Tab 1	**SB 48** by **Gibson**; (Similar to CS/H 06523) Relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board

Tab 2	**SR 210** by **Campbell (CO-INTRODUCERS) Gibson**; (Identical to H 08039) India Independence Day/India Heritage Month

Tab 3	**CS/SB 394** by **GO, Bracy**; (Identical to CS/H 00309) Fire Safety

Tab 4	**CS/CS/SB 616** by **CM, TR, Passidomo (CO-INTRODUCERS) Perry, Hutson**; (Similar to CS/H 00595) Motor Vehicle Dealers

325944	D		S		RCS	RC, Passidomo	Delete everything after 02/23 09:05 AM
~~277040~~	AA		S		WD	RC, Brandes	Delete L.140: 02/23 09:05 AM
~~855974~~	AA		S	L	WD	RC, Brandes	Delete L.140: 02/23 09:05 AM

Tab 5	**SB 676** by **Passidomo**; (Similar to 1ST ENG/H 00639) Equitable Distribution of Marital Assets and Liabilities

534390	A		S		RCS	RC, Passidomo	Delete L.40: 02/23 09:05 AM

Tab 6	**CS/SB 1252** by **HP, Passidomo**; (Similar to H 00513) Distributing Pharmaceutical Drugs and Devices

Tab 7	**CS/CS/SB 664** by **TR, CM, Young (CO-INTRODUCERS) Steube, Perry**; (Similar to CS/CS/CS/H 00469) Salvage of Pleasure Vessels

694526	D		S		RCS	RC, Young	Delete everything after 02/23 09:05 AM
~~968778~~	SD		S		WD	RC, Rodriguez	Delete everything after 02/23 09:05 AM

Tab 8	**CS/SB 746** by **BI, Bean**; (Similar to CS/H 00529) Florida Fire Prevention Code

Tab 9	**CS/CS/SB 1018** by **GO, CU, Bean (CO-INTRODUCERS) Stargel**; (Compare to CS/H 01167) Designation of Eligible Telecommunications Carriers

Tab 10	**SB 810** by **Powell**; (Similar to CS/H 00609) Vote-by-mail Ballots

243126	A		S	L	RCS	RC, Powell	Delete L.46 - 50: 02/22 03:28 PM

Tab 11	**CS/SB 1128** by **HP, Stargel**; (Similar to CS/H 00675) Pharmacies

Tab 12	**CS/SB 1282** by **BI, Taddeo**; (Similar to CS/CS/H 01011) Residential Property Insurance

Tab 13	**SB 7016** by **AG (CO-INTRODUCERS) Montford**; (Identical to H 07011) OGSR/School Food and Nutrition Service Program

Tab 14	**CS/SB 46** by **JU, Galvano**; (Similar to CS/H 06545) Relief of Ramiro Companioni, Jr., by the City of Tampa

Tab 15	**CS/SB 1004** by **CJ, Brandes**; (Identical to CS/H 00361) Persons Authorized to Visit Juvenile Facilities

Tab 16	**CS/CS/SB 1256** by **JU, CJ, Brandes**; (Similar to CS/H 01249) Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices

654094	A		S		RS	RC, Brandes	btw L.187 - 188: 02/26 08:54 AM
743964	SA		S		RCS	RC, Brandes	btw L.187 - 188: 02/26 08:54 AM

Tab 17	**SB 1028** by **Thurston**; (Similar to H 01285) Corporations

Tab 18	**CS/SB 1212** by **CF, Book (CO-INTRODUCERS) Rader**; (Similar to CS/1ST ENG/H 00417) Public Records/Child Advocacy Centers

Tab 19	**CS/CS/SB 1650** by **GO, CF, Montford (CO-INTRODUCERS) Book**; (Similar to H 01105) Child Welfare

494764	A	S	RCS	RC, Montford	Delete L.334 - 498.	02/22 11:56 AM

Tab 20	**SB 7020** by **EE**; (Identical to H 07041) OGSR/Complaints of Violations and Referrals

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, February 22, 2018
TIME: 10:00 a.m.—1:00 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	**SB 48** Gibson (Similar CS/H 6523)	Relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; Providing for the relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; providing for an appropriation to compensate Ashraf Kamel and Marguerite Dimitri for the wrongful death of their minor child, Jean A. Pierre Kamel, as a result of the negligence of the Palm Beach County School Board, etc. SM JU 01/18/2018 Favorable GO 02/13/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 12 Nays 1
2	**SR 210** Campbell (Identical HR 8039)	India Independence Day/India Heritage Month; Recognizing August 15, 2018, as “India Independence Day” and August 2018 as “India Heritage Month” in Florida, etc. CM 01/16/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 12 Nays 0
3	**CS/SB 394** Governmental Oversight and Accountability / Bracy (Identical CS/H 309)	Fire Safety; Requiring the Division of State Fire Marshal to establish specified courses as a part of firefighter and volunteer firefighter training and certification; specifying the division’s authority to adopt rules for training related to cancer and mental health risks within the fire service, etc. GO 01/23/2018 Fav/CS HP 02/06/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/CS/SB 616** Commerce and Tourism / Transportation / Passidomo (Similar CS/H 595)	Motor Vehicle Dealers; Revising the definitions of the terms “motor vehicle dealer,” “franchised motor vehicle dealer,” “independent motor vehicle dealer,” “wholesale motor vehicle dealer,” and “motor vehicle broker”; prohibiting persons from engaging in business as, serving in the capacity of, or acting as a motor vehicle broker in this state without first obtaining a certain license; adding an exception to the prohibition on persons other than a licensed motor vehicle dealer from advertising for sale or lease any motor vehicle belonging to another party, etc. TR 12/05/2017 Fav/CS CM 01/22/2018 Fav/CS RC 02/22/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
5	**SB 676** Passidomo (Similar H 639)	Equitable Distribution of Marital Assets and Liabilities; Redefining the term “marital assets and liabilities” for purposes of equitable distribution in dissolution of marriage actions; providing that the term includes the paydown of principal of notes and mortgages secured by nonmarital real property and certain passive appreciation in such property under certain circumstances, etc. JU 01/10/2018 Favorable BI 01/30/2018 Favorable RC 02/22/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
6	**CS/SB 1252** Health Policy / Passidomo (Similar H 513)	Distributing Pharmaceutical Drugs and Devices; Revising an exception to pharmacy regulations for certain manufacturers and distributors of dialysis drugs or supplies, etc. HP 01/23/2018 Fav/CS RI 02/08/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 12 Nays 0
7	**CS/CS/SB 664** Transportation / Commerce and Tourism / Young (Similar CS/CS/CS/H 469)	Salvage of Pleasure Vessels; Requiring salvors of pleasure vessels to provide specified verbal and written notice, etc. CM 12/04/2017 Fav/CS TR 01/25/2018 Fav/CS RC 02/22/2018 Fav/CS	Fav/CS Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 746** Banking and Insurance / Bean (Similar CS/H 529)	Florida Fire Prevention Code; Requiring that doorstep refuse and recycling collection containers be allowed in exit corridors of certain apartment occupancies under certain circumstances; authorizing authorities having jurisdiction to approve certain alternative containers and storage arrangements, etc. BI 01/23/2018 Fav/CS RI 02/08/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0
9	**CS/CS/SB 1018** Governmental Oversight and Accountability / Communications, Energy, and Public Utilities / Bean (Compare CS/H 1167)	Designation of Eligible Telecommunications Carriers; Revising the term “eligible telecommunications carrier”; authorizing the Public Service Commission to designate any commercial mobile radio service provider as an eligible telecommunications carrier for the purpose of providing Lifeline service, etc. CU 01/10/2018 Fav/CS GO 02/06/2018 Fav/CS RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0
10	**SB 810** Powell (Similar CS/H 609)	Vote-by-mail Ballots; Authorizing an elector to vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the elector’s county of residence during the site’s hours of operation, etc. EE 02/06/2018 Favorable RC 02/22/2018 Fav/CS	Fav/CS Yeas 13 Nays 0
11	**CS/SB 1128** Health Policy / Stargel (Similar CS/H 675)	Pharmacies; Revising the membership of the Board of Pharmacy; establishing Class III institutional pharmacies; authorizing the distribution of medicinal drugs and prepackaged drug products without a specified permit under certain conditions, etc. HP 01/30/2018 Fav/CS RI 02/14/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0
12	**CS/SB 1282** Banking and Insurance / Taddeo (Similar CS/CS/H 1011)	Residential Property Insurance; Revising a mandatory homeowner’s insurance policy disclosure regarding the absence of law and ordinance and flood insurance coverage; requiring insurers issuing such policies to include the disclosure with the policy documents upon the initial issuance of the policy and each renewal, etc. BI 01/30/2018 Fav/CS CA 02/13/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**SB 7016** Agriculture (Identical H 7011)	OGSR/School Food and Nutrition Service Program; Amending provisions relating to an exemption from public record requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program; removing the scheduled repeal of the exemption, etc. GO 02/06/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0
14	**CS/SB 46** Judiciary / Galvano (Similar CS/H 6545)	Relief of Ramiro Companioni, Jr., by the City of Tampa; Providing for the relief of Ramiro Companioni, Jr., by the City of Tampa; providing for an appropriation to compensate Mr. Companioni for injuries sustained as a result of the negligence of an employee of the City of Tampa, etc. SM JU 01/30/2018 Fav/CS GO 02/13/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 12 Nays 1
15	**CS/SB 1004** Criminal Justice / Brandes (Identical CS/H 361)	Persons Authorized to Visit Juvenile Facilities; Authorizing specified persons to visit, during certain hours, all facilities housing juveniles which are operated or overseen by the Department of Juvenile Justice or a county; authorizing such persons to visit the juvenile facilities outside of certain hours pursuant to department rules; prohibiting the department from unreasonably withholding permission for visits to such facilities by certain persons, etc. CJ 01/16/2018 Fav/CS RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0
16	**CS/CS/SB 1256** Judiciary / Criminal Justice / Brandes (Similar CS/H 1249)	Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices; Defining the terms “microphone-enabled household device” and “portable electronic communication device”; revising the exceptions to conduct that constitutes unlawful access to stored communications; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a warrant, rather than an order, authorizing the acquisition of cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite location data, etc. CJ 02/06/2018 Fav/CS JU 02/13/2018 Fav/CS RC 02/22/2018 Fav/CS	Fav/CS Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	**SB 1028** Thurston (Similar H 1285)	Corporations; Authorizing social purpose corporations and benefit corporations to omit certain information from annual benefit reports; requiring that annual benefit reports expressly state that such information was omitted, etc. CM 01/22/2018 Favorable JU 01/30/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0
18	**CS/SB 1212** Children, Families, and Elder Affairs / Book (Similar CS/H 417)	Public Records/Child Advocacy Centers; Providing an exemption from public records requirements to certain identifying and location information of current or former directors, managers, supervisors, and clinical employees of child advocacy centers that meet certain standards and requirements, members of a child protection team, and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 01/16/2018 Fav/CS GO 02/06/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0
19	**CS/CS/SB 1650** Governmental Oversight and Accountability / Children, Families, and Elder Affairs / Montford (Similar H 1105, Compare CS/CS/H 1079)	Child Welfare; Requiring cooperation between certain parties and the court to achieve permanency for a child in a timely manner; prohibiting the Department of Children and Families from releasing the names of certain persons who have provided information during a protective investigation except under certain circumstances; requiring the court to advise the parents during an adjudicatory hearing of certain actions that are required to achieve reunification; requiring a case plan for a child receiving services from the department to include a protocol for parents to achieve reunification with the child; requiring the court to enter a written order of disposition of the child following termination of parental rights within a specified timeframe, etc. CF 01/29/2018 Fav/CS GO 02/13/2018 Fav/CS RC 02/22/2018 Fav/CS	Fav/CS Yeas 13 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	**SB 7020** Ethics and Elections (Identical H 7041)	OGSR/Complaints of Violations and Referrals; Amending provisions which provides exemptions from public records and public meetings requirements for complaints alleging a violation of part III of ch. 112, F.S., and related records that are held by the Commission on Ethics or its agents and specified local government entities, for written referrals and related records that are held by the commission or its agents, the Governor, the Department of Law Enforcement, and state attorneys, and for portions of meetings at which complaints or referrals are discussed or acted upon; removing the scheduled repeal of the exemptions, etc. GO 02/06/2018 Favorable RC 02/22/2018 Favorable	Favorable Yeas 13 Nays 0

Other Related Meeting Documents

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/12/18	SM	**Favorable**
1/17/18	JU	**Favorable**
2/12/18	GO	**Favorable**
2/22/18	RC	**Favorable**

January 12, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 48** – Senator Audrey Gibson
HB 6523 – Representative Raburn
Relief of Ashraf Kamel and Marguerite Dimitri

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS JUDGMENT CLAIM BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES CAUSED BY THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL. THE CLAIM WAS PREVIOUSLY CONTESTED BUT HAS BEEN SETTLED FOR $360,000.

CURRENT STATUS:

When a prior version of this claim bill was filed, it was heard by a Senate staff attorney who served as a Senate special master. The bill sought approximately $1.4 million from the Palm Beach County School Board. After the special master hearing, the special master issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably. The special master also recommended that the $1.4 million sought in the claim bill be reduced to $200,900.

For the 2018 claim bill, the parties were asked to provide the Legislature with an update on the status of the claimants and documentation of any significant developments that have

occurred since the claim bill hearing. Of note in the joint response from the claimants and the respondent, the parties state that they have agreed to settle the claim for $360,000.

The most recent special master report in this matter was prepared for SB 44 (2005). A copy of the report is attached.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/1/04	SM	Fav/1 amendment

December 1, 2004

The Honorable Tom Lee
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 44 (2005)** – Senator Mandy Dawson
Relief of Ashraf Kamel and Marguerite Dimitri

SPECIAL MASTER'S FINAL REPORT

THIS IS A VIGOROUSLY CONTESTED EXCESS JUDGMENT CLAIM FOR $1,402,400 BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES SUSTAINED DUE TO THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL.

FINDINGS OF FACT:

The Shooting

On the morning of Monday, January 27, 1997, Jean Pierre Kamel, a 13-year-old student at Conniston Middle School in West Palm Beach, arrived at school on his bike. At 8:40 a.m., while standing in front of the school on a 9-foot-wide sidewalk, he was shot to death by Tronneal Mangum, a 14-year-old classmate. The 5-foot portion of the sidewalk closest to the school was owned by the school board. The 4-foot portion of the sidewalk closest to the road was owned by the city. The two portions were visibly distinguishable. The two students were near the curb, and thus were on city property at the time of the shooting. School board personnel were near the area in question; however, the School Resource Officer who usually monitored that particular spot had just moved to the center of campus where the majority of students were at that

time. The officer's replacement was walking toward the scene and was approximately 40 feet away when the shots were fired.

Immediately after the shooting, Tronneal ran into the school. He went around bragging about what he had just done. He was arrested inside a classroom shortly thereafter. He was suspended from school for possession of a firearm on campus. He was subsequently tried as an adult and was sentenced to life without parole. Tronneal did not testify at his criminal trial. He has steadfastly refused, and still refuses to disclose where or how he obtained the handgun he used to kill Jean Pierre.

The Shooter

In 1997, Tronneal Mangum was 14 years of age, 6 feet 1 inch tall and weighed 150 pounds. He and Jean Pierre were in a seventh grade math class together. Their math teacher, who had 30 years of teaching experience, described Tronneal as a quiet, polite, yet below average student who did not cause problems in her class. She never saw Tronneal threaten or harm any student and no student had ever complained to her of threats or harassment from Tronneal. She herself never felt threatened by him. Tronneal's discipline record at school for that school year indicated several instances of disruptive behavior, with only one referral, for which he served a detention.

Events Leading Up to the Shooting

Months prior to the shooting, Jean Pierre asked that his seat in math class be moved away from Tronneal because they did not get along. The math teacher did so and afterward noted that Jean Pierre's performance in math class improved.

Jean Pierre and Tronneal had traded various items of personal property with each other; for example, a CD player for a bike. Two weeks before the shooting, Jean Pierre told the School Resource Officer that he had traded an expensive watch to Tronneal for a bike, but now wanted the watch back. The officer suggested that Jean Pierre tell his parents and talk to the school's administrators.

On the Thursday before the shooting, Tronneal kicked Jean Pierre in his prosthetic leg and was written up by a teacher. The Assistant Principal met with the two students in her office.

She noted that Tronneal had one previous detention but decided to use conflict resolution to solve the dispute. She concluded that the two boys were merely horseplaying, and gave Tronneal a detention to be served on Tuesday, January 28. All concerned agreed that Tronneal would bring the watch back to school on Monday and deliver it to one of the school's administrators from whom Jean Pierre would get it. Jean Pierre asked that his father not be notified because he didn't want his father to know that he had traded the watch.

On the Friday before the shooting, Jean Pierre told his math teacher, "Tronneal is after me." Tronneal was absent that day and the math teacher asked Jean Pierre several times if he wanted to talk to an assistant principal. Jean Pierre replied that he didn't. The math teacher did not interpret Jean Pierre's statements as indicating that he felt threatened. He was smiling when he spoke to her. He didn't seem scared or upset. She didn't report the conversation because Jean Pierre told her that the problem had been taken care of.

Jean Pierre's father, Ashraf Kamel, testified at the civil trial that his son had told him about being kicked, but had given a slightly different story about the watch; namely that Tronneal had stolen it. Jean Pierre told his father that he had been to school administration and would have his watch back on Friday. After school on Friday, Jean Pierre told his father that Tronneal was not at school that day and that he would instead get the watch on Monday. Mr. Kamel testified that he believed that the school administrators had handled the issue and thus did not go to the school to see about it.

The Victim

Jean Pierre was born without a tibia in his right leg which was amputated when he was a baby. Despite having a prosthetic leg, Jean Pierre was very athletic, and was named Swimmer of the Year in 1993 by the Boys and Girls Club.

Battle of the Experts

Claimants' expert was of the opinion that the school board employees were negligent by not preparing an incident report when Jean Pierre asked to be moved away from Tronneal in math class; for the assistant principal's use of conflict resolution rather than the school's discipline policy for what he described as an assault; and for the math teacher's failure to write a referral when Jean Pierre told her that Tronneal was

after him. Claimants' expert also testified that the shooting should have been foreseeable as there had been two previous incidents of gun possession at Conniston Middle School,[1] and that the school's security plan was lacking in that only one teacher was near the area where the shooting occurred.

Respondent's expert was of the opinion that Conniston Middle School was ahead of the security curve with a program that emphasized early intervention, looked for troubled students, and that monitored the campus. Conniston also had an armed, fully trained officer on campus when only 6 percent of schools nationally had a police officer on campus for more than 30 hours a week. He further opined that there were no warning signs that would have been predictive of homicide; that the school could not have deterred the murder; and that having an armed officer at that precise spot at the time of the shooting might have displaced the shooting until later, but would not have prevented it.

LEGAL PROCEEDINGS: On May 21, 1999, Ashraf Kamel, on his own behalf and as personal representative of the estate of Jean Pierre Kamel, filed a wrongful death suit against the Palm Beach County School Board.

This case was tried to a jury in the Fifteenth Judicial Circuit between January 30 and February 8, 2002. The jury returned a comparative negligence verdict for a total of $2,003,000 in damages and found the Palm Beach County School Board 80 percent responsible for the death of Jean Pierre and found Jean Pierre 20 percent responsible for his own death. Tronneal Mangum was not included on the jury verdict form; thus, the jury had no opportunity to apportion any liability to the intentional criminal tortfeasor in accordance with §768.81(4)(b), F.S., and *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997).

The school board filed Motions for Directed Verdict and/or New Trial which were denied. The school board appealed to the Fourth District Court of Appeal. That court affirmed the case per curiam on February 12, 2003.[2]

CLAIMANT'S MAIN ARGUMENTS:

- There is a jury verdict that was reduced to Final Judgment in the sum of $1,602,400, based on a 20 percent comparative negligence offset. The Fourth District Court of Appeal affirmed the judgment. The Final Judgment should be given full effect by the Legislature.

- The school board had a duty to protect its students and this duty was breached when:
  - The math teacher failed to document Jean Pierre's request to have his seat moved and failed to report Jean Pierre's statement that Tronneal was after him.
  - The assistant principal failed to follow school board procedures after the kicking incident.
  - School personnel were not standing at the precise location of the shooting on the day in question.

- Prior gun possession incidents at Conniston made this shooting foreseeable.

RESPONDENT'S MAIN ARGUMENTS:

- The School Board didn't owe a duty to a student who was technically not on school grounds. This shooting took place on adjoining city property, not on school board property.

- The shooting was not foreseeable: there was no notice that Jean Pierre feared Tronneal; Tronneal was not a trouble-maker; there was no red flag in the conflict resolution process; there was no evidence that Tronneal had a gun; and there was no evidence of Tronneal's prior violent acts.

- The two prior reports of gun possession on campus were irrelevant because they did not involve these particular students, nor did they involve shootings; thus, these were not evidence of foreseeability for this shooting.

The source of funds for this claim bill is the general operating budget of the Palm Beach County School District. Payment would negatively impact the school district's ability to fund needed educational programs, particularly given the fact that the monies in the district's contingency fund were expended in order to repair damages from Hurricanes Frances and Jeanne.

CONCLUSIONS OF LAW:

Some see the Legislature's role in claim bills against government agencies as merely rubber-stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, as this one has. Others perceive the Legislature's role to review, reevaluate, and reweigh the total circumstances and the character of the public entity's liability, and to consider the factors that might not have been perceived by or introduced to the jury or court.

At the Special Master's level every claim bill, whether based on a jury verdict or not, is required to be measured anew against the four standard elements of negligence and of course, with or without a Final Judgment, the enactment of a claim bill is generally acknowledged to be completely discretionary with the Legislature.[3]

Liability

Element 1 -- Duty: Florida law imposes on school officials a duty to supervise students' activities while at school.[4] This incident occurred during school hours on property that both school officials and students reasonably believed was school property.[5] Thus, the duty element is satisfied.

Element 2 -- Breach of Duty: I find that the only breach of duty that the jury might have reasonably found concerns the incident where Jean Pierre told his math teacher that Tronneal was after him. The evidence indicates that Tronneal was not in school the day the comment was made, that Jean Pierre did not appear frightened when making the comment, and that the math teacher repeatedly offered Jean Pierre, a normally functioning 13-year-old, an opportunity to see the assistant principal, which he rejected. Given these circumstances, reasonable jurors might have found the math teacher's actions sufficient; however, reasonable jurors also might have found that the teacher should have reported Jean Pierre's comment to the school's administration or have otherwise acted upon it, particularly given that Jean Pierre had told her earlier in the year that he and Tronneal did not get along.

Further, I find that it was not a breach of duty for Assistant Principal Rigola to have employed conflict resolution rather than School Conduct Code procedures for the horseplay and watch incidents. Ms. Rigola investigated, held an informal hearing on the incident and resolved the immediate problem.

Further, she provided for notice to Tronneal's parent(s) because an adult's signature was required in the referral.

Perhaps the procedure could have required parental notification, but Ms. Rigola's failure to have done so cannot constitute negligence because such failure could not have been the proximate cause of Jean Pierre's death. Jean Pierre's father testified at the civil trial that Jean Pierre had told him that Tronneal kicked him; that Tronneal stole his watch; that Tronneal would return the watch to the school's administrators; and that they would return it to Jean Pierre. Consequently, Jean Pierre's father had notice of essentially everything that Ms. Rigola could have told him.

Finally, I find that it was not a breach of duty for the school to not have a security officer or teacher monitoring the precise location of the shooting at the time it occurred. Schools do not have a duty to supervise all movements of pupils at all times.[6] Schools only have a duty to provide reasonable supervision of students. The evidence demonstrates that the duty was satisfied. The school had a reasonable system of monitoring the campus and the system was fully operational on the morning Jean Pierre was killed.

Element 3 -- Causation: I find the math teacher's failure to have reported or otherwise acted upon Jean Pierre's statement that Tronneal was after him could have reasonably been found by the jury to be one of several proximate causes of Jean Pierre's death.

Further, I find that the evidence of prior gun possessions is not persuasive on the foreseeability issue in this case. Neither of these prior incidents involved Jean Pierre or Tronneal. Neither incident involved discharge of a weapon. Moreover, one of the incidents involved a starter pistol, which could only be lethal in a freak accident. Notably, this shooting occurred before the Columbine shootings, which focused national attention on the possession of guns in schools.

Element 4 – Damages: The jury assessed a total of $2,003,000 in damages: (1) $500,000 for Mr. Kamel's past pain and suffering and $500,000 for his future pain and suffering; (2) $500,000 for the victims mother's past pain and suffering and $500,000 for her future pain and suffering; and (3) $3,000 for funeral expenses. The school board was

tagged for 80 percent. A Final Judgment was entered by the Circuit Court against the school board in the amount of $1,602,400 on February 22, 2002.

The school board has already paid $200,000 as follows: (a) $50,000 for attorney's fees; (b) $68,341.81 for costs; (c) $35,829.10 to Mr. Kamel; and (d) $35,829.09 to Ms. Dimitri, the victim's mother.

LEGISLATIVE HISTORY: During the 2004 Legislative Session, Senator Dawson filed SB 38. This bill provided for the relief of Jean Pierre's parents, Ashraf Kamel and Marguerite Dimitri. It was referred to the Senate Special Master on Claim Bills, the Senate Education Committee, and the Senate Finance and Taxation Committee. The undersigned Special Master recommended that the bill be amended to direct the school board to compensate Jean Pierre's parents in the total amount of $400,900, which is 30 percent of the total jury award minus the $200,000 already paid by the school board to the claimants. The Senate Education Committee passed the bill favorably without amendment. The bill was withdrawn from the Senate Finance and Taxation Committee and placed on the Senate calendar where it died. The bill's companion, HB 1353, was referred to the House of Representatives Claims and Judiciary Committees, but was never considered. No further Special Master hearings have been held in this claim. The parties were provided with the opportunity to supplement the record in this case and the material received was reviewed and considered.

ATTORNEYS FEES: The claimants' attorneys have provided documentation verifying that attorney fees are capped at 25 percent in accordance with §768.28, F.S.

GENERAL CONCLUSIONS: As discussed above, I find that a reasonable juror could have determined: that the school board had a duty to Jean Pierre Kamel; that an employee failed to comply with that duty; that such failure was one of several causes of Jean Pierre's death; and that Jean Pierre's parents are entitled to damages as a result of their son's death.

Further, I concur with the jury's assignment of 20 percent comparative liability to Jean Pierre. Evidence demonstrated that Jean Pierre: (a) told Officer McIsaac that he traded his watch for a bike; (b) told his father that Tronneal stole his

watch; and (c) told the assistant principal that he loaned the watch and did not want her to call his father because his father would be angry that he had given the watch away. Thus, it appears that Jean Pierre knowingly failed to notify his father and other school personnel that Tronneal was after him because he did not want to get in trouble over the watch.

Distinguishably, however, I do not find the jury's assignment of 80 percent liability for a $2,003,000 judgment to the school to be equitable and just. The evidence of school negligence in this case was speculative. The only incident that appears at all susceptible to a negligence finding is Jean Pierre's statement to his math teacher that Tronneal was after him and given the facts surrounding that statement, as discussed above, it is difficult to contemplate what other actions the math teacher should have taken in response to the statement. The jury, however, apparently believed that the teacher should have reported or otherwise reacted to the statement and out of deference to that finding, I recommend upholding the negligence verdict; but, due to the speculative nature of the negligence, I recommend reducing the sizeable assignment of 80 percent liability, i.e., $1,602,400 ($2,003,000 multiplied by 80 percent), to the school. The school board's single incident of negligence, only one of several proximate causes of harm to Jean Pierre Kamel does not, in my view, support assessment of 80 percent of the total fault and damages.

In past claim bill cases that, like this case, involved injury caused by an intentional criminal tortfeasor and a Special Master recommendation to reduce the assignment of liability to an unintentional tortfeasor, the Special Master has recommended the symbolic assignment of 50 percent liability to the intentional criminal tortfeasor.[7] I recommend following this precedent. Unequivocally, the person truly at fault for the tragedy in this case is Tronneal Mangum. The jury, however, never had the opportunity to assign any amount of liability to Tronneal.[8] As such, I view it as the Legislature's prerogative and obligation to do so and recommend allocation of responsibility (and thus liability) as follows:

Tronneal Mangum	50%
Palm Beach County School Board	30%
Jean Pierre Kamel	20%

RECOMMENDATIONS: I recommend that Senate Bill 44 be amended: (1) to remove "Whereas" clauses inconsistent with this report's findings and conclusions; and (2) to direct the school board to compensate Jean Pierre's parents in the total amount of $400,900, which is 30 percent of the total jury award minus the $200,000 already paid by the school board to the claimants.

Accordingly, I recommend that Senate Bill 44 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Kristina White
Senate Special Master

cc: Senator Mandy Dawson
Faye Blanton, Secretary of the Senate
House Claims Committee

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[1] During the previous 1995-1996 school year, two gun possession incidents had occurred at Conniston. The first was on February 14, 1996, when Officer McIsaac took a .22 caliber starter pistol away from a student on campus. The second was on May 22, 1996, when a student told Officer McIsaac that a part-time student had brought a gun to school. In response, Officer McIsaac called the West Palm Beach Police Department, and police then went to the student's home where, after a consensual search of the student's bedroom, they found a gun. Officer McIsaac never saw the student bring the gun to school; instead, he only had hearsay evidence that the gun had been on school grounds. A West Palm Beach Police Report indicated that the student was arrested for possession of a gun on school grounds.

[2] *Palm Beach County School Bd. v. Kamel*, 840 So.2d 253 (Fla. 4th DCA 2003), rehearing denied (Mar 20, 2003).

[3] *Fernandes v. Barrs*, 641 So.2d 1371, 1376 (Fla. 1st DCA 1994); *South Broward Topeekeegeeyugnee Park District v. Martin*, 564 So.2d 1265, 1267 (Fla. 4th DCA 1990), review denied mem., 576 So.2d 291 (Fla. 1991).

[4] *Rupp v. Bryant*, 417 So.2d 658, 666 (Fla. 1982).

[5] Conniston Middle School personnel routinely patrolled the entirety of the sidewalk beginning at 8:30 a.m. S*ee Broward County School Board v. Ruiz*, 493 So.2d 474 (Fla. 1986) (holding that school's adoption of a system of supervision and patrols was evidence on the issue of duty to provide supervision at time and place that student was assaulted).

[6] *Benton v. School Board of Broward County,* 386 So.2d 831 (Fla. 4th DCA 1980).

[7] *See* Special Master Final Report for Senate Bill 4 at pp. 12-14, November 25, 1998 (recommending reduction of the amount of liability assigned to the Department of Health and Rehabilitative Services by a jury and recommending the assignment of 50 percent of total liability to the intentional criminal tortfeasors).

[8] Under Florida law, actions alleging that a property owner's negligence in failing to provide adequate security resulted in an intentional criminal assault by another are governed by joint and several liability, not comparative negligence. §768.81(4)(b), F.S.; *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997). Thus, the jury in this case was not permitted to consider Tronneal Mangum's liability when apportioning damages. The public policy behind this law is to preclude negligent tortfeasors from reducing their liability by shifting it to another tortfeasor whose intentional criminal conduct was a foreseeable result of their negligence. The Legislature, unlike the jury, however, is not prohibited from considering the criminal's liability in a claim bill case because claim bills are purely a matter of legislative grace. As indicated in *Gamble v. Wells,* 450 So.2d 850 (Fla.1984), it is the Legislature's prerogative in a claim bill case to: determine whether to allow compensation; decide the amount of compensation; and determine the conditions to be placed on the appropriation. Accordingly, for the reasons discussed in this report, I recommend that the Legislature exercise its discretion in this case and consider reduction of the amount of school board liability. There is little evidence demonstrating that school personnel could or should have foreseen the criminal danger that Tronneal posed and thus, as a matter of public policy, it appears unjust to impose 80 percent liability for a $2,003,000 judgment on the school.

By Senator Gibson

6-00257-18 201848__

A bill to be entitled

An act for the relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; providing for an appropriation to compensate Ashraf Kamel and Marguerite Dimitri for the wrongful death of their minor child, Jean A. Pierre Kamel, as a result of the negligence of the Palm Beach County School Board; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, Jean A. Pierre Kamel, age 13, was wrongfully killed on January 27, 1997, when he was shot by 14-year-old Tronneal Mangum in front of Conniston Middle School, a Palm Beach County public school, and

WHEREAS, Jean A. Pierre Kamel's father, Ashraf Kamel, brought a wrongful-death action against the Palm Beach County School Board seeking damages for Jean Kamel's mother, Marguerite Dimitri, and himself for their grief, anguish, and mental pain and suffering due to the repeated bullying and tragic death of their minor son, Jean Kamel, while he was in the care and custody of the Palm Beach County School Board, and

WHEREAS, Jean Kamel was born with a birth defect that required his right leg to be amputated, and

WHEREAS, Jean Kamel wore a prosthetic leg and suffered various physical disabilities as a result, and

WHEREAS, Jean Kamel attended Conniston Middle School in West Palm Beach in January of 1997, and

WHEREAS, Tronneal Mangum also attended Conniston Middle School in January of 1997, and

6-00257-18 201848__

WHEREAS, before the shooting occurred, Jean Kamel had told school officials that Tronneal Mangum was bullying him, including taunting him, kicking his prosthetic leg, and threatening him, and

WHEREAS, various school officials had witnessed some of these events, namely Tronneal Mangum's kicking Jean Kamel in his prosthetic leg, and

WHEREAS, Jean Kamel and Tronneal Mangum had one class together, and Jean Kamel repeatedly asked school officials to be moved to another class because he was afraid of Tronneal Mangum and that Tronneal Mangum was constantly making fun of him in front of other students, and

WHEREAS, days before the shooting, Jean Kamel reported that his watch had been taken from him by Tronneal Mangum, and

WHEREAS, Jean Kamel and Tronneal Mangum were brought to a guidance counselor and Jean Kamel told the counselor that Tronneal Mangum had taken his watch from him. The counselor instructed Tronneal Mangum to return the watch at the school with no supervision and did not contact Tronneal Mangum's parents or guardian, and

WHEREAS, when Tronneal Mangum did not show up for school the next day, Jean Kamel told a school official that "Tronneal is out to get me," and

WHEREAS, the school took no action under the circumstances, including contacting Tronneal Mangum's family or guardian, nor did the school contact Jean Kamel's parents and advise them of the situation, and

WHEREAS, on the next school day, January 27, 1997, Tronneal Mangum traveled to Conniston Middle School on the school bus

with a loaded firearm and entered school property carrying the weapon, and

WHEREAS, the Palm Beach County School Board was on notice that students had brought firearms to Conniston Middle School on previous occasions, but the board did not enact any security measures to prevent such acts, and

WHERAS, on January 27, 1997, the school failed to have personnel assigned to posts to adequately supervise the safety of the children as they entered the school, and

WEHREAS, on January 27, 1997, the school district police officer whose post was on the sidewalk directly in front of the school where the shooting occurred was not at his post that morning, and

WHEREAS, because of the multiple acts of negligence, carelessness, and a lack of concern for the risks of harm that confronted Jean Kamel by the Conniston Middle School staff, on January 27, 1997, Jean Kamel was brutally shot to death by Tronneal Mangum in the front of the school, and

WHEREAS, on February 8, 2002, a Palm Beach County jury found that the Palm Beach County School Board was negligent and 80 percent liable for the death of Jean Kamel, and

WHEREAS, the jury determined that the amount of damages Ashraf Kamel and Marguerite Dimitri, the parents of Jean Kamel, received was $2 million to compensate them for their grief, anguish, and mental pain and suffering as a result of the negligence of the school and the Palm Beach County School Board, and

WHEREAS, on February 22, 2002, the Circuit Court for the 15th Judicial Circuit in and for Palm Beach County reduced the

jury verdict to a final judgment of $1,602,400, based on the offset for 20 percent comparative negligence, and

WHEREAS, on May 14, 2002, the circuit court entered a cost judgment in favor of Ashraf Kamel in the amount of $13,490, and

WHEREAS, the Palm Beach County School Board appealed the final judgment, and the Fourth District Court of Appeal rejected the appeal in a per curiam affirmed opinion issued on February 12, 2003, and

WHEREAS, on February 27, 2003, the Palm Beach County School Board filed a Motion for Rehearing and Certification of Issues of Great Public Importance, which was denied by the Fourth District Court of Appeal on March 20, 2003, and

WHEREAS, on April 17, 2003, the Palm Beach County School Board tendered to Ashraf Kamel, as personal representative of the Estate of Jean A. Pierre Kamel, a payment of $200,000 in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, Ashraf Kamel and Marguerite Dimitri and the Palm Beach County School Board agreed to settle the parents' claim for an additional $360,000, and

WHEREAS, Ashraf Kamel, as personal representative of the Estate of Jean A. Pierre Kamel, seeks satisfaction of the $360,000 balance of the settlement agreement, NOW, THEREFORE,

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

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

Section 2. The Palm Beach County School Board is authorized

and directed to appropriate from funds of the school board not otherwise encumbered the total amount of $360,000, and to draw warrants payable to Ashraf Kamel in the sum of $180,000 and to Marguerite Dimitri in the sum of $180,000 to compensate them for their injuries and damages sustained due to the death of their son, Jean A. Pierre Kamel, as a result of the negligence of the school board.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amounts awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Jean A. Pierre Kamel. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

48
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Claim Bill - Ashraf KAMEL

Name LANCE BLOCK

Job Title ATTORNEY - LOBBYIST

Address 5189 Widefield Dr
Street
Tallahassee FL 32309
City *State* *Zip*

Phone 850-599-1980

Email lance@lanceblocklaw.com

Speaking: ☒ For ☐ Against ☒ Information

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

Representing KAMEL FAMILY

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)

2/22/18
Meeting Date

48
Bill Number (if applicable)

Topic KAMER CLAIMS BILL

Amendment Barcode (if applicable)

Name MATTHEW BLAIR

Job Title LOBBYIST

Address 112 S. JEFFERSON ST, FIRST FLOOR
Street

Phone 813-527-0172

TALLAHASSEE, FL 32301
City *State* *Zip*

Email matt@corcoranfirm.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing KAMER FAMILY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

COMMITTEES:
Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Judiciary
Regulated Industries
Joint Legislative Auditing Committee

February 13, 2018

Senator Lizabeth Benacquisto, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Benacquisto,

I respectfully request that SB 48, a claims bill on behalf of John Pierre Kamel, relating to negligence by the Palm Beach County School Board, be placed on the next committee agenda. The claim arises from the wrongful death of John, due to the repeated bullying while in the care and custody of Palm Beach County School Board.

