by:
  - A fantasy contest operator; or
  - A natural person who participates in the fantasy contest, serves as a commissioner of 10 or fewer contests in a calendar year, and distributes to the contest participants all of the entry fees as prizes.

[75] *See* Settlement Agreement and Stipulation (2017 Settlement) (July 5, 2017) (on file with the Senate Committee on Regulated Industries).
[76] *See Revenue Estimating Conference, Indian Gaming Revenues, Executive Summary* at http://www.edr.state.fl.us/Content/conferences/Indian-gaming/IndianGamingSummary.pdf (last visited Nov. 27, 2017).

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Young

A bill to be entitled

An act relating to fantasy contests; creating s. 546.13, F.S.; defining terms; exempting a fantasy contest from certain regulations; providing an effective date.

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

Section 1. Section 546.13, Florida Statutes, is created to read:

546.13 Fantasy contests and fantasy contest operators.—

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

(a) "Entry fee" means cash or a cash equivalent that is required to be paid by a participant in order to participate in a fantasy contest.

(b) "Fantasy contest" means a fantasy or simulated game or contest in which:

1. The value of all prizes and awards offered to winning participants is established and made known to the participants in advance of the contest;

2. All winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individuals, including athletes in the case of sporting events;

3. No winning outcome is based on the score, point spread, or any performance or performances of any single actual team or combination of such teams, solely on any single performance of an individual athlete or player in any single actual event, or on the performances of participants in collegiate, high school, or youth sporting events.

(c) "Fantasy contest operator" means a person or an entity, including any employee or agent, that offers or conducts a fantasy contest with an entry fee for a cash prize or award and that is not a participant in the fantasy contest.

(2) EXEMPTIONS.—The Department of Business and Professional Regulation may not regulate and the offenses established in s. 849.01, s. 849.08, s. 849.09, s. 849.11, s. 849.14, and s. 849.25 do not include or apply to a fantasy contest operated or conducted by a:

(a) Fantasy contest operator.

(b) Natural person who is a participant in the fantasy contest, serves as the commissioner of not more than 10 fantasy contests in a calendar year, and distributes all entry fees for the fantasy contest as prizes or awards to the participants in that fantasy contest.

Section 2. This act shall take effect October 1, 2018.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

December 12, 2017

Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto,

My Senate Bill 374 relating to Fantasy Contests has been referred to the committee for a hearing. I respectfully request that this bill be placed on the next available agenda.

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

Sincerely,

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

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

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/18
Meeting Date

374
Bill Number (if applicable)

Topic Fantasy Contests

Amendment Barcode (if applicable)

Name Tim Parson

Job Title

Address 113 E. College Ave.
Street

Tallahassee FL 32302
City *State* *Zip*

Phone (850) 910-2678

Email tim@libertypartnersfl.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing NO CASINOS

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/18
Meeting Date

374
Bill Number (if applicable)

Topic FANTASY CONTESTS

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644 *Street*

Phone 813.264.2977

TAMPA *City* FL *State* 33694 *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/18
Meeting Date

374
Bill Number (if applicable)

Topic FANTASY CONTESTS

Amendment Barcode (if applicable)

Name AMBER KELLY

Job Title DIRECTOR of POLICY AND COMMUNICATIONS

Address 4853 S ORANGE AVE SUITE C
Street

Phone 407-418-0250

ORLANDO FL 32806
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA FAMILY ACTION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 566
INTRODUCER:	Judiciary Committee and Senator Young
SUBJECT:	Unlawful Detention by a Transient Occupant
DATE:	January 24, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Favorable**
2.	Davis	Cibula	JU	**Fav/CS**
3.	Little	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 566 revises the laws governing a transient occupant who "unlawfully detains" a residential property. Under current law, a transient occupant is someone who initially possesses real property lawfully, such as a longer-term houseguest. A transient occupant, however, unlawfully detains the property after being directed to leave by the party entitled to possession. If the transient occupant refuses to leave the property after being directed to do so by a law enforcement officer, the transient occupant becomes a trespasser. Absent action by a law enforcement officer, the person entitled to possession of the dwelling must bring an unlawful detainer action against the transient occupant to have him or her removed.

The changes by the bill:

- Narrow the criteria defining whether an individual is a transient occupant whom the rightful possessor may remove through an unlawful detainer action.
- Identify events that terminate a transient occupancy and restore the right to possess a dwelling to the person having a right to possess the property. These events include surrendering a key to a dwelling, beginning to reside elsewhere, or agreeing to leave the dwelling.
- Generally require a former transient occupant to collect his or her personal belongings within 10 days after the termination of a transient occupancy. Otherwise, the personal property will be deemed abandoned.
- Authorize a former transient occupant to bring a civil action for damages or the recovery of his or her personal belongings that are unreasonably withheld by the person entitled to

possession of the dwelling. In that action, the court must award the prevailing party reasonable attorney fees and costs.

II. Present Situation:

Transient Occupant

Florida law provides for the removal of unwanted occupants from residential real property in several chapters. Section 82.045, however, outlines the remedies for an unlawful detention by a transient occupant. The term "transient" means temporary or impermanent and passing away after a short time.[1] A transient occupant is an individual whose residency in a residential dwelling has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.[2]

Unlawful Detention by a Transient Occupant of a Residential Property

An unlawful detention of residential property occurs when someone initially possesses real property lawfully but then unjustifiably retains possession of the property after the party entitled to possession has directed him or her to leave.[3] Legal actions to recover the property are based on the premise that no individual who has lawfully entered the property of another may continue to occupy the property without the consent of the party entitled to possession.[4]

A law enforcement officer may direct a transient occupant to surrender the residential property when the rightful possessor provides a sworn affidavit asserting that a transient occupant is unlawfully detaining the property. The affidavit must set forth any relevant facts that establish the unwanted occupant is a transient occupant, including any applicable factors listed in s. 82.045(1)(a), F.S. An individual may be a transient occupant if the person:[5]

- Does not have ownership, financial, or leasehold interest in the property that entitles occupancy of the property;
- Does not have property utility subscriptions;
- Does not use the property address as an address of record with any governmental agency;[6]
- Does not receive mail at the property;
- Pays minimal or no rent for his or her stay at the property;
- Does not have a designated space of his or her own, such as a room, at the property;
- Has minimal, if any, personal belongings at the property; or
- Has an apparent permanent residence elsewhere.[7]

[1] BLACK'S LAW DICTIONARY (10th ed. 2014).
[2] Section 82.045(1), F.S.
[3] BLACK'S LAW DICTIONARY (10th ed. 2014) and s. 82.045(1)(a), F.S.
[4] *See generally* chapter 82, F.S.
[5] Section 82.045(3), F.S.
[6] The Department of Highway Safety and Motor Vehicles and the supervisor of elections are listed as agencies included in the consideration of this factor. *See* s. 82.045(1)(a)3., F.S.
[7] Section 82.045(1)(a), F.S.