SB 48, requires $360,000.00 to be paid upon approval of the claims bill to the parents Ashraf Kamel and Marguerite Dimitri for the tragic death of their minor child on January 27, 1997.

Thank you for your time and consideration.

Sincerely,

Audrey Gibson
State Senator
District 6

101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904)359-2553
405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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:	SR 210
INTRODUCER:	Senator Campbell
SUBJECT:	India Independence Day/India Heritage Month
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Denton	McKay	CM	**Favorable**
2.	Denton	Phelps	RC	**Favorable**

I. Summary:

SR 210 recognizes August 15, 2018, as "India Independence Day" and August 2018 as "India Heritage Month" in Florida.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

II. Present Situation:

Background

The Republic of India is located in Asia, south of China and between Pakistan and Burma.[1] Its population is approximately 1.3 billion people, making it the second most populous country in the world.[2] Indians are one of the fastest growing immigrant group in the United States.[3] There are approximately 3.4 million Indians living in the United States, where they represent one percent of the overall population.[4] Florida is home to a significant population of approximately 143,000 Indians, representing 0.7% of the general population.[5] They are the largest Asian group at around 27 percent of the Asian population in Florida.[6]

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[1] United States Central Intelligence Agency, *The World Factbook: India*, https://www.cia.gov/library/publications/the-world-factbook/geos/in.html (last visited Jan. 12, 2018)
[2] *Id.*
[3] Migration Policy Institute, *Indian Immigrants in the United States*, https://www.migrationpolicy.org/article/indian-immigrants-united-states (last visited Jan. 12, 2018)
[4] United States Census Bureau, *American Fact Finder*, 2012-2016 American Community Survey 5-Year Estimates, *https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/DP05* (last visited Jan. 12, 2018)
[5] United States Census Bureau, *American Fact Finder*, 2012-2016 American Community Survey 5-Year Estimates, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/DP05/0400000US12, (last visited Jan. 12, 2018)
[6] Stefan Rayer, Bureau of Economic and Business Research, *Asians In Florida*, (August 27, 2014) https://www.bebr.ufl.edu/population/website-article/asians-florida (last visited Jan. 12, 2018)

History and Holidays

On August 15, 1947, India declared independence from Great Britain and formed a secular democratic government.[7] In addition to Independence Day, there are many holidays and festivals in the month of August. These holidays display the vast religious diversity of the country, with the Parsi New Year on August 17, 2018, the Muslim holiday Bakr-Eid on August 22, 2018, and the Hindu holiday Raksha Bandhan on August 26, 2018.[8] In addition to these holidays, there are a number of regional festivals celebrated in the southern state of Kerala.[9]

Recognition of Indian Events

The United States House of Representatives has introduced many resolutions to recognize and honor India's Independence Day on August 15, including, but not limited to, the following:

- House Resolution 395, sponsored by Representative Ami Bera in 2015;[10]
- House Resolution 677, sponsored by Representative Jim McDermott in 2009;[11] and
- House Resolution 607, sponsored by Representative Jim McDermott in 2007.[12]

In 2014, the Florida Senate passed a resolution recognizing the exceptional achievements of the Indian film industry and celebrating the Tampa Bay area's hosting of the 15th annual International Indian Film Academy Awards.[13]

Recognition of Other Commemorative Events in Florida

The Florida Senate has passed resolutions recognizing commemorative dates and months to honor the heritage of immigrant communities. Some recent examples include:

- In 2017, the Senate passed SR 1796, a resolution commemorating June 2017 as "Caribbean Heritage Month" in Florida;[14]

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[7] United States Central Intelligence Agency, *The World Factbook: India*, https://www.cia.gov/library/publications/the-world-factbook/geos/in.html (last visited Jan. 12, 2018)
[8] Website of the Government of India, *Holiday Calendar*, https://www.india.gov.in/calendar?date=2018-08 (last visited Jan. 12, 2018)
[9] *Id*.
[10] H.R. 395, 114th Cong. (2015) (Expressing the sense of the House of Representatives commemorating the Republic of India's Independence Day and recognizing United States-India relations on India's National Day), available at *https://www.congress.gov/bill/114th-congress/house-resolution/395?q=%7B%22search%22%3A%5B%22india%22%5D%7D&r=4* (last visited Jan. 12, 2018)
[11] H.R. 677, 111th Cong. (2009-2010) *(*Extending best wishes to the people of India as they celebrate the 62nd anniversary of India's independence from the British Empire*)*, available at https://www.congress.gov/bill/111th-congress/house-resolution/677?q=%7B%22search%22%3A%5B%22india%22%5D%7D&r=9 (last visited Jan. 12, 2018)
[12] H.R. 607, 110th Cong. (2007) (Extending best wishes to the people of India as they celebrate the 60th anniversary of India's independence from the British Empire), available at *https://www.congress.gov/bill/110th-congress/house-resolution/607?q=%7B%22search%22%3A%5B%22india%22%5D%7D&r=8* (last visited Jan. 12, 2018)
[13] Fla. SR 1680 (2014) (International Indian Film Academy), available at https://www.flsenate.gov/Session/Bill/2014/1680 (last visited Jan. 12, 2018)
[14] Fla. SR 1796 (2017) (Caribbean Heritage Month), available at https://www.flsenate.gov/Session/Bill/2017/8031/?Tab=BillText (last visited Jan. 12, 2018)

- In 2017, the Senate passed SR 1838, a resolution recognizing April 12, 2017 as "Nigerian-American Day" in Florida; [15] and
- In 2006, the Senate passed SR 782, a resolution recognizing the month of June as "Caribbean-American Heritage Month" in Florida.[16]

III. Effect of Proposed Changes:

SR 210 recognizes August 15, 2018, as "India Independence Day" and August 2018 as "India Heritage Month" in Florida.

Legislative resolutions have no force of law and are not subject to the approval or veto powers of the Governor.

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:

None.

[15] Fla. SR 1838 (2017) (Nigerian-American Day), available at https://www.flsenate.gov/Session/Bill/2017/01838/?Tab=BillText (last visited Jan. 12, 2018)
[16] Fla. SR 782 (2006) (Relating to Caribbean-American Heritage Month), available at http://archive.flsenate.gov/session/index.cfm?Mode=Bills&SubMenu=1&BI_Mode=ViewBillInfo&BillNum=0782 (last visited Jan. 12, 2018)

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

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 Campbell

38-00314-18 2018210__

Senate Resolution

A resolution recognizing August 15, 2018, as "India Independence Day" and August 2018 as "India Heritage Month" in Florida.

WHEREAS, the people of Florida represent many cultures and have a great tradition of celebrating significant milestones and events of cultural and historical importance, and

WHEREAS, Floridians are proud to join with their fellow residents of Indian heritage throughout the state and beyond as they commemorate the 71st anniversary of India's independence, and

WHEREAS, in 1947, India proclaimed independence and officially became a self-governing country, marking the beginning of its identity as a free and sovereign nation, and

WHEREAS, as a growing democracy, India has proved to be a courageous nation, seeking to establish as its basic, fundamental principles those same values upon which the United States of America was founded: freedom, opportunity, and justice, and

WHEREAS, Florida residents who hail from India, or who have ancestral ties to India, continually demonstrate the greatness of the culture, arts, traditions, and natural beauty of their homeland, and the contributions of these individuals are notable and reflect success in many fields, including education, medicine, science, technology, business, and industry, and

WHEREAS, Florida welcomes the opportunity to promote a greater understanding of the world's cultures, and this occasion, the 71st anniversary of India's independence, provides

38-00314-18 2018210__

an excellent means by which Floridians of all backgrounds can recognize the contributions made by the country and people of India and extend best wishes to them on commemorating this historic milestone of independence, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida:

That August 15, 2018, be designated as "India Independence Day" and August 2018 as "India Heritage Month."

THE FLORIDA SENATE

APPEARANCE RECORD

02/22/2018 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) SR 210

Meeting Date *Bill Number (if applicable)*

Topic SR 210 - India Independence Day *Amendment Barcode (if applicable)*

Name GEORGE ITTY

Job Title President

Address 3646 Biltmore Ave Phone 978-808-1596

Street

Tallahassee, Florida - 32311 Email georgeitty@yahoo.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing Malayalee Association of Tallahassee

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

02/22/2018
Meeting Date

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

SR 210
Bill Number (if applicable)

Topic SR-210 - India Independence DAY

Amendment Barcode (if applicable)

Name DASTAGIRI METTU PALLI

Job Title VICE PRESIDENT OF INDIA ASSOCIATION of TALLAHASSEE

Address 3061 DICKINSON DR
Street

Phone 850.879.3470

TALLAHASSEE FLORIDA 32311
City *State* *Zip*

Email mcdastagiri@gmail.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing India Association of TALLAHASSEE & TALLAHASSEE TELUGU SAMITI

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/22/2018
Meeting Date

SR210
Bill Number (if applicable)

Topic India Heritage Month

Amendment Barcode (if applicable)

Name RESHMID MACHERY RAMESH

Job Title

Address 112 PRESERVE CT
Street

TALLAHASSEE FL 32317
City *State* *Zip*

Phone 404-980-5276

Email RESHSMID@GMAIL.COM

Speaking: ☑ For ☐ Against ☐ Information

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

Representing MALAYALEE ASSOCIATION OF TALLAHASSEE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/14/14)

The Florida Senate

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 394
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Bracy
SUBJECT:	Fire Safety
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	**Fav/CS**
2.	Looke	Stovall	HP	**Favorable**
3.	Peacock	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 394 amends requirements related to firefighter and volunteer firefighter training and certification to require the Division of the State Fire Marshall (division) within the Department of Financial Services (DFS) to establish in rule training courses for career and volunteer firefighters related to cancer and mental health risks within the fire service. The bill requires that the training be a requirement in order to obtain certain certificates related to firefighting and specifies what must be included in the training.

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

II. Present Situation:

Division of the State Fire Marshal

Chapter 633, F.S., provides state law on fire prevention and control. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the division.[1] Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;[2]

[1] The head of the DFS is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.

[2] Section 633.128(1), F.S. *Also see* ch. 633, part IV: Fire Standards and Training, F.S.

- Investigates the causes of fires;[3]
- Enforces arson laws;[4]
- Regulates the installation and maintenance of fire equipment;[5]
- Conducts firesafety inspections of state buildings;[6]
- Develops firesafety standards;[7]
- Provides facilities for the analysis of fire debris;[8] and
- Operates the Florida State Fire College.[9]

Additionally, the State Fire Marshal adopts by rule the Florida Fire Prevention Code, which contains or references all firesafety laws and rules regarding public and private buildings.[10]

The division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.[11] The Florida Fire College, part of the BFST, trains over 6,000 students per year.[12] The Inspections Section, under the Bureau of Fire Prevention, annually inspects more than 14,000 state-owned buildings and facilities. Over 1.8 million fire and emergency reports are collected every year. These reports are entered into a database to form the basis for the State Fire Marshal's annual report.[13]

Firefighters Employment, Standards, and Training Council

The Firefighters Employment, Standards, and Training Council (council) is housed within the DFS and consists of 14 members.[14] The council is authorized to make recommendations for adoption by the division on:

- Uniform minimum standards for the employment and training of firefighters and training of volunteer firefighters.
- Minimum curriculum requirements for schools operated by or for any fire service provider[15] for the specific purpose of training firefighter trainees, firefighters, and volunteer firefighters.
- Matters relating to the funding, general operation, and administration of the Bureau of Fire Standards and Training (Florida State Fire College), including, but not limited to, all

[3] Sections 633.104(2)(e), and 633.112, F.S.
[4] Section 633.104(2)(e), F.S.
[5] Section 633,104(2)(b), F.S. *Also see* s. 633.104(2)(c), F.S., and ch. 633, part III: Fire Protection and Suppression, F.S.
[6] Section 633.218, F.S.
[7] Chapter 633, part II: Fire Safety and Prevention, F.S.
[8] Section 633.432, F.S.
[9] Section 633.128(1)(h)–(q), F.S. *Also see* ss. 633.428–633.434, F.S.
[10] Section 633.202(1), F.S.
[11] *See* https://www.myfloridacfo.com/Division/sfm/ (last visited on Jan. 31, 2018).
[12] *See* Division of State Fire Marshal, *About the Florida State Fire Marshal*, http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm (last visited on Jan. 31, 2018).
[13] *Id*.
[14] Section 633.402(1), F.S.
[15] Section 633.102(13), F.S., defines "fire service provider" as a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that employs firefighters or uses volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

standards, training, curriculum, and the issuance of any certificate of competency required by ch. 633, F.S.[16]

The council may also make or support studies on any aspect of firefighting employment, education, and training or recruitment.[17]

Curriculum Requirements for Firefighters

A person applying for certification as a firefighter must:
- Be a high school graduate or the equivalent and at least 18 years of age;
- Not have been convicted of a misdemeanor relating to the certification or to perjury or false statements, a felony, a crime punishable by imprisonment of one year or more or be dishonorably discharged from the Armed Forces of the United States;
- Submit a set of fingerprints to the division with a current processing fee;
- Have a good moral character;
- Be in good physical condition as determined by a medical examination; and
- Be a nonuser of tobacco or tobacco products for at least one year immediately preceding application.[18]

The division is responsible for establishing a Minimum Standards Course as the training and educational curriculum required in order for a firefighter to obtain a Firefighter Certificate of Compliance (FCOC).[19] A FCOC is issued by the division to an individual who does all of the following:
- Satisfactorily completes the Minimum Standards Course or has satisfactorily completed training for firefighters in another state which has been determined by the division to be at least the equivalent of the training required for the Minimum Standards Course;
- Passes the Minimum Standards Course examination within 12 months after completing the required courses; and
- Meets the character and fitness requirements in s. 633.412, F.S.[20]

In order for a firefighter to retain or renew his or her FCOC, every four years he or she must:
- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the four-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division;
- Within six months before the four-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; and
- Within six months before the four-year period expires, successfully retake and pass the Minimum Standards Course examination. [21]

[16] Section 633.402(9), F.S.
[17] *Id.*
[18] Section 633.412, F.S.
[19] Section 633.408(1)(a), F.S.
[20] Section 633.408(4), F.S.
[21] Section 633.414(1), F.S.

Curriculum Requirements for Volunteer Firefighters

To obtain a Volunteer Firefighter Certificate of Completion, a volunteer firefighter must take of Part I of the Minimum Standards Course as required by ch. 633, F.S., and chs. 69A-37 (Firefighters Standards and Training) and 69A-62 (Firefighter Employment Standards), F.A.C.[22] A significant portion of this training can be completed through on-line and practical skill courses. The on-line courses can be taken in lieu of the traditional classroom lecture and satisfies most of the required academic objectives. The Part I Minimum Standards Course is 206 hours of training as well as the following academic components:[23]

- Firefighter I Curriculum consists of classroom and live fire based core training.
- National Incident Management System focuses on the history, features, principles, and organizational structure of Incident Command.
- Wildland Firefighter Training curriculum and field exercises that address the basic skills required of all wildland firefighters who must understand the behavior and factors that affect the spread of wildfires.
- EMS First Responder curriculum that is an introduction to basic life support and emergency care.

A volunteer firefighter who has successfully completed the Firefighter Part I training may operate in the exclusionary or hot zone[24] and in an Immediately Dangerous to Life or Health environment.[25] In order for volunteer firefighters to retain their Volunteer Firefighter Certificate of Completion, every four years they must serve as a volunteer firefighter or complete a 40-hour refresher course.[26]

Special Certificate of Compliance

A Special Certificate of Compliance issued by the division authorizes an individual to serve as an administrative and command head of a fire service provider.[27] In order to obtain a Special Certificate of Compliance, an individual must do all of the following:

- Satisfactorily complete Part I of the Minimum Standards Course;
- Pass the Minimum Standards Course examination; and
- Meet the character and fitness requirements in s. 633.412, F.S.[28]

Cancer and Mental Health in Firefighting

In addition to the dangers of fighting fires, firefighters incur long term risks to their physical and mental well-being in the form of an increased cancer risk and increased mental health issues due

[22] Guidelines for the Firefighter Part I Certificate of Completion Program (Volunteer Firefighter), Division of State Fire Marshal, *The Bureau of Fire Standards and Training at the Florida State Fire College* (Revision 2.1, March 2017) *available at* https://myfloridacfo.com/division/sfm/bfst/Training/REV_2_1_Guidelines_FF1.pdf (last visited Jan. 21, 2018).
[23] *Id.*
[24] Section 633.102(17), F.S., defines the term "hot zone" as the area immediately around an incident where serious threat of harm exists, which includes the collapse zone for a structure fire.
[25] *See supra* note 23.
[26] Section 633.414(2), F.S.
[27] Section 633.408(6), F.S.
[28] *Id.*

to stress. The National Fire Protection Association warns of a growing body of research and data showing the contributions that job-related exposures have in chronic illnesses, such as cancer and heart disease for firefighters. The National Institute for Occupational Safety and Health recently undertook two large studies focused on firefighter cancer and concluded that firefighters face a 9 percent increase in cancer diagnoses, and a 14 percent increase in cancer-related deaths, compared to the general population in the U.S.[29]

Additionally, the International Association of Firefighters states that:

> Traditionally, medical and physical fitness have been prioritized above emotional or behavioral fitness in the Fire Service. However, it is clear from the aftermath of 9/11, Hurricane Katrina, and other disasters that these priorities are now changing. With each passing year, research shows that fire personnel who balance physical, behavioral and emotional fitness have the best outcomes, whether one is looking at adjustment to becoming a fire fighter, ratings of career satisfaction, family well-being, or adjustment to retirement.
>
> There is growing concern about behavioral health issues and the significant impact on wellness. The stresses faced by fire fighters, paramedics and EMTs throughout the course of their careers – incidents involving children, violence, inherent dangers of firefighting, and other potentially traumatic events – can have a cumulative impact on their mental health and well-being.[30]

III. Effect of Proposed Changes:

Section 1 amends s. 633.408, F.S., to require the division to establish in rule training courses for career and volunteer firefighters related to cancer and mental health risks within the fire service. The training must be a requirement for obtaining a Firefighter Certificate of Compliance, a Volunteer Firefighter Certificate of Compliance, or a Special Certificate of Compliance and must be made available to certified firefighters. The bill specifies that the training must:

- Include cancer and mental health awareness, prevention, mitigation, and treatment;
- Include lifestyle, environmental, inherited, and occupational risks; and
- Emphasize appropriate behavior, attitude, and cultural changes within the fire service.

Section 2 amends s. 633.508, F.S., to conform rulemaking authority for the division to include the new training requirement.

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

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[29] National Fire Protection Association, *Firefighters and Cancer* https://www.nfpa.org/News-and-Research/Resources/Emergency-Responders/Health-and-Wellness/Firefighters-and-cancer (last visited Feb. 2, 2018).
[30] IAFF Firefighters, *IAFF Behavioral Health Program* http://client.prod.iaff.org/#page=behavioralhealth (last visited Feb. 2, 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:

None.

C. Government Sector Impact:

CS/SB 394 may have an indeterminate negative fiscal impact on the division because it will require the division to adjust its training courses and exams to accommodate the training required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 633.408 and 633.508.

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

CS by Governmental Oversight and Accountability on January 23, 2018:
The committee substitute deletes provisions of the original bill that would have revised qualifications for firefighter certification to require firefighter to be a nonuser of tobacco or tobacco products during his or her career in the fire service.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability; and Senator Bracy

585-02374-18 2018394c1

A bill to be entitled

An act relating to fire safety; amending s. 633.408, F.S.; requiring the Division of State Fire Marshal to establish specified courses as a part of firefighter and volunteer firefighter training and certification; amending s. 633.508, F.S.; specifying the division's authority to adopt rules for training related to cancer and mental health risks within the fire service; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (1) of section 633.408, Florida Statutes, to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(1) The division shall establish by rule:

(d) Courses to provide training for career and volunteer firefighters related to cancer and mental health risks within the fire service. Such training must be a requirement for obtaining a Firefighter Certificate of Compliance, Volunteer Firefighter Certificate of Completion, or Special Certificate of Compliance. The training must include cancer and mental health awareness, prevention, mitigation, and treatment. The training must specifically include lifestyle, environmental, inherited, and occupational risks, and emphasize appropriate behavior, attitude, and cultural changes within the fire service. Certified firefighters shall have such training made available to them.

585-02374-18 2018394c1

Section 2. Subsection (2) of section 633.508, Florida Statutes, is amended to read:

633.508 Workplace safety; rulemaking authority; division authority.—

(2) The division shall have the authority to adopt rules for the purpose of ensuring safe working conditions for all firefighter employees by authorizing the enforcement of effective standards, by assisting and encouraging firefighter employers to maintain safe working conditions, and by providing for education and training in the field of safety, including training related to cancer and mental health risks within the fire service. Specifically, the division may by rule adopt the most current edition of all or any part of subparts C through T and subpart Z of 29 C.F.R. s. 1910; the National Fire Protection Association, Inc., Publication 1403, Standard on Live Fire Training Evolutions, as limited by subsection (6); and ANSI A 10.4.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

394
Bill Number (if applicable)

Topic 394 FIREFIGHTER SAFETY

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA FIRE CHIEFS ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

394
Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

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Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Rules Committee

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill #394**, relating to Fire Safety, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Randolph Bracy
Florida Senate, District 11

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/CS/CS/SB 616
INTRODUCER:	Rules Committee, Commerce and Tourism Committee, Transportation Committee, and Senators Passidomo and Perry
SUBJECT:	Motor Vehicle Dealers
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Miller	TR	**Fav/CS**
2.	Harmsen	McKay	CM	**Fav/CS**
3.	Miller	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 616 amends provisions relating to motor vehicle dealer licensing by the Department of Highway Safety and Motor Vehicles (DHSMV). The bill:

- Expands the definition of "motor vehicle dealer" to include those who lease motor vehicles;
- Amends the definitions of "franchised motor vehicle dealer," "independent motor vehicle dealer," and "wholesale motor vehicle dealer" to remove the term "dealing in" motor vehicles;
- Provides that the following are not considered motor vehicle dealers:
  - Persons who solely deal in motor vehicles by owning or hosting a publication or website which displays motor vehicles for sale or lease by licensed dealers; and
  - Persons primarily engaged in the business of short-term motor vehicle rentals (rental terms that do not exceed 12 months), who are not involved in the retail sale of vehicles;
- Deletes the definition of "motor vehicle broker;
- Requires pre-licensing dealer training requirements for all applicants; and
- Allows franchised motor vehicle dealers to provide certification of required industry training on either an annual or biennial basis, requiring four hours of training for the former and eight for the latter, and establishes fees for such training.

The bill may have a negative fiscal impact on motor vehicle dealers related to dealer training certification requirements, and on brokers or other persons required to obtain a license from the

DHSMV. The DHSMV may incur additional program costs associated with administration of dealer licensing requirements. See V. Fiscal Impact Statement.

The bill takes effect January 1, 2019.

II. Present Situation:

The Florida Department of Highway Safety and Motor Vehicles (DHSMV), Division of Motorist Services, regulates motor vehicle dealers and related licenses.[1] The DHSMV licenses, regulates, and assists both licensed dealers and consumers of the motor vehicle industry.[2] Each year, the DHSMV issues and renews over 13,000 licenses for motor vehicle, auction, salvage, wholesale, mobile home, recreational vehicle dealers and manufacturers, distributors, and importers.[3]

Section 320.27(1)(c), F.S., defines a "motor vehicle dealer" as any person engaged in the business of buying, selling, or dealing in motor vehicles or offering or displaying motor vehicles for sale at wholesale or retail, or who may service and repair vehicles pursuant to a franchise agreement.[4] A person who buys, sells, offers for sale, displays for sale or deals in three or more motor vehicles in any 12-month period is presumed to be a motor vehicle dealer.[5]

The term "motor vehicle dealer" does not include:[6]

- Persons who dispose of or sell vehicles acquired for their own personal or business use, or acquired by foreclosure or operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding dealer licensing provisions;
- Persons engaged in the business of manufacturing, selling, or offering or displaying for sale no more than 25 trailers in a 12-month period;
- Public officers performing their official duties;
- Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgement or order of, any court;
- Banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business;
- Motor vehicle rental and leasing companies that sell motor vehicles to licensed dealers; or
- Motor vehicle brokers.

Section 320.27(1)(d), F.S., defines a "motor vehicle broker" as any person who offers to procure or procures motor vehicles for the general public, including soliciting or advertising, but who does not store, display, or take ownership of any vehicle for the purpose of selling the vehicle. A motor vehicle broker is not required to obtain a motor vehicle dealer license.

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[1] Section 320.27, F.S.; Florida Department of Highway Safety and Motor Vehicles, *Licensing Requirements for Motor Vehicle Dealers*, http://www.flhsmv.gov/dmv/dealer.html (last visited Jan. 19, 2018).
[2] Florida Department of Highway Safety and Motor Vehicles, *Dealer Handbook, Vol. 17*, p. 9(2015), *available at* http://flhsmv.gov/dmv/DealerHandbook.pdf (last visited Jan. 19, 2018).
[3] *Id*.
[4] As defined in s. 320.60(1), F.S., an "agreement" or "franchise agreement" means "a contract, franchise, new motor vehicle franchise, sales and service agreement, or dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make."
[5] Section 320.60(11)(b), F.S.
[6] Section 320.27(1)(c), F.S.

Motor Vehicle Dealer Licenses

Motor vehicle dealers are required to be licensed by the state to conduct business. Currently, there are six classes of motor vehicle dealer licenses:[7]

- *Independent Dealer*: for persons dealing in used motor vehicles only;
- *Franchise Dealer*: for a licensee who sells new vehicles under an agreement with a manufacturer;
- *Service Facility*: for dealerships that perform maintenance or repairs of motor vehicles pursuant to a motor vehicle warranty;
- *Wholesale Dealer*: for licensees who may only buy from, sell to, and deal at wholesale with licensed dealers;
- *Auction Dealer*: for those licensed to sell vehicles to licensed dealers through the bid process; and
- *Salvage Dealer*: for licensees who deal in salvage or wrecked vehicles.

A person may advertise and offer for sale his or her own vehicle without a motor vehicle dealer license.[8] Only licensed motor vehicle dealers may offer for sale a vehicle that belongs to another party.[9] The only exceptions are transactions with motor vehicle auctions or sales that result from a legal proceeding, court order, estate settlement, or by operation of law.

Motor Vehicle Dealer License Application Requirements and Fees

An applicant for initial licensure must submit a preliminary filing to the DHSMV that proposes the site of the motor vehicle dealership, and other relevant information.[10] If a DHSMV Division of Motorist Services Regional Office approves the preliminary filing, the applicant must then submit an application to the DHSMV with required documentation, which may include:[11]

- A $25,000 surety bond or a letter of credit;
- The business location's lease or proof of ownership;
- Pre-licensing dealer training course completion certificate;
- A garage liability insurance certificate, or a general liability insurance policy coupled with a business automobile policy;
- The business' registration with the Florida Department of State, Division of Corporations;
- Specified corporate papers;
- A sales tax number and Federal Employer Identification Number; and
- The applicant's fingerprints for the purpose of performing a background check performed by the Florida Department of Law Enforcement and the Federal Bureau of Investigation.

The application must be coupled with a $300 fee per main location of the proposed dealership.[12] The applicant must certify that the business location is not a residence, provides an adequately

[7] *See*, note 1, *supra*.
[8] Section 320.27(2), F.S.
[9] *Id*.
[10] Florida Department of Highway Safety and Motor Vehicles, *Dealer Handbook, Vol. 17*, p. 37-38 (2015), *available at* http://flhsmv.gov/dmv/DealerHandbook.pdf (last visited Jan. 19, 2018).
[11] *See* s. 320.27, F.S.
[12] *See*, s. 320.27(3), F.S., Rule 15C-7.003, Fla. Admin. Code, and note 1, *supra*.

equipped office, affords sufficient unoccupied space to store motor vehicles offered and displayed for sale, and is suitable for keeping and maintaining books, records necessary to conduct such business, which shall be available at all reasonable hours to inspection by the DHSMV.[13] The applicant also must certify that the motor vehicle dealer business is the principal business conducted at that location.

Upon application approval by the DHSMV, a dealer license is valid until December 31 for franchise motor vehicle dealers and April 30 for independent, wholesale, or auction dealers.[14] A motor vehicle dealer license must be renewed every two years.[15] A license renewal fee is $75 for the second year; thereafter, motor vehicle dealers may renew their license for a period of one or two years for $75 for each year. A licensee who does not file required application documents and fees with the department at least 30 days prior to the license expiration date must cease to engage in business as a dealer on the expiration date.[16] Additionally, a dealer who renews a license with the DHSMV within 45 days after the license's expiration date will be assessed a $100 delinquent fee.[17] If the renewal is more than 45 days late, a new initial application and application fee is required. Furthermore, a licensee is required to obtain a supplemental license for each permanent additional place of business for a $50 annual fee.[18]At the appropriate time, a change of location fee of $50 is assessed, should it apply.[19]

Motor Vehicle Dealer Training and Continuing Education Requirements

Initial license applications must include a verification that, within the preceding six months, the applicant (or designated employee) attended a training and information seminar conducted by a licensed motor vehicle dealer training school.[20] The training must review statutory dealer requirements, including required bookkeeping and recordkeeping procedures, and requirements for the collection of sales and use taxes. An applicant who has held a valid motor vehicle dealer's license continuously within the past two years and who remains in good standing with the DHSMV is exempt from this pre-licensing requirement.

Applicants who apply for an independent motor vehicle dealer license are required to submit verification to the DHSMV that, within the preceding six months, he or she[21] has *successfully completed*[22] training conducted by a motor vehicle dealer training school. Such training includes:

- Training in titling and registration of motor vehicles;
- Training in laws relating to financing, and unfair and deceptive trade practices; and
- Training in other information that the DHSMV feels will promote good business practices.

[13] Section 320.27(3), F.S.
[14] Section 320.27(4), F.S.
[15] Section 320.27(3), F.S.
[16] Section 320.27(4), F.S.
[17] *Id.*
[18] Section 320.27(5), F.S.
[19] Section 320.27(3), F.S.
[20] Section 320.27(4), F.S. A list of licensed dealer training schools is available on the DHSMV website. See *Licensed Dealer Training Schools* (Oct. 9, 2017), https://www.flhsmv.gov/pdf/dealerservices/l_dealer_trng_sch.pdf (last visited Jan. 19, 2018).
[21] Or an owner, partner, officer, director of the applicant, or a full-time, management-level employee of the applicant. Section 320.27(4), F.S.
[22] Section 320.27(4)(b), F.S., provides that "successful completion" of the training is determined by an exam administered at the end of the course and attendance of no less than 90 percent of the total hours required by the school.

Upon renewal of an independent motor vehicle dealer license, the dealer must submit certification to the DHSMV that the dealer[23] has completed eight hours of continuing education, which includes at least two hours of legal or legislative issues, one hour of DHSMV issues, and five hours of relevant motor vehicle industry topics.[24] A motor vehicle dealer training school may charge a fee for the required training.[25]

Additional Licensee Requirements

Motor vehicle dealers are required to follow numerous state laws and procedures in order to maintain their dealer license. Any person who violates these license requirements can be found guilty of a second-degree misdemeanor,[26] and could be liable under civil law in violation of Florida's Deceptive and Unfair Trade Practices Act.[27]

Section 320.27, F.S., provides requirements for motor vehicle dealers to maintain their licensed status, as well as conduct for which the DHSMV may deny, suspend, or revoke a license. For example, s. 320.27(9)(a), F.S., provides that the DHSMV may deny, suspend, or revoke such license upon proof that an applicant or licensee has committed fraud or willful misrepresentation in obtaining a license, has been convicted of a felony, or has failed to provide payment to the DHSMV. Additionally, the DHSMV may deny, suspend, or revoke a license if a licensee has established a pattern of wrongdoing.[28] The terms "licensee" and "motor vehicle dealer" appear to be used interchangeably throughout s. 320.27, F.S.

III. Effect of Proposed Changes:

Motor Vehicle Dealer and Broker Definitions

The bill amends the definition of the term "motor vehicle dealer." Specifically, the bill expands the term "motor vehicle dealer" to include any person who:

- Leases, or offers or displays for lease, three or more motor vehicles in any 12-month period;
- Engages in possessing, storing, advertising, or displaying motor vehicles for retail sale or lease;
- Compensates customers for vehicles at wholesale or retail (trade-ins);
- Negotiates with customers regarding the terms of sale or lease for a motor vehicle offered for sale or lease by the person;
- Provides test drives of motor vehicles he or she is offering for retail sale or lease; or
- Delivers or arranges for delivery a motor vehicle in conjunction with the retail sale or lease of a motor vehicle.

The bill clarifies that those who own a publication or host a website that displays vehicles for sale or lease by licensed motor vehicle dealers are not required to obtain a motor vehicle dealer

[23] Section 320.27(4), F.S.
[24] Section 320.27(4)(a), F.S.
[25] Section 320.27(4)(b), F.S.
[26] Section 320.27(8), F.S.
[27] Part II, ch. 501, F.S.
[28] *See* s. 320.27(9)(b), F.S.

license. Additionally, a licensed motor vehicle manufacturer, factory branch, distributor, or importer[29] may sell motor vehicles to a franchised motor vehicle dealer without being licensed as a motor vehicle dealer as well.

The bill modifies the provision allowing a person to advertise and offer for sale his or her own vehicle without a motor vehicle dealer license, to add requirements that the vehicles are acquired and sold in good faith and not for avoiding the dealer licensing requirements.

The bill prohibits motor vehicle dealers from transferring a manufacturer's statement of origin for a motor vehicle to any person who intends to sell the motor vehicle in Florida, unless that person is a licensed motor vehicle dealer who is authorized by a franchise agreement to buy, sell, or lease such vehicles.

The bill deletes the definition of "motor vehicle broker" from the motor vehicle dealer licensing law. Current law defines a broker's practice as offering to procure, or procuring motor vehicles for the general public including soliciting or advertising such services. A person operating a motor vehicle broker business under current law would need to have a motor vehicle dealer license if the broker engages in any activity that would be classified as requiring a dealer license under s. 320.27, F.S., as that section is revised by the bill.

The bill also updates the definitions of "franchised motor vehicle dealer," "independent motor vehicle dealer," and "wholesale motor vehicle dealer" to remove the term "dealing in" motor vehicles.[30]

The bill adds that the definition of "independent motor vehicle dealer" includes persons in the business of leasing motor vehicles, but exempts from the term "motor vehicle dealer" persons primarily engaged in the business of short-term vehicle rentals (which do not exceed 12 months) who are not involved in the retail sale of motor vehicles.

Pre-licensing Dealer Training and Continuing Education Requirements

The bill revises the requirement for a licensee to file required application documents and fees with the department *at least 30 days prior to* the license expiration date; to provide instead that if the required filings are not submitted prior to the license expiration date, the licensee must cease to engage in business as a dealer on the expiration date. The bill adds s. 320.27(4)(d), F.S., requiring that each franchised motor vehicle dealer certify in its application for license renewal, that the dealer operator, owner, partner, director, or general manager of the licensee has completed industry certification on legal and legislative issues. The dealer may provide the certification on either an annual or biennial basis, requiring four hours of training for the former and eight for the latter.

Only a Florida-based, non-profit, dealer-owned, statewide industry association of franchised motor vehicle dealers with state and federal compliance credentials approved by the DHSMV may provide the certification, and such association may charge a fee for providing the industry

[29] Section 320.61, F.S.
[30] Current law refers to each as any person who engages in the business of buying, selling, or dealing in motor vehicles. *See* ss. 320.27(1)(c)2. and 3., F.S.

certification. The bill specifies that the fee may not exceed $500 per four hours. Beginning in 2020 the maximum fee must be adjusted annually based on the Consumer Price Index for All Urban Consumers as calculated by the Bureau of Labor Statistics of the U. S. Department of Labor.[31]

For licensees that belong to a dealership group,[32] certification may be satisfied for all licensees by one designated owner, officer, director, or manager of the group. Certification shall be required in a classroom setting in a convenient location within Florida. Designated individuals shall receive certificates of completion, which must be filed with their license renewal form.

Technical Changes and Effective Date

The bill makes technical and conforming changes throughout s 320.27(4), F.S., to provide clarity.

The bill takes effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have a negative fiscal impact on motor vehicle brokers and other persons who will be considered a "motor vehicle dealer" under the changes made by the bill and required to be licensed by the DHSMV as dealers. The bill may have a negative fiscal

[31] Additional information on the Consumer Price Index for All Urban Consumers can be found on the U. S. Department of Labor website at: https://www.bls.gov/cpi/questions-and-answers.htm, and the latest official CPI data release can be viewed at: https://www.bls.gov/news.release/cpi.nr0.htm (sites last visited February 21, 2018).

[32] The bill defines "dealership group" as "two or more licensed franchise motor vehicle dealers with at least one common owner or with common owners which has legal or equitable title of at least 50 percent of each dealer in the group."

impact on motor vehicle dealers required to meet additional training certification requirements to be licensed by the DHSMV.

C. Government Sector Impact:

DHSMV may incur additional program costs associated with administration of dealer licensing requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 320.27 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on February 22, 2018:
The CS/CS/CS:

- Deems any person engaging in advertising motor vehicles that such person offers for retail sale or lease to be a motor vehicle dealer (in addition to possessing, storing, or displaying motor vehicles);
- Removes the exclusion of "motor vehicle brokers" from the term "motor vehicle dealer," and repeals the definition of "motor vehicle broker" from dealer licensing laws;
- Excludes from the term "motor vehicle dealer" persons whose sole dealing in motor vehicles is owning a publication or hosting a website that displays vehicles for lease, in addition to vehicles for sale; and excludes such persons from the requirement to obtain a license to act as a motor vehicle dealer;
- Allows a licensed motor vehicle dealer to file his or her renewal application, fees, and other required documents at any time prior to the license expiration date, rather than at least 30 days prior; but the licensee must still cease to act as a motor vehicle dealer on the expiration date;
- Revises the authorized fee for providing the required industry certification for franchised dealers, to provide that the fee may not exceed $500 per 4 hours; and provides for annual CPI adjustment of the fee beginning in 2020; and
- Revises the term "dealership group" to mean two or more licensed franchised motor vehicle dealers *with at least one common officer* or with common owners having legal or equitable title to at least 50, rather than 80, percent of each dealer in the group.

CS/CS by Commerce and Tourism on January 22, 2018:
The CS/CS:

- Excludes from the definition of a motor vehicle dealer a motor vehicle manufacturer, distributor, or importer who is licensed under s. 320.61, F.S., and who sells cars only to a franchised motor vehicle dealer;
- Returns practice to current law by allowing individuals without a motor vehicle dealer license to offer or sell motor vehicle service agreements when a car is sold or leased;
- Prohibits a motor vehicle dealer from transferring a manufacturer's statement of origin for a motor vehicle to any person who intends to sell the car in Florida, unless that person is a licensed motor vehicle dealer who is authorized by a franchise agreement to buy, sell, or lease such vehicles;
- Requires the DHSMV to send a statement of required continuing education or industry certification requirements that the licensee must complete along with the notice of license renewal;
- Allows franchised motor vehicle dealers to renew their license on an annual or biennial basis, and provides pro-rated industry certification standards for such filings;
- Maintains the current requirement that each initial application include verification that the applicant successfully attended and training and information seminar, and expands the requirement to include motor vehicle broker applicants;
- Changes the effective date to January 1, 2019; and
- Makes conforming changes throughout.

CS by Transportation on December 5, 2017:
The CS:

- Adds that a person who leases three or more vehicles in any 12-month period shall be presumed to be a motor vehicle dealer, and adds references to leasing throughout the "motor vehicle dealer" definition;
- Exempts from the term "motor vehicle dealer" persons who are primarily engaged in the business of short-term vehicle rentals (which do not exceed 12 months) and who are not involved in the retail sale of motor vehicles;
- Removes language from s. 320.27(1)(c), F.S., requiring a vehicle to be titled as a used vehicle when a motor vehicle dealer transferring the motor vehicle does not meet certain qualifications;
- Amends the definition of "franchised motor vehicle dealer", "independent motor vehicle dealer" and "wholesale motor vehicle dealer" to remove the term "dealing in" motor vehicles;
- Reinserts language previously removed by the bill, which provides that a motor vehicle broker does not store, display, or take ownership of any vehicle for the purpose of selling such vehicles;
- Adds that a licensed manufacturer, distributor, or importer is not considered a motor vehicle broker;
- Includes additional requirements for pre-licensing training for independent motor vehicle dealers that were removed by the bill and currently required of all motor vehicle dealer applicants;

- Adds that the franchised motor vehicle dealer industry certification be provided by a statewide industry association of franchised motor vehicles dealers, and such association may charge a fee for providing industry certification; and
- Provides industry certification requirements for licensees in dealership groups, and defines the term "dealership group" for purposes of s. 320.27, F.S.

B. Amendments:

None.

325944

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2018	.	
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The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (c) and (d) of subsection (1) and subsections (2) and (4) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context


325944

clearly indicates a different meaning:

(c) "Motor vehicle dealer" means any person engaged in the business of buying, selling, or leasing ~~dealing in~~ motor vehicles or offering or displaying motor vehicles for sale or lease at wholesale, excluding sales from a manufacturer, factory branch, distributor, or importer licensed pursuant to s. 320.61 to a franchised motor vehicle dealer licensed pursuant to this section, or at retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1). Any person who buys, sells, or leases ~~deals in~~ three or more motor vehicles in any 12-month period or who offers or displays for sale or lease three or more motor vehicles in any 12-month period is ~~shall be~~ prima facie presumed to be a motor vehicle dealer. Any person who engages in any of the following activities is deemed to be a motor vehicle dealer: possessing, storing, advertising, or displaying motor vehicles that such person offers for retail sale or lease; compensating customers for vehicles at wholesale or retail, also known as trade-ins; negotiating with customers regarding the terms of sale or lease for a motor vehicle offered for retail sale or lease by such person; providing test drives of motor vehicles that such person offers for retail sale or lease; delivering or arranging for the delivery of a motor vehicle in conjunction with the retail sale or lease of the motor vehicle by such person ~~engaged in such business~~. ~~The terms "selling" and "sale" include lease-purchase transactions.~~ A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale or lease of a motor vehicle, provided such acquisition is

incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771. ~~A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchised agreement as defined in s. 320.60(1), to buy, sell, or deal in such vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle; provided this limitation shall not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. The transfer of a motor vehicle by a dealer not meeting these qualifications shall be titled as a used vehicle.~~ The classifications of motor vehicle dealers are defined as follows:

1. "Franchised motor vehicle dealer" means any person who engages in the business of repairing, servicing, buying, selling, or leasing ~~dealing in~~ motor vehicles pursuant to an agreement as defined in s. 320.60(1). A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d) or s. 320.08(3)(a), (b), or (c), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchise agreement as defined in s. 320.60(1) to buy, sell, or lease such vehicles and to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle. This limitation does not apply to recreational


325944

vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. A motor vehicle dealer may not transfer a manufacturer's statement of origin for a motor vehicle to any person who intends to sell such motor vehicle in this state unless such person is a licensed motor vehicle dealer authorized by a franchise agreement to buy, sell, or lease such vehicles.

2. "Independent motor vehicle dealer" means any person other than a franchised or wholesale motor vehicle dealer who engages in the business of buying, selling, or leasing ~~dealing in~~ motor vehicles, and who may service and repair motor vehicles.

3. "Wholesale motor vehicle dealer" means any person who engages exclusively in the business of buying or~~,~~ selling~~, or dealing in~~ motor vehicles at wholesale or with motor vehicle auctions. Such person shall be licensed to do business in this state, shall not sell or auction a vehicle to any person who is not a licensed dealer, and shall not have the privilege of the use of dealer license plates. Any person who buys, sells, or deals in motor vehicles at wholesale or with motor vehicle auctions on behalf of a licensed motor vehicle dealer and as a bona fide employee of such licensed motor vehicle dealer is not required to be licensed as a wholesale motor vehicle dealer. In such cases it shall be prima facie presumed that a bona fide employer-employee relationship exists. A wholesale motor vehicle dealer shall be exempt from the display provisions of this section but shall maintain an office wherein records are kept in order that those records may be inspected.

4. "Motor vehicle auction" means any person offering motor


325944

vehicles or recreational vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers. Such person shall not sell a vehicle to anyone other than a licensed motor vehicle dealer.

5. "Salvage motor vehicle dealer" means any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

Notwithstanding anything in this subsection to the contrary, the term "motor vehicle dealer" does not include persons not engaged in the purchase, ~~or~~ sale, or lease of motor vehicles as a business who are disposing of vehicles acquired for their own use or for use in their business or acquired by foreclosure or by operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the provisions of this law; persons engaged in the business of manufacturing, selling, or offering or displaying for sale or lease at wholesale or retail no more than 25 trailers in a 12-month period; public officers while performing their official duties; receivers; trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court; banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; persons whose sole dealing in motor vehicles is owning a publication in which, or hosting a website on which, licensed motor vehicle dealers display vehicles for sale or lease; persons primarily engaged in the business of the short-term rental of motor vehicles, which rental term may not exceed 12 months, who are not involved in the retail sale or


325944

lease of motor vehicles; ~~motor vehicle brokers;~~ and motor vehicle rental and leasing companies that sell motor vehicles only to motor vehicle dealers licensed under this section. Vehicles owned under circumstances described in this paragraph may be disposed of at retail, wholesale, or auction, unless otherwise restricted. A manufacturer of fire trucks, ambulances, or school buses may sell such vehicles directly to governmental agencies or to persons who contract to perform or provide firefighting, ambulance, or school transportation services exclusively to governmental agencies without processing such sales through dealers if such fire trucks, ambulances, school buses, or similar vehicles are not presently available through motor vehicle dealers licensed by the department.

~~(d) "Motor vehicle broker" means any person engaged in the business of offering to procure or procuring motor vehicles for the general public, or who holds himself or herself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles for the general public, and who does not store, display, or take ownership of any vehicles for the purpose of selling such vehicles.~~

(2) LICENSE REQUIRED.—No person shall engage in business as, serve in the capacity of, or act as a motor vehicle dealer in this state without first obtaining a license therefor in the appropriate classification as provided in this section. With the exception of transactions with motor vehicle auctions, no person other than a licensed motor vehicle dealer may advertise for sale or lease any motor vehicle belonging to another party unless as a direct result of a bona fide legal proceeding, court order, settlement of an estate, ~~or~~ by operation of law, or if

325944

done by a person whose sole dealing in motor vehicles is owning a publication in which, or hosting a website on which, licensed motor vehicle dealers display vehicles for sale or lease. However, owners of motor vehicles titled in their names may advertise and offer motor vehicles for sale on their own behalf, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the requirements of this section. It shall be unlawful for a licensed motor vehicle dealer to allow any person other than its ~~a~~ bona fide employee to use the motor vehicle dealer license for the purpose of acting in the capacity of or conducting motor vehicle sales or lease transactions as a motor vehicle dealer. Any person acting ~~selling or offering a motor vehicle for sale~~ in violation of the licensing requirements of this subsection, or who misrepresents to any person his or her ~~its~~ relationship with any manufacturer, importer, ~~or~~ distributor, or motor vehicle dealer, in addition to the penalties provided herein, shall be deemed to have committed ~~guilty of~~ an unfair and deceptive trade practice ~~as defined~~ in violation of part II of chapter 501 and shall be subject to the provisions of subsections (8) and (9).

(4) LICENSE CERTIFICATE.—

(a) A license certificate shall be issued by the department in accordance with such application when the application is regular in form and in compliance with the provisions of this section. The license certificate may be in the form of a document or a computerized card as determined by the department. The actual cost of each original, additional, or replacement computerized card shall be borne by the licensee and is in addition to the fee for licensure. Such license, when so issued,


325944

entitles the licensee to carry on and conduct the business of a motor vehicle dealer. Each license issued to a franchise motor vehicle dealer expires on December 31 of the year of its expiration unless revoked or suspended before ~~prior to~~ that date. Each license issued to an independent or wholesale dealer or auction expires on April 30 of the year of its expiration unless revoked or suspended prior to that date. At least 60 days before the license expiration date, the department shall deliver or mail to each licensee the necessary renewal forms along with a statement that the licensee is required to complete any applicable continuing education or industry certification requirements. ~~Each independent dealer shall certify that the dealer (owner, partner, officer, or director of the licensee, or a full-time employee of the licensee that holds a responsible management-level position) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification shall be filed once every 2 years. The continuing education shall include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education.~~ Any licensee who does not file his or her application and fees and any other requisite documents, as required by law, ~~with the department at least 30 days~~ prior to the license expiration date shall cease to engage in business as a motor

vehicle dealer on the license expiration date. A renewal filed with the department within 45 days after the expiration date shall be accompanied by a delinquent fee of $100. Thereafter, a new application is required, accompanied by the initial license fee. A license certificate duly issued by the department may be modified by endorsement to show a change in the name of the licensee, provided, as shown by affidavit of the licensee, the majority ownership interest of the licensee has not changed or the name of the person appearing as franchisee on the sales and service agreement has not changed. Modification of a license certificate to show any name change as herein provided shall not require initial licensure or reissuance of dealer tags; however, any dealer obtaining a name change shall transact all business in and be properly identified by that name. All documents relative to licensure shall reflect the new name. In the case of a franchise dealer, the name change shall be approved by the manufacturer, distributor, or importer. A licensee applying for a name change endorsement shall pay a fee of $25 which fee shall apply to the change in the name of a main location and all additional locations licensed under the provisions of subsection (5). Each initial license application received by the department shall be accompanied by verification that, within the preceding 6 months, the applicant, or one or more of his or her designated employees, has attended a training and information seminar conducted by a licensed motor vehicle dealer training school. Any applicant for a new franchised motor vehicle dealer license who has held a valid franchised motor vehicle dealer license continuously for the past 2 years and who remains in good standing with the department is exempt from the prelicensing

training requirement. Such seminar shall include, but is not limited to, statutory dealer requirements, which requirements include required bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and such other information that in the opinion of the department will promote good business practices. No seminar may exceed 8 hours in length.

(b) Each initial license application received by the department for licensure under subparagraph (1)(c)2. shall be accompanied by verification that, within the preceding 6 months, the applicant (owner, partner, officer, or director of the applicant, or a full-time employee of the applicant that holds a responsible management-level position) has successfully completed training conducted by a licensed motor vehicle dealer training school. Such training must include training in titling and registration of motor vehicles, laws relating to unfair and deceptive trade practices, laws relating to financing with regard to buy-here, pay-here operations, and such other information that in the opinion of the department will promote good business practices. Successful completion of this training shall be determined by examination administered at the end of the course and attendance of no less than 90 percent of the total hours required by such school. Any applicant who had held a valid motor vehicle dealer’s license continuously within the past 2 years and who remains in good standing with the department is exempt from the prelicensing requirements of this section. The department shall have the authority to adopt any rule necessary for establishing the training curriculum; length of training, which shall not exceed 8 hours for required


325944

department topics and shall not exceed an additional 24 hours for topics related to other regulatory agencies' instructor qualifications; and any other requirements under this section. The curriculum for other subjects shall be approved by any and all other regulatory agencies having jurisdiction over specific subject matters; however, the overall administration of the licensing of these dealer schools and their instructors shall remain with the department. Such schools are authorized to charge a fee.

(c) Each application received by the department for renewal of a license under subparagraph (1)(c)2. must certify that the dealer (owner, partner, officer, or director of the licensee, or a full-time employee of the licensee that holds a responsible management-level position) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification must be filed once every 2 years. The continuing education must include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education.

(d) Each application received by the department for renewal of a license under subparagraph (1)(c)1. must certify that the dealer (dealer operator, owner, partner, officer, director, or general manager of the licensee) has completed 4 hours of


325944

industry certification on legal and legislative issues each year prior to filing the renewal forms with the department. Industry certification shall be provided by a Florida-based, nonprofit, dealer-owned, statewide industry association of franchised motor vehicle dealers with state and federal compliance credentials approved by the department, and shall be in a classroom setting in convenient locations within the state. Such association shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form. An application for renewal of a license previously issued for 1 year must be accompanied by a certificate establishing completion of 4 hours of industry certification during the prior year. An application for renewal of a license previously issued for 2 years must be accompanied by certificates establishing completion of 8 hours of industry certification, except that renewal of a 2-year license that expires on December 31, 2019, must be accompanied by a certificate establishing completion of 4 hours of industry certification. An association may charge a fee not to exceed $500 per 4 hours for providing the industry certification. In 2020 and for each subsequent year, the maximum fee of $500 per 4 hours shall be increased by a percentage equal to the annual Consumer Price Index for All Urban Consumers calculated for the previous year by the Bureau of Labor Statistics of the United States Department of Labor. In the case of licensees belonging to a dealership group, the required industry certification may be satisfied for all licensees in the dealership group through completion of the industry certification by a single designated owner, officer, director, or manager of the dealership group. For purposes of this

325944

section, the term "dealership group" means two or more licensed franchised motor vehicle dealers with at least one common officer or with common owners having legal or equitable title of at least 50 percent of each dealer in the group. A licensee who seeks to satisfy the required industry certification through a dealership group must provide the department with evidence of the required common ownership at the time of filing the certificate of completion.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to motor vehicle dealers; amending s. 320.27, F.S.; revising the definitions of the terms "motor vehicle dealer," "franchised motor vehicle dealer," "independent motor vehicle dealer," and "wholesale motor vehicle dealer"; deleting the definition of "motor vehicle broker"; adding an exception to the prohibition against persons other than licensed motor vehicle dealers from advertising for sale or lease any motor vehicle belonging to another party; authorizing owners of motor vehicles titled in their names to advertise and offer motor vehicles for sale on their own behalf, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding specified requirements;

prohibiting a licensed motor vehicle dealer from allowing any person other than its bona fide employee to use its motor vehicle dealer license for the purpose of acting in the capacity of or conducting motor vehicle lease transactions as a motor vehicle dealer; providing that any person acting in violation of specified licensing requirements or misrepresenting to any person his or her relationship with any motor vehicle dealer is deemed to have committed an unfair and deceptive trade practice in violation of specified provisions; requiring, within a specified timeframe, the Department of Highway Safety and Motor Vehicles to deliver or mail to each licensee the necessary renewal forms along with a statement that the licensee is required to complete any applicable continuing education or industry certification requirements; deleting certain continuing education and certification requirements; requiring any licensee who does not file his or her application and fees and any other requisite documents, as required by law, before the license expiration date to cease engaging in business as a motor vehicle dealer on the license expiration date; requiring applications received by the department for renewal of independent motor vehicle dealer licenses to certify that the dealer has completed continuing education before filing the renewal forms with the department, subject to certain requirements; providing requirements for continuing education and dealer schools; authorizing such schools

to charge a fee for providing continuing education; requiring applications received by the department for renewal of franchised motor vehicle dealer licenses to certify that the dealer has completed certain industry certification before filing the renewal forms with the department, subject to certain requirements; providing requirements for industry certification and certain statewide industry associations of franchised motor vehicle dealers; authorizing an association to charge up to a specified fee for providing the industry certification; providing for annual adjustments to the maximum fee, beginning on a specified date; authorizing industry certification for licensees belonging to a dealership group to be accomplished by a certain designated person; defining the term "dealership group"; requiring a licensee who seeks to satisfy the certification through a dealership group to provide the department with certain evidence at the time of filing the certificate of completion; providing an effective date.

277040

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/23/2018	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (325944) (with title amendment)

Delete line 140
and insert:
motor vehicle dealers licensed by the department. If a manufacturer that is licensed pursuant to s. 320.61 is also directly or indirectly licensed as a motor vehicle dealer under this section on or before July 1, 2018, but is no longer licensed as a motor vehicle dealer after that date, it may provide information to, or demonstrate motor vehicles for, a

277040

consumer only for the purpose of marketing, advertising, educating, or informing the consumer about the manufacturer's products.

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

And the title is amended as follows:

Delete line 350

and insert:

"wholesale motor vehicle dealer"; authorizing a manufacturer to provide information to, or demonstrate motor vehicles for, a consumer only for specified purposes if the manufacturer is licensed and also directly or indirectly licensed as a motor vehicle dealer on or before, but not after, a specified date; deleting the

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/23/2018	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment to Amendment (325944) (with title amendment)

Delete line 140
and insert:
motor vehicle dealers licensed by the department. A manufacturer licensed pursuant to s. 320.61 which does not have a franchise agreement as defined by s. 320.60(1) with any person in this state may advertise the motor vehicles that it manufactures, including demonstrations of those motor vehicles to consumers, provided that the sale or lease of such a motor vehicle in this

855974

state may only occur through a licensed motor vehicle dealer.

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

And the title is amended as follows:

Delete line 350

and insert:

"wholesale motor vehicle dealer"; authorizing a licensed manufacturer that does not have a franchise agreement with any person in this state to advertise motor vehicles it manufactures, provided that the sale or lease of such a motor vehicle in this state may only occur through a licensed motor vehicle dealer; deleting the

By the Committees on Commerce and Tourism; and Transportation; and Senators Passidomo, Perry, and Hutson

577-02328-18 2018616c2

A bill to be entitled

An act relating to motor vehicle dealers; amending s. 320.27, F.S.; revising the definitions of the terms "motor vehicle dealer," "franchised motor vehicle dealer," "independent motor vehicle dealer," "wholesale motor vehicle dealer," and "motor vehicle broker"; prohibiting persons from engaging in business as, serving in the capacity of, or acting as a motor vehicle broker in this state without first obtaining a certain license; adding an exception to the prohibition on persons other than a licensed motor vehicle dealer from advertising for sale or lease any motor vehicle belonging to another party; authorizing owners of motor vehicles titled in their names to advertise and offer motor vehicles for sale on their own behalves provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding specified requirements; prohibiting a licensed motor vehicle dealer from allowing any person other than its bona fide employee to use its motor vehicle dealer license for the purpose of acting in the capacity of or conducting motor vehicle lease transactions as a motor vehicle dealer; providing that any person acting in violation of specified licensing requirements or misrepresenting to any person his or her relationship with any motor vehicle dealer is deemed to have committed an unfair and deceptive trade practice in violation of specified provisions; requiring an application for a license to contain a statement that

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the applicant is a motor vehicle broker under certain circumstances; providing that a certain license entitles a licensee to carry on and conduct the business of a motor vehicle broker; providing that each license issued to a motor vehicle broker expires on a specified date of the year of its expiration unless revoked or suspended before that date; requiring, within a specified timeframe, the Department of Highway Safety and Motor Vehicles to deliver or mail to each licensee the necessary renewal forms along with a statement that the licensee is required to complete any applicable continuing education or industry certification requirements; deleting certain continuing education and certification requirements; requiring applications received by the department for renewal of independent motor vehicle dealer licenses to certify that the dealer has completed continuing education prior to filing the renewal forms with the department, subject to certain requirements; providing requirements for continuing education and dealer schools; authorizing such schools to charge a fee for providing continuing education; requiring applications received by the department for renewal of franchised motor vehicle dealer licenses to certify that the dealer has completed certain industry certification prior to filing the renewal forms with the department, subject to certain requirements; providing requirements for industry certification and certain statewide industry

associations of franchised motor vehicle dealers; authorizing an association to charge a fee for providing the industry certification; authorizing industry certification for licensees belonging to a certain dealership group to be accomplished by a certain designated person; requiring a licensee who seeks to satisfy the certification through a dealership group to provide the department with certain evidence at the time of filing the certificate of completion; providing an effective date.

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

Section 1. Paragraphs (c) and (d) of subsection (1) and subsections (2), (3), and (4) of section 320.27, Florida Statutes, are amended to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(c) "Motor vehicle dealer" means any person engaged in the business of buying, selling, or leasing ~~dealing in~~ motor vehicles or offering or displaying motor vehicles for sale or lease at wholesale, excluding sales from a manufacturer, factory branch, distributor, or importer licensed pursuant to s. 320.61 to a franchised motor vehicle dealer licensed pursuant to this section, or at retail, or who may service and repair motor vehicles pursuant to an agreement as defined in s. 320.60(1).

Any person who buys, sells, or leases ~~deals in~~ three or more motor vehicles in any 12-month period or who offers or displays for sale or lease three or more motor vehicles in any 12-month period is ~~shall be~~ prima facie presumed to be a motor vehicle dealer. Any person who engages in any of the following activities is deemed to be a motor vehicle dealer: possessing, storing, or displaying motor vehicles that such person offers for retail sale or lease; advertising motor vehicles held in inventory which such person offers for retail sale or lease; compensating customers for vehicles at wholesale or retail, also known as trade-ins; negotiating with customers regarding the terms of sale or lease for a motor vehicle; providing test drives of motor vehicles that such person offers for retail sale or lease; delivering or arranging for the delivery of a motor vehicle in conjunction with the retail sale or lease of the motor vehicle by such person ~~engaged in such business~~. ~~The terms "selling" and "sale" include lease-purchase transactions.~~ A motor vehicle dealer may, at retail or wholesale, sell a recreational vehicle as described in s. 320.01(1)(b)1.-6. and 8., acquired in exchange for the sale or lease of a motor vehicle, provided such acquisition is incidental to the principal business of being a motor vehicle dealer. However, a motor vehicle dealer may not buy a recreational vehicle for the purpose of resale unless licensed as a recreational vehicle dealer pursuant to s. 320.771. ~~A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchised agreement as~~

~~defined in s. 320.60(1), to buy, sell, or deal in such vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle; provided this limitation shall not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. The transfer of a motor vehicle by a dealer not meeting these qualifications shall be titled as a used vehicle.~~ The classifications of motor vehicle dealers are defined as follows:

1. "Franchised motor vehicle dealer" means any person who engages in the business of repairing, servicing, buying, selling, or leasing ~~dealing in~~ motor vehicles pursuant to an agreement as defined in s. 320.60(1). A motor vehicle dealer may apply for a certificate of title to a motor vehicle required to be registered under s. 320.08(2)(b), (c), and (d) or s. 320.08(3)(a), (b), or (c), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a franchise agreement as defined in s. 320.60(1) to buy, sell, or lease such vehicles and to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle. This limitation does not apply to recreational vehicles, van conversions, or any other motor vehicle manufactured on a truck chassis. A motor vehicle dealer may not transfer a manufacturer's statement of origin for a motor vehicle to any person who intends to sell such motor vehicle in this state unless such person is a licensed motor vehicle dealer authorized by a franchise agreement to buy, sell, or lease such vehicles.

2. "Independent motor vehicle dealer" means any person

other than a franchised or wholesale motor vehicle dealer who engages in the business of buying, selling, or leasing ~~dealing in~~ motor vehicles, and who may service and repair motor vehicles.

3. "Wholesale motor vehicle dealer" means any person who engages exclusively in the business of buying or~~,~~ selling~~, or dealing in~~ motor vehicles at wholesale or with motor vehicle auctions. Such person shall be licensed to do business in this state, shall not sell or auction a vehicle to any person who is not a licensed dealer, and shall not have the privilege of the use of dealer license plates. Any person who buys, sells, or deals in motor vehicles at wholesale or with motor vehicle auctions on behalf of a licensed motor vehicle dealer and as a bona fide employee of such licensed motor vehicle dealer is not required to be licensed as a wholesale motor vehicle dealer. In such cases it shall be prima facie presumed that a bona fide employer-employee relationship exists. A wholesale motor vehicle dealer shall be exempt from the display provisions of this section but shall maintain an office wherein records are kept in order that those records may be inspected.

4. "Motor vehicle auction" means any person offering motor vehicles or recreational vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers. Such person shall not sell a vehicle to anyone other than a licensed motor vehicle dealer.

5. "Salvage motor vehicle dealer" means any person who engages in the business of acquiring salvaged or wrecked motor vehicles for the purpose of reselling them and their parts.

Notwithstanding anything in this subsection to the contrary, the term "motor vehicle dealer" does not include persons not engaged in the purchase, ~~or~~ sale, or lease of motor vehicles as a business who are disposing of vehicles acquired for their own use or for use in their business or acquired by foreclosure or by operation of law, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the provisions of this law; persons engaged in the business of manufacturing, selling, or offering or displaying for sale or lease at wholesale or retail no more than 25 trailers in a 12-month period; public officers while performing their official duties; receivers; trustees, administrators, executors, guardians, or other persons appointed by, or acting under the judgment or order of, any court; banks, finance companies, or other loan agencies that acquire motor vehicles as an incident to their regular business; motor vehicle brokers; persons whose sole dealing in motor vehicles is owning a publication in which, or hosting a website on which, licensed motor vehicle dealers display vehicles for sale; persons primarily engaged in the business of the short-term rental of motor vehicles, which rental term may not exceed 12 months, who are not involved in the retail sale or lease of motor vehicles; and motor vehicle rental and leasing companies that sell motor vehicles only to motor vehicle dealers licensed under this section. Vehicles owned under circumstances described in this paragraph may be disposed of at retail, wholesale, or auction, unless otherwise restricted. A manufacturer of fire trucks, ambulances, or school buses may sell such vehicles directly to governmental agencies or to persons who contract to perform or provide firefighting,

ambulance, or school transportation services exclusively to governmental agencies without processing such sales through dealers if such fire trucks, ambulances, school buses, or similar vehicles are not presently available through motor vehicle dealers licensed by the department.

(d) "Motor vehicle broker" means any person engaged in the business of, or who holds himself or herself out through solicitation, advertisement, or other means as being in the business of, assisting ~~offering to procure or procuring motor vehicles for~~ the general public in purchasing or leasing a motor vehicle from a licensed motor vehicle dealer. A motor vehicle broker may~~, or who holds himself or herself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles for the general public, and who does~~ not store, display, or take ownership of any vehicles for the purpose of selling such vehicles. Any advertisement or solicitation by a motor vehicle broker must include conspicuous notice that the broker is receiving a fee and must clearly state that the broker is not a licensed motor vehicle dealer. A licensed manufacturer, distributor, or importer is not considered a motor vehicle broker.

(2) LICENSE REQUIRED.—No person shall engage in business as, serve in the capacity of, or act as a motor vehicle dealer or motor vehicle broker in this state without first obtaining a license therefor in the appropriate classification as provided in this section. With the exception of transactions with motor vehicle auctions, no person other than a licensed motor vehicle dealer may advertise for sale or lease any motor vehicle belonging to another party unless as a direct result of a bona

fide legal proceeding, court order, settlement of an estate, or by contract with a motor vehicle dealer, or by operation of law. However, owners of motor vehicles titled in their names may advertise and offer motor vehicles for sale on their own behalves, provided such vehicles are acquired and sold in good faith and not for the purpose of avoiding the requirements of this section ~~behalf~~. It shall be unlawful for a licensed motor vehicle dealer to allow any person other than its ~~a~~ bona fide employee to use the motor vehicle dealer license for the purpose of acting in the capacity of or conducting motor vehicle sales or lease transactions as a motor vehicle dealer. Any person acting ~~selling or offering a motor vehicle for sale~~ in violation of the licensing requirements of this subsection, or who misrepresents to any person his or her ~~its~~ relationship with any manufacturer, importer, ~~or~~ distributor, or motor vehicle dealer, in addition to the penalties provided herein, shall be deemed to have committed ~~guilty of~~ an unfair and deceptive trade practice ~~as defined~~ in violation of part II of chapter 501 and shall be subject to the provisions of subsections (8) and (9).

(3) APPLICATION AND FEE.—The application for the license shall be in such form as may be prescribed by the department and shall be subject to such rules with respect thereto as may be so prescribed by it. Such application shall be verified by oath or affirmation and shall contain a full statement of the name and birth date of the person or persons applying therefor; the name of the firm or copartnership, with the names and places of residence of all members thereof, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or

other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or places of residence of the applicant; and prior business in which the applicant has been engaged and the location thereof. Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which shall be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business which shall be conducted at that location. The application shall contain a statement that the applicant is ~~either~~ franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell shall be included; is~~, or~~ an independent (nonfranchised) motor vehicle dealer; or is a motor vehicle broker. The application shall contain other relevant information as may be required by the department, including evidence that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy,

which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance and personal injury protection insurance on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy shall be for the license period, and evidence of a new or continued policy shall be delivered to the department at the beginning of each license period. Upon making initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of $300 for the first year and $75 for the second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department $75 for a 1-year renewal or $150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a change of location, the person shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a

corporate applicant, must file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing shall be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

(4) LICENSE CERTIFICATE.—

(a) A license certificate shall be issued by the department in accordance with such application when the application is regular in form and in compliance with the provisions of this section. The license certificate may be in the form of a document or a computerized card as determined by the department. The actual cost of each original, additional, or replacement computerized card shall be borne by the licensee and is in addition to the fee for licensure. Such license, when so issued, entitles the licensee to carry on and conduct the business of a motor vehicle dealer or motor vehicle broker. Each license issued to a franchise motor vehicle dealer or motor vehicle broker expires on December 31 of the year of its expiration unless revoked or suspended before ~~prior to~~ that date. Each license issued to an independent or wholesale dealer or auction expires on April 30 of the year of its expiration unless revoked or suspended prior to that date. At least 60 days before the

license expiration date, the department shall deliver or mail to each licensee the necessary renewal forms along with a statement that the licensee is required to complete any applicable continuing education or industry certification requirements. ~~Each independent dealer shall certify that the dealer (owner, partner, officer, or director of the licensee, or a full-time employee of the licensee that holds a responsible management-level position) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification shall be filed once every 2 years. The continuing education shall include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education.~~ Any licensee who does not file his or her application and fees and any other requisite documents, as required by law, with the department at least 30 days prior to the license expiration date shall cease to engage in business as a motor vehicle dealer on the license expiration date. A renewal filed with the department within 45 days after the expiration date shall be accompanied by a delinquent fee of $100. Thereafter, a new application is required, accompanied by the initial license fee. A license certificate duly issued by the department may be modified by endorsement to show a change in the name of the licensee, provided, as shown by affidavit of the licensee, the

majority ownership interest of the licensee has not changed or the name of the person appearing as franchisee on the sales and service agreement has not changed. Modification of a license certificate to show any name change as herein provided shall not require initial licensure or reissuance of dealer tags; however, any dealer obtaining a name change shall transact all business in and be properly identified by that name. All documents relative to licensure shall reflect the new name. In the case of a franchise dealer, the name change shall be approved by the manufacturer, distributor, or importer. A licensee applying for a name change endorsement shall pay a fee of $25 which fee shall apply to the change in the name of a main location and all additional locations licensed under the provisions of subsection (5). Each initial license application received by the department shall be accompanied by verification that, within the preceding 6 months, the applicant, or one or more of his or her designated employees, has attended a training and information seminar conducted by a licensed motor vehicle dealer training school. Any applicant for a new franchised motor vehicle dealer license who has held a valid franchised motor vehicle dealer license continuously for the past 2 years and who remains in good standing with the department is exempt from the prelicensing training requirement. Such seminar shall include, but is not limited to, statutory dealer requirements, which requirements include required bookkeeping and recordkeeping procedures, requirements for the collection of sales and use taxes, and such other information that in the opinion of the department will promote good business practices. No seminar may exceed 8 hours in length.

(b) Each initial license application received by the department for licensure under subparagraph (1)(c)2. shall be accompanied by verification that, within the preceding 6 months, the applicant (owner, partner, officer, or director of the applicant, or a full-time employee of the applicant that holds a responsible management-level position) has successfully completed training conducted by a licensed motor vehicle dealer training school. Such training must include training in titling and registration of motor vehicles, laws relating to unfair and deceptive trade practices, laws relating to financing with regard to buy-here, pay-here operations, and such other information that in the opinion of the department will promote good business practices. Successful completion of this training shall be determined by examination administered at the end of the course and attendance of no less than 90 percent of the total hours required by such school. Any applicant who had held a valid motor vehicle dealer's license continuously within the past 2 years and who remains in good standing with the department is exempt from the prelicensing requirements of this section. The department shall have the authority to adopt any rule necessary for establishing the training curriculum; length of training, which shall not exceed 8 hours for required department topics and shall not exceed an additional 24 hours for topics related to other regulatory agencies' instructor qualifications; and any other requirements under this section. The curriculum for other subjects shall be approved by any and all other regulatory agencies having jurisdiction over specific subject matters; however, the overall administration of the licensing of these dealer schools and their instructors shall

remain with the department. Such schools are authorized to charge a fee.

(c) Each application received by the department for renewal of a license under subparagraph (1)(c)2. must certify that the dealer (owner, partner, officer, or director of the licensee, or a full-time employee of the licensee that holds a responsible management-level position) has completed 8 hours of continuing education prior to filing the renewal forms with the department. Such certification must be filed once every 2 years. The continuing education must include at least 2 hours of legal or legislative issues, 1 hour of department issues, and 5 hours of relevant motor vehicle industry topics. Continuing education shall be provided by dealer schools licensed under paragraph (b) either in a classroom setting or by correspondence. Such schools shall provide certificates of completion to the department and the customer which shall be filed with the license renewal form, and such schools may charge a fee for providing continuing education.

(d) Each application received by the department for renewal of a license under subparagraph (1)(c)1. must certify that the dealer (dealer operator, owner, partner, officer, director, or general manager of the licensee) has completed 4 hours of industry certification on legal and legislative issues each year prior to filing the renewal forms with the department. Industry certification shall be provided by a Florida-based, nonprofit, dealer-owned, statewide industry association of franchised motor vehicle dealers with state and federal compliance credentials approved by the department, and shall be in a classroom setting in convenient locations within the state. Such association shall

provide certificates of completion to the department and the customer which shall be filed with the license renewal form. An application for renewal of a license previously issued for 1 year must be accompanied by a certificate establishing completion of 4 hours of industry certification during the prior year. An application for renewal of a license previously issued for 2 years must be accompanied by certificates establishing completion of 8 hours of industry certification, except that renewal of a 2 year license that expires on December 31, 2019, must be accompanied by a certificate establishing completion of 4 hours of industry certification. An association may charge a fee for providing the industry certification. In the case of licensees belonging to a dealership group, the required industry certification may be satisfied for all licensees in the dealership group through completion of the industry certification by a single designated owner, officer, director, or manager of the dealership group. For purposes of this section, a dealership group is two or more licensed franchised motor vehicle dealers with common owners having legal or equitable title of at least 80 percent of each dealer in the group. A licensee who seeks to satisfy the required industry certification through a dealership group must provide the department with evidence of the required common ownership at the time of filing the certificate of completion.