Unlawful Detainer Action

A rightful possessor may bring an action against a transient occupant within 3 years after an unlawful detention.[8] The action does not involve a question of title. Instead, the action is an expeditious remedy in which the main issue is the right to immediate possession[9] and related damages.[10] According to the office of the Clerk of the Circuit Court and Comptroller for Leon County, the filing fee for an unlawful detainer action is $300, plus an additional $10 for issuance of a summons.[11]

Unlawful detainer actions are resolved through summary procedure under s. 51.011, F.S.[12] In order to establish an unlawful detention, the plaintiff must demonstrate that:

- He or she was in possession of the property at one time;
- The plaintiff was ousted or deprived of rightful possession of the property by the defendant;
- The defendant withheld possession from the plaintiff without consent; and
- The action has been filed within the 3-year statute of limitation for unlawful detainer actions.[13]

Within 5 days after service of process, the defendant must file an answer to the unlawful detainer complaint. If the defendant's answer incorporates a counterclaim, the plaintiff is required to serve any answer to the counterclaim within 5 days. No other pleadings are allowed.[14]

If the plaintiff prevails, the court must enter judgment that the plaintiff is entitled to recover possession of the property described in the complaint, along with damages and costs, and a writ of possession without delay and execution.[15] If the defendant prevails, the court must enter judgment against the plaintiff by dismissing the complaint and awarding the defendant costs.[16]

Additional Causes of Action

Criminal Trespass

A transient occupant is subject to the criminal charge of trespass if he or she fails to surrender possession of the property when directed to do so by a law enforcement officer who has a sworn affidavit pursuant to s. 82.045(3), F.S.[17] Section 810.08, F.S., establishes the offense of trespass for anyone who:

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[8] Section 82.04, F.S.
[9] *Tollius v. Dutch Inns of America, Inc.*, 218 So. 2d 504 (Fla. 3rd DCA 1969).
[10] Section 82.05, F.S.
[11] Telephone conversation with Pam Kristoph, Office of the Clerk of the Circuit Court and Comptroller for Leon County, Tallahassee, Fla. (Jan. 3, 2018).
[12] A summary proceeding under s. 51.011, F.S., is applicable to actions that specifically provide for this procedure by statute or rule, including actions for forcible entry, unlawful detainer, and certain tenant evictions. Sections 51.011, 82.03, 82.04, 83.21, and 83.59, F.S.
[13] *Florida Athletic & Health Club v. Royce*, 33 So. 2d 222 (Fla. 1948); *Floro v. Parker*, 205 So. 2d 363, 367-368 (Fla. 2d DCA 1967).
[14] Section 51.011(1), F.S.
[15] Section 82.091, F.S.
[16] *Id.*
[17] Section 82.045(3)(a), F.S.

> 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, commits the offense of trespass in a structure or conveyance.[18]

Criminal trespass penalties range from a second degree misdemeanor for simple trespass to a first degree misdemeanor if a person was in the structure or conveyance at the time the offender trespassed or attempted to trespass.[19]

Wrongful Removal of an Individual

A person who is wrongfully removed from a property under s. 82.045, F.S., has a cause of action for wrongful removal against the person who requested the removal, excluding the law enforcement officer and his or her employing agency.[20] If the court finds that a wrongful removal occurred, the court may award the plaintiff injunctive relief and compensatory damages.[21]

Eviction

If the court, in examining an action for unlawful detainer, finds the defendant is a tenant rather than a transient occupant, the court must allow the plaintiff to provide adequate notice to the defendant as required under the act and to amend the complaint to pursue an eviction under the Landlord and Tenant Act.[22]

Generally, in eviction proceedings, a landlord is required to provide the tenant written notice of any violation of the rental agreement and must allow the tenant an opportunity to correct the problem.[23] If the tenant fails to correct the problem, the landlord may bring an action in the county court where the property is located.[24] The filing fee for the removal of a tenant is $180, plus an additional $10 for the issuance of a summons.[25] If the court enters a judgment for the landlord, the clerk will issue a writ of possession to the sheriff.[26] After the sheriff provides 24 hours' notice to the tenant, through a posting on the premises, the landlord may remove the tenant's property and change the locks.[27]

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[18] Section 810.08(1), F.S.
[19] Section 810.08(2)(a) and (b), F.S. A second degree misdemeanor is punishable by a jail term of up to 60 days. A first degree misdemeanor is punishable by a jail term of up to 1 year. Section 775.082(4)(a) and (b), F.S. Section 775.083(1)(d) and (e), F.S., authorize fines of up to $500 for a second degree misdemeanor and up to $1,000 for a first degree misdemeanor.
[20] However, the wrongfully removed individual may bring an action against a law enforcement officer or his or her employing agency upon a showing of bad faith. *See* s. 82.045(3)(b), F.S.
[21] *Id.*
[22] Section 82.045(4), F.S.
[23] Section 83.56(2), F.S.; *3618 Lantana Road Partners, LLC v. Palm Beach Pain Management, Inc.*, 57 So. 3d 966, 968 (Fla. 4th DCA 2011).
[24] Section 83.59(2), F.S.
[25] Section 34.041(1)(a)7., F.S. and verified in a phone conversation with the Office of the Clerk of the Circuit Court and Comptroller for Leon County, Tallahassee, Fla. (Jan. 3, 2018).
[26] Section 83.62(1), F.S.
[27] Section 83.62(2), F.S.

Ejectment and Trespass

A judgment rendered in an unlawful detainer case does not bar any action of trespass for injury to the property or ejectment. Additionally, the verdict in an action for unlawful detainer is not conclusive of the facts found in any subsequent proceeding of trespass or ejectment.[28]

Recovery and Abandonment of Personal Belongings

The statutes do not provide a process for recovering abandoned personal belongings that remain on a property after an unlawful detention has ended.

Under landlord-tenant regulations, a landlord is required to provide written notice to a former tenant of the right to reclaim abandoned property when it remains on the premises after the tenancy has terminated or expired and the premises have been vacated by the tenant.[29] The written notice must describe the property at issue, state where the property may be claimed, and specify the date by which the claim must be made.[30] The notice must also advise the former tenant that reasonable costs of storage may be charged before the property is returned.[31]

III. Effect of Proposed Changes:

Transient Occupancy

The bill revises the factors used in determining whether an occupant of a residential dwelling is a transient occupant who is entitled to some procedural protections from removal or a tenant who is entitled to the protections of the Landlord and Tenant Act or a trespasser.

The bill modifies two of the existing factors detailed in the Present Situation that may be used to determine whether someone is a transient occupant. The factors are narrowed in a way that makes occupants who are not tenants less likely to have the status of transient occupants. Under the existing factors, one might argue that the use of an address as an address of record with a government agency in the distant past, indicates that he or she presently has the status of a transient occupant at that address. The intent of the bill, by changing the factor, appears to require that a person claiming the status of a transient occupant have used the address as an address of record within the past 12 months. The current factor of whether the person received mail at the property is deleted and therefore the receipt of mail at a particular address may not be used to establish a person's status as a transient occupant. As a result, property owners and leaseholders and others entitled to possession of a residential property will have more control over their properties.

The bill provides that a transient occupancy terminates when a transient occupant:

- Begins to reside elsewhere;
- Surrenders the key to the dwelling; or

[28] Section 82.101, F.S.
[29] Section 715.104, F.S.
[30] The date specified in the notice cannot be less than 10 days after the notice is personally delivered or less than 15 days after the notice is mailed. Section 715.104(2), F.S.
[31] *Id.*

- Agrees to leave the dwelling when directed by a law enforcement officer, the party entitled to possession, or a court.

The bill also specifies that a transient occupancy is not extended by the presence of the former transient occupants' personal belongings. By identifying events terminating a transient occupancy, those entitled to possession of a residential property may have certainty as to when their rights to control property and exclude unwanted guests is restored.

Recovery of Former Transient Occupant's Personal Belongings

A transient occupant must collect his or her belongings or they may be presumed abandoned. A reasonable time for the recovery of the personal belongings includes a convenient time when the party entitled to possession of the dwelling or a trusted third party can be present at the dwelling to supervise the recovery of the belongings.

The bill establishes that it is reasonable for the party entitled to possession of the dwelling to impose additional conditions on access to the dwelling or personal belongings if he or she reasonably believes that the former transient occupant has engaged in misconduct or has a history of violence or drug or alcohol abuse.