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

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

2-22-18
Meeting Date

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

616
Bill Number (if applicable)

Topic Car dealers

Other Amendments
Amendment Barcode (if applicable)

Name Ted Smith

Job Title President

Address 400 N. Meridian St
Street

Phone 445 0435

City *State* *Zip*

Email teds@fada.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Automobile Dealers Assoc.

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)

2-22-18
Meeting Date

616
Bill Number (if applicable)

855974
Amendment Barcode (if applicable)

Topic Auto Bill

Name ALBERT GORE

Job Title Sr. Associate, Policy + Business Development

Address 3500 Deer Creek Road
Street

Phone 310-773-1401

Palo Alto CA 94304
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Tesla

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)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

Staff ee - FL

2-22-18 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting) CS/SB 616

Meeting Date *Bill Number (if applicable)*

Topic Auto Dealer

Amendment Barcode (if applicable)

Name TAYLOR BIEHL

Job Title LOBBYIST

Address 106 E. COLLEGE AVE Suite 640 Phone 850-224-1660

Street

TLH FL 32301 Email TAYLOR@CAPITOLALLIANCEGROUP.COM

City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☑ Against

(The Chair will read this information into the record.)

Representing TESLA

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

2-22-18
Meeting Date

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

616
Bill Number (if applicable)

Topic Car dealers

Strikeall
Amendment Barcode (if applicable)

Name TED SMITH

Job Title President

Address 400 N. MERIDIAN ST
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 445 0435

Email teds@flada.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL. Automobile Dealers Assoc

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 23, 2018

I respectfully request that **Senate Bill #616**, relating to Motor Vehicle Dealers, 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 676
INTRODUCER:	Rules Committee and Senator Passidomo
SUBJECT:	Equitable Distribution of Marital Assets and Liabilities
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	**Favorable**
2.	Billmeier	Knudson	BI	**Favorable**
3.	Tulloch	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

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

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

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

II. Present Situation:

Statutory Framework for the Equitable Distribution of Marital Assets and Liabilities

When a couple divorces in Florida, assets (i.e., property) and liabilities (i.e., debts) acquired by the couple during the marriage are subject to "equitable distribution."[1] Equitable distribution is based on the premise that "marriage is a partnership"[2] and the assets and liabilities acquired *during* the marriage belong to both spouses equally. Thus, Florida courts "must begin with the premise that the distribution" of marital assets and liabilities to divorcing spouses "should be equal."[3]

Under Florida law, "martial assets and liabilities" generally include:

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

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

Nonmartial assets and liabilities generally include:

- Assets (property) or liabilities (debts) acquired *prior* to the marriage.[12]
- Gifts or an inheritance received separately by one spouse from a third party.[13]
- All income from nonmartial assets during the marriage (for example, income derived from renting a nonmarital home when deposited into a separate bank account) unless the income

[1] Section 61.075, F.S.
[2] Emily Osborn, *The Treatment of Unearned Separate Property at Divorce in Common Law Property Jurisdictions*, 1990 Wis. L. Rev. 903, 909 (1990) (noting Florida enacted uniform model legislation).
[3] Section 61.075(1), F.S.; *see also* Osborn, *supra* note 1, at 909-10 & n. 32.
[4] Section 61.075(6)(a)1.a., F.S. *See also Rosenfeld v. Rosenfeld*, 597 So.2d 835, 837 (Fla.3d DCA 1992) (stating that once the spouses married, "each spouse's income during the marriage was marital income.").
[5] Section 61.075(6)(a)1.b., F.S.
[6] Section 61.075(6)(a)1.c., F.S.
[7] Section 61.075(6)(a)1.d., F.S.
[8] Section 61.075(6)(a)2., F.S.
[9] Section 61.075(6)(a)3., F.S. The presumption that gifts and jointly held real and personal property are martial assets may be rebutted by the spouse claiming they are not marital property. s. 61.075(6)(a)2.-4., F.S.
[10] Osborn, *supra* note 1, at 910.
[11] Section 61.075(6)(b), F.S.
[12] Section 61.075(6)(b)1., F.S. If the asset or liability is exchanged to acquire a new asset or incur a new liability, the new asset or liability will also be deemed nonmarital. *Id.*
[13] Section 61.075(6)(b)2., F.S. If the gift or bequest is exchanged to acquire a new asset, the asset will be deemed nonmarital property. *Id.*

was treated as or relied on as a marital asset by the parties (for example, the income derived from renting a nonmarital home is deposited into a joint bank account and relied upon by both spouses as income).[14]

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

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

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

The Facts of Kaaa

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

[14] Section 61.075(b)(b)3., F.S.
[15] Section 61.075(b)(b)4., F.S. If the excluded asset or liability is exchanged to acquire a new asset or incur a new liability, the new asset or liability is likewise excluded as marital property.
[16] Section 61.075(b)(b)5., F.S.
[17] 58 So.3d 867 (Fla. 2010).
[18] *Kaaa*, 58 So.3d at 872 (addressing how to determine an award of passive appreciation). The applicable provision was renumbered after *Kaaa* from s. 61.075(5)(a)(2), F.S. to s. 61.075(6)(a)1.b., F.S.
[19] *Id.* at 870-71 ("we conclude that the passive appreciation of a nonmarital asset, such as the Kaaa's marital home, is properly considered a martial asset where martial funds or the efforts of either party contributed to the appreciation . . . We agree with the reasoning in *Stevens* to the extent that it concludes that the payment of the *mortgage* with marital funds subjected the passive appreciation to equitable distribution. However, we emphasize here that it is the passive appreciation in the value of the home that is the martial asset, not the home itself.")
[20] *Id.* at 869-70.
[21] *See generally Mitchell v. Mitchell*, 841 So.2d 564, 567 (Fla.2d DCA 2003) ("the enhancement in value of a nonmarital asset resulting from either party's nonpassive efforts or the expenditure of marital funds is a marital asset") (*overruled sub silento by Kaaa,* 58 So.3d at 870).
[22] *Kaaa*, 58 So.3d at 869.

even though the home was refinanced several times during the marriage. Thus, because the home was titled only to Mr. Kaaa, the home was determined to be his separate, nonmarital property.[23]

During the divorce proceedings, the nonowner spouse, Mrs. Kaaa, argued that she was entitled not only to half of the active appreciation in the value of the home (pay down of the mortgage principal and addition of the carport), but also the passive appreciation of the home during the 27-year marriage (increase from $36,500 to $225,000). However, the trial court held that she was only entitled to half of the active appreciation. The active appreciation was only $36,679 ($22,279 mortgage amount paid + $14,400 for carport), so Mrs. Kaaa's half share was only $18,339.50.[24]

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

Calculating Passive Appreciation under Kaaa

On review by the Florida Supreme Court, first, the Court reversed the Second District's *Kaaa* decision[29] and approved the holding in *Stevens*, that a nonowner spouse may be entitled to a portion of the value of passive appreciation of a home when marital funds paid the mortgage.[30] Second, the Court explained how to calculate the amount of passive appreciation to be equitably distributed and set out the following steps the trial court must take, which incorporates a fraction set out in *Stevens*:

1.) Determine the overall fair market value of the home.

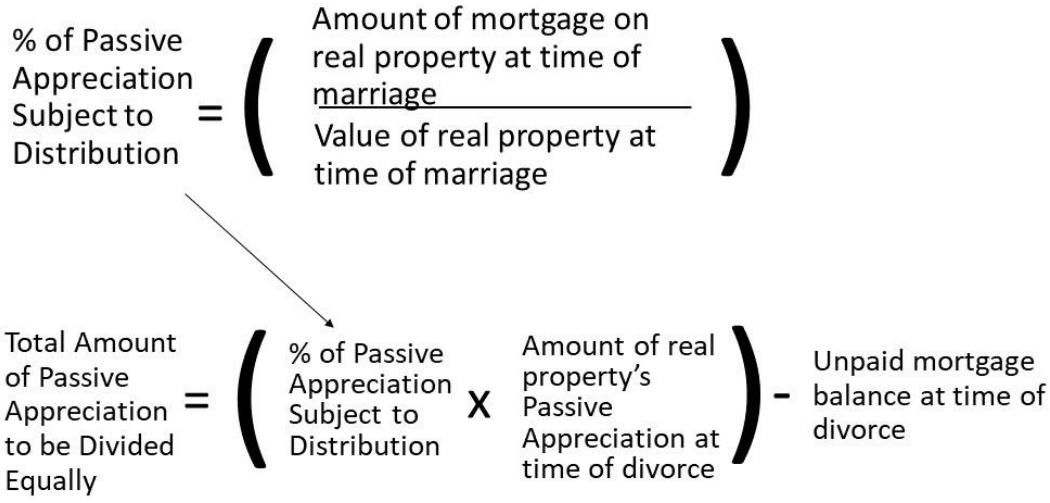
2.) Determine whether there is passive appreciation in the home's value.

3.) Determine whether the passive appreciation is a marital asset. The *Kaaa* Court further announced that the trial court must make the following factual findings under this step:
(a) whether marital funds were used to pay the mortgage;
(b) whether the nonowner spouse made contributions to the property; and
(c) the extent to which the contributions of the nonowner spouse affected the appreciation of the property.[31]

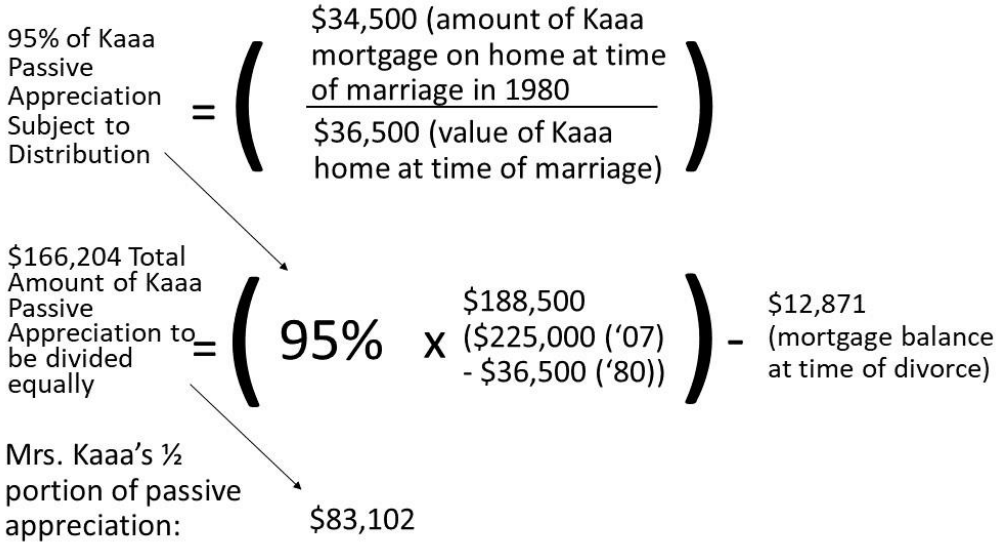
4.) Determine the value of the passive appreciation subject to equitable distribution. Under this step, the *Kaaa* Court announced that courts should utilize the fraction set out in

[23] *Id.*
[24] *Id.*
[25] *Kaaa v. Kaaa,* 9 So.3d 756, 757 (Fla.2d DCA 2009).
[26] *Id.; Stevens v. Stevens,* 651 So.2d 1306 (Fla. 1st DCA 1995).
[27] *Id.* at 1307.
[28] *Id.*
[29] *Kaaa v. Kaaa,* 9 So.3d 756, 757 (Fla.2d DCA 2009).
[30] *Kaaa*, 58 So.3d at 871.
[31] *Id.* at 872.

Stevens to allocate the value of passive appreciation when the mortgage on nonmarital real property is repaid entirely by marital funds:[32]



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



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

[32] *Id.*

The Florida Bar Family Law Section's Concern with the *Kaaa*[33] Formulation

While The Florida Bar Family Law Section (Section) agrees with *Kaaa*'s holding that a nonowner spouse should be entitled to some portion of the passive appreciation value when the mortgage on a real property is paid down with marital funds, the Section is concerned about the formula set out in *Kaaa*. The Section views the *Kaaa* formula as arbitrary because it fails to take into account the actual contributions of each party in paying down the mortgage during the marriage. The Section proposes, instead, that a "coverture fraction" be utilized in place of the *Stevens* fraction adopted by *Kaaa*, which replaces the numerator (top number) with the amount of mortgage principal paid down *during* the marriage.[34]

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

In Florida, coverture[35] fractions are often used in determining a spouse's marital share of military and pension or retirement benefits, which are viewed as moving targets since these benefits may increase or decrease based on the markets.[36] In the retirement context, "[t]he coverture fraction is the proportion of years worked during the marriage to total number of years worked."[37] "The numerator [top number] represents that portion of the benefit, enhanced or not, that was legally and beneficially acquired during the marriage."[38] "The denominator [bottom number] is the total number of years worked up to retirement."[39] "The longer the employee spouse works, the larger the denominator [of the coverture fraction], thus reducing the non-employee spouse's percentage share and assuring the employee spouse the benefits of his or her post-divorce labors."[40]

A coverture fraction generally works the same outside the retirement context. It is a specifically tailored fraction based on the divorcing couple's particular circumstances that aims to insure "that the equitable distribution pot includes only that portion of the working spouse's labor

[33] 58 So.3d 867 (Fla. 2010).
[34] Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of The Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).
[35] "*Coverture* is by law applied to the state and condition of a married woman, who is *sub potestati viri*, (under the power of her husband) and therefore unable to contract with any to the damage of herself or husband, without his consent and privity, or his allowance and confirmation thereof." BLACK'S LAW DICTIONARY (10th ed. 2014) (citing *The Pocket Lawyer and Family Conveyancer* 96 (3d ed. 1833)).
[36] *See Parry v. Parry*, 933 So.2d 9, 14 (Fla. 2d DCA 2006); *In re Marriage of Hug*, 201 Cal. Rptr. 676, 681 (Ct. App. 1984). *See also* JERRY REISS & KDOUGLAS H. REYNOLDS, *The Not-So-Simple Coverture Fraction: Do Attorneys Risk More Than Embittered Clients?*, Fla. B.J., MAY 1996, at 62, 63
[37] *Eisenhardt v. Eisenhardt*, 740 A.2d 164, 166 (App. Div. 1999).
[38] *Id.* (citations and internal quotation marks omitted).
[39] *Id.*
[40] *Barr v. Barr*, 11 A.3d 875, 884 (App. Div. 2011). (quoting *Reinbold v Reinbold*, 710 A.2d 556 (App. Div.1998)).

which constitutes a 'shared enterprise.'"[41] Generally, large denominators [bottom numbers] favor the owner spouse, whereas large numerators [top numbers] favor nonowner spouses.[42] According to the Section, the proposed coverture fraction is designed to measure the actual martial contributions of each party in paying down the mortgage during the marriage when measuring passive appreciation. The Section believes the formula is more fair and equitable to the owner spouse. While the nonowner spouse may receive much less under the coverture formula than the *Kaaa* formula, the Section notes that the coverture formula *only* applies to passive appreciation (market forces and inflation), and that the nonowner spouse is still entitled to a 50 percent share of active appreciation.[43]

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

III. Effect of Proposed Changes:

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

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

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[41] *Id.* (quoting *Eisenhardt* at 581).
[42] David Clayton Conrad, *The Complete QDRO Handbook, Dividing ERISA, Military, and Civil Service Pensions and Collecting Child Support from Employee Benefit Plans*, p. 53, American Bar Association, Section of Family Law, (3d ed. 2009), available at https://books.google.com/books?id=huTtOPnR318C&pg=PA57&lpg=PA57&dq=simple+definition+coverture+fraction&source=bl&ots=cj8On51Qu7&sig=9oaLHheB_HQ7Fa7-O4gtZf6I6aA&hl=en&sa=X&ved=0ahUKEwiH9euM5qrYAhXLS98KHZVJAeY4ChDoAQhEMAU#v=onepage&q=simple%20definition%20coverture%20fraction&f=false (last visited Dec. 27, 2017).
[43] Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of the Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).
[44] *Kaaa v. Kaaa*, 58 So.3d at 872 ("Third, the court must determine whether the passive appreciation is a marital asset under section 61.075(5)(a)(2). This step must include findings of fact by the trial court that marital funds were used to pay the mortgage *and* that the nonowner spouse made contributions to the property.") (emphasis added).
[45] Conversation with David Manz, The Florida Bar Family Law Section (Nov. 16, 2017); Family Law Section of the Florida Bar, *Proposed Equitable Distribution Legislation* (2017) (on file with the Senate Judiciary Committee).

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

Proposed Bill: Step 1 – Determine Amount of Passive Appreciation

Property Value on divorce date
(– Active appreciation)
(– Additional encumbrances)

– Value on Date of Marriage

= *Amount of Passive Appreciation

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

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

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

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

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

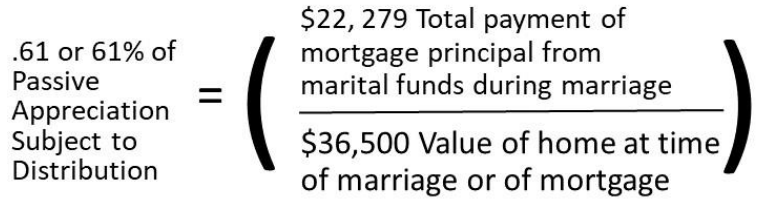
Step 1:

$225,000 Property Value on divorce date
(– $36,679 Active appreciation)
(– $12,871 Additional encumbrances (mortgage balance))

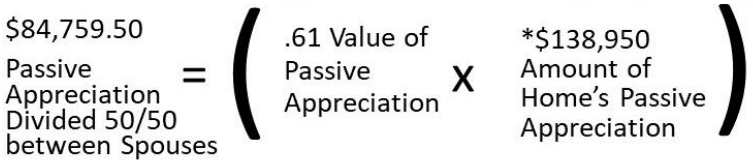
– $36,500 Value on Date of Marriage

= $138,950 *Amount of Passive Appreciation

Step 2:



Step 3:



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

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

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

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 61.075 of the Florida Statutes.

IX. Additional Information:

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

CS by Rules on February 22, 2018:

The committee substitute strikes the word “gross” from the “gross value of property” language in line 40 and replaces it with the “value of property” language from line 42 in order to reflect the intent that both lines refer to the same method of determining value.

B. Amendments:

None.

534390

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2018	.	
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	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment

Delete line 40
and insert:
the value of the property on the date of the marriage or

By Senator Passidomo

28-00819-18 2018676__

A bill to be entitled

An act relating to equitable distribution of marital assets and liabilities; amending s. 61.075, F.S.; redefining the term "marital assets and liabilities" for purposes of equitable distribution in dissolution of marriage actions; providing that the term includes the paydown of principal of notes and mortgages secured by nonmarital real property and certain passive appreciation in such property under certain circumstances; providing formulas and guidelines for determining the amount of such passive appreciation; authorizing the court to require security and interest when installment payments are ordered in the division of assets; providing applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) and subsection (10) of section 61.075, Florida Statutes, are amended to read:

61.075 Equitable distribution of marital assets and liabilities.—

(6) As used in this section:

(a)1. "Marital assets and liabilities" include:

a. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.

b. The enhancement in value and appreciation of nonmarital assets resulting ~~either~~ from the efforts of either party during the marriage or from the contribution to or expenditure thereon

28-00819-18 2018676__

of marital funds or other forms of marital assets, or both.

c. The paydown of principal of a note and mortgage secured by nonmarital real property and a portion of any passive appreciation in the property, if the note and mortgage secured by the property are paid down from marital funds during the marriage. The portion of passive appreciation in the property characterized as marital and subject to equitable distribution is determined by multiplying a coverture fraction by the passive appreciation in the property during the marriage.

(I) The passive appreciation is determined by subtracting the gross value of the property on the date of the marriage or the date of acquisition of the property, whichever is later, from the value of the property on the valuation date in the dissolution action, less any active appreciation of the property during the marriage as described in sub-subparagraph b., and less any additional encumbrances secured by the property during the marriage in excess of the first note and mortgage on which principal is paid from marital funds.

(II) The coverture fraction must consist of a numerator, defined as the total payment of principal from marital funds of all notes and mortgages secured by the property during the marriage, and a denominator, defined as the value of the subject real property on the date of the marriage, the date of acquisition of the property, or the date the property was encumbered by the first note and mortgage on which principal was paid from marital funds, whichever is later.

(III) The passive appreciation must be multiplied by the coverture fraction to determine the marital portion of the passive appreciation of the property.

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

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

d.~~c.~~ Interspousal gifts during the marriage.

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

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

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

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

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.2018
Meeting Date

676
Bill Number (if applicable)

Topic EQUITABLE DISTRIBUTION

Amendment Barcode (if applicable)

Name DAVID L. MANZ

Job Title ATTORNEY

Address 5701 O/S HIGHWAY, SUITE 7
Street

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MARATHON FL 33050
City *State* *Zip*

Email dlm@gmpa/mw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA BAR FAMILY LAW SECTION

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 31, 2018

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

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

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 1252
INTRODUCER:	Health Policy Committee and Senator Passidomo
SUBJECT:	Distributing Pharmaceutical Drugs and Devices
DATE:	February 22, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1252 exempts any manufacturer holding a manufacturer permit, or its agent that holds a manufacturer or third party logistics provider permit, under the Florida Drug and Cosmetic Act,[1] from the requirements of the Florida Pharmacy Act[2] for the distribution of dialysate,[3] drugs, or devices that are necessary to perform home renal dialysis under certain circumstances.

The bill has no impact on state government.

CS/SB 1252 bill takes effect upon becoming law.

II. Present Situation:

Kidney Disease and Renal Dialysis

Chronic kidney disease is a condition in which a person gradually loses kidney function over time, and includes conditions that damage the kidneys and decrease their ability to process

[1] *See* ss. 499.001 through 499.94, F.S.
[2] *See* ch. 465, F.S.
[3] Dialysate is a fluid used in dialysis to pull toxins from blood. *See* https://www.merriam-webster.com/dictionary/dialysate (last visited Feb. 1, 2018).

waste.[4] Renal dialysis is a common treatment for individuals with chronic kidney failure, and is used to:[5]

- Remove waste, salt, and extra water to prevent build up in the body;
- Maintain a safe level of certain chemicals in the blood, such as potassium, sodium, and bicarbonate; and
- Control blood pressure.

Renal dialysis may be performed in a hospital, in a dialysis unit that is not part of a hospital, or in a person's home.[6] Additionally, there are two types of dialysis, hemodialysis and peritoneal dialysis.

In hemodialysis, an artificial kidney, called a hemodialyzer, is used to remove waste and extra chemicals and fluid from the blood.[7] Blood is pumped out of the body and into the hemodialyzer to be cleaned. The dialyzer, or filter, has two parts, separated by a thin membrane: one for blood and one for a washing fluid, called dialysate.[8] Blood cells and proteins remain in the blood because they are too large to pass through the membrane; however, smaller waste products, such as urea, creatinine, potassium, and extra fluid pass through the membrane and are washed away.[9] The filtered blood is returned to the body when the process is complete.[10]

In peritoneal dialysis, the inside lining of the abdominal cavity acts as a natural filter and wastes are taken out with dialysate, which is washed in and out of the abdominal cavity in cycles.[11] A catheter is surgically inserted into the abdominal cavity and is used to transfer the dialysate into and out of the abdominal cavity.[12] There are two kinds of peritoneal dialysis, continuous ambulatory peritoneal dialysis and automated peritoneal dialysis.[13] The former is manual and done while the person receiving treatment goes about normal daily activities, and the latter is a machine cycler that is usually done overnight, while the person is asleep.[14]

Regulation of Pharmacies and Pharmacists

Pursuant to ch. 465, F.S., the Florida Board of Pharmacy, within the Department of Health (DOH), licenses and regulates the practice of pharmacy, including community pharmacies,[15]

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[4] *See* National Kidney Foundation, *About Chronic Kidney Disease*, (February 15, 2017) at https://www.kidney.org/kidneydisease/aboutckd (last visited Feb. 1, 2018).
[5] *See* National Kidney Foundation, *Dialysis* at https://www.kidney.org/atoz/content/dialysisinfo (last visited Feb. 1, 2018).
[6] *Id*.
[7] National Kidney Foundation, *Hemodialysis*, https://www.kidney.org/atoz/content/hemodialysis (last visited Feb. 1, 2018).
[8] National Kidney Foundation, *Peritoneal Dialysis: What You Need to Know*, https://www.kidney.org/atoz/content/peritoneal (last visited Feb. 1, 2018).
[9] *Supra* note 7.
[10] *Supra* note 8.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] A community pharmacy includes every location where medicinal drugs are compounded, dispensed, stored, or sold, or where prescriptions are filled or dispensed on an outpatient basis. Section 465.003(11)(a)1., F.S.

institutional pharmacies,[16] nuclear pharmacies,[17] special pharmacies,[18] and internet pharmacies.[19] The board regulates the operation of pharmacies and disciplines pharmacies for failure to comply with state and federal regulations.[20] One aspect of the practice of pharmacy involves the dispensing of prescription drugs pursuant to a physician's prescription or order.[21]

Special Pharmacy – End Stage Renal Dialysis Permit

The Board of Pharmacy recognizes six types of special pharmacy permits, including Special Pharmacy – End Stage Renal Dialysis (ESRD).[22] An ESRD permit is required for any person who provides dialysis products and supplies to persons with chronic kidney failure for self-administration at the person's home or specified address.[23] To obtain an ESRD permit, an applicant must:[24]

- Complete an application and pay a $250 initial payment fee;
- Submit a legible set of fingerprint cards and $48 fee for each person having an ownership interest of at least 5 percent, and any person who, directly or indirectly, manages, oversees, or controls the operation of the pharmacy, including officers and members of the board of directors, if the applicant is a corporation;
- Pass an on-site inspection;
- Provide written policies and procedures for preventing controlled substance dispensing based on fraudulent representations or invalid practitioner-patient relationships; and
- Designate a prescription department manager or consultant pharmacist of record.

Florida law provides an exemption to pharmacy permitting requirements, including ESRD permits, under limited circumstances. Specifically, s. 465.027(2), F.S., exempts a manufacturer, or its agent holding an active permit as a manufacturer under ch. 499, F.S., who is engaged solely in the manufacture or distribution of dialysate, drugs, or devices necessary to perform home renal dialysis on patients with chronic kidney failure, from pharmacy permitting and regulatory requirements if the dialysate, drugs, or devices are:

- Approved by the federal Food and Drug Administration; and
- Delivered in the original, sealed packaging to the patient for self-administration after receipt of a physician's order to dispense, to a health care practitioner, or to an institution.[25]

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[16] An institutional pharmacy includes every location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold. Section 465.003(11)(a)2., F.S.
[17] A nuclear pharmacy includes every location were radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals or the nuclear medicine facilities of hospitals. Section 465.003(11)(a)3., F.S.
[18] A special pharmacy includes every location where medicinal drugs are compounded, dispensed, stored, or sold, if not otherwise classified as a community pharmacy, institutional pharmacy, nuclear pharmacy, or internet pharmacy. Section 465.003(11)(a)4., F.S.
[19] An internet pharmacy includes locations not otherwise licensed or issued a permit pursuant to statute, within or outside of this state, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy. Section 465.003(11)(a)5., F.S.
[20] *See* ss. 465.022 and 465.023, F.S.
[21] *See* s. 465.003(6) and (14), F.S.
[22] *See* Fla. Admin. Code R. 64B16-28.100 (5(d) (2018).
[23] *See* Fla. Admin. Code R. 64B16-28.850(1) (2018).
[24] *See* Fla. Admin. Code R. 64B16-28.16-28.100(1) and (5) (2018).
[25] This exemption was enacted in ch. 2016-230, s. 23, Laws of Fla.

Regulation of Drugs, Devices, and Cosmetics in Florida

Part I of ch. 499, F.S., the Florida Drug and Cosmetic Act, requires the Department of Business and Professional Regulation (DBPR) to regulate drugs, devices, and cosmetics.[26] Most of the regulations relate to the distribution of prescription drugs into and within Florida. The chapter also regulates manufacturing and distributing medical devices. In particular, the regulations require various entities in the distribution chain, such as prescription drug manufacturers and prescription drug wholesale distributors, to obtain permits. Florida has 18 distinct permits for these entities.[27]

Manufacturer Permits

The DBPR offers nine different manufacturer and repackager permits for prescription drugs, over-the-counter drugs, cosmetics, and medical devices.[28]

Prescription drug manufacturer permits are required for anyone that manufactures a prescription drug and manufactures or distributes that prescription drugs in Florida.[29] If someone manufactures prescription drugs outside of Florida, but distributes their prescription drugs into Florida, a nonresident prescription drug manufacturer permit is required, unless that person is permitted as a third party logistics provider.[30] Virtual permits are available for those who manufacture prescription drugs but do not make or take physical possession of any prescription drugs.[31] An over-the-counter drug manufacturer permit is required for anyone manufacturing or repackaging over-the-counter drugs,[32] and a cosmetic manufacturer permit is required for anyone manufacturing or repackaging cosmetics in Florida.[33]

A device manufacturer permit is required for anyone manufacturing, repackaging, or assembling medical devices for human use, unless the person only manufactures, repackages, or assembles medical devices or components:[34]

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[26] Section 27, ch. 2010-161, Laws of Fla., shifted responsibility for operation and enforcement of the Florida Drug and Cosmetic Act (ch. 499, F.S.) from the DOH to the DBPR.

[27] A permit is required for a prescription drug manufacturer; a prescription drug repackager; a nonresident prescription drug manufacturer; a prescription drug wholesale distributor; an out-of-state prescription drug wholesale distributor; a retail pharmacy drug wholesale distributor; a restricted prescription drug distributor; a complimentary drug distributor; a freight forwarder; a veterinary prescription drug retail establishment; a veterinary prescription drug wholesale distributor; a limited prescription drug veterinary wholesale distributor; an over-the-counter drug manufacturer; a device manufacturer; a cosmetic manufacturer; a third party logistics provider; or a health care clinic establishment. Section 499.01(1), F.S.

[28] *See* the DBPR's website at http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/apply/#1510868730238-4ebd727c-3d62 (last visited Feb. 1, 2018).

[29] Section 499.01(2)(a), F.S.

[30] Section 499.01(2)(c), F.S.

[31] Section 499.01(2)(a)1., F.S., and s. 499.01(2)(c), F.S. *See* the DBPR's website at http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/nonresident-prescription-drug-manufacturer-virtual/ (last visited Feb. 1, 2018).

[32] Section 499.01(2)(n), F.S. *See* the DBPR's website at http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/over-the-counter-drug-manufacturer/ (last visited Feb. 1, 2018).

[33] Section 499.01(2)(p), F.S. Someone that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a cosmetic manufacturer permit. *See* the DBPR's website at http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/cosmetic-manufacturer/ (last visited Feb. 1, 2018).

[34] Section 499.01(2)(o), F.S.

- Pursuant to a practitioner's order for a specific patient; or
- Registered with the federal Food and Drug Administration and that satisfy specified statutory requirements.

Regulation of Third-Party Logistics Providers

A third-party logistics provider acts as an intermediary between the manufacturer or distributor of prescription drugs and the consumer by providing supply chain logistics services and transportation. A third party logistics provider contracts with a prescription drug wholesale distributor or prescription drug manufacturer to provide warehousing, distribution, or other logistics services on behalf a manufacturer, wholesale distributor, or dispenser, but does not take title to or have responsibility to direct the sale or disposition of the prescription drug.[35]

Third-party logistic providers must obtain a DBPR permit before operating in Florida and out-of-state third-party logistics providers must also be licensed in the state or territory from which it distributes the prescription drug.[36] Third-party logistics providers that provide dialysis products and supplies to persons with chronic kidney failure for self-administration at the person's home must also obtain an ESRD permit from the Board of Pharmacy.[37]

III. Effect of Proposed Changes:

CS/SB 1252 amends s. 465.027, F.S., to expand and clarify the exemption from the Florida Pharmacy Act for the distribution of certain drugs and devices directly to a patient by a manufacturer's third party logistics provider.

The bill exempts a manufacturer's agent who holds a third party logistics provider permit under ch. 499, F.S., (related to drugs, devices, and cosmetics), from the requirements of ch. 465, F.S., (related to pharmacies), when the manufacturer's agent is engaged in the distribution of dialysate, drugs, or devices necessary to perform home renal dialysis on patients with chronic kidney failure, and the dialysate, drugs, or devices are:

- Approved by the United States Food and Drug Administration; and
- Delivered in the original, sealed packaging after receipt of a physician's order to dispense to a patient or the patient's designee for the patient's self-administration, or to a health care practitioner or institution for administration or delivery of dialysis therapy.

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[35] Section 499.01(2)(q), F.S.
[36] If the state or territory from which the third party logistics provider originates does not require a license to operate as a third party logistics provider, the third party logistics provider must be licensed as a third party logistics provider as required under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ss. 301 *et seq*. *Id.*
[37] *See* Fla. Admin. Code R. 64B-16-28.100(5)(d)4. (2018).

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:

Third party logistics provider permit holders made exempt under the bill may see a positive fiscal impact due to no longer being required to pay any permitting fees required by ch. 465, F.S.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 465.027 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 Health Policy on January 23, 2018:
The CS specifies that the exemption from the Florida Pharmacy Act also applies to the manufacturer's agent if the agent is a third party logistics provider permit holder, or the agent of the manufacturer or third party logistics provider permit holder is engaged in providing dialysate, drugs, or devices related to renal dialysis as detailed in the bill.

The CS changes the effective date to upon becoming law.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Passidomo

588-02385-18 20181252c1

A bill to be entitled

An act relating to distributing pharmaceutical drugs and devices; amending s. 465.027, F.S.; revising an exception to pharmacy regulations for certain manufacturers and distributors of dialysis drugs or supplies; providing an effective date.

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

Section 1. Subsection (2) of section 465.027, Florida Statutes, is amended to read:

465.027 Exceptions.—

(2) This chapter does ~~shall~~ not apply to a manufacturer, or its agent, holding an active manufacturer or third-party logistics provider permit ~~as a manufacturer~~ under chapter 499, to the extent the manufacturer, or its agent, is ~~and~~ engaged ~~solely~~ in the manufacture or distribution of dialysate, drugs, or devices necessary to perform home renal dialysis on patients with chronic kidney failure, if the dialysate, drugs, or devices are:

(a) Approved or cleared by the United States Food and Drug Administration; and

(b) Delivered in the original, sealed packaging after receipt of a physician's order to dispense to:

1. A patient with chronic kidney failure, or the patient's designee, for the patient's self-administration of the dialysis therapy; or

2. A health care practitioner or an institution for administration or delivery of the dialysis therapy to a patient

588-02385-18 20181252c1

with chronic kidney failure.

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

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 9, 2018

I respectfully request that **Senate Bill #1252**, relating to Distributing Pharmaceutical Drugs and Devices, 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/CS/CS/SB 664
INTRODUCER:	Rules Committee; Transportation Committee; Commerce and Tourism Committee; and Senators Young and others
SUBJECT:	Salvage of Pleasure Vessels
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	**Fav/CS**
2.	Price	Miller	TR	**Fav/CS**
3.	Little	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 664 requires all salvors operating in the waters of Florida to provide customers with a written notification before salvaging a pleasure vessel.

The salvage of a vessel occurs when assistance is voluntarily rendered to a vessel under circumstances of marine peril, and such assistance is successful in saving, preserving, or rescuing the vessel. The individual who rendered the assistance that saved, preserved, or rescued the vessel, is considered the salvor. Generally, a salvor is entitled to an award of compensation after the salvage of a vessel.

The bill requires all salvors operating in the waters of Florida to notify a customer in writing when the salvor offers a service to the customer that is considered salvage work and the cost of the work will not be covered by a towing contract. The written notice must provide a specified description of salvage operations and inform the customer of his or her right to agree to a fixed price or to decline service. The customer must sign the notice before the salvor begins salvage work, unless there is an imminent threat of injury or death to any person on board the vessel.

If a salvor fails to provide the customer with the notice required by the bill, the owner of the pleasure vessel is authorized to bring a civil action in a court of competent jurisdiction. The bill provides that a prevailing owner is entitled to damages in an amount equal to 1.5 times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees.

II. Present Situation:

Salvage of Vessels

Admiralty law encourages seamen to render prompt aid to vessels and property in peril at sea by authorizing vessels of the United States and numbered motorboats owned by citizens to engage in any salvage operation within the territorial waters of the United States.[1]

An award for salvage is "the compensation allowed to persons by whose voluntary assistance a ship at sea or her cargo or both have been saved in whole or in part from impending sea peril."[2]

To assert a valid salvage claim, a salvor must establish three necessary elements:
- That a marine peril[3] existed;
- That the salvage service was rendered voluntarily and was not required as an existing duty or from a special contract; and
- That the salvage service rendered contributed to success, in whole or in part, in saving the ship from the marine peril.[4]

Federal district courts have original jurisdiction of "any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."[5,6] The amount of an award for salvage can vary greatly.[7] Traditionally, courts have considered the following factors in determining an award for salvage:
- The labor expended by the salvors in rendering the salvage service;
- The promptitude, skill, and energy displayed in rendering the salvage service;
- The value of the property employed by the salvors in rendering the service; and
- The danger to which such property was exposed;
- The risk incurred by the salvors in securing the property from the impending peril;
- The value of the property employed by the salvors in rendering the service and the danger to which such property was exposed;
- The risk incurred by the salvors in securing the property from the impending peril;
- The value of the property saved; and
- The degree of danger from which the property was rescued.[8]

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[1] 19 C.F.R. s. 4.97(a) (1969).
[2] *The Sabine*, 101 U.S. 384, 384 (1879).
[3] Marine peril does not necessarily require immediate or actual danger so long as at the time the assistance was rendered the ship was in a situation that might expose her to loss or destruction. *Fine v. Rockwood*, 895 F. Supp. 306, 309 (S.D. Fla 1995).
[4] *Id. See also Klein v. Unidentified Wreck & Abandoned Sailing Vessel*, 785 F.2d 1511, 1515 (11th Cir. 1985).
[5] 28 U.S.C. s. 1333.
[6] The "saving to suitors clause" has been interpreted to allow state courts concurrent jurisdiction over common law claims arising in connection with admiralty claims. *See Sebastian Tow Boat & Salvage, Inc. v. Vernon Slavens & Allstate Floridian Insurance Co.*, 16 FLW Fed, D187 (M.D. Fla. 2002) (holding that the state court has concurrent jurisdiction, so long as the case proceeded *in personam* rather than *in rem*, and the cause of action arose from a contract entered into by both parties).
[7] *Biscayne Towing & Salvage, Inc. v. Kilo Alfa Ltd.*, 2004 WL 3310573 (S.D. Fla 2004).
[8] *The Blackwell*, 77 U.S. 1 (1869).

In an effort to establish uniformity in determining the amount of a salvage award, The 1989 International Convention on Salvage[9] added additional factors to consider in determining the amount of a salvage award. The additional factors include consideration for the prevention or minimization of environmental damage.[10]

Generally, state courts may apply state law to maritime actions so long as there is no conflict with federal law.[11]

III. Effect of Proposed Changes:

The bill creates s. 559.9602, F.S., relating to the salvage of pleasure vessels. The bill applies the new section to all salvors operating in the waters of Florida,[12] with the exception of:

- Any person who performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government;
- Any person who engages solely in salvage work for:
  - Pleasure vessels that are owned, maintained, and operated exclusively by such person and for the person's own use; or
  - For-hire pleasure vessels that are rented for periods of 30 days or less;
- Any person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at the person's facility;
- Any person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer; or
- Any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

The bill also provides definitions for the terms "customer,"[13] "pleasure vessel,"[14] "salvage work,"[15] and "salvor."[16]

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[9] United Nations, *International Convention on Salvage*, *available at* https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf (last visited Feb. 22, 2018).

[10] *International Convention on Salvage, 1989*, http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf (last visited Feb. 22, 2018); International Maritime Organization, *International Convention on Salvage*, *available at* http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx, (last visited Feb. 22, 2018).

[11] *Madruga v. Superior Court of State of California ex. Rel San Diego County*, 346 U.S. 556 (1954). See the discussion under the "Other Constitutional Issues" heading below for further details.

[12] Section 327.02(47), F.S., defines the waters of Florida as "any navigable waters of the United States within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as a part of a journey or ride to or from the shore of this state, and all the inland lakes, rivers, and canals under the jurisdiction of this state."

[13] "Customer" means the owner of the pleasure vessel or the person who has been given the authority by the owner to authorize salvage work of the pleasure vessel.

[14] "Pleasure vessel" means any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.

[15] "Salvage work" means any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew which are in marine peril. Salvage work does not include towing a vessel.

[16] "Salvor" means a person in the business of voluntarily providing assistance, services, repairs, or other efforts related to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril in exchange for compensation.

The bill requires a salvor, before engaging in the salvage of a pleasure vessel, to provide a customer with written notice that the service offered is considered salvage work and the service is not covered by a towing contract. The written notice must include a statement in capital letters of at least 12-point type that notifies the customer that:

- The service offered is salvage work not covered by any towing contract.
- Salvage work allows the salvor to bill the customer or the customer's insurance company at a later date.
- The salvor is required to calculate the charges according to federal salvage law.
- The total salvage charges could amount to as much as the entire value of the vessel and its contents, including its gear and equipment.
- If the customer agrees to allow the salvor to perform the offered work without an agreement for a fixed charge, the customer's only recourse to challenge any salvage charges is by a lawsuit in federal court or, if the customer and salvor both agree in writing, by binding arbitration.
- The customer and salvor may agree in writing to a fixed charge on the U.S. Open Form Salvage Agreement[17] or other similar salvage contract.
- The customer has the right to reject the salvor's offer of service if the salvor will not agree to a charge before beginning work.

The salvor must also obtain the signature of the customer on the written notice before engaging in the salvage of a pleasure vessel. However, the bill relieves a salvor of the obligation to provide the notice and obtain a signature when there is an imminent threat of injury or death to any person on board the vessel.

The bill provides that an owner who does not receive the required notice may bring an action for relief in a court of competent jurisdiction. An owner who prevails in such action is entitled to damages in the amount of 1.5 times that paid or awarded to the salvor, plus court costs and reasonable attorney fees.

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.

[17] *See* The Society of Maritime Arbitrators, *The U.S. Open Form Salvage Agreement*, *available at* http://www.smany.org/salvage-rules-agreement-form.html (last visited Feb. 22, 2018).

D. Other Constitutional Issues:

The U.S. Constitution grants federal district courts judicial power over of any civil case of admiralty or maritime jurisdiction.[18] While it is established that federal courts have exclusive jurisdiction over *in rem* actions,[19] courts are split as to whether states can handle admiralty or maritime *in personam* claims for *quantum meruit.*[20] As noted, state courts generally may apply state law to maritime actions so long as there is no conflict with federal law.[21]

The bill provides a legal remedy for owners of pleasure vessels and entitles a prevailing owner an award of damages equal to 1.5 times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees. Federal maritime law does not award attorney fees to a prevailing party.[22] It is unclear whether a federal court or state court would have jurisdiction over a dispute arising from the lack of notification required by the bill. If the dispute is considered an *in personam* claim concerning a contractual agreement, it may fall within the jurisdiction of a state court. However, if a dispute arising from the lack of notification falls within maritime jurisdiction, the language in the bill directing the court to award attorney fees to the prevailing party may be preempted by federal law.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals in need of salvage work for a pleasure vessel may see a reduction in the cost of salvage work if they are afforded an opportunity to arrive at agreed-upon charges before any salvage work is performed.

Salvors operating in the waters of Florida may incur costs associated with:
- Providing the required written notices.
- Litigating cases brought under the legal remedy created by the bill, including payment of the specified damages, costs, and attorney fees.

[18] U.S. Const. Art. III, ss. 1 and 2.
[19] *Supra* note 11.
[20] *See Metropolitan Dade County v. One (1) Bronze Cannon,* 537 F.Supp. 923 (S.D. Fla. 1982) (explaining the "saving to suitors" clause affords litigants a choice of remedies but not forums) and *Lewis v. JPI Corp.*, Case No. 07-20103-CIV-TORRES (S.D. Fla. 2009) ("The salvage award, which is unique to maritime and admiralty law, is not one of *quantum meruit* as compensation for work performed"). *Compare Sebastian Tow Boat & Salvage, supra* note 6 and *Phillips v. Sea Tow/ Sea Spill of Savannah,* 578 S.E.2d 846 (Ga. 2002).
[21] *Madruga*, 346 U.S. 556 (1954).
[22] *Garan Inc. v. MV Aivik*, 907 F.Supp. 397 (S.D. Fla. 1995) (holding that absent specific federal statutory authorization, federal maritime law does not entitle a prevailing party an award of attorney fees).

C. Government Sector Impact:

Indeterminate. The fiscal impact to the Florida Court System will depend on the volume and complexity of civil lawsuits filed by owners of pleasure vessels.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 559.9602 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on February 22, 2018:
The bill is amended to:

- Require a salvor to provide a customer with written notice, rather than written or oral notice, that the service offered is not covered by any towing contract before beginning a salvage operation of a pleasure vessel;
- Modify the requirements of the written notice to include the signature of the customer and to provide the customer with notice of his or her opportunity to agree to a fixed charge for the salvage;
- Remove injunctive relief and actual damages from the legal remedies that may be sought by the owner of a pleasure vessel after a salvor fails to provide the required notice; and
- Modify the definition of "customer," remove the definition for the term "employee," and clarify that the term "waters of the state" has the same meaning as defined in s. 327.02(47), F.S.

CS/CS by Transportation on January 25, 2018:
The committee adopted a delete-all amendment that generally replaces the text of the bill as follows:

- Requires a salvor to provide a customer with verbal and written notice that the salvor's offered service is not covered by any towing contract before a salvor may engage in the salvage operation of a pleasure vessel.
- Requires the written notice to include a specified statement, including, among other items, that a customer's only recourse to challenge assessed salvage charges is by a lawsuit in federal court or, if agreed to, binding arbitration.
- Relieves a salvor of providing the verbal and written notice if there is an imminent threat of injury or death to any person on board the vessel.

- Provides that a customer injured by a violation of the new section of law may bring an action in the appropriate court.
- Deems a prevailing customer in such an action entitled to damages in an amount that is 1.5 times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees.
- Provides that a customer may also bring an action for injunctive relief in the circuit court.

CS by Commerce and Tourism Committee on December 4, 2017:
The bill is amended to:

- Clarify that the bill does not apply to any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels;
- Make a technical change to correct the sequential order of the parts and statutes within ch. 559, F.S.; and
- Make a technical change to ensure the term "employee" is used consistently throughout the bill.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2018	.	
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	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 559.9602, Florida Statutes, is created to read:

559.9602 Salvage of pleasure vessels.—

(1) This section applies to all salvors operating within the waters of this state, as defined in s. 327.02(47), except:

(a) Any person who performs salvage work while employed by a municipal, county, state, or federal government when carrying

694526

out the functions of that government.

(b) Any person who engages solely in salvage work for:

1. Pleasure vessels that are owned, maintained, and operated exclusively by such person and for that person's own use; or

2. For-hire pleasure vessels that are rented for periods of 30 days or less.

(c) Any person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at that person's facility.

(d) Any person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer.

(e) Any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

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

(a) "Customer" means the owner of the pleasure vessel or the person who has been given the authority by the owner to authorize salvage work of the pleasure vessel.

(b) "Pleasure vessel" means any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.

(c) "Salvage work" means any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew which are in marine peril. Salvage work does not include

694526

towing a pleasure vessel.

(d) "Salvor" means a person in the business of voluntarily providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril, in exchange for compensation.

(3)(a) If the customer is present on the pleasure vessel, before a salvor may engage in the salvage operation of a pleasure vessel, the salvor must provide the customer with written notice that the service offered is not covered by any towing contract. The written notice must include the following statement, in capital letters of at least 12-point type, and must be signed by the customer:

THE SERVICE OFFERED BY THE SALVOR IS CONSIDERED SALVAGE WORK AND IS NOT COVERED BY ANY TOWING SERVICE CONTRACT. SALVAGE WORK ALLOWS THE SALVOR TO PRESENT YOU OR YOUR INSURANCE COMPANY WITH A BILL FOR THE CHARGES AT A LATER DATE. THE SALVOR SHALL CALCULATE THE CHARGES ACCORDING TO FEDERAL SALVAGE LAW AND SUCH CHARGES MAY EXCEED A CHARGE BASED ON A TIME AND MATERIALS CALCULATION. THE CHARGES COULD AMOUNT TO AS MUCH AS THE ENTIRE VALUE OF YOUR VESSEL, INCLUDING ITS GEAR AND EQUIPMENT.

IF YOU AGREE TO ALLOW THE SALVOR TO PERFORM THE OFFERED WORK WITHOUT AN AGREEMENT FOR A FIXED CHARGE FOR THE SALVAGE, YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY A LAWSUIT IN FEDERAL COURT OR, IF YOU AND THE SALVOR AGREE IN WRITING, BY BINDING ARBITRATION.

694526

YOU MAY AGREE TO A FIXED CHARGE FOR THE SALVAGE WITH THE SALVOR BEFORE WORK BEGINS, AND THE AGREED CHARGE SHALL BE DOCUMENTED ON THE U.S. OPEN FORM SALVAGE AGREEMENT OR OTHER SUCH SALVAGE CONTRACT SIGNED BY YOU AND THE SALVOR. YOU HAVE A RIGHT TO REJECT THE SALVOR'S OFFER OF SERVICES IF THE SALVOR WILL NOT AGREE TO A FIXED CHARGE BEFORE BEGINNING WORK.

CUSTOMER SIGNATURE:...(Signature of customer)...

DATE:...(Date signed by customer)... TIME:...(Time signed by customer)...

(b) The salvor is relieved of providing the written notice required by this subsection if there is an imminent threat of injury or death to any person on board the pleasure vessel. The salvor must provide the written notice required by this subsection when there is no longer an imminent threat of injury or death to any person on board the pleasure vessel.

(4)(a) If a written notice is not provided before a salvage operation as required by this section, the owner of a pleasure vessel may bring an action in the appropriate court of competent jurisdiction. An owner who prevails in such an action is entitled to damages equal to 1.5 times the amount paid or awarded to the salvor, plus court costs and reasonable attorney fees.

(b) The remedies provided for in this subsection shall be in addition to any other remedy provided by law.

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

694526

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to the salvage of pleasure vessels; creating s. 559.9602, F.S.; providing applicability; providing definitions; requiring salvors of pleasure vessels to provide specified written notice to a customer who is present on a pleasure vessel before engaging in a salvage operation of the vessel; providing an exception; providing a cause of action and remedies; specifying that such remedies are in addition to others provided by law; providing an effective date.

968778

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/23/2018	.	
	.	
	.	
	.	

The Committee on Rules (Rodriguez) recommended the following:

Senate Substitute for Amendment (694526) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (37) through (47) of section 327.02, Florida Statutes, are redesignated as subsections (38) through (48), respectively, and a new subsection (37) is added to that section, to read:

327.02 Definitions.—As used in this chapter and in chapter 328, unless the context clearly requires a different meaning,

968778

the term:

(37) "Pleasure vessel" means a watercraft no more than 60 feet in length used solely for personal and family use and guests of the owner.

Section 2. Section 327.511, Florida Statutes is created to read:

327.511 Salvage of a pleasure vessel.—

(1) If a salvor intends to engage in a salvage operation and renders assistance to a pleasure vessel outside the scope of simple towage, the salvor shall inform the operator, per the terms of a declaration of salvage, that the offer of services rendered is salvage and not towage. The salvor shall provide a written notice of the declaration of salvage which must be signed by the customer. The written notice must be in capital letters of at least 12-point type and must include the following statement:

THE CONDITION OF YOUR VESSEL IS NOT A TOWAGE BUT IS A SALVAGE. A SALVAGE IS NOT CONSIDERED TOWAGE AND MAY BE OUTSIDE THE COVERAGE PROVIDED BY YOUR TOWING AGREEMENT. THE COST OF A SALVAGE IS NOT DETERMINABLE BEFORE COMPLETION OF SALVAGE SERVICES. THE COST OF A SALVAGE CLAIM IS DEPENDENT ON SEVERAL FACTORS, INCLUDING THE POST-CASUALTY VALUE OF THE VESSEL. THERE ARE OTHER CONSIDERATIONS ASSOCIATED WITH A SALVAGE, AND IT IS RECOMMENDED THAT IF YOU HAVE ANY QUESTIONS OR CONCERNS REGARDING A SALVAGE TO CONTACT YOUR ATTORNEY AND INSURANCE AGENT.

(2) At the discretion of the salvor, if maritime conditions do not allow for immediate disclosure of the declaration of

salvage as specified in subsection (1), disclosure must occur at a time when the salvor deems it is safe to do so.

(3) The Legislature intends that the declaration of salvage specified in subsection (1) is to provide informed consent as to the terms of a salvage. A salvor does not assume any liability based solely upon disclosure of the terms of a declaration of salvage.

(4) The Fish and Wildlife Conservation Commission shall receive complaints from operators of pleasure vessels who do not receive disclosure of a declaration of salvage and must address such complaints in an expeditious manner by assisting in the resolution of complaints between operators and salvors. The Fish and Wildlife Conservation Commission may adopt procedural rules necessary to administer this section. However, the commission does not have authority to impose penalties inconsistent with those established by federal maritime and admiralty law, binding treatises, and other binding bodies of governing law.

(5) This section may not be construed to limit or restrict the continued applicability of federal maritime and admiralty law, binding treatises, and other binding bodies of governing law. In the event of any inconsistency between any provision of this section and any provision of federal maritime and admiralty law, binding treatises, or other binding bodies of governing law, there is an irrefutable presumption that federal maritime and admiralty law, binding treatises, and other binding bodies of governing law supersede this section.

Section 3. Paragraph (cc) is added to subsection (1) of section 327.73, Florida Statutes, to read:

327.73 Noncriminal infractions.—


968778

(1) Violations of the following provisions of the vessel laws of this state are noncriminal infractions:

(cc) Section 327.511, relating to salvage of pleasure vessels.

Any person cited for a violation of any provision of this subsection shall be deemed to be charged with a noncriminal infraction, shall be cited for such an infraction, and shall be cited to appear before the county court. The civil penalty for any such infraction is $50, except as otherwise provided in this section. Any person who fails to appear or otherwise properly respond to a uniform boating citation shall, in addition to the charge relating to the violation of the boating laws of this state, be charged with the offense of failing to respond to such citation and, upon conviction, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time such uniform boating citation is issued.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to salvage of pleasure vessels; amending s. 327.02, F.S.; defining the term "pleasure vessel"; creating s. 327.511, F.S.; requiring salvors of pleasure vessels to inform operators of certain

968778

terms under certain conditions; requiring such salvors to include a certain statement in a declaration of salvage; providing an exception; specifying legislative intent and salvor liability pertaining to a declaration of salvage; requiring the Fish and Wildlife Conservation Commission to receive and resolve complaints; authorizing the commission to adopt certain rules; providing construction and applicability; amending s. 327.73, F.S.; revising noncriminal infractions to include violations of requirements relating to the salvage of pleasure vessels; providing an effective date.

By the Committees on Transportation; and Commerce and Tourism; and Senators Young and Steube

A bill to be entitled

An act relating to the salvage of pleasure vessels; creating s. 559.952, F.S.; providing scope and applicability; providing definitions; requiring salvors of pleasure vessels to provide specified verbal and written notice; providing an exception; providing remedies; specifying that such remedies are in addition to others provided by law; providing an effective date.

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

Section 1. Section 559.952, Florida Statutes, is created to read:

559.952 Salvage of pleasure vessels.—

(1) This section applies to all salvors operating in this state, except:

(a) Any person who performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government.

(b) Any person who engages solely in salvage work for:

1. Pleasure vessels that are owned, maintained, and operated exclusively by such person and for that person's own use; or

2. For-hire pleasure vessels that are rented for periods of 30 days or less.

(c) Any person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at that

person's facility.

(d) Any person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer.

(e) Any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

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

(a) "Customer" means the person to whom a salvor offers salvage work.

(b) "Employee" means an individual who is employed full time or part time by a salvor and performs salvage work.

(c) "Pleasure vessel" means any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.

(d) "Salvage work" means any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew which are in marine peril. Salvage work does not include towing a pleasure vessel.

(e) "Salvor" means a person in the business of voluntarily providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril, in exchange for compensation.

(3)(a) Before a salvor may engage in the salvage operation of a pleasure vessel, the salvor shall provide the customer with verbal and written notice that the service offered is not

covered by any towing contract. The written notice must include the following statement, in capital letters of at least 12-point type:

THE SERVICE OFFERED BY THE SALVOR IS CONSIDERED SALVAGE WORK AND IS NOT COVERED BY ANY TOWING SERVICE CONTRACT. SALVAGE WORK ALLOWS THE SALVOR TO PRESENT YOU, OR YOUR INSURANCE COMPANY, WITH A BILL FOR THE CHARGES AT A LATER DATE. THE SALVOR SHALL CALCULATE THE CHARGES ACCORDING TO FEDERAL SALVAGE LAW AND SUCH CHARGES MAY EXCEED A CHARGE BASED ON A TIME AND MATERIALS CALCULATION. THE CHARGES COULD AMOUNT TO AS MUCH AS THE ENTIRE VALUE OF YOUR VESSEL AND ITS CONTENTS.

IF YOU AGREE TO ALLOW THE SALVOR TO PERFORM THE OFFERED WORK, YOUR ONLY RECOURSE TO CHALLENGE THE ASSESSED CHARGES IS BY A LAWSUIT IN FEDERAL COURT OR, IF YOU AGREE, BY BINDING ARBITRATION.

YOU MAY AGREE TO THE CHARGES WITH THE SALVOR BEFORE WORK BEGINS, AND THAT AGREED AMOUNT SHALL BE THE MAXIMUM AMOUNT THE SALVOR MAY CHARGE. YOU HAVE A RIGHT TO REJECT THE SALVOR'S OFFER OF SERVICES IF THE SALVOR WILL NOT AGREE TO A CHARGE BEFORE BEGINNING WORK.

(b) The salvor is relieved of providing the verbal and written notice pursuant to this subsection if there is an imminent threat of injury or death to any person on board the vessel.

(4)(a) Any customer injured by a violation of this section may bring an action in the appropriate court for relief. A customer who prevails in such an action is entitled to damages

equal to 1.5 times the amount charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The customer may also bring an action for injunctive relief in the circuit court.

(b) The remedies provided for in this subsection shall be in addition to any other remedy provided by law.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

664
Bill Number (if applicable)

968778SDA
Amendment Barcode (if applicable)

Topic Salvage

Name Michael Black

Job Title Attorney

Address 1700 N. Kendall Drive #505
Street

Phone 305-271-8301

Miami FL 33156
City *State* *Zip*

Email mblack@marbaw.com

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

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

Representing Self

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

Lobbyist registered with Legislature: [ ] Yes [X] 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

2-22-18
Meeting Date

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

664
Bill Number (if applicable)

968778
Amendment Barcode (if applicable)

Topic Salvage

Name Jon Costello

Job Title lobbyist

Address 119 S. Monroe
Street

Tallahassee FL 32311
City *State* *Zip*

Phone 681-6788

Email jon@reuphlaw.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Public Advocacy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

664
Bill Number (if applicable)

694526
Amendment Barcode (if applicable)

Topic Salvage

Name Jon Costello

Job Title lobbyist

Address 119 S. Monroe
Street

Tallahassee FL 32311
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Public Advocacy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

664
Bill Number (if applicable)

Topic SALVAGE

Amendment Barcode (if applicable)

Name ERIC HULL

Job Title

Address 1612 LIMONA RD
Street

BRANDON FL 33510
City *State* *Zip*

Phone 813 610 8835

Email ERIC@MEDALEX.COM

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

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

Representing SELF

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

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

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2017
Meeting Date

664
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Pleasure Boat Salvage

Name Harry C. Offutt

Job Title President

Address 1635 N Bayshore Dr. Phone 305-360 1491
Street

Miami FL 33132 Email TowTo Dock@aol.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Biscayne Towing & Salvage Inc.

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

664
Bill Number (if applicable)

Topic Salvage of Pleasure Vessels

Amendment Barcode (if applicable)

Name Larry Acheson

Job Title Capt

Address 201 NE 28 ct. Pompano Bch
Street

Phone 954-657-9313

FL 33064
City *State* *Zip*

Email LarryE@TBUSFL.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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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)

2/22/2018
Meeting Date

664
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Salvage

Name David McCreadie

Job Title Attorney

Address 805 S. Orleans
Street

Tampa Fla
City *State* *Zip*

Phone 813 240-7910

Email dmccreadie@lawfl.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Public Advocacy

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2018
Meeting Date

S664
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Salvage

Name Tina Cardone

Job Title Executive Director

Address 3640-B3 N Federal Hwy # 136
Street

Lighthouse Pt FL 33064
City *State* *Zip*

Phone 954-261-2012

Email tcardone@cport.us

Speaking: ☐ For ☑ Against ☐ Information

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

Representing C-PORT

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

664
Bill Number (if applicable)

Topic Salvage of Pleasure Vessels

Amendment Barcode (if applicable)

Name Michael Black

Job Title Attorney

Address 7700 N. Kendall Drive #505
Street

Phone 3052718301

Miami FL 33156
City *State* *Zip*

Email mblack@markew.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing C-Port

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)

2-22-18
Meeting Date

664
Bill Number (if applicable)

Topic Salvage

Amendment Barcode (if applicable)

Name Jon Costello

Job Title lobbyist

Address 119 S. Monroe
Street

Phone 681-6788

Tallahassee FL 32311
City *State* *Zip*

Email Jon@reynhlaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Public Advocacy

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)

2/22/18
Meeting Date

SB 664
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Salvage of Pleasure Vessels

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St
Street

Phone 224-7173

Tallahassee FL 32301
City *State* *Zip*

Email bbevis@aif.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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 30, 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 664 relating to Salvage of Pleasure Vessels 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

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 746
INTRODUCER:	Banking and Insurance Committee and Senator Bean
SUBJECT:	Florida Fire Prevention Code
DATE:	February 22, 2018 REVISED:

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 746 establishes a three-year exemption to the Florida Fire Prevention Code to allow for the limited placement of waste containers and waste within the hallways of apartment buildings that utilize a doorstep refuse and recycling collection service.

A doorstep waste collection service may operate in apartment buildings with enclosed corridors served by interior or exterior exit stairs, if waste is not placed in exit access corridors for longer than five hours; waste containers do not occupy exit access corridors for longer than 12 hours; and effective January 1, 2020, waste containers do not exceed 13 gallons. For apartment buildings with open-air corridors or balconies serviced by exterior stairs, waste cannot be placed in exit access corridors for longer than five hours; there is no limit on how long waste containers may occupy access corridors; and effective January 1, 2020, waste containers may not exceed 27 gallons.

In all cases the waste containers cannot reduce the means of egress width below that required under NFPA Life Safety Code 101:31. Additionally, the management of an apartment complex utilizing a doorstep waste collection service that would operate under this new law must have written policies and procedures in place, and enforce them to insure compliance. A copy of such policies and procedures can be requested and must be provided to the authority having jurisdiction.

The bill has a legislative intent statement to make clear the requirements in the bill are not intended to set precedent for future changes to the Florida Fire Prevention Code.

The three-year exemption for the limited placement of waste containers and waste within the hallways of apartment buildings that utilize a doorstep waste collection service expires January 1, 2021.

SB 746 has no impact on state government.

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

II. Present Situation:

State Fire Prevention – State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[1] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.[2]

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule[3] the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.

The State Fire Marshal adopts a new edition of the Fire Code every three years.[4] When adopting the Fire Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA),[5] including the:

- NFPA's Fire Code (Standard 1);
- Life Safety Code (NFPA 101); and

[1] Section 633.104, F.S.
[2] *See* ss. 633.104, 633.106, 633.112, 633.115, 633.126, and 633.128, F.S.
[3] *See* Fla. Admin. Code R. Ch. 69A-60 (2018) at https://www.flrules.org/gateway/ChapterHome.asp?Chapter=69A-60 (last visited Feb. 1, 2018).
[4] Section 633.202, F.S.
[5] Section 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on January 17, 2018).

- Guide on Alternative Approaches to Life Safety (NFPA 101A).[6]

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[7]

The most recent Fire Code is the 6th edition, referred to as the 2017 Florida Fire Prevention Code which took effect on December 31, 2017.[8] The State Marshal has authority to interpret the Fire Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.[9]

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[10] These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[11]

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.[12] Each county, municipality, and special district with fire safety enforcement responsibilities is required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[13]

Section 633.208(5), F.S., provides"[w]ith regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Florida Fire Prevention Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety." Local fire officials must apply the Fire Code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property.[14] The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.[15]

[6] *See* ss. 633.202(1) and 633.208(5), F.S.
[7] *Id.*
[8] *See* https://www.myfloridacfo.com/Division/SFM/BFP/FloridaFirePreventionCodePage.htm (last visited Feb. 1, 2018), for access to a read-only version of the Fire Code, which consists of 1295 pages. The Fire Code is also available for purchase. *Id.*
[9] Section 633.104(6), F.S.
[10] Sections 633.108 and 633.208, F.S.
[11] Sections 633.208 and 633.214(4), F.S.
[12] Section 633.118, F.S.
[13] Section 633.216(1), F.S.
[14] Section 633.208(5), F.S.
[15] *Id.*

Florida Building Code

Part IV of ch. 553, F.S., the Florida Building Codes Act, provides a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of the Florida Building Code[16] by the Florida Building Commission (commission).[17] The commission reviews the most current updates of various international codes published by the International Code Council,[18] as well as the National Electric Code, every three years to determine if the Building Code requires updating to maintain eligibility for federal funding.[19]

Means of Egress

A means of egress is a path available for a person to leave a building. A means of egress is made up of three parts, which includes the:

- Exit access;
- Exit; and
- Exit discharge.[20]

The exit access is a path, such as a hallway or corridor, from any location in the building to an exit. The exit is usually a door leading outside, or in a multi-story building, an enclosed stairway. The exit discharge is a path from the exit to a space that is dedicated to public use such as a street or alley.[21]

The Fire Code provides that a building's means of egress must be a certain width determined by the number of occupants in the building and the use of the building.[22] The Fire Code further provides that a building's means of egress must be free of all obstructions or impediments in case of fire or other emergency.[23]

The Building Code[24] also provides that a building's means of egress must be a certain width determined by the number of occupants in the building.[25] The Building Code provides that the *required width* of a building's means of egress must be free of all obstructions and impediments.[26]

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[16] The Florida Building Code is a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities, and to the enforcement of such requirements. *See* s. 553.72(1), F.S., which also indicates that effective and reasonable protection for public safety, health, and general welfare at the most reasonable cost to the consumer is also intended.
[17] *See* s. 553.72(3), F.S. The commission is housed within the Department of Business and Professional Regulation (DBPR).
[18] *See* s. 553.72(1), F.S.
[19] Section 553.73(7)(a), F.S.
[20] Section 3.3.176 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[21] International Code Council, *Accessible Means of Egress*, https://www.iccsafe.org/safety/Documents/MeansofEgressBroch.pdf (last visited Feb. 1, 2018).
[22] *See* Section 7.3.4 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).
[23] Section 7.1.10.1 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).
[24] The Building Code may be reviewed at https://codes.iccsafe.org/public/document/FBC2017 (last visited Feb. 1, 2018).
[25] Section 1005 of the 6th edition of the Florida Building Code (Building).
[26] Section 1018.1, 1020.3, and 1024.2 of the 6th edition of the Florida Building Code (Building).

However, the Building Code provides that maintenance of a building's means of egress must be in accordance with the Fire Code.[27] The Department of Business and Professional Regulation (DBPR) has interpreted this to mean that the Fire Code takes precedence when it comes to people placing objects, such as a trashcan, in a building's means of egress.[28]

Combustible Waste and Refuse

The Fire Code defines *combustible waste* as "combustible or loose waste material that is generated by an establishment or process and, if salvageable, is retained for scrap or reprocessing on the premises where generated or transported to a plant for processing."[29]

The Fire Code defines *combustible refuse* as "combustible or loose rubbish, litter, or waste materials generated by an occupancy that are refused, rejected, or considered worthless and are disposed of by incineration on the premises where generated or periodically transported from the premises."[30]

Combustible waste and combustible refuse may be stored in an apartment building if the combustible waste and combustible refuse is:

- Stored in a container less than 1.5 cubic yards (302 gallons);
- Stored in an enclosed area with a one hour fire resistance rating and an automatic sprinkler system;
- Removed from the building once each working day unless the waste and refuse is stored in a noncombustible room; and
- Not stored in the building's exit(s).[31]

Private Doorstep Waste Collection Providers

Currently, various providers offer doorstep waste collection services to apartment complexes throughout the state. According to the DFS, the basic business model requires the residents of an apartment building to place their waste outside of their doorstep, in a specified container approved by the provider.[32] The waste collection companies collect the contents of the containers at a specified time.[33]

An apartment complex resident's front door typically opens to a hallway, corridor, or walkway, which is usually the building's exit access and therefore part of the building's means of egress. According to the DFS, the Fire Code does not allow the storage of combustible material in exits.[34]

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[27] Section 1001.3 of the 6th edition of the Florida Building Code (Building).
[28] Email from Department of Business and Professional Regulation staff, to Senate Committee on Banking and Insurance staff (Dec. 18, 2017) (on file with Senate Committee on Regulated Industries).
[29] Section 3.3.62 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[30] Section 3.3.61 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[31] *See* Sections 10.18.4, 19.2.1.3, 19.2.1.4 and 19.2.1.4.1 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[32] *See Department of Financial Services Analysis for SB 746*, dated Nov. 9, 2017 (on file with Senate Committee on Regulated Industries) at page 1.
[33] *Id*.
[34] *Id*.

In two recent declaratory statements, the State Fire Marshal determined that apartments may not allow residents to place refuse and recycling containers outside their front doors regardless of the size of the container or if the container's contents are removed daily. The State Fire Marshal determined that the Fire Code prohibits apartment residents from placing any type of combustible material may be stored in containers outside their doors because the residents are placing obstructions in a building's means of egress and combustible waste in a building's exit.[35]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 633.202(20), F.S., to establish a three-year exemption to the Fire Code to allow for the limited placement of refuse and recycling containers and waste within the hallways of apartment buildings that utilize a doorstep waste pickup service.

A doorstep waste collection service may operate in apartment buildings with enclosed corridors served by interior or exterior exit stairs, if waste is not placed in exit access corridors for longer than five hours; waste containers do not occupy exit access corridors for longer than 12 hours; and effective January 1, 2020, waste containers do not exceed 13 gallons. For apartment buildings with open-air corridors or balconies serviced by exterior stairs waste cannot be placed in exit access corridors for longer than 5 hours; there is no limit on how long waste containers may occupy access corridors; and effective January 1, 2020, waste containers may not exceed 27 gallons.

In all cases the management of an apartment complex utilizing a doorstep waste collection service that would operate under this new law must have written policies and procedures in place and enforce them to insure compliance. A copy of such policies and procedures can be requested and must be provided to the authority having jurisdiction. Additionally, waste containers may not reduce the means of egress width below that required under NFPA Life Safety Code 101:31.

The bill would preempt NFPA 101:7.1.10.1 which provides that the "means of egress shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency."

Based on the two declaratory statements issued by the State Fire Marshal, the operations of doorstep waste collection services that comply with the provisions in the bill would be exempt from the following Fire Code requirements:[36]

- NFPA 1:19.1.3 (combustible waste or refuse shall be properly stored or disposed of to prevent unsafe conditions).
- NFPA 1:10.19.4 (combustible material shall not be stored in exits).
- NFPA 101:7.1.10.1 (means of egress shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency).
- NFPA 1:19.2.1.2.1 (requirements for nonmetallic rubbish containers exceeding a capacity of 40 gallons may be enforced only from January 1, 2020, to January 1, 2021).)

[35] *See In the matter of: William Harrison, Fire Marshal, Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (Jun. 21, 2016) and *In the matter of: Steve Strong, Fire Marshal, Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016) (on file with Senate Committee on Regulated Industries).
[36] *Id*.

The bill contains a legislative intent statement that:

- The legislature intends to allow doorstep refuse and recycling collection containers in exit corridors pursuant to the requirements in the bill until the adoption of the next edition of the Fire Code; and
- The requirements in the bill do not establish precedent regarding standards for such collection containers in exit corridors in future editions of the Fire Code, and that the State Fire Marshal exercise independent discretion when adopting such standards.

CS/SB 746 sunsets the Fire Code exemptions created by the bill effective January 1, 2021.

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:

Doorstep waste refuse and recycling collection services will be allowed to operate in apartment buildings while changes are pursued to the Fire Code.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.202 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 Banking and Insurance on January 23, 2018:
The CS:
- Delays enforcement on waste container size until January 1, 2020.
- Provides a legislative intent statement.
- Provides a sunset date of January 1, 2021.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Bean

A bill to be entitled

An act relating to the Florida Fire Prevention Code; amending s. 633.202, F.S.; requiring that doorstep refuse and recycling collection containers be allowed in exit corridors of certain apartment occupancies under certain circumstances; authorizing authorities having jurisdiction to approve certain alternative containers and storage arrangements; prohibiting such authorities from enforcing specified provisions until a specified date; providing legislative intent; providing for expiration; providing an effective date.

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

Section 1. Subsection (20) is added to section 633.202, Florida Statutes, to read:

633.202 Florida Fire Prevention Code.—

(20)(a) In apartment occupancies with enclosed corridors served by interior or exterior exit stairs, doorstep refuse and recycling collection containers must be allowed in exit corridors when all of the following conditions exist:

1. The maximum waste container size does not exceed 13 gallons.

2. Waste is not placed in the exit access corridors for single periods exceeding 5 hours.

3. Waste containers do not occupy the exit access corridors for single periods exceeding 12 hours.

4. Waste containers do not reduce the means of egress width below that required under NFPA Life Safety Code 101:31, as

adopted under the Florida Fire Prevention Code.

5. Management staff have written policies and procedures in place and enforce them to ensure compliance with this subsection, and, upon request, provide a copy of such policies and procedures to the authority having jurisdiction.

(b) In apartment occupancies with open-air corridors or balconies served by exterior exit stairs, doorstep refuse and recycling collection containers must be allowed in exit corridors when all of the following conditions exist:

1. The maximum waste container size does not exceed 27 gallons.

2. Waste is not placed in the exit access corridors for single periods exceeding 5 hours.

3. Waste containers do not reduce the means of egress width below that required under NFPA Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.