The additional conditions that may be imposed on access to the dwelling or personal belongings include, but are not limited to, the presence of a law enforcement officer, the use of a mover registered with the Department of Agriculture and Consumer Services (DACS),[32] or the use of a trusted third party to recover the personal belongings.

Misconduct includes, but is not limited to:
- Intentional damage to the dwelling, to the property owned by the party entitled to possession of the dwelling, or to property owned by another occupant of the dwelling;
- Physical or verbal abuse directed at the party entitled to possession of the dwelling or another occupant of the dwelling; or
- Theft of property belonging to the party entitled to possession of the dwelling or property of another occupant of the dwelling.

Abandonment of Former Transient Occupant's Personal Belongings

The bill provides that the person who is entitled to possession of a dwelling can presume that the former transient occupant has abandoned any personal belongings left at the dwelling if he or she does not seek to recover the belongings within a "reasonable time" after surrendering occupancy of the dwelling. A reasonable time for a former transient occupant to recover personal belongings is 10 days after the termination of the transient occupancy, unless specific circumstances require a reasonable time to be shorter or longer than 10 days. If the party entitled to possession of the property is unavailable to supervise the recovery of the personal belongings, the time may be extended.

Circumstances that may shorten the length of reasonable time include, but are not limited to:

[32] Ch. 507, F.S. requires any person who is engaged in intrastate moving for compensation to register with the DACS.

- The poor condition of or the perishable or hazardous nature of the personal belongings;
- The intent of the former transient occupant to abandon or discard the belongings; or
- The significant impairment of the use of the dwelling by the storage of the former transient occupant's personal belongings.

Unreasonably Withheld Access to Personal Belongings

The bill provides that a former transient occupant may bring a civil action for damages or the recovery of the property against a person entitled to possession of the dwelling if that person unreasonably withholds access to the former transient occupant's personal belongings. In such action, the bill directs the court to award reasonable attorney fees and costs to the prevailing party.

Construction Language

Subsection (6) states that the entire section relating to the remedy for unlawful detention by a transient occupant should be "construed in recognition of the right to exclude others as one of the most essential components of property rights." This statement paraphrases language found in a U.S. Supreme Court decision which discusses property rights.[33] According to the Court, it has "repeatedly held that, as to property reserved by its owner for private use, 'the right to exclude [others is] 'one of the most essential sticks in the bundle of rights that are commonly characterized as property.'"[34]

Effective Date

The bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The State Constitution addresses the property rights of citizens in two pertinent provisions. Article 1, section 2 provides that all natural persons have the right to acquire,

[33] *Nollan v. California Coastal Com'n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982) quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)).
[34] *Id.*

possess, and protect property. Article 1, section 9 provides that "No person shall be deprived of life, liberty or property without due process of law . . ."

The bill requires the party entitled to possession of the dwelling to allow a former transient occupant to recover his or her personal belongings and provides that the belongings are presumed abandoned if the former transient occupant does not seek to recover the personal belongings within 10 days of surrendering occupancy of the dwelling. However, the bill does not address whether the former transient occupant will receive notice of his or her opportunity to recover the personal belongings.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By narrowing the criteria used to determine whether a person is a transient occupant and clarifying when a transient occupancy ends, the bill may reduce the time and legal expenses that a property owner, leaseholder, or other person entitled to possession would incur to remove an occupant or former transient occupant.

C. Government Sector Impact:

This bill may reduce the expenses associated with the county courts because it may result in fewer unlawful detainer actions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 82.045 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on January 10, 2018:
The committee substitute makes several small changes that are consistent with the bill's underlying purposes. Those changes include:

- Limiting documents or identification cards used to support a claim of transient occupancy to have been issued or sent within the previous 12 months and not the distant past.
- Increasing the time to recover personal belongings after the transient occupancy ends to 10 days from 5 days.
- Making stylistic changes for clarity or consistency throughout the bill.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Young

590-01988-18 2018566c1

A bill to be entitled

An act relating to unlawful detention by a transient occupant; amending s. 82.045, F.S.; revising factors that establish a person as a transient occupant of residential property; specifying circumstances when a transient occupancy terminates; providing that a transient occupancy is not extended by the presence of personal belongings of a former transient occupant; requiring the party entitled to possession of a dwelling to allow a former transient occupant to recover personal belongings at reasonable times and under reasonable conditions; specifying a reasonable time to recover personal belongings; authorizing a party entitled to possession of the dwelling, under certain circumstances, to impose additional conditions on access to the dwelling or personal belongings; providing a presumption of when a former transient occupant has abandoned his or her personal belongings; providing circumstances in which the period for recovering personal belongings may be extended or shortened; authorizing a former transient occupant, under certain circumstances, to bring a civil action for damages or recovery of personal belongings; requiring a court to award the prevailing party reasonable attorney fees and costs; providing construction; providing an effective date.

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

590-01988-18 2018566c1

Section 1. Section 82.045, Florida Statutes, is amended to read:

82.045 Remedy for unlawful detention by a transient occupant of residential property; recovery of transient occupant's personal belongings.—

(1) As used in this section, the term "transient occupant" means a person whose residency in a dwelling 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.

(a) Factors that establish that a person is a transient occupant include, but are not limited to:

1. 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.

2. The person does not have any property utility subscriptions.

3. 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 ~~does not use the property address as an address of record with any governmental agency, including, but not limited to, the Department of Highway Safety and Motor Vehicles or the supervisor of elections~~.

~~4. The person does not receive mail at the property.~~

4.~~5.~~ The person pays minimal or no rent for his or her stay

at the property.

5.~~6.~~ The person does not have a designated space of his or her own, such as a room, at the property.

6.~~7.~~ The person has minimal, if any, personal belongings at the property.

7.~~8.~~ The person has an apparent permanent residence elsewhere.

(b) Minor contributions made for the purchase of household goods, or minor contributions towards other household expenses, do not establish residency.

(2) A transient occupant unlawfully detains a residential property if the transient occupant remains in occupancy of the residential property after the party entitled to possession of the property has directed the transient occupant to leave. A transient occupancy terminates when a transient occupant begins to reside elsewhere, surrenders the key to the dwelling, or agrees to leave the dwelling when directed by a law enforcement officer in receipt of an affidavit under subsection (3), the party entitled to possession, or a court. A transient occupancy is not extended by the presence of personal belongings of a former transient occupant.

(3) Any law enforcement officer may, upon receipt of a sworn affidavit of the party entitled to possession that a person who is a transient occupant is unlawfully detaining residential property, direct a transient occupant to surrender possession of residential property. The sworn affidavit must set forth the facts, including the applicable factors listed in paragraph (1)(a), which establish that a transient occupant is unlawfully detaining residential property.

(a) A person who fails to comply with the direction of the law enforcement officer to surrender possession or occupancy violates s. 810.08. In any prosecution of a violation of s. 810.08 related to this section, whether the defendant was properly classified as a transient occupant is not an element of the offense, the state is not required to prove that the defendant was in fact a transient occupant, and the defendant's status as a permanent resident is not an affirmative defense.

(b) A person wrongfully removed pursuant to this subsection 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.

(4) A party entitled to possession of a dwelling has a cause of action for unlawful detainer against a transient occupant pursuant to s. 82.04. The party entitled to possession is not required to notify the transient occupant before filing the action. If the court finds that the defendant is not a transient occupant but is instead a tenant of residential property governed by part II of chapter 83, the court may not dismiss the action without first allowing the plaintiff to give the transient occupant the notice required by that part and to thereafter amend the complaint to pursue eviction under that part.