4. Management staff have written policies and procedures in place and enforce them to ensure compliance with this subsection, and, upon request, provide a copy of such policies and procedures to the authority having jurisdiction.

(c) The authority having jurisdiction may approve alternative containers and storage arrangements that are demonstrated to provide an equivalent level of safety to that provided under paragraphs (a) and (b).

(d) The authority having jurisdiction may not enforce subparagraphs (a)1. and (b)1. until January 1, 2020.

(e) It is the intent of the Legislature to allow doorstep refuse and recycling collection containers in exit corridors pursuant to this subsection until adoption of the next edition

of the Florida Fire Prevention Code. The Legislature intends that this subsection does not establish precedent regarding standards for doorstep refuse and recycling collection containers in exit corridors in subsequent editions of the Florida Fire Prevention Code and that the State Fire Marshal exercise independent discretion when adopting such standards.

(f) This subsection expires January 1, 2021.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 0746
Bill Number (if applicable)

Topic Fire Prevention Code

Amendment Barcode (if applicable)

Name JUSTIN FROST

Job Title OWNER AFFINITY Waste Solutions

Address PO Box 623187
Street

Phone 407-808-0550

Oviedo FL 32762
City *State* *Zip*

Email jfrost@affinitywastesolutions.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing AFFinity Waste Solutions

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)

2/22/18
Meeting Date

746
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Florida Fire Prevention Code

Name Jeff Johnston

Job Title Lobbyist

Address 21748 State Road 54
Street

Phone (813) 527-0172

Lutz FL 33549
City *State* *Zip*

Email jeff@corcoranfirm.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Valet Living

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)

2/22/18
Meeting Date

746
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Fire Prevention

Name Kelly Mallette

Job Title

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City *State* *Zip*

Phone (850) 224-3427

Email kelly@rlbookpa.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Apartment Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 12, 2018

I respectfully request that **Senate Bill # 746**, relating to Florida Fire Prevention Code, 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

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/CS/SB 1018
INTRODUCER:	Governmental Oversight and Accountability Committee; Communications, Energy, and Public Utilities Committee and Senator Bean
SUBJECT:	Designation of Eligible Telecommunications Carriers
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Fav/CS**
2.	Caldwell	Caldwell	GO	**Fav/CS**
3.	Wiehle	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1018 amends s. 364.10, F.S., relating to Lifeline services, to authorize the Public Service Commission (PSC) to designate a commercial mobile radio service (CMRS) provider as an eligible telecommunications carrier, upon petition, for the limited purpose of providing Lifeline service. The section conforms to federal Lifeline service guidelines by:

- Requiring a subscriber to present proof of continued eligibility upon request of the eligible telecommunications carrier.
- Revising the income eligibility test to 135 from 150 percent or less of federal poverty income guidelines.

The bill removes obsolete language, and makes technical and conforming changes.

Section 364.107, F.S., relating to public records exemptions, is amended to clarify that the Federal Communication Commission or its designee may receive confidential and exempt information for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

This bill takes effect July 1, 2018.

II. Present Situation:

The Lifeline program was created by the federal government in 1985 to provide phone service discounts for qualifying low-income consumers as part of the federal Universal Service Program. In 2016, the Federal Communications Commission (FCC) adopted a comprehensive modernization reform adding broadband access to the Lifeline program. As a result, qualifying households may either receive up to a $9.25 discount on their monthly phone or broadband bill or receive a free Lifeline cell phone and limited voice or broadband from certain wireless carriers.[1, 2]

In Florida, the PSC oversees the Lifeline program[3] and Lifeline services are provided to eligible customers by an "eligible telecommunications carrier," a term defined to mean "a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201."[4]

The commission only evaluates applications for eligible telecommunications carrier (ETC) designation from wireline companies, leaving wireless applications to be evaluated by the FCC.[5] The commission explains this position as follows: "The Florida 2011 Legislature (HB 1231), removed the FPSC authority to designate ETC wireless providers. Effective July 1, 2012, wireless providers must directly apply for Florida ETC designation with the FCC."[6]

In 2011, the Florida Legislature passed the "Regulatory Reform Act," completing its deregulation of retail landline telecommunications service providers. Prior to this Act, s. 364.011, F.S., in part, exempted wireless communications from PSC jurisdiction except as "specifically authorized by federal law." The Act deleted the quoted language from this statute.[7] This appears to be the statutory change that the PSC refers to as removing its authority to designate a wireless carrier as an ETC.

Section 364.107, F.S., provides that personal identifying information of a participant in a telecommunications carrier's Lifeline Assistance Plan under s. 364.10, F.S., held by the Public Service Commission is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

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[1] Florida Public Service Commission, *Florida Lifeline Assistance: Number of Customers Subscribing to Lifeline Service And the Effectiveness of Procedures to Promote Participation*, pg. 3(Dec. 2017).
[2] The FCC had already expanded the Lifeline program to include wireless voice communications services in 2005 to accommodate shifting consumer demand. *Lifeline Program for Low-Income Consumers*, available at: https://www.fcc.gov/general/lifeline-program-low-income-consumers (last visited Jan. 31, 2017).
[3] Section 364.10, F.S.
[4] Section 364.10(1)(a), F.S.
[5] Fla. Public Service Commission, *supra* note 2 at 3.
[6] Fla. Public Service Commission, *supra* note 2 at 3, FN 13.
[7] Section 3, Ch. 2011-36, L.O.F.

III. Effect of Proposed Changes:

Section 1 amends s. 364.10, F.S., on Lifeline services, to authorize the PSC to designate a commercial mobile radio service (CMRS) provider as an eligible telecommunications carrier, upon petition, for the limited purpose of providing Lifeline service.

The bill conforms the section to federal Lifeline service guidelines by:

- Requiring a subscriber to present proof of continued eligibility upon request of the eligible telecommunications carrier.
- Revising the income eligibility test to 135 from 150 percent or less of federal poverty income guidelines.

The bill removes obsolete language, and makes technical and conforming changes.

Section 2 amends s. 364.107, F.S., relating to public records exemptions, to clarify that the Federal Communication Commission or its designee may receive confidential and exempt information for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

The bill takes effect 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 should allow wireless communications services providers to obtain an eligible telecommunications carrier designation quicker, thereby allowing them to provide

Lifeline service to eligible customers and obtain Universal Service payments quicker. This should benefit both the carriers and customers.

C. Government Sector Impact:

The PSC may incur costs associated with designating these carriers as eligible telecommunications carriers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 364.10 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/CS by Governmental Oversight and Accountability on February 6, 2018:

- Retains the original intent of authorizing the Public Service Commission to certify a commercial mobile radio service provider as an eligible telecommunications carrier for the limited purpose of providing Lifeline services, but rewrites the language for clarity.
- Makes further changes to s. 364.10, F.S., as requested by the commission, to update the statute to conform to changes in the industry and in federal law;
- Amends s. 364.107, F.S., on public records relating to Lifeline services, as requested by the commission, to authorize the commission to release confidential and exempt information to the Federal Communications Commission or the Federal Communications Commission designee; and
- Makes technical and conforming changes to both statutes.

CS by Communications, Energy, and Public Utilities on January 10, 2018:
For purposes of providing Lifeline services under s. 364.10, F.S., any commercial mobile radio service provider that is certified as an eligible telecommunications carrier by the Public Service Commission is included in the term "eligible telecommunications carrier." The provision authorizing the commission to make the designation was moved from s. 364.011, F.S.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability; and Communications, Energy, and Public Utilities; and Senators Bean and Stargel

585-02918-18 20181018c2

A bill to be entitled

An act relating to designation of eligible telecommunications carriers; amending s. 364.10, F.S.; revising the term "eligible telecommunications carrier"; authorizing the Public Service Commission to designate any commercial mobile radio service provider as an eligible telecommunications carrier for the purpose of providing Lifeline service; deleting a provision requiring carriers to allow subscribers to demonstrate continued eligibility for Lifeline service under certain conditions; requiring subscribers to furnish proof of eligibility upon request from the carrier or the Federal Communications Commission or its designee; revising the carriers that may provide Lifeline service; revising Lifeline service eligibility; deleting obsolete provisions; revising the entities with which the commission may exchange certain information; amending s. 364.107, F.S.; revising the entities to which certain information relating to Lifeline service eligibility may be released; providing an effective date.

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

Section 1. Section 364.10, Florida Statutes, is amended to read:

364.10 Lifeline service.—

(1)(a) An eligible telecommunications carrier shall provide a Lifeline Assistance Plan to qualified residential subscribers,

585-02918-18 20181018c2

as defined in the eligible telecommunications carrier's published schedules. For the purposes of this section, the term "eligible telecommunications carrier" means a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201. Notwithstanding the provision of s. 364.011 that exempts certain commercial mobile radio service providers from commission oversight, the term "eligible telecommunications carrier" includes any commercial mobile radio service provider designated by the commission pursuant to 47 C.F.R. s. 54.201 and the commission is authorized to make such a designation, upon petition, for the limited purpose of providing Lifeline service.

(b) An eligible telecommunications carrier must ~~shall~~ offer a consumer who applies for or receives Lifeline service the option of blocking all toll calls or, if technically capable, placing a limit on the number of toll calls a consumer can make. The eligible telecommunications carrier may not charge the consumer an administrative charge or other additional fee for blocking the service.

(c) An eligible telecommunications carrier may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll blocking or toll limitation. If the qualifying low-income consumer elects not to place toll blocking on the line, an eligible telecommunications carrier may charge a service deposit.

(d) An eligible telecommunications carrier may not charge Lifeline subscribers a monthly number-portability charge.

(e)1. An eligible telecommunications carrier must notify a

Lifeline subscriber of impending termination of Lifeline service if the company has a reasonable basis for believing that the subscriber no longer qualifies for such service. Notification of pending termination must be in the form of a letter that is separate from the subscriber's bill.

2. ~~An eligible telecommunications carrier shall allow a subscriber 60 days following the date of the pending termination letter to demonstrate continued eligibility.~~ The subscriber must present proof of continued eligibility upon request of the eligible telecommunications carrier or the Federal Communications Commission or its designee. An eligible telecommunications carrier may transfer a subscriber off of Lifeline service, pursuant to its tariff, if the subscriber fails to demonstrate continued eligibility.

3. The commission shall establish procedures for such notification and termination.

(f) An eligible telecommunications carrier must ~~shall~~ timely credit a consumer's bill with the Lifeline Assistance credit as soon as practicable, but no later than 60 days following receipt of notice of eligibility from the Office of Public Counsel or proof of eligibility from the consumer.

(2)(a) An ~~Each local exchange telecommunications company that has more than 1 million access lines and that is designated as an~~ eligible telecommunications carrier, including ~~shall, and~~ any commercial mobile radio service provider designated as an eligible telecommunications carrier pursuant to 47 U.S.C. s. 214(e) may~~, upon filing a notice of election to do so with the commission,~~ provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility

test at 135 ~~150~~ percent or less of the federal poverty income guidelines for Lifeline customers. ~~Such a test for eligibility must augment, rather than replace, the eligibility standards established by federal law and based on participation in certain low-income assistance programs. Each intrastate interexchange telecommunications company shall file or publish a schedule providing at a minimum the intrastate interexchange telecommunications company's current Lifeline benefits and exemptions to Lifeline customers who meet the income eligibility test set forth in this subsection.~~ The Office of Public Counsel shall certify and maintain claims submitted by a customer for eligibility under the income test authorized by this subsection.

(b) Each eligible telecommunications carrier subject to this subsection must ~~shall~~ provide to each state and federal agency providing benefits to persons eligible for Lifeline service applications, brochures, pamphlets, or other materials that inform the persons of their eligibility for Lifeline, and each state agency providing the benefits shall furnish the materials to affected persons at the time they apply for benefits.

(c) An eligible telecommunications carrier may not discontinue basic local telecommunications service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for nonbasic services billed by the telecommunications company, including, but not limited to, long-distance service. A subscriber who receives Lifeline service must ~~shall~~ pay all applicable basic local telecommunications service fees, including the subscriber line charge, E-911, telephone relay system charges, and applicable state and federal

taxes.

(d) An eligible telecommunications carrier may not refuse to connect, reconnect, or provide Lifeline service because of unpaid toll charges or nonbasic charges other than basic local telecommunications service.

(e) An eligible telecommunications carrier may require that payment arrangements be made for outstanding debt associated with basic local telecommunications service, subscriber line charges, E-911, telephone relay system charges, and applicable state and federal taxes.

(f) An eligible telecommunications carrier may block a Lifeline service subscriber's access to all long-distance service, except for toll-free numbers, and may block the ability to accept collect calls if ~~when~~ the subscriber owes an outstanding amount for long-distance service or amounts resulting from collect calls. However, the eligible telecommunications carrier may not impose a charge for blocking long-distance service. The eligible telecommunications carrier shall remove the block at the request of the subscriber without additional cost to the subscriber upon payment of the outstanding amount. An eligible telecommunications carrier may charge a service deposit before removing the block.

(g)1. ~~By December 31, 2010,~~ Each state agency that provides benefits to persons eligible for Lifeline service shall undertake, in cooperation with the Department of Children and Families, ~~the Department of Education,~~ the commission, the Office of Public Counsel, and telecommunications companies designated eligible telecommunications carriers providing Lifeline services, the development of procedures to promote

Lifeline participation. The department ~~departments~~, the commission, and the Office of Public Counsel may exchange sufficient information with the appropriate eligible telecommunications carriers or the Federal Communications Commission, or its designee and any commercial mobile radio service provider electing to provide Lifeline service under paragraph (a), such as a person's name, date of birth, service address, and telephone number, so that eligible customers ~~the carriers~~ can be enrolled ~~identify and enroll an eligible person~~ in the Lifeline and Link-Up programs. The information remains confidential and exempt pursuant to s. 364.107 and may only be used for purposes of determining eligibility and enrollment in the Lifeline and Link-Up programs.

2. If any state agency determines that a person is eligible for Lifeline services, the agency shall immediately forward the information to the commission to ensure that the person is automatically enrolled in the program with the appropriate eligible telecommunications carrier. The state agency shall include an option for an eligible customer to choose not to subscribe to the Lifeline service. The Public Service Commission and the Department of Children and Families shall~~, no later than December 31, 2007,~~ adopt rules creating procedures to automatically enroll eligible customers in Lifeline service.

3. ~~By December 31, 2010,~~ The commission, the Department of Children and Families, the Office of Public Counsel, and each eligible telecommunications carrier offering Lifeline and Link-Up services shall convene a Lifeline Workgroup to discuss how the eligible subscriber information in subparagraph 1. will be shared, the obligations of each party with respect to the use of

that information, and the procedures to be implemented to increase enrollment and verify eligibility in these programs.

(h) The commission shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 each year on the number of customers who are subscribing to Lifeline service and the effectiveness of any procedures to promote participation.

(i) The commission may undertake appropriate measures to inform low-income consumers of the availability of the Lifeline and Link-Up programs.

(j) The commission shall adopt rules to administer this section.

Section 2. Subsection (2) of section 364.107, Florida Statutes, is amended to read:

364.107 Public records exemption; Lifeline Assistance Plan participants.—

(2) Information made confidential and exempt under subsection (1) may be released to the applicable telecommunications carrier, the Federal Communications Commission, or the Federal Communications Commission designee for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 8, 2018

I respectfully request that **Senate Bill # 1018**, relating to Designation of Eligible Telecommunications Carriers, 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

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 810
INTRODUCER:	Rules Committee and Senator Powell
SUBJECT:	Vote-by-mail Ballots
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	**Favorable**
2.	Fox	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810 is a single-subject, election administration bill that allows a county supervisor of elections to accept the completed, vote-by-mail ballot of a county-registered elector at early voting sites during the sites' hours of operation. Arguably, the law does not currently allow for this return method; instead, a vote-by-mail elector may only return a ballot to his or her county Supervisor of Election's office(s), unless the voter chooses to wait in line at an early voting site or Election Day polling place and vote in person.

The bill also tasks the Florida Division of Elections to adopt uniform rules for the receipt of ballots.

The bill takes effect on July 1, 2018.

II. Present Situation:

An elector must return his or her vote-by-mail ballot to the supervisor's office in his of her county of registration.[1] An elector possessing a vote-by-mail ballot who seeks to vote at an early

[1] Secretary of State, *Directive 2013-01— Return of Absentee Ballots* (Nov. 25, 2013), available at http://dos.myflorida.com/media/693333/sos_directive_2013-01.pdf (last accessed Jan. 31, 2018). The Secretary of State's Directive was controversial; Deb Clark, Pinellas County Supervisor of Elections, openly defied the Directive by maintaining remote ballot drop-off sites throughout her county for an upcoming federal special election. Steve Bousquet, Tampa Bay Times, *Detzner's Directive on Absentee Ballots Sets-Off Spirited Debate*, reprinted at http://miamiherald.typepad.com/nakedpolitics/2013/11/detzners-directive-on-absentees-sets-off-spirited-debate.html (Miami

voting site or Election-day polling place must have an elections worker spoil the ballot, after which the elector may cast a regular or provisional ballot.[2] Poll workers can utilize alternate procedures if the voter does not have the vote-by-mail ballot in his or her possession.[3] All of these procedures, however, require a voter to wait in line at the early voting site or polling place to cast a ballot.

III. Effect of Proposed Changes:

CS/SB 810 gives county supervisors of elections the option to provide for vote-by-mail ballot drop-off at early voting sites during the sites' hours of operation, for voters registered in the county. Further, it directs the Division of Elections to adopt uniform rules for the receipt of ballots.

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:

County supervisors of elections may need to purchase secure drop-boxes for polling sites or employ additional poll workers, depending on the precedural drop-off rules enacted by the Division. However, local government will fund these relatively minor costs; there is no expected impact on State revenues or expenditures.

Herald Nov. 2013 Naked Politics blog) (last accessed Jan. 31, 2018). It is unclear how many Supervisors of Elections are currently complying with the Secretary's mandate.

[2] *Id.*; ss. 101.68 and 101.69, F.S.

[3] Section 101.69, F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 101.69 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 Rules on February 22, 2018:
The CS gives each county supervisors of elections the *option* to accept vote-by-mail ballots at early voting sites, and removes a requirement that the elector *personally deliver* his or her ballot.

B. Amendments:

None.

243126

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
	.	
	.	
	.	

The Committee on Rules (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 46 - 50

and insert:

(2)(a) If an elector who has received a vote-by-mail ballot and has not returned the voted vote-by-mail ballot to the supervisor chooses not to vote in person as provided in subsection (1), the supervisor may accept the elector's voted vote-by-mail ballot at an early voting site in the county where the elector is registered to vote during the site's hours of operation.

243126

12

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

14 And the title is amended as follows:

15 Delete lines 3 - 6

16 and insert:

17 101.69, F.S.; authorizing a supervisor of elections to

18 accept an elector’s voted vote-by-mail ballot at an

19 early voting site in the county where the elector is

20 registered to vote during the site’s hours of

By Senator Powell

30-00516-18 2018810__

A bill to be entitled

An act relating to vote-by-mail ballots; amending s. 101.69, F.S.; authorizing an elector to vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the elector's county of residence during the site's hours of operation; requiring the Division of Elections to adopt rules; providing an effective date.

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

Section 1. Section 101.69, Florida Statutes, is amended to read:

101.69 Voting in person; return of vote-by-mail ballot.—

(1) The provisions of this code shall not be construed to prohibit any elector from voting in person at the elector's precinct on the day of an election or at an early voting site, notwithstanding that the elector has requested a vote-by-mail ballot for that election. An elector who has returned a voted vote-by-mail ballot to the supervisor, however, is deemed to have cast his or her ballot and is not entitled to vote another ballot or to have a provisional ballot counted by the county canvassing board. An elector who has received a vote-by-mail ballot and has not returned the voted ballot to the supervisor, but desires to vote in person, shall return the ballot, whether voted or not, to the election board in the elector's precinct or to an early voting site. The returned ballot shall be marked "canceled" by the board and placed with other canceled ballots. However, if the elector does not return the ballot and the

30-00516-18 2018810__

election official:

(a) ~~(1)~~ Confirms that the supervisor has received the elector's vote-by-mail ballot, the elector shall not be allowed to vote in person. If the elector maintains that he or she has not returned the vote-by-mail ballot or remains eligible to vote, the elector shall be provided a provisional ballot as provided in s. 101.048.

(b) ~~(2)~~ Confirms that the supervisor has not received the elector's vote-by-mail ballot, the elector shall be allowed to vote in person as provided in this code. The elector's vote-by-mail ballot, if subsequently received, shall not be counted and shall remain in the mailing envelope, and the envelope shall be marked "Rejected as Illegal."

(c) ~~(3)~~ Cannot determine whether the supervisor has received the elector's vote-by-mail ballot, the elector may vote a provisional ballot as provided in s. 101.048.

(2)(a) If the elector chooses not to vote in person as provided in subsection (1), the elector may vote by personally delivering his or her completed vote-by-mail ballot to an early voting site in the elector's county of residence during the early voting site's hours of operation.

(b) The division shall adopt uniform rules for the receipt of the ballots.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-22-18
Meeting Date

SB 810
Bill Number (if applicable)

Topic Vote by Mail Ballots

243126
Amendment Barcode (if applicable)

Name JAN RUBINO

Job Title Volunteer

Address 726 Ingleside Ave
Street

Phone (850) 224-9262

Tallahassee Fla 32303
City *State* *Zip*

Email rubinojan@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida League of Women Voters

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

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2-22-18
Meeting Date

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Topic Vote by Mail Ballots

Amendment Barcode (if applicable)

Name JAN RUBINO

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Address 726 Ingleside Ave.
Street

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Tallahassee Fla. 32303
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(The Chair will read this information into the record.)

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

SB 810
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic SB 810 Early Voting

Name Dillon Boatner

Job Title Student / University of Florida

Address 2933 SW 35 Pl #121
Street

Phone 386-852-6245

Gainesville FL 32608
City *State* *Zip*

Email dboatner@ufl.edu

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

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 2, 2018

I respectfully request that **Senate Bill #810**, relating to Vote-by-mail Ballots, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Bobby Powell
Florida Senate, District 30

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 1128
INTRODUCER:	Health Policy Committee and Senator Stargel
SUBJECT:	Pharmacies
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	**Fav/CS**
2.	Kraemer	McSwain	RI	**Favorable**
3.	Rossitto-Van Winkle	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1128 establishes a Class III institutional pharmacy permit. A Class III institutional pharmacy may dispense, distribute, compound, fill prescriptions, and prepare prepackaged drug products, for an affiliated hospital and entities under common control that hold permits issued under the Florida Pharmacy Act or the Florida Drug and Cosmetic Act. A Class III institutional pharmacy is exempt from permitting under the Florida Drug and Cosmetic Act.

The bill exempts from the definition of wholesale distribution under the Florida Drug and Cosmetic Act:

- A hospital arranging for a prescription drug wholesale distributor to distribute prescription drugs that were purchased by the hospital under s. 340B of the Public Health Services Act directly to a contract pharmacy; and
- The dispensing or distribution of a medicinal (prescription) drug by a Class III institutional pharmacy.

The bill expands the pharmacists eligible for two seats on the Board of Pharmacy to include pharmacists engaged in the practice of pharmacy in a Class III institutional pharmacy.

CS/SB 1128 has an indeterminate effect on state government. See Section V, Fiscal Impact Statement.

The effective date of the bill is July 1, 2018.

II. Present Situation:

Pharmacy

The practice of pharmacy, and the licensure of pharmacies, are regulated by ch. 465, F.S. The "practice of the profession of pharmacy" includes:

- Compounding, dispensing, and consulting the consumer concerning the contents, therapeutic values, and uses of any medicinal (prescription)[1] drug; and
- Other pharmaceutical services.[2,3]

The Board of Pharmacy

The Board of Pharmacy (Board) is created within the Department of Health (DOH), and consists of nine members appointed for four-year terms by the Governor and confirmed by the Senate.[4] Seven members of the Board must be licensed pharmacists who are residents of Florida and who have been engaged in the practice of pharmacy in this state for at least four years and, to the extent possible, represent the various pharmacy practice settings.[5]

The Board members must include the following, of which one member must be 60 years of age or older:

- Two pharmacists currently engaged in practice in a community pharmacy;
- Two pharmacists currently engaged in practice in a Class II institutional pharmacy or a Modified Class II institutional pharmacy;
- Three pharmacists must be licensed in this state irrespective of practice setting; and
- Two Florida residents who are not pharmacists and are not connected with the practice of pharmacy, drug manufacturing or drug wholesaling.[6]

The Board is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for safe practice.[7] All pharmacies must obtain a

---

[1] Under s. 465.003(8), F.S., "medicinal drugs" means substances commonly known as "prescription: or "legend" drugs required by law to be dispensed by prescription only.
[2] Section 465.003(13), F.S.
[3] In the context of pharmacy practice, "other pharmaceutical services" means the monitoring of the patient's drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient's drug therapy and communication with the patient's prescribing health care provider as licensed under chs. 458, 459, 461, or 466, F.S., or similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient, regarding the drug therapy. The "practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, expressly permits a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients, and includes the administration of vaccines to adults. Section 465.003(13), F.S.
[4] *See* s. 465.004(1), F.S.
[5] *See* s. 465.004(2), F.S.
[6] *Id*.
[7] Sections 465.002, and 465.0155, F.S.

permit before operating, unless exempt. This is true whether opening a new establishment, or simply changing locations or owners.[8]

The general application and permitting process for a business establishment to obtain a pharmacy permit requires the submission of the following information to the DOH:

- General drug safety measures;
- Minimum standards for the physical facilities of pharmacies;
- Safe storage of floor-stock drugs;
- Functions of the pharmacist, and consultant pharmacist[9] in an institutional pharmacy, consistent with the size and scope of the pharmacy;
- Procedures for the safe storage and handling of radioactive drugs;
- Procedures for the distribution and disposition of drug samples or complimentary medicinal drugs;[10]
- Procedures for the transfer of prescription files and medicinal drugs upon the change of ownership or closing of a pharmacy;
- Minimum equipment which a pharmacy must at all times possess to fill prescriptions properly; and
- Procedures for the dispensing of controlled substances to minimize dispensing based on fraudulent representations or invalid practitioner-patient relationships.[11]

The Practice of Pharmacy

There are seven types of pharmacies eligible for various operating permits issued by the DOH:

- Community pharmacy;[12]
- Institutional pharmacy;[13]
- Nuclear pharmacy;[14]
- Special pharmacy;[15]
- Internet pharmacy;[16]

[8] *See* Fla. Admin. Code R. 64B16-28.100(1) (2018).
[9] Sections 465.003(3) and 465.0125, F.S., provide that a consultant pharmacist, licensed and certified by DOH, is responsible for maintaining all required drug records and establishing safe drug handling and storage procedures. *See infra* notes 23 and 24.
[10] *See* s. 499.028, F.S.
[11] Section 465.022, F.S., and *See* Fla. Admin. Code R. 64B16-28.100 (2018).
[12] The term "community pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See* ss. 465.003(11)(a)1. and 465.018, F.S.
[13] *See* ss. 465.003(11)(a)2. and 465.019, F.S.
[14] The term "nuclear pharmacy" includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under chapter 395, F.S., or the nuclear medicine facilities of such hospitals. *See* ss. 465.003(11)(a)3. and 465.0193, F.S.
[15] The term "special pharmacy" includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. *See* ss. 465.003(11)(a)4. and 465.0196, F.S.
[16] The term "internet pharmacy" includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See* ss. 465.003(11)(a)5. and 465.0197, F.S.

- Non-resident sterile compounding pharmacy;[17] and
- Special sterile compounding pharmacy.[18]

Institutional Pharmacies

An "institutional pharmacy" includes any pharmacy located in a health care institution, which includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.[19] Institutional pharmacy permits are required for any pharmacy located in any health care institution.[20]

All institutional pharmacies must designate a consultant pharmacist[21] who is responsible for maintaining all drug records required by law, and for establishing drug handling procedures for the safe handling and storage of drugs. The consultant pharmacist may also be responsible for ordering and evaluating any laboratory or clinical tests when such tests are necessary for the proper performance of his or her responsibilities.[22] Such laboratory or clinical tests may be ordered only with regard to patients residing in a nursing home; and then only when authorized by the medical director. The consultant pharmacist must complete additional training, demonstrate additional qualifications in the practice of institutional pharmacy, as required by the board, and be licensed as a registered pharmacist.[23,24]

Currently there are three types of institutional pharmacy permits issued by the Board to institutional pharmacies: Institutional Class I, Class II, and Modified Class II.[25]

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy in which all medicinal drugs are administered from individual prescription containers to an individual patient; and in which

[17] The term "nonresident sterile compounding pharmacy" includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. *See* s. 465.0158, F.S.
[18] *See* Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2018). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.
[19] Section 465.003(11)(a)2., F.S.
[20] *See* Fla. Admin. Code R. 64B16-28.100(3) (2018).
[21] *See* ss. 465.003(11), and 465.0125, F.S.
[22] *Id*.
[23] Section 465.0125, F.S.
[24] As required by Fla. Admin. Code R. 64B16-28.501(1), (2), and (3) (2018), the consultant pharmacist must also "conduct Drug Regimen Reviews required by Federal or State law, inspect the facility and prepare a written report to be filed at the permitted facility at least monthly, . . . , monitor the facility system for providing medication administration records and physician order sheets to ensure that the most current record of medications is available for the monthly drug regimen review, and may utilize additional consultant pharmacists to assist in this review and in the monthly facility inspection." A licensed consultant pharmacist may "remotely access a facility or pharmacy's electronic database from outside the facility or pharmacy to conduct any services additional or supplemental to regular drug regimen reviews, subject to the pharmacy or facility establishing policies and procedures to ensure the security and privacy of confidential patient records, including compliance with applicable Federal HIPAA regulations." The Board office must be notified in writing within ten days of any change in the consultant pharmacist of record, pursuant to Fla. Admin. Code R. 64B16-28.100(3)(b) (2018).
[25] Section 465.019, F.S.

medicinal drugs are not dispensed on the premises, except licensed nursing homes[26] may purchase medical oxygen for administration to residents.[27]

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, provide dispensing and consulting services on the premises to patients of the institution, for use on the premises of the institution.[28] A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.[29] The consultant pharmacist of record is responsible for establishing a written policy and procedure manual for the implementation.[30] An Institutional Class II Pharmacy may elect to participate in the Cancer Drug Donation Program within the Department of Business and Professional Regulation (DBPR).[31]

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are those institutional pharmacies in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements.[32] Modified Class II Institutional pharmacies are designated as Type "A," Type "B," and Type "C" according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and, the quantity of the medicinal drug formulary at the facility;[33] and provide the following pharmacy services.

Type "A" Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the Board after review of the policy and procedure manual.

Type "B" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the Board after review of the policy and procedure manual.

Type "C" Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations

[26] *See* part II, ch. 400, F.S., relating to Nursing Homes.
[27] Section 465.019(2)(a), F.S.
[28] *See* s. 565.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians under limited circumstances.
[29] *See* Fla. Admin. Code R. 64B16-28.603 (2018).
[30] *See* s. 465.019(5), F.S.
[31] *See* s. 499.029, F.S., relating to the Cancer Drug Donation Program Act.
[32] *See* s. 465.019(2)(c), F.S.
[33] *See* Fla. Admin. Code R. 64B16-28.702 (2018).

not less than once per month, unless otherwise directed by the Board after review of the policy and procedure manual.[34]

All Modified Class II Institutional Pharmacies must be under the control and supervision of a certified consultant pharmacist. The consultant pharmacist of record is responsible for developing and maintaining a current policy and procedure manual. The permittee must make available the policy and procedure manual to the appropriate state or federal agencies upon inspection.[35]

Pharmaceutical Distribution in Florida

The DBPR is charged with, among other duties, regulating the distribution of prescription drugs into and within Florida against fraud, adulteration, misbranding, or false advertising in the preparation, manufacture, repackaging, or distribution of drugs under the Florida Drug and Cosmetic Act.[36]

In particular, the regulations require various entities in the distribution chain, such as prescription drug manufacturers,[37] prescription drug repackagers, and prescription drug wholesale distributors,[38] to obtain permits. In total, Florida has 18 distinct permits for prescription drug manufacturers and wholesale distributors.[39]

Prescription Drug Repackaging Permit and Restricted Prescription Drug Distributor Permit

Within the pharmaceutical supply chain, a repackager removes a drug from its container and places it in another, usually smaller, container for sale to a distributor or dispenser. At the end of the supply chain, a dispenser provides the drug to the patient. A dispenser may be a community pharmacy (i.e. a retail chain pharmacy), an institutional pharmacy, a health care facility, or a doctor's office.[40]

A prescription drug repackager permit is required for any person that repackages a prescription drug in this state. A person that operates an establishment permitted as a prescription drug repackager may engage in distribution of prescription drugs repackaged at that establishment and must comply with all of the provisions of this part and the rules adopted under this part that

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[34] *Id.*
[35] *See* the *Institutional Pharmacy Permit* information published by the DOH at http://floridaspharmacy.gov/licensing/institutional-pharmacy-permit/ (last visited Feb. 7, 2018).
[36] *See* part I, ch. 499, F.S., and specifically s. 499.002, F.S.
[37] Sections 499.01(2)(a) and (c), F.S.
[38] Sections 499.01(2)(e), (f), (g) and (h), F.S.
[39] *See* s. 499.01(1), F.S., which provides a permit is required, before operating, for each person and establishment that intends to operate as a: prescription drug manufacturer; prescription drug repackager; nonresident prescription drug manufacturer; nonresident prescription drug repackager; prescription drug wholesale distributor; out-of-state prescription drug wholesale distributor; retail pharmacy drug wholesale distributor; restricted prescription drug distributor; complimentary drug distributor; freight forwarder; veterinary prescription drug retail establishment; veterinary prescription drug wholesale distributor; limited prescription drug veterinary wholesale distributor; over-the-counter drug manufacturer; device manufacturer; cosmetic manufacturer; third party logistics provider; or health care clinic establishment.
[40] Section 499.01(2)(b), F.S.

apply to a prescription drug manufacturer. A prescription drug repackager must comply with all appropriate state and federal good manufacturing practices.[41]

A health care entity,[42] permitted as a restricted prescription drug distributor,[43] is exempt from obtaining a prescription drug repackager permit for the repackaging of prescription drugs for that health care entity's own use or for distribution to other hospitals or health care entities in the state for their own use under the following conditions:[44]

- The hospital or health care entity is under common control;[45]
- The prescription drugs are repackaged in accordance with current state and federal good manufacturing practices;
- The prescription drugs are labeled in accordance with state and federal law; and
- The distributor notifies the DOH 30 days in advance of its intent to repackage.

Health Care Clinic Establishment Permit

A health care clinic establishment permit is required for the purchase of a prescription drug by a health care clinic that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number.[46]

Section 340B Discount Drug Program

Section 340B of the Public Health Services Act is a federal program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations and covered entities at significantly reduced prices directed at serving primarily low income and vulnerable populations.[47] Eligible health care organizations are required to register with the Health Resources and Services Administration within the federal Department of Health and Human Services and meet established eligibility requirements.[48] Eligible health care entities who receive distributions of such drugs must obtain a restricted drug distributor-governmental entities permit from DBPR allowing them to receive and distribute the discounted drugs.[49]

The following six categories of hospitals are eligible to participate in the program:

- Disproportionate Share Hospitals (DSH);

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[41] *Id*.
[42] A "health care entity" means a closed pharmacy or any person, organization, or business entity that provides diagnostic, medical, surgical, or dental treatment or care, or chronic or rehabilitative care, but does not include any wholesale distributor or [community pharmacy]. *See* s. 499.003(21), F.S. A "closed pharmacy" means a pharmacy that is licensed under ch. 465, F.S., and purchases prescription drugs for use by a limited patient population and not for wholesale distribution or sale to the public. *See* s. 499.003(8), F.S.
[43] A restricted prescription drug distributor permit is required for the distribution of a prescription drug that is not considered wholesale distribution. *See* s. 499.01(2)(h)1.a., F.S. Several exemptions from the definition of wholesale distribution could be applicable to the discussion, including s. 499.003(48)(a)3, (b)6, and (i), F.S.
[44] Section 499.01(5), F.S.
[45] Section 499.01(5)(b), F.S., defines "common control" as the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.
[46] *See* s. 499.01(2)(r), F.S.
[47] 42 U.S.C. s. 256(b); *See also* 340B Health, *Overview of the 340B Drug Pricing Program* https://www.340bhealth.org/340b-resources/340b-program/overview/ (last visited Feb. 7, 2018).
[48] *Id.*
[49] *See* Fla. Admin. Code R. 61N-1.023 (2018).

- Children's hospitals;
- Cancer hospitals exempt from the Medicare prospective payment system;
- Sole community hospitals;
- Rural Referral Centers; and
- Critical Access Hospitals (CAH).

Hospitals in each of the categories must be owned or operated by state or local government, a public or private non-profit corporation which is formally granted governmental powers by state or local government, or a private non-profit organization that has a contract with a state or local government to provide care to low-income individuals who do not qualify for Medicaid or Medicare.[50] In addition, with the exception of CAHs, hospitals must meet payer-mix criteria related to the Medicare DSH program.

There are also eleven categories of non-hospital covered entities that are eligible based on receiving federal funding, including federally qualified health centers (FQHCs)[51]; FQHC "look-alikes"[52]; state-operated AIDS drug assistance programs; the Ryan White Comprehensive AIDS Resources Emergency Act clinics and programs; tuberculosis, black lung, family planning, and sexually transmitted disease clinics; hemophilia treatment centers; Title X public housing primary care clinics; homeless clinics; Urban Indian clinics; and Native Hawaiian health centers.[53]

III. Effect of Proposed Changes:

Amendments to the Florida Pharmacy Act

The bill creates a new type of institutional pharmacy – the "Class III institutional pharmacy"; and describes it as an institutional pharmacy, including central distribution facilities, which is affiliated with a hospital and provides the same services as those authorized for Class II institutional pharmacies.