(5) The party entitled to possession of a dwelling shall allow a former transient occupant to recover his or her personal belongings at reasonable times and under reasonable conditions.

(a) Unless otherwise agreed to, a reasonable time for the recovery of the former transient occupant's personal belongings generally means a time period within 10 days after termination of the transient occupancy, when the party entitled to possession of the dwelling or a trusted third party can be present at the dwelling to supervise the recovery of the belongings.

(b) If the party entitled to possession of the dwelling reasonably believes that the former transient occupant has engaged in misconduct or has a history of violence or drug or alcohol abuse, it is reasonable for the party entitled to possession of the dwelling to impose additional conditions on access to the dwelling or the personal belongings. These conditions may include, but are not limited to, the presence of a law enforcement officer, the use of a mover registered with the Department of Agriculture and Consumer Services, or the use of a trusted third party to recover the personal belongings. For purposes of this paragraph, misconduct includes, but is not limited to:

1. Intentional damage to the dwelling, to property owned by the party entitled to possession of the dwelling, or to property owned by another occupant of the dwelling;

2. Physical or verbal abuse directed at the party entitled to possession of the dwelling or another occupant of the dwelling; or

3. Theft of property belonging to the party entitled to possession of the dwelling or property of another occupant of the dwelling.

(c) The person entitled to possession of a dwelling may

presume that the former transient occupant has abandoned personal belongings left at the dwelling if the former transient occupant does not seek to recover them within a reasonable time after the transient occupant surrenders occupancy of the dwelling. The time period to recover personal belongings may be extended due to the unavailability of the party entitled to possession of the dwelling to supervise the recovery of the personal belongings. Circumstances that may shorten the time include, but are not limited to, the poor condition of or the perishable or hazardous nature of the personal belongings, the intent of the former transient occupant to abandon or discard the belongings, or the significant impairment of the use of the dwelling by the storage of the former transient occupant's personal belongings.

(d) If the person entitled to possession of the dwelling unreasonably withholds access to a former transient occupant's personal belongings, the former transient occupant may bring a civil action for damages or the recovery of the property. The court shall award the prevailing party reasonable attorney fees and costs.

(6) This section shall be construed in recognition of the right to exclude others as one of the most essential components of property rights.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

January 11, 2018

Senator Lizbeth Benacquisto, Chair
Senate Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 566 relating to Unlawful Detention by a Transient Occupant has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

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

Sincerely,

Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Senate Rules Committee

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

Senate's Website: *www.flsenate.gov*

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

Jan 25, 2018
Meeting Date

566
Bill Number (if applicable)

Topic Unlawful Detention

Amendment Barcode (if applicable)

Name Ken "cope-CHEN-ski" Kopczynski

Job Title lobbyist

Address 300 East Brevard St
Street

Phone 222-3324

Talla FL 32301
City *State* *Zip*

Email Ken@flpba.org

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

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

Representing Fla PBA Inc

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

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

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

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

S-001 (10/14/14)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	SB 608
INTRODUCER:	Senator Passidomo
SUBJECT:	Public Records/Identity Theft and Fraud Protection Act
DATE:	January 24, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Favorable**
2.	Farach	Cibula	JU	**Favorable**
3.	Peacock	Phelps	RC	**Favorable**

I. Summary:

SB 608 creates the Identity Theft and Fraud Protection Act and requires an agency to review information to determine if it is susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website. The bill requires the Division of Library and Information Services of the Department of State to adopt rules establishing uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

The bill also requires an agency to establish a policy that allows a person to request removal of an image or a copy of a public record containing information susceptible to use for purposes of identity theft or fraud which is posted on an agency's publicly available website. Information that an agency may not post on a publicly available website, however, may be posted on a limited access area of the agency's website which is not available to the general public.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, or employee of the state, or of persons acting on their behalf.[1] This right to access public records includes records made or received by legislative, executive, and judicial branches of government.[2]
The statutes declare that agencies should strive to provide remote electronic access to public records to the extent feasible.[3] If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner

[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[3] Section 119.01(2)(e), F.S.

available to the agency providing the information.[4] Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.[5]

Chapter 817, Fraudulent Practices

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices that are committed against individuals, corporations, and governments. 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.[6] Identity theft or fraud is the criminal use of an individual's personal identification information.[7] Identity thieves steal such information as a person's name, social security number, driver's license information, or bank and credit card accounts and use the information to establish credit, make purchases, apply for loans, or seek employment. According to the Federal Trade Commission, Florida ranked second in the nation for identity theft in 2017, with 38,384 reported complaints.[8]

Section 817.568, F.S., punishes criminal use of personal identification information.[9] For example, the statute makes it a third degree felony for a person to willfully and without authorization fraudulently use, or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. The statute provides enhanced penalties if:

- The pecuniary benefit exceeds specified amounts;
- The person fraudulently uses the information of more than a certain number of people;
- The person commits the offense for purposes of harassment; or
- The victim is younger than 18 years of age or 60 years of age or older.

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[4] *Id.*
[5] Section 119.01(2)(a), F.S.
[6] BLACK'S LAW DICTIONARY (9th ed. 2009).
[7] Office of the Attorney General, *Identity Theft*, http://myfloridalegal.com/pages.nsf/Main/3C2A3BA3C2DA5C6F85256DBE006C1B30?OpenDocument (last visited Jan. 13, 2018).
[8] *Id.*
[9] Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.

Exemption from Public Record Laws for Certain Sensitive Information

The Supreme Court has adopted rules to minimize the release of sensitive information from court files. Specifically, every pleading or other document filed with the court must comply with Florida Rules of Judicial Administration 2.420, Public Access to and Protection of Judicial Branch Records and 2.425, Minimization of the Filing of Sensitive Information.[10] Certain sensitive information that may be susceptible to use in identity theft or other fraudulent practices, such as social security, bank account, charge, debit, and credit card numbers must be maintained by the clerk of court as confidential.[11] Furthermore, the rules of Judicial Administration prohibit or restrict the inclusion of sensitive financial information such as social security numbers, bank account numbers, and driver license numbers on court filings..[12]

Secretary of State

The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor.[13] The Secretary of State is the state's chief of elections, chief cultural officer and head of the Department of State.[14] The Secretary of State also performs functions conferred by the State Constitution upon the custodian of state records.[15] The Department of State is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.[16]

III. Effect of Proposed Changes:

Section 1 provides that the bill may be cited as the "Identity Theft and Fraud Protection Act."

Section 2 amends section 119.021, F.S., to require a state agency[17] to review the information in order to determine if it is susceptible to use for purposes of identity theft or fraud before posting the information on a publicly available website. The state agency is prohibited from posting an image or a copy of, or information from, a public record on the agency's publicly available website or another publicly available website used by the agency if the public record contains information susceptible to use for purposes of identity theft or fraud.

The bill requires the Division of Library and Information Services of the Department of State to adopt rules to establish uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

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[10] Fla. R. Civ .P. 1.020.
[11] Rule. 2.424(d)(1)(B)(iii) Fla. R. Jud. Admin.; ss. 119.071(5)(a) And 119.0714(2), F.S.
[12] Rule 2.245 Fla. R. Jud. Admin.
[13] Section 20.10(1), F.S.
[14] See Florida Department of State, *About the Department*, http://dos.myflorida.com/about-the-department/ (last visited Jan. 13, 2018).
[15] Section 20.10(1), F.S.
[16] Section 20.10(2), F.S.
[17] Section 119.011(2), F.S., defines "agency" to mean "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."