Additionally, the bill authorizes a Class III institutional pharmacy to:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for affiliated hospitals and entities under common control, each of which must be permitted under ch. 465, F.S., to possess medicinal drugs; and
- Provide medicinal drugs, drug products, and pharmaceutical services to an entity under common control that holds an active health care clinic establishment permit.[54]

[50] *See supra* note 47.
[51] Federally Qualified Health Centers are community-based health care providers that receive funds from the HRSA Health Center Program to provide primary care services in underserved areas. *See* U.S. Health Resources & Services Administration, *Federally Qualified Health Centers* https://www.hrsa.gov/opa/eligibility-and-registration/health-centers/fqhc/index.html (last visited Feb. 7, 2018).
[52] Federally Qualified Health Center Look-Alikes are community-based health care providers that meet the requirements of the HRSA Health Center Program, but do not receive Health Center Program funding. *See* U.S. Health Resources & Services Administration, *Federally Qualified Health Centers Look Alike* https://www.hrsa.gov/opa/eligibility-and-registration/health-centers/fqhc-look-alikes/index.html (last visited Feb. 7, 2018).
[53] See *supra* note 51.
[54] *See* s. 499.01(2)(r), F.S.

The bill requires a Class III institutional pharmacy to maintain policies and procedures that identify or address:

- The consultant pharmacist responsible for pharmaceutical services;
- Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products;
- Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products; and
- Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.

The bill amends s. 465.003, F.S., to modify the definition of the "practice of the profession of pharmacy" to include the preparation of prepackaged drug products in facilities holding Class III institutional pharmacy permits. The bill also provides the following new definitions:

- "Central distribution facility" means a facility under common control with a hospital holding a Class III institutional pharmacy permit that may dispense, distribute, compound, or fill prescriptions for medicinal drugs; prepare prepackaged drug products; and conduct other pharmaceutical services.
- "Common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

The bill allows up to a 24- hour supply of medicinal drugs to be prescribed to outpatients in a hospital emergency department that does not have a Community Pharmacy Permit, if the hospital holds a Class III institutional pharmacy permit, similar to the authority granted to a Class II institutional pharmacy. The bill also treats Class III permits similar to Class II permits with respect to institutional formulary systems and substitutions of interchangeable biosimilar products.

Section 465.004, F.S., expands the qualifications of two persons eligible to serve on the Board to include a person engaged in the practice of professional pharmacy in a Class II institutional pharmacy, a Modified Class II institutional pharmacy, or a Class III institutional pharmacy.

Amendments to the Florida Drug and Cosmetic Act

The bill amends s. 499.003, F.S., to modify the definition of a "prepackaged drug product" to include a drug that was originally finished in a package sealed by a manufacturer, that is placed in a properly labeled container by a pharmacy or practitioner authorized to dispense pursuant to ch. 465, F.S., for the purpose of dispensing, or such a product dispensed "by a facility holding a Class III institutional pharmacy permit," The revised definition authorizes dispensing by a facility with a Class III institutional pharmacy permit and removes a reference to "the establishment in which the prepackaging occurred."

The definition of "wholesale distribution" in s. 499.003(48), F.S., is amended to exclude:

- A hospital covered by s. 340B of the Public Health Service Act, 42 U.S.C. s. 256b, that arranges for a prescription drug wholesale distributor to distribute prescription drugs covered under that act directly to a contract pharmacy.[55] The definition further provides that such hospital is exempt from obtaining a restricted prescription drug distributor permit under s. 499.01(2)(h), F.S.; and
- The dispensing or distribution of a medicinal drug by a Class III institutional pharmacy pursuant to s. 465.019, F.S.

Section 499.01, F.S., is amended to exempt entities holding a Class III institutional pharmacy permit or a health care clinic establishment permit from the requirement for Prescription Drug Repackager permits or Restricted Prescription Drug Distributor permits for the distribution of medicinal drugs or prepackaged drug products between the establishments, if those entities are under common control.

The bill removes the exemption in s. 499.01(5), F.S., from the requirement that a health care entity with a Prescription Drug Repackager permit obtain a Restricted Prescription Drug Distributor permit when the prepackaging or distribution is for its own use. That exemption is replaced by the express exemptions in ss. 499.01((2)(b) and (h), F.S., created in the bill.

CS/SB 1128 has 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:

The Department of Business and Professional Regulation (DBPR) indicated it may see a reduction in licensure revenues as health care institutions that obtain a Class III

[55] A "contract pharmacy" is a pharmacy which contracts with a covered entity to dispense 340B drugs to eligible patients on the covered entity's behalf in accordance with guidelines of the federal agency charged with improving access to health services for poor, uninsured, or underserved communities. *See* https://www.340bhealth.org/340b-resources/340b-program/key-acronyms-terms/ (last visited Feb. 7, 2018).

Institutional Pharmacy permit will no longer require permits from the DBPR as a prescription drug repackager or restricted prescription drug distributor.[56]

B. Private Sector Impact:

According to the DBPR, the private sector could realize a reduction in expenditures on permitting fees based on the ability to obtain one Class III institutional pharmacy permit and be exempted from other permitting requirements under ch. 499, F.S.[57]

C. Government Sector Impact:

Because the number of licensees choosing to obtain a Class III institutional permit is unknown, the DBPR indicated that the fiscal impact upon its operations is indeterminate.[58]

While the creation of Class III institutional pharmacy permits may result in additional expenditures for the DOH and the Board with respect to licensure and enforcement, the DOH estimated no fiscal impact to state government.[59]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provision in s. 499.01(5), F.S., that is eliminated by the bill (in favor of the Class III institutional pharmacy permit) authorized repackaging and distribution activities of prescription [medicinal] drugs for a hospital or other health care entity's "own use," which is a limiting term of art for antitrust considerations. This limiting term is not used with respect to the authorized activities under the Class III institutional pharmacy permit.[60]

Similarly, the exemption from the definition of wholesale distribution for the dispensing or distribution of a medicinal drug by a Class III institutional pharmacy pursuant to s. 465.019, F.S., is very broad. Section 465.019(2)(d)1.d., F.S., of the bill authorizes the provision of services (stated in s. 465.019(2)(d)1.(a.-c.), F.S.),to affiliated hospitals, and to any entity under common control, if the entity holds a health care clinic establishment permit.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 465.003, 465.004, 465.019, 465.0252, 499.003, and 499.01.

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[56] *See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation)* for HB 675, (similar to SB 1128), dated Jan. 5, 2018, (on file with Senate Committee on Regulated Industries) at page 6.
[57] *Id*.
[58] *Id*.
[59] *See 2018 Agency Legislative Bill Analysis (AGENCY: Florida Department of Health)* for HB 675, (similar to SB 1128), dated Nov. 15, 2017, (on file with Senate Committee on Regulated Industries) at page 4.
[60] *See Abbott Laboratories v. Portland Retail Druggists*, 425 U.S. 1 (1976).

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 Health Policy on January 30, 2018:
The committee substitute:

- Reorganizes the contents of the bill;
- Further modifies the definition of "prepackaged drug product" in Section 5 of the CS; and
- Instead of exempting a hospital that arranges for a prescription drug wholesale distributor to distribute 340B drugs directly to a contract pharmacy from the requirement to obtain a restricted prescription drug distributor permit, the CS exempts the activity from the definition of wholesale distribution.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Stargel

588-02616-18 20181128c1

A bill to be entitled

An act relating to pharmacies; amending s. 465.003, F.S.; revising and providing definitions; amending s. 465.004, F.S.; revising the membership of the Board of Pharmacy; amending s. 465.019, F.S.; establishing Class III institutional pharmacies; providing requirements for such pharmacies; conforming provisions to changes made by the act; amending s. 465.0252, F.S.; revising notice requirements to conform to changes made by the act; amending s. 499.003, F.S.; providing and revising definitions; amending s. 499.01, F.S.; authorizing the distribution of medicinal drugs and prepackaged drug products without a specified permit under certain conditions; deleting a provision exempting certain drug repackagers from specified permit requirements; providing an effective date.

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

Section 1. Subsections (7) and (13) of section 465.003, Florida Statutes, are amended, and subsections (21) and (22) are added to that section, to read:

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

(7) "Institutional formulary system" means a method whereby the medical staff evaluates, appraises, and selects those medicinal drugs or proprietary preparations which in the medical staff's clinical judgment are most useful in patient care, and which are available for dispensing by a practicing pharmacist in

588-02616-18 20181128c1

a Class II or Class III institutional pharmacy.

(13) "Practice of the profession of pharmacy" includes compounding, dispensing, and consulting concerning contents, therapeutic values, and uses of any medicinal drug; consulting concerning therapeutic values and interactions of patent or proprietary preparations, whether pursuant to prescriptions or in the absence and entirely independent of such prescriptions or orders; and conducting other pharmaceutical services. For purposes of this subsection, "other pharmaceutical services" means the monitoring of the patient's drug therapy and assisting the patient in the management of his or her drug therapy, and includes review of the patient's drug therapy and communication with the patient's prescribing health care provider as licensed under chapter 458, chapter 459, chapter 461, or chapter 466, or similar statutory provision in another jurisdiction, or such provider's agent or such other persons as specifically authorized by the patient, regarding the drug therapy. However, nothing in this subsection may be interpreted to permit an alteration of a prescriber's directions, the diagnosis or treatment of any disease, the initiation of any drug therapy, the practice of medicine, or the practice of osteopathic medicine, unless otherwise permitted by law. "Practice of the profession of pharmacy" also includes any other act, service, operation, research, or transaction incidental to, or forming a part of, any of the foregoing acts, requiring, involving, or employing the science or art of any branch of the pharmaceutical profession, study, or training, and shall expressly permit a pharmacist to transmit information from persons authorized to prescribe medicinal drugs to their patients. The practice of the

profession of pharmacy also includes the administration of vaccines to adults pursuant to s. 465.189 and the preparation of prepackaged drug products in facilities holding Class III institutional pharmacy permits.

(21) "Central distribution facility" means a facility under common control with a hospital holding a Class III institutional pharmacy permit that may dispense, distribute, compound, or fill prescriptions for medicinal drugs; prepare prepackaged drug products; and conduct other pharmaceutical services.

(22) "Common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

Section 2. Subsection (2) of section 465.004, Florida Statutes, is amended to read:

465.004 Board of Pharmacy.—

(2) Seven members of the board must be licensed pharmacists who are residents of this state and who have been engaged in the practice of the profession of pharmacy in this state for at least 4 years and, to the extent practicable, represent the various pharmacy practice settings. Of the pharmacist members, two must be currently engaged in the practice of pharmacy in a community pharmacy, two must be currently engaged in the practice of pharmacy in a Class II, ~~institutional pharmacy or a~~ Modified Class II, or Class III institutional pharmacy, and three must be pharmacists licensed in this state irrespective of practice setting. The remaining two members must be residents of the state who have never been licensed as pharmacists and who are in no way connected with the practice of the profession of

pharmacy. No person may be appointed as a consumer member who is in any way connected with a drug manufacturer or wholesaler. At least one member of the board must be 60 years of age or older. The Governor shall appoint members to the board in accordance with this subsection as members' terms expire or as a vacancy occurs until the composition of the board complies with the requirements of this subsection.

Section 3. Subsections (4) and (6) of section 465.019, Florida Statutes, are amended, and paragraph (d) is added to subsection (2) of that section, to read:

465.019 Institutional pharmacies; permits.—

(2) The following classes of institutional pharmacies are established:

(d)1. "Class III institutional pharmacies" are those institutional pharmacies, including central distribution facilities, affiliated with a hospital that provide the same services that are authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may also:

a. Dispense, distribute, compound, and fill prescriptions for medicinal drugs.

b. Prepare prepackaged drug products.

c. Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under this chapter to possess medicinal drugs.

d. Provide the services in sub-subparagraphs a.-c. to an entity under common control which holds an active health care clinic establishment permit as required under s. 499.01(2)(r).

2. A Class III institutional pharmacy shall maintain policies and procedures addressing:

a. The consultant pharmacist responsible for pharmaceutical services.

b. Safe practices for the preparation, dispensing, prepackaging, distribution, and transportation of medicinal drugs and prepackaged drug products.

c. Recordkeeping to monitor the movement, distribution, and transportation of medicinal drugs and prepackaged drug products.

d. Recordkeeping of pharmacy staff responsible for each step in the preparation, dispensing, prepackaging, transportation, and distribution of medicinal drugs and prepackaged drug products.

e. Medicinal drugs and prepackaged drug products that may not be safely distributed among Class III institutional pharmacies.

(4) Medicinal drugs shall be dispensed in an institutional pharmacy to outpatients only when that institution has secured a community pharmacy permit from the department. However, an individual licensed to prescribe medicinal drugs in this state may dispense up to a 24-hour supply of a medicinal drug to any patient of an emergency department of a hospital that operates a Class II or Class III institutional pharmacy, provided that the physician treating the patient in such hospital's emergency department determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such dispensing from the emergency department must be in accordance with the procedures of the hospital. For any such patient for whom a medicinal drug is warranted for a period to exceed 24 hours, an individual licensed to prescribe such drug must dispense a 24-

hour supply of such drug to the patient and must provide the patient with a prescription for such drug for use after the initial 24-hour period. The board may adopt rules necessary to carry out the provisions of this subsection.

(6) In a Class II or Class III institutional pharmacy, an institutional formulary system may be adopted with approval of the medical staff for the purpose of identifying those medicinal drugs, proprietary preparations, biologics, biosimilars, and biosimilar interchangeables that may be dispensed by the pharmacists employed in such institution. A facility with a Class II or Class III institutional pharmacy permit which is operating under the formulary system shall establish policies and procedures for the development of the system in accordance with the joint standards of the American Hospital Association and American Society of Hospital Pharmacists for the utilization of a hospital formulary system, which formulary shall be approved by the medical staff.

Section 4. Subsection (3) of section 465.0252, Florida Statutes, is amended to read:

465.0252 Substitution of interchangeable biosimilar products.—

(3) A pharmacist who practices in a Class II, ~~or~~ Modified Class II, or Class III institutional pharmacy shall comply with the notification provisions of paragraph (2)(c) by entering the substitution in the institution's written medical record system or electronic medical record system.

Section 5. Subsection (39) of section 499.003, Florida Statutes, is amended, and paragraphs (w) and (x) are added to subsection (48) of that section, to read:

499.003 Definitions of terms used in this part.—As used in this part, the term:

(39) "Prepackaged drug product" means a drug that originally was in finished packaged form sealed by a manufacturer and that is placed in a properly labeled container by a pharmacy or practitioner authorized to dispense pursuant to chapter 465 for the purpose of dispensing or by a facility holding a Class III institutional pharmacy permit ~~in the establishment in which the prepackaging occurred~~.

(48) "Wholesale distribution" means the distribution of a prescription drug to a person other than a consumer or patient, or the receipt of a prescription drug by a person other than the consumer or patient, but does not include:

(w) A hospital covered by s. 340B of the Public Health Service Act, 42 U.S.C. s. 256b, that arranges for a prescription drug wholesale distributor to distribute prescription drugs covered under that act directly to a contract pharmacy. Such hospital is exempt from obtaining a restricted prescription drug distributor permit under s. 499.01(2)(h).

(x) The dispensing or distribution of a medicinal drug by a Class III institutional pharmacy pursuant to s. 465.019.

Section 6. Paragraphs (b) and (h) of subsection (2) and subsection (5) of section 499.01, Florida Statutes, are amended to read:

499.01 Permits.—

(2) The following permits are established:

(b) *Prescription drug repackager permit.*—A prescription drug repackager permit is required for any person that repackages a prescription drug in this state.

1. A person that operates an establishment permitted as a prescription drug repackager may engage in distribution of prescription drugs repackaged at that establishment and must comply with all of the provisions of this part and the rules adopted under this part that apply to a prescription drug manufacturer.

2. A prescription drug repackager must comply with all appropriate state and federal good manufacturing practices.

3. A prescription drug repackager permit is not required for distributing medicinal drugs or prepackaged drug products between entities under common control which each hold an active Class III institutional pharmacy permit under chapter 465 or an active health care clinic establishment permit under paragraph (r). For purposes of this subparagraph, the term "common control" has the same meaning as in s. 499.003(48)(a)3.

(h) *Restricted prescription drug distributor permit.*—

1. A restricted prescription drug distributor permit is required for:

a. Any person located in this state who engages in the distribution of a prescription drug, which distribution is not considered "wholesale distribution" under s. 499.003(48)(a).

b. Any person located in this state who engages in the receipt or distribution of a prescription drug in this state for the purpose of processing its return or its destruction if such person is not the person initiating the return, the prescription drug wholesale supplier of the person initiating the return, or the manufacturer of the drug.

c. A blood establishment located in this state which collects blood and blood components only from volunteer donors

as defined in s. 381.06014 or pursuant to an authorized practitioner's order for medical treatment or therapy and engages in the wholesale distribution of a prescription drug not described in s. 499.003(48)(j) to a health care entity. A mobile blood unit operated by a blood establishment permitted under this sub-subparagraph is not required to be separately permitted. The health care entity receiving a prescription drug distributed under this sub-subparagraph must be licensed as a closed pharmacy or provide health care services at that establishment. The blood establishment must operate in accordance with s. 381.06014 and may distribute only:

(I) Prescription drugs indicated for a bleeding or clotting disorder or anemia;

(II) Blood-collection containers approved under s. 505 of the federal act;

(III) Drugs that are blood derivatives, or a recombinant or synthetic form of a blood derivative;

(IV) Prescription drugs that are identified in rules adopted by the department and that are essential to services performed or provided by blood establishments and authorized for distribution by blood establishments under federal law; or

(V) To the extent authorized by federal law, drugs necessary to collect blood or blood components from volunteer blood donors; for blood establishment personnel to perform therapeutic procedures under the direction and supervision of a licensed physician; and to diagnose, treat, manage, and prevent any reaction of a volunteer blood donor or a patient undergoing a therapeutic procedure performed under the direction and supervision of a licensed physician,

as long as all of the health care services provided by the blood establishment are related to its activities as a registered blood establishment or the health care services consist of collecting, processing, storing, or administering human hematopoietic stem cells or progenitor cells or performing diagnostic testing of specimens if such specimens are tested together with specimens undergoing routine donor testing. The blood establishment may purchase and possess the drugs described in this sub-subparagraph without a health care clinic establishment permit.

2. Storage, handling, and recordkeeping of these distributions by a person required to be permitted as a restricted prescription drug distributor must be in accordance with the requirements for wholesale distributors under s. 499.0121.

3. A person who applies for a permit as a restricted prescription drug distributor, or for the renewal of such a permit, must provide to the department the information required under s. 499.012.

4. The department may adopt rules regarding the distribution of prescription drugs by hospitals, health care entities, charitable organizations, other persons not involved in wholesale distribution, and blood establishments, which rules are necessary for the protection of the public health, safety, and welfare.

5. A restricted prescription drug distributor permit is not required for distributions between pharmacies that each hold an active permit under chapter 465, have a common ownership, and

are operating in a freestanding end-stage renal dialysis clinic, if such distributions are made to meet the immediate emergency medical needs of specifically identified patients and do not occur with such frequency as to amount to the regular and systematic supplying of that drug between the pharmacies. The department shall adopt rules establishing when the distribution of a prescription drug under this subparagraph amounts to the regular and systematic supplying of that drug.

6. A restricted prescription drug distributor permit is not required for distributing medicinal drugs or prepackaged drug products between entities under common control that each hold either an active Class III institutional pharmacy permit under chapter 465 or an active health care clinic establishment permit under paragraph (2)(r). For purposes of this subparagraph, the term "common control" has the same meaning as in s. 499.003(48)(a)3.

~~(5) A prescription drug repackager permit issued under this part is not required for a restricted prescription drug distributor permitholder that is a health care entity to repackage prescription drugs in this state for its own use or for distribution to hospitals or other health care entities in the state for their own use, pursuant to s. 499.003(48)(a)3., if:~~

~~(a) The prescription drug distributor notifies the department, in writing, of its intention to engage in repackaging under this exemption, 30 days before engaging in the repackaging of prescription drugs at the permitted establishment;~~

~~(b) The prescription drug distributor is under common~~

~~control with the hospitals or other health care entities to which the prescription drug distributor is distributing prescription drugs. As used in this paragraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;~~

~~(c) The prescription drug distributor repackages the prescription drugs in accordance with current state and federal good manufacturing practices; and~~

~~(d) The prescription drug distributor labels the prescription drug it repackages in accordance with state and federal laws and rules.~~

~~The prescription drug distributor is exempt from the product registration requirements of s. 499.015 with regard to the prescription drugs that it repackages and distributes under this subsection. A prescription drug distributor that repackages and distributes prescription drugs under this subsection to a not-for-profit rural hospital, as defined in s. 395.602, is not required to comply with paragraph (c) or paragraph (d), but must provide to each health care entity for which it repackages, for each prescription drug that is repackaged and distributed, the information required by department rule for labeling prescription drugs. The department shall adopt rules to ensure the safety and integrity of prescription drugs repackaged and distributed under this subsection, including rules regarding prescription drug manufacturing and labeling requirements.~~

Section 7. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1128
Bill Number (if applicable)

Topic Pharmacies

Amendment Barcode (if applicable)

Name David Christian

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Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Hospital

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)

2/22/18
Meeting Date

1128
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic PHARMACY

Name HEATHER FULLER

Job Title PHARMACIST

Address 402 E PALMER AVE
Street

TALLAHASSEE FL 32301
City *State* *Zip*

Phone

Email

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA SOCIETY OF HEALTH SYSTEM PHARMACISTS

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations Subcommittee on Health and Human Services, *Vice Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability
Military and Veterans Affairs, Space, and Domestic Security

SENATOR KELLI STARGEL
Deputy Majority Leader
22nd District

February 16, 2018

The Honorable Lizbeth Benacquisto
Senate Rules Committee, Chair
402 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto:

I respectfully request that SB 1128, related to *Pharmacies*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 22

Cc: John B. Phelps/ Staff Director
Cynthia Futch/ AA

REPLY TO:
☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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 1282
INTRODUCER:	Banking and Insurance Committee and Senator Taddeo
SUBJECT:	Residential Property Insurance
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Present	Yeatman	CA	**Favorable**
3.	Matiyow	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1282 expands the required notice in a homeowner's property insurance policy to include a separate notice that the purchase of hurricane insurance does not include flood insurance.

Additionally, the insurer shall include the notice with the policy documents upon the initial issuance and at each renewal of the homeowner's insurance policy rather than within the homeowner's insurance policy itself.

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

II. Present Situation:

Insurance Policy Notice Requirements

The Florida Insurance Code[1] requires that various insurance policies include specific notices to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. The content of the notice depends on the type of coverage provided. Statutory provisions requiring notices often establish requirements regarding their content, print type or size, and appearance (e.g., bold type or all capitalized text).

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

Section 627.7011(4), F.S., requires a homeowner's property insurance policy to include the following statement in bold, 18-point type:

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

National Flood Insurance Program

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

Nationally, the NFIP insured almost $1.29 trillion in assets in 2014 and $1.27 trillion in assets in 2015. Total earned premium for NFIP coverage for 2014 was $3.56 billion and for 2015 was $3.44 billion.[4]

Private Market Flood Insurance in Florida

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

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

The Legislature amended the law in 2015[7] and 2017.[8] Flood insurance is a separate line of insurance from homeowner's property insurance and is not included in such a policy.[9] In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the

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[2] s. 627.7011(4), F.S.
[3] FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last visited Feb. 7, 2018).
[4] FEMA, *Total Coverage by Calendar Year*, http://www.fema.gov/statistics-calendar-year (last visited Feb. 7, 2018).
[5] Ch. 2014-80, Laws of Fla.
[6] s. 627.715(1)(b), F.S.
[7] Ch. 2015-69, Laws of Fla.
[8] Ch. 2017-142, Laws of Fla.
[9] part X, ch. 627, F.S.

homeowner's property insurance policy does not cover the flood damage.[10] If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will be uninsured.

III. Effect of Proposed Changes:

The bill expands the required notice in a homeowner's property insurance policy to include a separate notice that the purchase of hurricane insurance does not include flood insurance.

Additionally, the insurer shall include the notice with the policy documents upon the initial issuance and at each renewal of the homeowner's insurance policy rather than within the homeowner's insurance policy itself.

If the bill passes, the notice will read:

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

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

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

The effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[10] Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.7011 of the Florida Statutes.

IX. Additional Information:

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

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

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

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Taddeo

597-02620-18 20181282c1

A bill to be entitled

An act relating to residential property insurance; amending s. 627.7011, F.S.; revising a mandatory homeowner's insurance policy disclosure regarding the absence of law and ordinance and flood insurance coverage; requiring insurers issuing such policies to include the disclosure with the policy documents upon the initial issuance of the policy and each renewal; providing applicability; providing an effective date.

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

Section 1. Subsection (4) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

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

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

"FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE ~~FROM THE NATIONAL FLOOD INSURANCE PROGRAM~~. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM

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

597-02620-18 20181282c1

FLOOD, EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE ~~THIS~~ COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE ~~THESE COVERAGES~~ WITH YOUR INSURANCE AGENT."

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

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

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

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 7016
INTRODUCER:	Agriculture Committee
SUBJECT:	OGSR/School Food and Nutrition Service Program
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Akhavein	Becker		**AG Submitted as Committee Bill**
1.	Brown	Caldwell	GO	**Favorable**
2.	Akhavein	Phelps	RC	**Favorable**

I. Summary:

SB 7016 provides an Open Government Sunset Review (OGSR) of a public records exemption for certain personal identifying information of students and families who receive free or reduced cost meals during the school year, including the summer period. Specifically, the public records exemption upon which the OGSR is based makes exempt from disclosure by designated agencies personal identifying information on recipients of free or reduced cost meals.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed to protect information of sensitive, personal nature, the release of which could be defamatory, cause unwarranted damage to reputation, and possibly jeopardize the individual's personal safety. The justification upon which the exemption is based remains valid. Therefore, the bill deletes the repeal date of the public records exemption.

Additionally, agencies identified in the original public records exemption as holding the personal identifying information are the Department of Agriculture and Consumer Services (DACS), the Department of Children and Families (DCF), and the Department of Education (DOE). The DCF indicates, however, that the agency does not receive information related to applicants and participants in school food and nutrition programs. Therefore, the bill narrows the exemption by removing the reference to the DCF as one of the agencies that holds this personal identifying information.

As the bill continues an existing public records exemption, and narrows rather than expands the exemption, a vote of each house by simply majority for passage is required.

II. Present Situation:

Public Records Law

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

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House 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]

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[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.
[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

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 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 meetings exemptions.[14] 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.[15] 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.[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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

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

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

[14] Section 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.

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

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

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

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

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

[20] Section 119.15(6)(a), F.S. The specified questions are:

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[21] 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.[22]

School Food and Nutrition Service Programs

Federal law authorizes federal financial assistance to states for the operation of school food and nutrition service programs.[23] The United States Department of Agriculture annually prescribes income guidelines for determining eligibility for free and reduced price meals.[24] DACS is the state administrator of school food and nutrition service programs. Programs include the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition under the purview of DACS.[25]

Applicants for, or participants in school food and nutrition service programs provide certain sensitive, personal information to DACS and the DOE. In addition, the DCF receives information from the United States Social Security Administration and determines Medicaid eligibility for Florida and forwards that information to DACS and local education agencies to determine qualification in a school food and nutrition service program. Although DCF shares certain information with DACS, DCF does not receive information related to applicants for, or participants in school food and nutrition service programs.

Public Records Exemption for School Food Programs

Current law provides a public records exemption for personal identifying information of an applicant for, or participant in a school food and nutrition service program for information held by the DACS, the DCF, and the DOE.[26] The public records exemption makes exempt from disclosure this information except to another governmental entity in the performance of its official duties and responsibilities, or a person with written consent of the applicant for, or

- 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?

[21] FLA. CONST. art. I, s. 24(c).
[22] Section 119.15(7), F.S.
[23] *See* the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq).
[24] 42 U.S.C.1758(b)(1)(A) and 42 U.S.C. 1773(e)(1)(A); *see also* USDA Food and Nutrition Service, *Income Eligibility Guidelines*, available at: https://www.fns.usda.gov/school-meals/income-eligibility-guidelines (last visited Feb. 1, 2018).
[25] Section 595.402(3), F.S.
[26] Chapter 2013-217, L.O.F.(HB 7089).

participant in the program. Additionally, a legal guardian may access certain information about participation in the program.

The public necessity statement for the bill provides that the protected information is of a sensitive, personal nature, the release of which could defame the individual, cause unwarranted damage to his or her reputation, and possibly jeopardize his or her safety. Additionally, the state's ability to effectively and efficiently administer the program would be significantly impaired without the exemption.

The bill upon which the exemption is based provides that the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal by the Legislature before that date.

Staff Review of the Exemption

The Open Government Sunset Review Act requires that a public records exemption must serve an identifiable public purpose in order to be maintained. As part of the Open Government Sunset Review, professional staff of the Senate Agriculture Committee sent a questionnaire to DACS, DOE, and DCF. DACS and DOE recommend continuing the exemption, and DCF does not oppose narrowing the application of the exemption by removing DCF from the exemption.[27]

III. Effect of Proposed Changes:

The bill provides an Open Government Sunset Review of a public records exemption for certain personal identifying information of students and families who receive free or reduced cost meals during the school year, including the summer period. Specifically, the public records exemption upon which the OGSR is based makes exempt from disclosure by designated agencies personal identifying information on recipients of free or reduced cost meals.

The original public necessity statement of the bill provided that the exemption is needed to protect information of sensitive, personal nature, the release of which could be defamatory, cause unwarranted damage to reputation, and possibly jeopardize the individual's personal safety. The justification upon which the exemption is based remains valid. Therefore, the bill deletes the repeal date of the public records exemption.

Additionally, agencies identified in the original public records exemption as holding the personal identifying information are the DACS, the DCF, and the DOE. The DCF indicates, however, that the agency does not receive information related to applicants and participants in school food and nutrition programs. Therefore, the bill recommends narrowing the exemption by removing the reference to the DCF as one of the agencies that holds this personal identifying information.

As the bill continues an existing public records exemption, and narrows rather than expands the exemption, a vote of each house by simply majority for passage is required.

The bill takes effect October 1, 2018.

[27] The survey is on file with the Senate Agriculture Committee.

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:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, and actually narrows the existing exemption. Therefore, just a simple majority vote suffices for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 595.409 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 the Committee on Agriculture

575-02459A-18 20187016__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 595.409, F.S., relating to an exemption from public record requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program; removing applicability of the exemption to such information held by the Department of Children and Families; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 595.409, Florida Statutes, is amended to read:

595.409 Public records exemption.—

(1) Personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, held by the department~~, the Department of Children and Families,~~ or the Department of Education is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2)(a) Such information shall be disclosed to:

1. Another governmental entity in the performance of its official duties and responsibilities; or

2. Any person who has the written consent of the applicant for or participant in such program.

(b) This section does not prohibit a participant's legal

575-02459A-18 20187016__

guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

(3) This exemption applies to any information identifying a program applicant or participant held by the department~~, the Department of Children and Families,~~ or the Department of Education before, on, or after the effective date of this exemption.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 9, 2018

I respectfully request that **Senate Bill #7016**, relating to OGSR/School Food and Nutrition Service Program, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Denise Grimsley

Senator Denise Grimsley
Florida Senate, District 26

cc: John B. Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/25/18	SM	**Unfavorable**
1/31/18	JU	**Fav/CS**
2/12/18	GO	**Favorable**
2/22/18	RC	**Favorable**

January 25, 2018

The Honorable Joe Negron
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 46** – Judiciary Committee and Senator Bill Galvano
HB 6545 – Representative David Santiago
Relief of Ramiro Companioni, Jr.

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR $17,828,800.00 OF LOCAL MONEY BASED ON A JURY AWARD AGAINST THE CITY OF TAMPA TO COMPENSATE RAMIRO COMPANIONI FOR THE PERMANENT INJURIES HE SUFFERED IN A COLLISION WITH A CITY WATER DEPARTMENT TRUCK.

FINDINGS OF FACT:

Generally - The Accident

On November 22, 1996, the City of Tampa Water Department directed three employees, each driving a separate department pick-up truck, to East Hillsborough Avenue for the purpose of restoring the access to water valve boxes, which had been paved over, along that road. Three trucks were parked eastbound one behind the other in the far right lane of E. Hillsborough Ave. just before Rose Lane, which intersects from the south, and between N. 48th and 50th Streets, intersecting from the north. East Hillsborough Ave. is a six-lane thoroughfare with an additional center lane designated for left turns from both directions.

According to the drivers' depositions taken December 1, 1998, the City trucks were parked in the outside lane in the

following order at the water valve: farthest west, at the rear of the line of trucks, was a truck driven by Mr. John Allen which pulled a large arrow sign that was set up to warn oncoming cars to merge left into the inner lanes. In front of the truck pulling the sign was a truck carrying tools and supplies driven by Mr. Foster. In front of Mr. Foster's truck was the water valve, and in front of the water valve was Mr. Faustino Pierola's truck which contained asphalt for the road repair.

The trial testimony of the drivers appears to conflict with the depositions as to the order of the two trucks driven by Mr. Foster and Mr. Pierola. At the trial, Mr. Pierola stated that he was in the middle truck, although he appeared to be uncertain. Mr. Pierola stated "okay -- I took off -- I think Foster -- wait a second -- I took off, okay, everything was clear and Foster was right beside me." Mr. Foster did not testify at the trial.

Just before noon, with repairs on the water valve completed, the crew of three left for lunch and intended to turn left onto North 50th Street. Mr. Allen, the driver of the rear truck pulling the arrow sign, testified that he pulled out first into the middle lane, going around the first two trucks, and returning to the outside lane as he was going to turn into a vacant lot to take down the arrow sign. While Mr. Allen was far enough down E. Hillsborough Ave. that it appears his truck did not factor into the accident, all drivers testified that the arrow sign was still erect and flashing.

In both the deposition and at trial, Mr. Pierola stated that before he pulled out from the outside lane, he checked his mirrors, looked over his shoulder, and seeing each of the eastbound lanes clear, pulled into the middle lane, straightened, looked again and seeing that it was clear, pulled into the inside lane. Mr. Pierola stated that he was traveling up to 20 to 25 miles per hour. During this time, all witness stated that no traffic was sighted traveling east on E. Hillsborough Ave. The posted speed limit for E. Hillsborough Ave. is 45 mph.

Just after entering into the inside lane and approximately 185 feet from the water valve, Mr. Pierola heard a crash and saw yellow pieces of plastic fly about. Thinking that a barricade fell from his truck, he immediately moved to the center turn

lane and stopped within 116 feet. When he looked back, he saw a man lying in the street, bleeding profusely. When he exited his truck, he saw a motorcycle wedged underneath the back of the truck. The driver of the motorcycle was Mr. Ramiro Companioni, Jr. He suffered severe and permanent injury as a result of the accident.

Accident Details

Mr. Companioni stated that he could not recall much about the accident. In his deposition dated December 1, 1998, he stated he was travelling 40 to 45 mph on the inside lane of E. Hillsborough Ave. He did not recall much traffic. Beyond that, Mr. Companioni stated that he could vaguely recall what happened in the accident. He further stated that it would be unfair to tell what he remembered about the accident due to the tremendous medication he was under after the accident. The last thing he remembered was turning left onto Hillsborough.

According to the police report, Mr. Pierola travelled 116.5 feet from the time he was hit by the motorcycle until he came to a complete stop in the center turn lane. He travelled straight in the inside lane for approximately 54 feet before angling into the inside lane and travelled approximately 62 feet before coming to a complete stop. The police photos show scrape marks in the road made by the motorcycle being dragged under the truck which confirm Mr. Pierola travelled straight a distance in the middle lane before angling into the center turn lane. From the police report and the information provided by the City's expert, Dr. Charles Benedict, it can be determined that Mr. Pierola traveled east approximately 183 feet, during which he left his parking space and merged into the middle, then inside lanes.

Both in the depositions and at trial, each of the City drivers stated that they never saw a motorcycle on E. Hillsborough Ave. when initially pulling out or when changing lanes. Mr. Foster stated that he did see the motorcycle just as it hit the truck.

Expert Testimony

At the trial, both parties presented experts to reconstruct the accident.

Claimant's Expert: The Claimant offered Mr. Dennis Payne, an expert accident reconstruction specialist. He was a former Highway Patrolman and had attended numerous reconstruction courses at the Department of Highway Safety and Motor Vehicles, community colleges, and universities and attended other courses in conjunction with the private sector. He began reconstruction work as a private consultant in 1982. Mr. Payne stated he used Mr. Companioni's medical records, police photos of the City truck and of the accident, and an inspection of the motorcycle to reconstruct the accident.

Mr. Payne stated that the difference in speed between the truck and the motorcycle when it hit was 20 mph. He based this decision on the "way the bumper had been twisted." He "looked at the damage to the motorcycle . . . at the injury pattern, and the fact that the rider survived the collision." Mr. Payne discussed a federal government standard of a 30 mph barrier crash which is what is estimated the human body can withstand and still live. Because a motorcycle doesn't have the protections, Mr. Payne concluded that the difference in speed of travel between Mr. Companioni and the city truck was 20 miles per hour was reasonable because humans can survive that force and Mr. Companioni survived the crash. If Mr. Pierola was travelling 25 mph, then, stated Mr. Payne, Mr. Companioni was travelling 45 mph.