The bill also requires an agency to establish a policy that allows a person, or his or her attorney or legal guardian, to request that the agency remove an image or a copy of a public record containing information that is susceptible to use for purposes of identity theft or fraud which is posted on the agency's publicly available website or another publicly available website used by the agency to display such records. The request must specify which record contains the information that is susceptible to identity theft or fraud. Upon a valid request, the agency must remove the posting of the record containing such information as expeditiously as possible. The agency may not charge a fee to the person making the request.

Additionally, the bill does not prohibit an agency from posting images or copies of records not otherwise authorized under this section to a limited access area of the agency's website not made available to the general public. This provision does not authorize the disclosure of information or records that are otherwise exempted by law from public disclosure.

Section 3 provides a legislative finding that the bill fulfills an important state interest.

Section 4 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may reduce the financial losses caused or aided by the fraudulent use of public information that is readily available from an agency website.

C. Government Sector Impact:

Agencies will incur costs to comply with requests to remove information from their websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is not a new public records exemption, but it creates a process for state agencies to consider what information they should post on publicly available websites.

VIII. Statutes Affected:

This bill substantially amends section 119.021 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 Passidomo

28-00495-18 2018608__

A bill to be entitled

An act relating to public records; providing a short title; amending s. 119.021, F.S.; requiring an agency to review for information susceptible to use for purposes of identity theft or fraud before making postings to a publicly available website; prohibiting an agency from posting to a publicly available website an image or a copy of a public record containing information susceptible to use for purposes of identity theft or fraud; requiring the Division of Library and Information Services of the Department of State to adopt certain rules; requiring an agency to establish a policy providing for requests to remove an image or a copy of a public record containing information susceptible to use for purposes of identity theft and fraud; specifying requirements for the policy; authorizing an agency to post images or copies of records containing information which is not otherwise exempt to portions of websites not accessible to the general public; providing a finding of an important state interest; providing an effective date.

WHEREAS, according to the Federal Trade Commission, Florida repeatedly has been ranked as one of the states with the highest instances of reported identity theft and fraud complaints, and

WHEREAS, identity theft and fraud continues to be of great concern to many Floridians, especially in light of many recent security and data breaches that have compromised the security of

28-00495-18 2018608__

personal information, and

WHEREAS, while there is no general requirement that agencies post public records on publicly available websites, numerous agencies often post such records online for the convenience to the agency and the public, and

WHEREAS, the Legislature acknowledges that the ease of access to certain public records on websites can aid the public and many business entities to obtain certain information quickly and easily, but also recognizes that agencies should be required to consider the impact of posting certain public records on publicly available websites before taking such action, and

WHEREAS, in some cases, perpetrators of identity theft and fraud have accessed information about individuals through public records posted on the websites of agencies, and

WHEREAS, the Legislature finds that it is critical that it take steps to protect information contained in public records that is susceptible to use for purposes of identity theft and fraud, while also respecting the state's strong public policy in favor of open government, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Identity Theft and Fraud Protection Act."

Section 2. Subsection (5) is added to section 119.021, Florida Statutes, to read:

119.021 Custodial requirements; maintenance, preservation, and retention of public records.—

(5)(a) Before posting any information on a publicly

available website, an agency must review the information to determine if it is susceptible to use for purposes of identity theft or fraud. An agency may not post an image or a copy of, or information from, a public record on the agency's publicly available website or another publicly available website used by the agency if the public record contains information susceptible to use for purposes of identity theft or fraud.

(b) The Division of Library and Information Services of the Department of State shall adopt rules to establish uniform standards for agencies in determining the types of information which qualify as information that is susceptible to use for purposes of identity theft or fraud.

(c) An agency must establish a policy that allows a person, or his or her attorney or legal guardian, to request that the agency remove an image or a copy of a public record containing information that is susceptible to use for purposes of identity theft or fraud which is posted on the agency's publicly available website or another publicly available website used by the agency to display such records. A request must specify which record contains the information that is susceptible to identify theft or fraud. Upon receipt of a valid request, the agency shall remove the posting of the record containing such information as expeditiously as possible. An agency may not charge a fee to the person making such a request.

(d) This subsection does not prohibit an agency from posting information or images or copies of records not otherwise authorized under paragraph (a) to a limited access area of the agency's website not made available to the general public. This paragraph does not authorize the disclosure of information or

records that are otherwise exempted by law from public disclosure.

Section 3. The Legislature finds that a proper and legitimate state purpose is served when protecting the identifying information of the residents of this state in order to reduce the risk of identity theft and fraud. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 4. This act shall take effect July 1, 2018.

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 18, 2018

I respectfully request that **Senate Bill #608**, relating to Public Records/Identity Fraud Protection Act, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Kathleen Passidomo
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

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 Rules

BILL:	CS/SB 962
INTRODUCER:	Commerce and Tourism Committee and Senator Grimsley
SUBJECT:	Telephone Solicitation
DATE:	January 24, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Fav/CS**
2.	Harmsen	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 962 allows telephone service providers to block certain phone calls from ringing through to a telephone service subscriber's phone, if authorized by the subscriber.

Telephone service providers may block "spoofed" calls that are made from:

- An inbound-only phone number that a subscriber has requested be blocked;
- An invalid phone number;
- A phone number that has not been allocated to a provider by the North American Numbering Plan Administrator; and
- A phone number that is not used by any telephone subscriber, if the telephone service provider confirms that the number is unused.

Telephone service providers may only block calls in a manner that is consistent with authorization from federal laws and rules.

On November 17, 2017, the Federal Communications Commission adopted a rule that provides similar safe harbor provisions to telephone service providers who preemptively block suspected robocalls. This bill provides state-level authorization for the same call blocking services.

II. Present Situation:

Robocalls

A robocall is a phone call that answers with a pre-recorded message, instead of a live person, or any auto dialed phone call.[1,2] The rise of inexpensive technology, such as voice over internet protocol (VoIP) and auto dialers, has allowed robocallers to manipulate telephone technologies to contact a large volume of consumers, and to misrepresent ("spoof") the phone number from which they are calling. Such robocalls are intended to trick the consumer into accepting a scam sales call, and are usually illegal.[3]

Unwanted phone calls, including robocalls, are consistently among the top consumer complaints filed with the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC).[4] During 2017, the FCC received 181,631 consumer complaints about robocalls, including federal Do Not Call List violations, call spoofing, and solicitations made by an automated recording;[5] the FTC received 3.5 million complaints.[6] One organization estimates that in November 2017, 2.7 billion robocalls were made to U.S. consumers.[7] Florida residents filed 588,021 Do Not Call Registry complaints with the FTC in 2017.[8]

Telephone Solicitation (Robocall) Laws

The federal Telephone Consumer Protection Act of 1991 (TCPA) restricts the use of auto dialers, prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

- The National Do Not Call Program (Program), administered by the FTC, in concert with the FCC under the TCPA,[9] prohibits telephone solicitors from contacting a consumer who participates in the Program, unless the calls are:[10]
  - Made with a consumer's prior, express permission;
  - Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
  - Made by a tax-exempt organization.

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[1] Federal Trade Commission, *Consumer Information: Robocalls*, https://www.consumer.ftc.gov/features/feature-0025-robocalls (last visited Jan. 2, 2018).
[2] An auto dialer is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).
[3] 47 U.S.C. § 227.
[4] Federal Communications Commission, *Stop Unwanted Calls and Texts* (Dec. 5, 2017), https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Jan. 2, 2018).
[5] *Id.*, *see also*, Federal Communications Commission, *Consumer Complaints Data- Unwanted Calls*, https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e (last visited Jan. 2, 2018).
[6] Federal Trade Commission, *FTC Testifies Before U.S. Senate Special Committee on Aging on the Continuing Fight to Combat Illegal Robocalls* (Oct. 4, 2017), https://www.ftc.gov/news-events/press-releases/2017/10/ftc-testifies-us-senate-special-committee-aging-continuing-fight (last visited Jan. 1, 2018).
[7] YouMail, *Robocall Index*, https://robocallindex.com/ (last visited Jan. 3, 2018).
[8] *Florida Ranks No. 3 for Rate of Do Not Call Complaints in 2017*, The Tampa Bay Times, Jan. 3, 2018, http://www.tampabay.com/news/business/corporate/Florida-ranks-No-3-for-rate-of-Do-Not-Call-complaints-in-2017_163965427 (last visited Jan. 2, 2018).
[9] Federal Communications Commission, *Stop Unwanted Calls and Texts—The National Do Not Call List*, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Jan. 3, 2018).
[10] 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

- The Florida Department of Agriculture and Consumer Services administers the Florida Do Not Call Act, which prohibits unsolicited phone calls and text messages to a cell phone, and prohibits most prerecorded calls to a landline phone.[11]

The federal Truth in Caller ID Act of 2009 bans most call spoofing by prohibiting the transmission of misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.[12]

Industry Actions to Combat Robocalls

Robocall Strike Force

Many robocalls are made without regard to the laws in place to prevent them. As a result, the Chairman of the FCC called upon the telephone service industry (industry) to develop and implement responses that could more quickly react to the developments of the robocall problem.[13] In response, the Robocall Strike Force (Strike Force) was created in 2016.[14] The Strike Force, which consists of representatives from the industry, issued a report on its efforts in October 2016.[15] The Strike Force's report outlined:[16]

- Steps the industry had taken to implement telephone service provider authentication of caller identification for calls made over VoIP networks;
- Methods for consumer education about robocalls and the solutions currently available to telephone subscribers on the market, such as the app "nomorobo;"
- The industry's trial implementation of a "Do-Not-Originate" (DNO) list, a compilation of numbers known to be illegitimate, and therefore likely to be used by a robocaller, from which telephone service providers could pull numbers that it would block from being able to complete calls to subscribers.

Do Not Originate List

On November 17, 2017, the FCC adopted a rule that implements the Strike Force's DNO list proposal.[17] The rule permits telephone service providers to block phone calls made from a number that appears on a DNO list before they reach subscribers' phones. Only the following types of phone numbers may be placed on the DNO list:

- An inbound services-only number that is assigned to a subscriber who requests that the number be blocked;

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[11] *See*, s. 501.059, F.S.. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call (last visited Jan. 3, 2018).
[12] 47 U.S.C. § 227 (e),
[13] Tom Wheeler, Chairman of the Federal Communications Commission, *Cutting off Robocalls* (Jul. 22, 2016), https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls (last visited Jan. 2, 2018).
[14] Federal Communications Commission, *First Meeting of Industry-Led Robocall Strike Force*, https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force (last visited Jan. 3, 2018).
[15] *Robocall Strike Force Report* at p. 2 (Oct. 26, 2016), available at: https://transition.fcc.gov/cgb/Robocall-Strike-Force-Final-Report.pdf (last visited Jan. 2, 2018).
[16] *Id*.
[17] Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, FCC Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, at para. 9 (Nov. 16, 2017), *available at*: https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls-0 (last visited Jan. 3, 2018).

- A number that is invalid under the North American Number Plan (NANP), such as a single digit repeated (000-000-0000), or one without the required number of digits;[18]
- A number that has not yet been allocated to a telephone services provider by the NANP Administrator; and
- A number that is allocated to a telephone services provider, but has not yet been assigned to a telephone subscriber.

Market Options

The telephone service industry offers various products for consumers to block robocalls from ringing through to his or her phone.[19] These methods include phone software, apps to install on a phone, and services offered by telephone service providers to block suspected robocalls. The FTC promotes the development of solutions by hosting technology challenges, such as the 2015 'DetectaRobo Contest' that offer rewards to those who design tools to block robocalls.[20]

III. Effect of Proposed Changes:

Section 1 of the bill permits telephone service providers to preemptively block certain phone calls from ringing through to a telephone service subscriber's phone, if so authorized by the subscriber.

Telephone service providers may block "spoofed" calls that are made from:
- An inbound-only phone number that a subscriber has requested be blocked;
- An invalid phone number, such as "111-111-1111";
- A phone number that has not been allocated to a provider by the NANP Administrator or pooling administrator; and
- A phone number that is not used by any telephone subscriber, if the telephone service provider confirms that the number is unused.

The bill also permits telephone service providers to rely on a phone number as reflected on a caller identification service for purposes of blocking that number. However, a telephone service provider may not block an emergency call placed to 911.

Additionally, the bill provides that telephone service providers may only block such calls in a manner that is consistent with authorization from federal laws and rules.

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[18] The NANP was created to organize the nationwide assignment of phone numbers in order to make direct dialing of long distance calls possible, and to eliminate the need for operators. Area codes are an innovation of the NANP. The NANP also pools numbers into numerical blocks of 1,000 numbers each and then allocates those numbers to service providers. *See generally*, North American Numbering Plan Administrator, *About the North American Numbering Plan*, https://www.nationalnanpa.com/about_us/abt_nanp.html (last visited Jan. 2, 2018); 47 CFR § 52.20.

[19] Federal Trade Commission, *Consumer Information: Blocking Unwanted Calls* (June 2016) https://www.consumer.ftc.gov/articles/0548-blocking-unwanted-calls (last visited Jan. 3, 2018). *See also*, Federal Communications Commission, *Stop Unwanted Calls and Texts: Web Resources for Blocking Robocalls*, *supra* at 4.

[20] *See* note 1, *supra*.

While some telephone service providers already block such calls,[21] this bill clarifies that such actions will not result in penalties under Florida law.

Section 2 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Economic harm to victims of fraudulent schemes carried out on spoofed phone calls may be reduced.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 365.176 of the Florida Statutes.

[21] Federal Communications Commission, *Stop Unwanted Calls and Texts—Call Blocking Resources*, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited Jan. 3, 2018).

IX. Additional Information:

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

CS by Commerce and Tourism on January 9, 2018:
The Committee Substitute:

- Transfers the proposed language from ch. 364, F.S., "Telecommunications Companies" to ch. 365, F.S., "Use of Telephone and Facsimile Machines";
- Permits telephone service providers to block active numbers only if the number is used for inbound calls only, and if the number's subscriber has requested to block calls that purport to be from its number; and
- Prohibits call blocking of an emergency call placed to 911.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Grimsley

577-01937-18 2018962c1

A bill to be entitled

An act relating to telephone solicitation; creating s. 365.176, F.S.; providing a short title; defining terms; authorizing telecommunication providers to block certain calls; prohibiting the blocking of certain calls; authorizing telecommunication providers to rely upon caller identification service information to determine originating numbers for the purpose of blocking such calls; providing an effective date.

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

Section 1. Section 365.176, Florida Statutes, is created to read:

365.176 Florida Call-Blocking Act.—

(1) This section may be cited as the "Florida Call-Blocking Act."

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

(a) "Caller identification service" means a service that allows a telephone subscriber to have the telephone number and, if available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(b) "Pooling administrator" means the Thousands-Block Pooling Administrator as identified in 47 C.F.R. s. 52.20.

(c) "Provider" means a telecommunications company that provides voice communications services to customers in this state.

(3) Consistent with authorization provided by federal law

577-01937-18 2018962c1

and rules of the Federal Communications Commission or its successors, providers operating in this state may block calls in the following manner:

(a) Providers may block a voice call when the subscriber to which the originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only.

(b) Providers may block calls originating from the following numbers:

1. A number that is not a valid North American Numbering Plan number;

2. A valid North American Numbering Plan number that is not allocated to a provider by the North American Numbering Plan Administrator or the pooling administrator; and

3. A valid North American Numbering Plan number that is allocated to a provider by the North American Numbering Plan Administrator or pooling administrator, but is unused, so long as the provider blocking the calls is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of the blocking.

Providers may not block a voice call pursuant to subparagraph 1. or subparagraph 2. if the call is an emergency call placed to 911.

(4) For purposes of blocking calls from certain originating numbers as authorized in this section, a provider may rely on caller identification service information to determine the originating number.

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

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 Rules

BILL:	SB 660
INTRODUCER:	Senator Brandes
SUBJECT:	Florida Insurance Code Exemption for Nonprofit Religious Organizations
DATE:	January 24, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	**Favorable**
2.	Stallard	Cibula	JU	**Favorable**
3.	Billmeier	Phelps	RC	**Favorable**

I. Summary:

SB 660 substantially conforms the statute that governs health care sharing ministries to model legislation of the American Legislative Exchange Council,[1] federal law, and the common practices of these ministries. A health care sharing ministry is an alternative to health insurance through which people of similar beliefs assist each other in paying for health care.

One area addressed by the bill is the list of requirements that a health care sharing ministry must meet to be exempt from the laws regulating insurers. New requirements are added to the list and other requirements in the list are modified. The additions require a ministry to:

- Have an annual, independent audit conducted according to generally accepted accounting principles; and
- Provide monthly statements to participants of the total dollar amount of qualified needs actually shared in the previous month in accordance with the ministry's criteria.

A revised requirement allows for flexibility in how medical costs may be shared among ministry participants. Current law requires participant-to-participant payment, but the bill also allows payments to be made from a common fund of participant-donated money.

Additionally, the bill removes language from the law that expressly states that a ministry may exclude participants who have pre-existing conditions. Finally, the bill requires a ministry to give much clearer notice to prospective participants that the ministry is not an insurer.

[1] *See* American Legislative Exchange Council, *Health Care Sharing Ministries Tax Parity Act*, https://www.alec.org/model-policy/health-care-sharing-ministries-tax-parity-act/ (last visited Jan. 16, 2018).

II. Present Situation:

Overview

A health care sharing ministry is an alternative to health insurance through which people of similar ethical or religious beliefs assist each other in paying for health care. Some health care sharing ministries act as a clearinghouse to allow one or more members to directly pay the medical expenses of another member. Other health care sharing ministries receive funds from members and use those funds to pay authorized medical expenses when members request payment. The first health care sharing ministry was established in 1981.[2]

The Florida Insurance Code will exempt a ministry, which it refers to as a "nonprofit religious organization,"[3] from the code's provisions governing health insurers if the ministry meets several criteria set forth in the code. These requirements for a ministry's exemption from the code also appear to serve as regulations for these organizations.

Florida Law

Since 2008, Florida law has expressly exempted health care sharing ministries that meet statutory criteria from being regulated as insurers. Specifically, a health care sharing ministry qualifies as a "nonprofit religious organization" that is exempt from the requirements of this state's insurance code if it:

- Qualifies under federal law as tax-exempt;
- Limits its participants to members of the same religion;
- Acts as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and participants who have the ability to pay for the benefit of those participants who have financial, physical, or medical needs;
- Provides for the financial or medical needs of a participant through payments directly from one participant to another participant; and
- Suggests amounts that participants may voluntarily give with no assumption of risk or promise to pay among the participants or between the participants.[4]

Though the code exempts qualified ministries from its requirements of insurers, it nonetheless regulates these ministries in a limited sense. Particularly, the code requires each ministry to give prospective participants notice that it is not an insurer and that it is not subject to regulation under the insurance code.[5] Moreover, the code expressly states that it "does not prevent" an organization that meets the qualifying criteria from deciding which pre-existing conditions will disqualify a prospective participant or from canceling the membership of a participant who fails to make a payment for another participant for a period in excess of 60 days.

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[2] *See* Benjamin Boyd, *Health Care Sharing Ministries: Scam or Solution*, 26 J.L. & Health 219, 229 (2013).
[3] The more descriptive and widely used term "health care sharing ministry" will continue to be used generally throughout this analysis for continuity and to avoid confusion.
[4] *See* s. 624.1265(1), F.S.
[5] *See* s. 624.1265(3), F.S.

Federal Law

Federal law pertains to health care sharing ministries in two ways. As mentioned above, state law requires a ministry to qualify as tax exempt under federal tax law. Also, though federal law requires people to have health insurance or pay a penalty,[6] it exempts members of a health care sharing ministry, which it defines as an organization:

- Which is tax-exempt under federal law;
- Members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed;
- Members of which retain membership even after they develop a medical condition;
- Which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and
- Which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.[7]

III. Effect of Proposed Changes:

Overview

The bill substantially conforms the statute that governs health care sharing ministries to model legislation of the American Legislative Exchange Council, federal law, and the common practices of these ministries.

The bill changes the list of requirements that a ministry must meet to be exempt from regulation as an insurer. Additionally, the bill removes language from the law which expressly states that a ministry may exclude participants who have pre-existing conditions. Finally, the bill requires each ministry to give a much clearer notice to prospective participants that the ministry is not an insurer.

Requirements for a Health Care Sharing Ministry to be Exempt from the Insurance Code

The Florida Insurance Code regulates insurance organizations that operate in this state. To avoid being subject to regulation under the code as an insurer, a health care sharing ministry must meet each of a list of criteria set forth in the code. The bill amends several of these criteria.

Current law requires a nonprofit religious organization to limit participation to "members of the same religion." The bill modifies this language to require a ministry to limit participation to those who "share a common set of ethical or religious beliefs." This change allows a nonprofit religious organization to welcome persons of different religions, or even of no religion. Additionally, this change conforms the code to language in federal law.

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[6] This provision is known as the "individual mandate." The individual mandate was recently repealed, but the repeal is not effective until 2019. *See* Margot Sanger-Katz, *Requiem for the Individual Mandate,* N.Y. TIMES (Dec. 21, 2017), https://www.nytimes.com/2017/12/21/upshot/individual-health-insurance-mandate-end-impact.html.

[7] *See* 26 U.S.C. 5000A(d)(2)(B)(ii).

Further, the code currently requires a health care sharing ministry to act as an organizational clearinghouse for information between participants who have financial, physical, or medical needs and participants who have the ability to pay for the benefit of those participants. The bill replaces "organizational clearinghouse" with "facilitator" and provides that the nonprofit religious organization must act as a facilitator among participants who have financial or medical needs[8] to assist those with financial or medical needs in accordance with criteria established by the nonprofit religious organization. This change conforms the code to the model act.

The code currently requires a nonprofit religious organization to provide for financial or medical needs by direct payments from one participant to another. The bill allows direct payments to participants but does not require them. Thus, payments may pass through the organization or through a fund to a participant.

Under the bill, a health care sharing ministry must, on a monthly basis, provide the participants "the amount of qualified needs actually shared in the previous month in accordance with criteria established by the" health care sharing ministry. The code does not currently include this provision, which requires a ministry to be more transparent and more accountable to its participants.

Finally, the bill creates an annual audit requirement that does not exist in the code, but appears in the model act and federal law. Particularly, a health care sharing ministry must conduct an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles. Moreover, the audit must be made available to the public by providing a copy upon request or by posting it on the ministry's website.

Notice

One of several ways in which the bill increases consumer protection has to do with the notice that a health care sharing ministry is required to provide to prospective members. The notice required by the bill is more explicit and more thorough than that required in current law. Moreover, the bill requires this notice to read, "in substance":

> The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant is compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payments for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills.

[8] Section 624.1265, F.S., uses "financial, physical, or medical" needs. The bill eliminates "physical" from the statute. It is not clear whether the removal "physical" from the statute is a substantive change. The model act and similar laws from other states do not include it.

Effective Date

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact on the private sector should be minimal, as the changes made by the bill are relatively minor and health care sharing ministries have been operating under the requirements set forth in the Insurance Code since 2008.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 624.1265 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 Brandes

24-00834-18 2018660__

A bill to be entitled

An act relating to the Florida Insurance Code exemption for nonprofit religious organizations; amending s. 624.1265, F.S.; revising criteria under which a nonprofit religious organization that facilitates the sharing of contributions among its participants for financial or medical needs is exempt from requirements of the code; revising construction; revising requirements for a notice provided by the organization; providing an effective date.

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

Section 1. Section 624.1265, Florida Statutes, is amended to read:

624.1265 Nonprofit religious organization exemption; authority; notice.—

(1) A nonprofit religious organization is not subject to the requirements of the Florida Insurance Code if the nonprofit religious organization:

(a) Qualifies under Title 26, s. 501 of the Internal Revenue Code of 1986, as amended;

(b) Limits its participants to those members who share a common set of ethical or religious beliefs ~~of the same religion~~;

(c) Acts as a facilitator among ~~an organizational clearinghouse for information between~~ participants who have financial~~, physical,~~ or medical needs to assist those with financial or medical needs in accordance with criteria established by the nonprofit religious organization ~~and~~

24-00834-18 2018660__

~~participants who have the ability to pay for the benefit of those participants who have financial, physical, or medical needs~~;

(d) Provides for the financial or medical needs of a participant through contributions from other participants; ~~payments directly from one participant to another participant;~~ ~~and~~

(e) Provides amounts that participants may contribute, with no assumption of risk and no promise to pay:

1. Among the participants; or

2. By the nonprofit religious organization to the participants;

(f) Provides monthly to the participants the total dollar amount of qualified needs actually shared in the previous month in accordance with criteria established by the nonprofit religious organization; and

(g) Conducts an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and that is made available to the public by providing a copy upon request or by posting on the nonprofit religious organization's website ~~suggests amounts that participants may voluntarily give with no assumption of risk or promise to pay among the participants or between the participants~~.

(2) This section does not prevent:

(a) The organization described in subsection (1) from acting as a facilitator among participants who have financial or medical needs to assist those with financial or medical needs in accordance with criteria established by the organization;

~~establishing qualifications of participation relating to the health of a prospective participant, does not prevent~~

(b) A participant from limiting the financial or medical needs that may be eligible for payment; or~~, and does not prevent~~

(c) The organization from canceling the membership of a participant when such participant indicates his or her unwillingness to participate by failing to make a payment to another participant for a period in excess of 60 days.

(3) The nonprofit religious organization described in subsection (1) shall provide a written disclaimer on or accompanying all applications and guideline materials distributed by or on behalf of the nonprofit religious organization. The disclaimer must read in substance: "Notice: The organization facilitating the sharing of medical expenses is not an insurance company, and neither its guidelines nor plan of operation is an insurance policy. Whether anyone chooses to assist you with your medical bills will be totally voluntary because no other participant is compelled by law to contribute toward your medical bills. As such, participation in the organization or a subscription to any of its documents should never be considered to be insurance. Regardless of whether you receive any payments for medical expenses or whether this organization continues to operate, you are always personally responsible for the payment of your own medical bills." ~~each prospective participant in the organizational clearinghouse written notice that the organization is not an insurance company, that membership is not offered through an insurance company, and that the organization is not subject to the regulatory requirements or consumer protections of the Florida~~

~~Insurance Code.~~

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: January 18, 2018

I respectfully request that **Senate Bill #660**, relating to **Florida Insurance Code Exemption for Nonprofit Religious Organizations**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/25/18
Meeting Date

660
Bill Number (if applicable)

Topic FLA INSURANCE CODE EXEMPTION FOR NONPROFIT

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 341644 Phone 813.269.2977
Street

TAMPA FL 33694 Email
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110 **Case No.:** **Type:**
Caption: Senate Rules Committee **Judge:**

Started: 1/25/2018 1:33:38 PM
Ends: 1/25/2018 2:09:21 PM Length: 00:35:44

1:33:39 PM Chair calls meeting to order
1:33:46 PM Roll call
1:34:04 PM Quorum is present
1:34:24 PM Tab 6 SB 608 by Senator Passidomo
1:34:33 PM Passidomo explains bill
1:35:19 PM Roll call on SB 608 reported favorably
1:35:36 PM Tab 4 SB CS/SB 374 by Senator Young
1:36:16 PM Senator Lee asks question on the bill
1:37:48 PM Senator Young explains she has carried this bill for 4 years
1:38:22 PM Senator Young explains bill is identical to House Companion
1:38:29 PM Senator Lee asks another question
1:38:45 PM Senator Young answers
1:39:22 PM Senator Lee asks about more technical questions
1:41:15 PM Senator Young explains further
1:42:59 PM Senator Lee asks if this is Class III gaming
1:43:30 PM Senator Young explains Class III is game of chance
1:43:47 PM Senator Young explains this is a game of skiill
1:44:24 PM Senator Lee asks further questions
1:45:16 PM Senator Young responds
1:47:02 PM Senator Lee has one final question regarding limit to underage gaming
1:47:30 PM Senator Young explains you must be 21
1:48:22 PM Senator Lee asks about provisions we can put in place to protect against underage gaming
1:49:00 PM Senator Lee in debate of the bill
1:49:54 PM Senator Young waives close
1:50:43 PM Roll call on 374 favorable
1:51:13 PM Tab 5 by Senator Young CS /SB 566
1:51:59 PM Senator Rodriguez asks question regarding the resumption of abandonment
1:53:37 PM Senator Young addresses issue of notification of abandonment
1:54:49 PM Roll call on CS/SB 566 reported favorably
1:55:07 PM Tab 3 by Senator Steube SB 560
1:55:15 PM Senator Steube explains bill
1:56:47 PM Substitute amendment passed favorably 256718
1:57:08 PM Amendment 161932 voted favorably
1:57:13 PM back on bill as amended
1:57:37 PM Senator Rodriguez in debate
1:58:17 PM Senator Steube closes on bill
1:59:01 PM roll call on CS/SB 560 voted favorably
1:59:16 PM tab 1 CS/SB 276 by Senator Hutson
1:59:24 PM Senator Hutson explains bill
1:59:53 PM waives close
2:00:50 PM Roll call vote on CS/SB 276 voted favorably

2:01:03 PM Tab 2 by Senator Bean SB 522
2:02:15 PM Amendment 518080 adopted
2:02:20 PM back on the bill
2:03:17 PM Alan Abramowitz with Guardian Ad Litem speaks
2:03:36 PM Senator Montford in debate
2:03:50 PM Senator Bean closes on bill
2:04:23 PM Roll call vote for SB 522 reported favorably
2:04:44 PM Tab 8 SB 660 by Senator Brandes
2:06:04 PM Roll call vote on SB 660 reported favorably
2:06:19 PM informal recess
2:06:40 PM Senator Bradley changes vote on 608 from yes to no
2:07:16 PM Tab 7 SB 962 by Senator Grimsley
2:08:51 PM Roll call vote on SB 962 reported favorably
2:09:14 PM meeting adjourned without objection