The police photographs show damage to the left half to the City truck's rear bumper. Mr. Payne opines that the damage is consistent with the motorcycle travelling in a straight line and the truck being at an angle when the motorcycle hit it.

City of Tampa's Expert: The City offered Dr. Charles Benedict as their expert witness. Dr. Benedict has a Bachelor's degree in mathematics with an engineering science minor from Florida State University (1963) and a Bachelors, Masters, and PhD in mechanical engineering with an emphasis on kinematics (kinematics is the study of motion of the path that something follows) and dynamics machine design (the study of the forces through acceleration or impact or whatever that cause the body or something such as the body to move in a given direction) from University of Florida (1971). Dr. Benedict is a registered engineer in Florida and Georgia (and was applying to South Carolina and Alabama). He has been a consultant since 1971. He participated in

motor dynamics training at Watkins Glenn, NY, riding numerous motorcycles, and has reconstructed motorcycle accidents for 35 years.

Dr. Benedict relied on depositions, accident reports, and photographs, and conducted a reconstruction on E. Hillsborough Ave. He stated he used the physical evidence of the accident and worked backward to determine what happened. At trial Dr. Benedict provided the following conclusions:

- Based on the reconstruction work, the time from when the trucks left their standing position to the point of impact was approximately 19 seconds.
- The motorcycle was traveling somewhere around 65 mph or faster and it was in the middle lane coming up behind the trucks.
- On E. Hillsborough Ave. there is a dip in the road where a motorcycle would not be visible nor could the rider see very far down the road. Once on the straightaway, visibility from that dip to the point of impact is 1050 feet.
- The motorcycle would have been in the dip west of where the accident occurred and would not be visible to the trucks at the time they were initially pulling out.
- Travelling the 1050 feet at 45 mph, a driver has 16 seconds to see the City trucks and react before time of impact. Travelling at 65 mph, a driver has 11 seconds.
- As the motorcycle approached the back of the trucks in the middle lane, it veered left toward the inside lane to go around the trucks at the same time that the truck in the front moved into the inside lane.
- The motorcycle was leaned over to the left as it was going around the trucks and it was also in the process of slowing down.
- Mr. Companioni thrust down on his brakes and his bike was going faster than the wheels were turning. He was veering to the left to get around the truck, but before he came back to the right, he released the rear brake causing an opposite reaction of the bike (known as "highsiding"[i]) to come back upright and throw Mr. Companioni off into the back end of the tailgate and the bumper.
- The motorcycle continued the highside rotation to come down on its right side with its wheels facing the

truck, caved in the bumper, and began sliding underneath the left side of the truck and at the same time swiveling front wheel first, to where the truck drug the motorcycle to a stop.

- The motorcycle was going 55 mph when it struck the truck, and the truck was going 20 mph. The difference in velocity was 35 mph, which was consistent with the damage to the truck.
- Had Mr. Companioni been going 40 to 45 miles per hour, he would have been able to avoid the accident completely. If he stayed in the middle lane and applied brakes to the near maximum for that motorcycle, he could have slowed down to 20 mph before he got to the truck and avoided the accident.

At the special master hearing, Dr. Benedict further explained his interpretation of the evidence.

- In a police photograph of the back tire, a striation about 20 inches long and just left of center can be observed (this measurement was confirmed by Mr. Payne). Dr. Benedict states that this is an indication of the motorcycle being in a slight left turn and the back wheel turning very slowly, not locked. Mr. Payne stated this was caused by the tow truck hauling the motorcycle onto its truck while the wheel was in gear. However, the police photograph shows the striation present when the motorcycle was under the truck.
- Photographs of the muffler exhibited striations at angles consistent with sliding wheels first on its right side. At the point where the muffler enters the engine, the area shows evidence of pivoting (as it hits and slides under the truck) and then being ground down as the motorcycle front wheel wedges under the truck. At final rest, photographs show the muffler no longer touching the ground. Photographs also show striation in the road bed consistent with the grinding of the muffler end.
- Police photographs of the road bed area show the truck and motorcycle traveling a short distance in the same forward direction, just before and as the motorcycle hits the truck, and then moving to the left into the center turn lane.
- Police photographs of the truck tailgate indicate that Mr. Companioni was thrown off his motorcycle before he hit. Marks on the tailgate appeared to be a glove

print and indent made by the helmet. Injuries to Mr. Companioni were consistent with hitting the bumper of the truck.

- Dr. Benedict refuted claims that the motorcycle struck the truck head-on as the front tire was not damaged. He also refuted the idea that the motorcycle slid down on its right side as the driver would have road rash and grinding injuries.

Injuries

Mr. Companioni suffered devastating injuries. Upon arrival at the Trauma Unit at Tampa General, it was noted the Mr. Companioni's rectum was "fileted" through the scrotum. The primary physician was Dr. Michael Albrink, a board certified trauma and general surgeon who teaches at USF Medical School. Dr. Albrink testified that, "his legs were ripped apart, like breaking a wish bone apart." He suffered multiple open fractures of the pelvis, shoulder, elbow, lumbar vertebrae, and right knee. He sustained a bowel injury and a ruptured urethra. He lost portions of his colon and suffered massive bleeding and damage to his peritoneal cavity and organs. His anus was ripped and sphincter ruined, which has resulted in a permanent colostomy. He injured the nerves to his genitals, which destroyed sexual function. Both the femoral artery and sciatic nerve were severely injured. Mr. Companioni was in an induced coma in the ICU for approximately a month. He remained in ICU and the floor at Tampa General until the end of February 1997, and then was transferred to its inpatient rehabilitation center before being released to home health care months later. He battled with numerous complications, infections, and bed sores, and has had more than twenty surgeries since sustaining his injury.

Mr. Companioni underwent a tracheostomy and has tracheal scarring, and now has frequent difficulty with swallowing. With portions of his colon missing and the intestinal damage, his diet is limited. He has had hernias in his abdomen and is at risk to develop bowel blockages. He must use a colostomy bag and wear it at all times. He has bladder spasms and incontinence. He also has frequent, excruciatingly painful kidney stones. His core muscles were ripped apart in the crash and were further injured due to the multiple surgeries, leaving his core muscles scarred, atrophied, and weakened. His four lower vertebrae and coccyx have been fused.

Mr. Companioni has suffered life-long, severely disabling injuries to his right hip and leg. His right hip is fused, so it is without motion and he has limited range of motion in his knee and his ankle. One-third of the right quadriceps has been removed. Dr. Albrink stated that he has arthritis and bone calcification in his right knee and hip joint so severe that he may someday be forever wheelchair bound. A Greenfield filter was surgically inserted to prevent deep vein blood clots. Dr. Albrink testified that "[H]e's at risk to have problems where he could lose his leg . . . [d]ue to any number of combinations of things. Lack of innervation most of all."

Mr. Companioni wears a right leg brace, mostly for support and stability. He has constant burning pain throughout the right hip, buttocks, and all the way down his right leg. Due to his dependence on a cane, he has developed carpel tunnel syndrome in his left wrist. His current medical team includes a primary care/general internist, and specialists in general surgery, orthopedic surgery, gastroenterology, urology, podiatry, and occasionally neurology.

Mr. Companioni's quality of life has been catastrophically affected. He was an active, healthy man in his thirties. He was in top physical condition and served honorably in the Naval Reserve. He will never have children and meaningful female companionship is very difficult.

Although Dr. Albrink said at trial that Mr. Companioni's resulting injuries could reduce his life expectancy, the life table provides that he has a life expectancy of almost 44 years from the date of the accident (until 2040).

Economic Damages

Mr. Companioni is totally and permanently disabled. He had been an executive chef and ice sculptor, sometimes working up to 80 hours a week. He had earned $45,000 plus benefits while working for a year in Mexico, and was earning $30,000 annually just before the accident. He had hopes of one day opening his own restaurant. In addition, Mr. Companioni was in the Naval Reserves, earning $200 to $300 per week (averaging $13,000 annually). He has since retired from the Reserves as he was unable to continue service.

Mr. Companioni currently receives $980 monthly in Social Security disability and is eligible for Medicare benefits. Although difficult, he has tried to continue working part-time earning an average of $2,500 annually.

The Claimant submitted a closing statement dated August 21, 2012, pursuant to Court Order to disburse $100,000 of recovery per Sovereign Immunity limits of liability.

Medical liens that are related to a governmental entity or have a subrogation lien interest or right and letter of protection:

Creditor	**Amount due**	**Motion% pd**
Winn-Dixie (Employer health insurance provider)	$472,635.59	$4,641.46
Health and Social Services	$475.00	$9.25
ACS Recovery Group (Medicaid)	$0.00	$0.00
Humana Financial Recovery Reduced balance from $32,496.63 to benefit client	$0.00	$0.00
Vincent DiCarlo, M.D & Asso. (LOP 1/30/04 D.R.Stahl PA)	$4,851.76	$82.52
Total	**$477,962.35**	**$4,733.23**
Difference (amt. due - paid)	**$473,229.12**	

Medical liens that are not covered under a letter of protection and for which the Claimant has a due and outstanding balance:

Creditor	**Amount due**	**Motion% pd**
Tampa General (reduced from $21,522.29 to benefit client)	$0.00	$0.00
Tampa General (reduced from $14,098.359 to benefit client)	$0.00	$0.00

AR Resources - Acct. #9473 (Tampa Bay surgery)	$100.00	$2.60
Gulf Coast Collections - TGH/#2101299110 & 2073759249	$650.00	$10.74
Gulf Coast Collections - USF/#12105745, 14340454, 14562834	$187.00	$7.83
Preferred Group of Tampa - USF Physical Group	$3,974.34	$66.02
Preferred Group UCH - Carrolwood/Florida Hospital	$200.00	$7.83
FFCC - Columbus, Inc (Place MRI)	$114.75	$2.60
Merchant Associates - Tower - #7591102, 7559634, 12426722	$152.00	$4.00
TOTAL	**$5,378.09**	**$101.62**
Difference	**$5,276.47**	

The Claimant lists additional providers, but the closing statement indicates the balance owed them was unknown. Therefore, the remaining balance according to the closing statement is $478,505.59. Beyond the closing statement, the claimant has not provided any further medical lien information. The record states that future medical expenses may be $2,000 per year, and Mr. Companioni may require a hip replacement, if it is possible.

LEGAL PROCEEDINGS:

The accident occurred on November 22, 1996. A trial was held March 23 through 26, 2004 in the Circuit Court of the 13th Judicial Circuit, in and for Hillsborough County, Civil Division, before Judge Herbert Baumann, Jr. The jury found the City of Tampa 90 percent negligent, Ramiro Companioni, Jr., 10 percent negligent, and total damages of $19,932,000. The damages were not separated into any categories.

In April 2004, the City moved for a new trial. The trial court issued a final judgment order on April 5, 2004. The City filed a motion to amend its motion for a new trial, and to alter the judgment on April 15, 2004. On May 6, 2004 the City filed its amended motion for new trial and a hearing was held October 5, 2004. The motion stated grounds relating to counsel

misconduct, jury misconduct, the verdict being against the weight of the evidence, a misperception by the jury of instructions, and the jury verdict being excessive based on undue sympathy. An order granting a new trial was issued by the court on January 6, 2005.

On March 30, 2007, the Second District Court of Appeal (Second DCA) reversed the order granting a new trial and remanded the matter to the trial court for reinstatement of the jury verdict. The trial court was to conduct further proceedings to dispose of the City's motions for remittitur, to alter or amend judgment, and other grounds raised for the new trial. On October 19, 2007, the trial court heard the issues on remand, and on January 22, 2008, issued its order denying motions for new trial and remittitur. On October 28, 2009, the Second DCA again reversed the trial court, but this time the DCA ordered the trial court to conduct a new trial.

On December 16, 2010, the Florida Supreme Court quashed the Second DCA opinion (51 So. 3d 452, Fla. 2010) and remanded it for consideration of whether the trial court abused its discretion in denying a new trial. On remand, if the Second DCA were to conclude that the City is not entitled to a new trial, then the DCA was to consider any other remaining claims not reached in its prior opinion, including the City's claim that the verdict was excessive.

On November 23, 2011, the Second DCA affirmed the trial court's order denying the City's motion for a new trial and remittitur. On August 12, 2012, the trial court issued an order granting the plaintiff's petition for equitable distribution of the proceeds to Peachtree Settlement Services, to the plaintiff, and to medical providers.

CLAIMANT'S ARGUMENTS: The Claimant argues that on November 22, 1996, the City of Tampa, through its employee, Mr. Faustino Pierola, negligently entered into the inside lane of E. Hillsborough Avenue into the path of Mr. Ramiro Companioni, Jr. Claimant argues that Mr. Companioni was unable to stop his motorcycle in time to avoid crashing into the rear of the City's pick-up truck. Mr. Companioni suffered severe injuries that required multiple operations and continual medical attention. Mr. Companioni is permanently and severely disabled and is unable to sustain long term employment.

RESPONDENT'S POSITION: Respondent City of Tampa argues that Mr. Companioni had a record of reckless driving before and after the accident implying that he was at fault; that he has received just compensation; and that the City did not receive a fair trial.

CONCLUSIONS OF LAW: The Claimant relies on s. 316.085(2), F.S. (1996), that the City of Tampa had a duty to not enter the inside lane occupied by Mr. Companioni. That subsection states:

> No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with the safety and without interfering with the safe operation of any vehicle approaching from the same direction.

Mr. Pierola stated that before he pulled into the second lane, he straightened, then looked again and seeing that it was clear, pulled into the third lane. He stated he was travelling between 20 and 25 mph. If Mr. Companioni was travelling in the inside lane, and Mr. Pierola moved from the middle lane to the inside lane where he was struck by Mr. Companioni, the City would have breached its duty to safely operate a vehicle. However, it appears that the City's liability could be diminished if Mr. Companioni was not operating his vehicle safely as the statute provides: "and without interfering with the safe operation of any vehicle approaching from the same direction."

Excessive speed is not a safe operation of a vehicle. *See* s. 316.183, F.S. (1996). Mr. Companioni testified that he was travelling between 40 and 45 mph and knew that the speed limit for E. Hillsborough Ave. was 45 mph. His expert, Mr. Payne, testified that Mr. Companioni was travelling 45 mph because the velocity of the City truck (25 mph) plus his estimated crash impact (20 mph) equaled 45 mph. Mr. Payne's explanation of his crash impact estimate does not appear to be supported by any fact. Although Mr. Steve Aguilar, who was interviewed at the scene, stated that he saw the motorcycle just before it hit and estimated that it was travelling around 40 mph, he later testified at trial that he looked up just as he heard the crash.

Moreover, it is not clear that the accident occurred with Mr. Companioni travelling in the inside lane, even though he testified so. Dr. Benedict provided compelling testimony as to how the accident happened. If Mr. Companioni was travelling in the middle lane, the testimony explains why the drivers never saw him when they looked into their side or rear view mirrors. When the trucks moved out and into the middle lane, it appeared that E. Hillsborough Ave. was clear because Mr. Companioni was in the dip 1050 feet east. If Mr. Pierola was in the middle lane and looking in his side mirror for traffic in the inside lane, he would not have seen Mr. Companioni, as he would have been behind Mr. Foster's truck in the middle lane. Nor would Mr. Companioni have seen Mr. Pierola as he moved to the inside lane as it was probably at the same time, and at that point, too late to stop.

Section 316.185, F.S. (1996), provides in part:

> The fact that the speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when . . . special hazards exist or may exist with respect to other traffic, . . . and speed shall be decreased as may be necessary . . . to avoid colliding with any . . . vehicle in compliance with legal requirements and the duty of all persons to use due care.

Evidence was presented that Mr. Companioni was not travelling at an excessive speed. Mr. Payne opined that Mr. Companioni could have been going 45 mph. However, the slower speed does not account for the damages incurred by the truck and motorcycle or the injuries suffered by Mr. Companioni.

The police report, made at the time of the accident, estimated Mr. Companioni's speed at 70 mph based upon the damage observed. City expert Dr. Benedict estimated that Mr. Companioni was travelling 65 mph, and had slowed to 55 mph at the time of impact. Dr. Benedict based his estimation on the damage to the truck, motorcycle, and Mr. Companioni's injuries. The weight of the evidence suggests that excessive speed appears to have been a factor in this accident.

Section 316.1925(1), F.S. (1996), states:

> Any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such a manner shall constitute careless driving and a violation of this section.

At trial, Mr. Companioni stated, ". . .I was going down the far left lane which is my habit. . . . I got to go over the bridge. And I may have been -- there may have been some trucks on the right-hand side. I didn't pay attention too much to them because they were two lanes over from me. At that point I didn't consider them any threat because they weren't nowhere near me and I had no intentions of going over to them. . . . So I was basically looking forward, no traffic around me, just minding my business going forward." Finally, Mr. Companioni recalled, ". . . all I remember is trying to just brace myself because it seemed like I just stopped and that was it. . . . Just putting my hands out because I was -- I hit a wall." It appears that Mr. Companioni was not paying attention to the circumstances of a flashing arrow sign and the City trucks moving onto the highway.

The motor vehicle statutes require that all drivers drive in a careful and prudent manner in order to avoid accidents. Each driver must act in a manner that does not create a hazard. It appears that Mr. Companioni did not exercise sufficient caution as he approached the City trucks. He saw them and chose to ignore them. Dr. Benedict's testimony showed that Mr. Companioni had ample time to assess the situation and put himself in a more defensive posture to avoid the accident, but did not.

This claim is very complicated. The transcripts of the trial reveal complex reconstruction theories confused by the questions and legal wrangling by both attorneys. There were essentially no reliable witnesses to the accident as none could testify that they at any time saw the motorcycle before impact. Mr. Companioni stated he did not remember much about the accident, and he did not trust the memories he does have because of the heavy medication he was on after the accident. The drivers of each of the City trucks said they never saw the motorcycle approaching, although Mr. Foster

stated he saw the moment of impact. Two other witnesses saw the City trucks pull away and looked up after they heard the motorcycle strike the truck, but the witnesses never actually saw the motorcycle moving down E. Hillsborough Ave. Finally, there are the injuries that are horrific. It is impressive that Mr. Companioni lived through the accident and is able to walk today. His quality of life, no matter how impressive his recovery, is one that few would want.

Legal analysis for a claim requires that the claim satisfy the elements of a negligence case: duty, breach of duty, causation, and damages.

The City has a duty to make sure the inside lane was clear before merging into it, but is not liable if the accident was caused by Mr. Companion's failure to safely operate his motorcycle. Florida law makes all drivers responsible for the safe operation of their vehicles. Based upon the evidence presented, it appears that Mr. Companioni was not driving in a safe manner considering the congestion being created by the City trucks. He had ample opportunity to assess conditions ahead and failed to modify his speed to avoid the accident.

Based upon the foregoing, I find that the City met its duty to merge safely into the next lane and by driving in a safe manner and was not the legal cause of Mr. Companion's damages. I further find that Mr. Companioni drove at an excessive speed and failed to pay attention to the traffic ahead of him. Thus, Mr. Companioni failed to meet his burden to prove that the City is liable for his injuries.

SPECIAL ISSUES:

Before and after the accident, Mr. Companioni had numerous moving traffic violations and also received many speeding tickets. Additionally, he has had other experiences as a defendant within the criminal justice system. In contrast, Mr. Pierola has no record of traffic citations.

INDEMNITY:

The City of Tampa has no commercial insurance that could be used to fund this claim bill. The City is self-insured and maintains a general liability reserve for the purpose of satisfying all City-wide lawsuits, claims, and associated costs. As of October 1, 2014, the general liability reserve balance was $9,733,630 (unaudited). This amount is

designated for the purpose of satisfying all City-wide lawsuits and claims.

Since October 1, 2014, (the beginning of its fiscal year), the City has spent $687,629 for settlements and expenses from the budgeted amount stated above. The City fully expects to continually satisfy additional pending City-wide claims. To the extent that the funds in the general liability reserve are insufficient to pay City-wide claims and this claim bill, the City will need to use general fund revenue which have been previously budgeted for general governmental operations.

ATTORNEYS FEES: The bill provides that all fees and related costs are to be capped at 25 percent. The claimant's attorneys and lobbyists agree that they will follow the law of the enacted claim bill.

After the Final Judgment was upheld on appeal, attorney fees were paid on the underlying claim in accordance with the statutory cap of 25 percent pursuant to s. 768.28, F.S.

RECOMMENDATIONS: Based upon the foregoing, I recommend that SB 46, be reported UNFAVORABLY.

Respectfully submitted,

Diana Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute replaces the detailed descriptions of the claimant's motor vehicle accident and resulting injuries with a more general description of the accident and a statement that the claimant and the City of Tampa have agreed to settle the claim for $5 million. Additionally, the committee substitute waives all "lien interests relating to the treatment and care" of the claimant except the federal portions of any of those liens.

[i]"Highsiding" is best understood by beginning with the contrasting "lowside" crash. In a lowside crash, the bike's rear tire loses traction, or friction; the rear end begins to slide sideways; it begins to move forward at an angle to the front tire, but, due to the loss of friction, moves faster than the front tire; the bike and rider tend to lean away from the direction of the slide; if this continues, the bike falls over on its side, with the rider falling with it.

The highside begins with a lowside situation (with a loss of rear tire traction and a sideways skid), which is followed by a recovery of traction and an ejection of the rider off the top of the bike. Assume, for example, that the rider has applied the rear brake hard, with the rear tire losing traction and sliding to the rider's right, with the rear wheel moving forward faster than the front wheel and with the bike and rider leaning to the rider's left. If the rider releases the brake, the back tire regains traction and grabs the road, abruptly ending the slide of the rear tire. Momentum, however, causes the upper part of the bike to continue forward at a higher speed, and the bike not only comes upright, it continues on and is thrown onto its right side, throwing the rider in the process.

All Things (Safety Oriented) Motorcycle, *Highside Dynamics, What happens and how to prevent it*, James R. Davis, Jan. 04, 2006, http://www.msgroup.org/forums/mtt/topic.asp?TOPIC_ID=2192 .
Steve Munden, Math & Science Tutoring, Motorcycling, Skiing, & Shooting Instruction., *Traction Management for Motorcyclists- and what happens when you blow it*, http://stevemunden.com/sides.html

By the Committee on Judiciary; and Senator Galvano

590-02638-18 201846c1

A bill to be entitled

An act for the relief of Ramiro Companioni, Jr., by the City of Tampa; providing for an appropriation to compensate Mr. Companioni for injuries sustained as a result of the negligence of an employee of the City of Tampa; providing a limitation on the payment of compensation and fees; providing an effective date.

WHEREAS, on November 22, 1996, Ramiro Companioni, Jr., was seriously injured while operating his motorcycle on East Hillsborough Avenue in Tampa, Florida, as a result of a collision with a City of Tampa Water Department truck, and

WHEREAS, a lawsuit was filed and in 2004 a final judgment was entered in favor of Mr. Companioni in the amount of $17,928,800 against the City of Tampa, based on a jury verdict in the amount of $19,932,000, and

WHEREAS, after appeals and all legal remedies were exhausted, claim bills have been filed annually since the 2014 Regular Session seeking the full amount of the final judgment, plus interest, for Mr. Companioni, and

WHEREAS, the parties have agreed to a compromised settlement in the amount of $5 million, NOW, THEREFORE,

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

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

Section 2. The City of Tampa is authorized and directed to appropriate from funds not otherwise encumbered and to draw a

590-02638-18 201846c1

warrant in the sum of $5 million, to fund a special needs trust created for the exclusive use and benefit of Ramiro Companioni, Jr., as compensation for injuries and damages sustained as described in this act.

Section 3. The amount paid by the City of Tampa pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Mr. Companioni. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. Excluding the federal portions of any liens, Medicaid or otherwise, which the claimant must pay, it is the intent of the Legislature that the lien interests relating to the treatment and care of Ramiro Companioni, Jr., are hereby waived or extinguished.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

4/6
Bill Number (if applicable)

Topic Relief of Ramiro Companioni

Amendment Barcode (if applicable)

Name Lance Block

Job Title Attorney

Address P.O. Box 840
Street

Phone 850-599-1980

Tallahassee FL 32302
City *State* *Zip*

Email lance@lanceblocklaw

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Ramiro Companioni

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)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

02/22/18
Meeting Date

SB 46
Bill Number (if applicable)

Topic City of Tampa Claim Bill (Companion)

Amendment Barcode (if applicable)

Name Joseph R. Salzverg ("Saalz-verg")

Job Title Attorney/Lobbyist

Address 301 S. Bronough St, #600
Street

Phone

TLH 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 City of Tampa

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

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Higher Education, *Chair*
Appropriations
Education
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR BILL GALVANO
21st District

February 14, 2018

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

Dear Chairman Benacquisto:

I respectfully request that CS/SB 46 Relief of Ramiro Companioni, Jr., by the City of Tampa be scheduled for a hearing in the Committee on Rules, at your earliest convenience.

If I can provide additional documentation to you on this, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Bill Galvano

cc: John B. Phelps
Cynthia Futch

REPLY TO:
❒ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
❒ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

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 1004
INTRODUCER:	Criminal Justice Committee and Senator Brandes
SUBJECT:	Persons Authorized to Visit Juvenile Facilities
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	**Fav/CS**
2.	Storch	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1004 authorizes the following persons to visit at their pleasure between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles that are operated or overseen by the Department of Juvenile Justice (DJJ) or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the secretary of the DJJ.

The bill provides that a person specified may visit a state facility housing juveniles between 11 p.m. and 6 a.m. pursuant to rules prescribed by the DJJ.

The bill states that permission to visit a state facility housing juveniles must not be unreasonably withheld from a person who gives sufficient evidence that he or she is a bona fide reporter or writer.

The bill requires the DJJ to make rules for purposes of implementing the bill.

The bill is effective July 1, 2018.

II. Present Situation:

Juvenile Detention Centers and Residential Facilities

Juveniles within the Florida juvenile justice system may be housed in detention centers and/or residential facilities.

Juvenile Detention Centers

There are 21 juvenile detention centers throughout Florida. Detention is the custody status for juveniles who are held pursuant to a court order or after being taken into custody for a violation of law. Detention centers provide custody, supervision, education, and mental health/substance abuse and medical services to juveniles.[1]

Generally a juvenile cannot be held in detention care for longer than 24 hours.[2] Section 985.255, F.S., requires a juvenile to have a detention hearing to determine the existence of probable cause and the need for continued detention within 24 hours of being taken into custody and placed in detention.[3] A juvenile cannot be held in detention for more than 21 days unless an adjudicatory hearing has been commenced.[4] The court may extend the length of the detention by nine days if more time is required for the prosecution or defense to prepare for cases involving certain serious crimes.[5] A prolific juvenile offender[6] may also be held for 15 days after the order of adjudication.[7]

Juvenile Residential Commitment Programs

The DJJ contracts with private providers that operate the residential commitment programs throughout Florida. Residential programs provide behavioral health, mental health, substance abuse, and sex offender treatment services to juveniles.[8] In Florida, only a judge can place a juvenile into a DJJ residential commitment program for an adjudication. Commitment to a residential program is for an indeterminate period of time and may include periods of temporary release.[9]

Each residential program is monitored regularly and evaluated through the DJJ's Bureau of Monitoring and Quality Improvement (Bureau).[10] The Bureau conducts reviews throughout the

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[1] Florida Department of Juvenile Justice, *Detention Services*, available at http://www.djj.state.fl.us/services/detention (last visited January 9, 2018).
[2] Section 985.26(1), F.S.
[3] Section 985.255(3)(a), F.S.
[4] Section 985.26(2) and (3), F.S.
[5] These serious crimes include capital felonies, life felonies, and first or second degree felonies. Section 985.26(2), F.S.
[6] A juvenile is a prolific juvenile offender if the juvenile: is charged with a delinquent act that would be a felony if committed by an adult; has been adjudicated or had adjudication withheld for a felony offense or delinquent act that would be a felony if committed by an adult, before the current charge; and has 5 or more of any of the following, at least 3 of which must have been for felony offenses or delinquent acts that would have been felonies if committed by an adult: an arrest event for which a disposition has not been entered, an adjudication or an adjudication withheld. Section 985.255(1)(j), F.S.
[7] Section 985.26(3), F.S.
[8] Florida Department of Juvenile Justice, *Residential Services*, available at http://www.djj.state.fl.us/services/residential (last visited January 9, 2018).
[9] *Id.*
[10] *Id.*

fiscal year to ensure that the programs are in compliance with contract terms and conditions, Florida Statutes, Rules of the Florida Administrative Code, and the DJJ policies.[11]

Investigation into State Facilities Housing Juveniles

A recent investigation conducted by the *Miami Herald* delved into the DJJ's detention centers and residential programs. The investigation probed 10 years of the DJJ's incident reports, investigations and reviews, inspections, emails, and surveillance videos, revealing incidents of misconduct that have occurred at the DJJ's facilities over the years.[12] The article discussed some of the symptoms that have plagued the DJJ's facilities over the years: inexperienced and underpaid staff, inadequate personnel screening and standards, tolerance for cover-ups, faulty security cameras, and legal impunity for abusive staffers.[13]

In response to the article, the DJJ issued a press release, stating that the stories published in the *Miami Herald* did not accurately define the juvenile justice system in Florida. The DJJ's response addressed each claim asserted in the *Miami Herald* article and further stated that the article ignored the aggressive reforms that the DJJ has implemented over the past six years.[14] A subsequent article published by the *Miami Herald* evidenced that the investigation had furthered discussion between lawmakers surrounding potential initiatives and reform for the DJJ's facilities.[15]

Visitation of State Juvenile Facilities

Currently, any member of the Legislature who wishes to tour any of the detention centers or residential programs may arrange a visit with the DJJ Legislative Affairs Office or may schedule a visit of any of the DJJ's facilities on his or her own accord.[16] In contrast, any member of the Legislature, including other specified persons, have unrestricted visitation privileges to state correctional facilities.[17]

On October 18, 2018, the DJJ sent a letter to members of the Legislature concerning the visitation of the DJJ's facilities. The letter addressed unannounced visits to the DJJ's facilities and the differences between adult correctional facilities and the DJJ's facilities. The letter noted that juveniles in the DJJ's programs are statutorily entitled to a degree of confidentiality while adult offenders are not entitled to such protections. Specifically, s. 985.04, F.S., requires a

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[11] Florida Department of Juvenile Justice, *Monitoring and Quality Improvement*, available at http://www.djj.state.fl.us/partners/QI (last visited January 9, 2018).
[12] Audra D.S. Burch and Carol Marbin Miller, *Dark secrets of Florida juvenile justice: 'honey-bun hits,' illicit sex, cover-ups*, MIAMI HERALD, October 10, 2017, available at http://www.miamiherald.com/news/special-reports/florida-prisons/article177883676.html (last visited January 9, 2018).
[13] *Id.*
[14] Press Release, Florida Department of Juvenile Justice, *Setting the Record Straight: Miami Herald Omits Facts, Ignores Reforms in Series Targeting DJJ* (October 10, 2017) (on file with the Senate Committee on Criminal Justice).
[15] Mary Ellen Klas, Caitlin Ostroff and Carol Marbin Miller, *Powerful lawmaker calls for juvenile justice review in wake of Herald series*, MIAMI HERALD, October 13, 2017, available at http://www.miamiherald.com/news/local/community/miami-dade/article178771326.html (last visited January 9, 2018).
[16] Email from Rachel Moscoso, Legislative Affairs Director, Florida Department of Juvenile Justice, to Lauren Storch, Attorney, The Florida Senate Committee on Criminal Justice, (October 26, 2017) (on file with the Senate Committee on Criminal Justice).
[17] Section 944.23, F.S.

juvenile's information to be kept confidential. The letter further noted that many of the juveniles suffer from previous trauma and interruptions to their daily schedules can be problematic. The letter requests that members of the Legislature wishing to visit a DJJ facility take these noted circumstances into consideration.[18]

Visitation of State Correctional Institutions

Section 944.23, F.S., authorizes the following persons to visit at their pleasure all state correctional institutions:

- The Governor;
- All Cabinet members;
- Members of the Legislature;
- Judges of state courts;
- State attorneys;
- Public defenders; and
- Authorized representatives of the Florida Commission on Offender Review.[19]

Current law prohibits any person not otherwise authorized by law from entering a state correctional institution except pursuant to rules prescribed by the Department of Corrections (DOC). Additionally, permission to visit state prisons must not be unreasonably withheld from those who give sufficient evidence to the DOC that they are bona fide reporters or writers.[20]

III. Effect of Proposed Changes:

The bill authorizes the following persons to visit at their pleasure between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles that are operated or overseen by the DJJ or a county:

- The Governor;
- A Cabinet member;
- A member of the Legislature;
- A judge of a state court;
- A state attorney;
- A public defender; and
- A person authorized by the secretary of the DJJ.

The bill provides that a person specified may visit a state facility housing juveniles between 11 p.m. and 6 a.m. pursuant to rules prescribed by the DJJ.

The bill prohibits the DJJ from unreasonably withholding permission to visit a state facility housing juveniles from a person who provides sufficient evidence that he or she is a bona fide reporter or writer.

The bill requires the DJJ to make rules for purposes of implementing the bill.

[18] *Supra* n. 8.
[19] Section 944.23, F.S.
[20] *Id.*

The bill is effective 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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 985.6885 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 Criminal Justice on January 16, 2018:
The Committee Substitute:

- Adds facilities housing juveniles that are county-run to the list of facilities included under the bill;
- Removes members of the Florida Commission on Offender Review from the list of personnel authorized to visit facilities housing juveniles under the bill; and
- Requires the DJJ to makes rules for the purpose of implementing the bill.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Brandes

591-02128A-18 20181004c1

A bill to be entitled

An act relating to persons authorized to visit juvenile facilities; creating s. 985.6885, F.S.; authorizing specified persons to visit, during certain hours, all facilities housing juveniles which are operated or overseen by the Department of Juvenile Justice or a county; authorizing such persons to visit the juvenile facilities outside of certain hours pursuant to department rules; prohibiting the department from unreasonably withholding permission for visits to such facilities by certain persons; requiring the department to adopt rules; providing an effective date.

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

Section 1. Section 985.6885, Florida Statutes, is created to read:

985.6885 Persons authorized to visit juvenile facilities.—

(1) The following persons may visit at their pleasure between the hours of 6 a.m. and 11 p.m. all facilities housing juveniles which are operated or overseen by the department or a county:

(a) The Governor.

(b) A Cabinet member.

(c) A member of the Legislature.

(d) A judge of a state court.

(e) A state attorney.

(f) A public defender.

591-02128A-18 20181004c1

(g) A person authorized by the secretary of the department.

(2) A person specified in subsection (1) may visit a facility subject to this section before 6 a.m. or after 11 p.m. pursuant to rules adopted by the department.

(3) The department may not unreasonably withhold permission to visit a facility subject to this section from a person who gives sufficient evidence that he or she is a bona fide reporter or writer.

(4) The department shall adopt rules to implement this section.

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 16, 2018

I respectfully request that **Senate Bill #1004**, relating to **Persons Authorized to Visit State Juvenile Facilities**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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/CS/CS/SB 1256
INTRODUCER:	Rules Committee; Judiciary Committee; Criminal Justice Committee; and Senator Brandes
SUBJECT:	Security of Communications
DATE:	February 26, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	**Fav/CS**
2.	Tulloch	Cibula	JU	**Fav/CS**
3.	Cellon/Erickson	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1256 amends ch. 934, F.S., relating to security of communications, to address privacy issues related to the use of communication technology and the contents of stored electronic communications, and also sets forth requirements relating to obtaining by subpoena certain information in investigations involving child sexual abuse and certain sex crimes.

Communication technology, such as cell phones, laptops, and tablets, may be equipped with location tracking technology which allows the service provider to track the device whenever it is on. The bill replaces the current requirement for a court order supported by a reasonable articulable suspicion to install and use a tracking device with a requirement for a warrant supported by the higher probable cause standard to install and use a tracking device. Similarly, the bill requires law enforcement agencies to obtain a warrant to acquire data identifying the location of a person's cellular phone or portable electronic communications device from the person's service provider.

Other specific changes relevant to communication technology include: defining or amending relevant terms; providing time constraints under which a tracking device must be used and when notice must be provided to the person tracked; providing that a postponement of notice may only be granted by a court for good cause; and permitting emergency tracking under certain circumstances.

The bill also making substantial changes regarding the legal process required to obtain the content of stored wire or electronic communications. The bill requires a warrant to obtain all contents of stored communications, and removes provisions of law relating to obtaining such contents, with prior notice, by court order for disclosure or subpoena. A law enforcement agency must request a prosecutor obtain the subpoena.

In an investigation involving allegations of sexual abuse of a child or the suspected commission of certain sex crimes, a subpoena is authorized to obtain records, documents, or other tangible objects (not related to stored communications). In an investigation involving allegations of sexual abuse of a child, a subpoena is authorized to obtain noncontent basic subscriber information in stored communications. A law enforcement agency must request a prosecutor obtain the subpoena. The bill prohibits a service provider to whom the subpoena is directed from disclosing the existence of the subpoena for a 180-day period if the subpoena is accompanied by written certification by a supervisory official that disclosure may result in an adverse result. Limited disclosure is authorized. The subpoena recipient can petition a court for an order to modify or set aside the disclosure prohibition. The 180-day period can be extended pursuant to a court order as provided in the bill.

Other specific changes relevant to this investigative subpoena include: providing for retention of some subpoenaed tangible objects for specific uses; providing for compensation of a subpoenaed witness and others; providing legal protections for subpoena compliance; and authorizing a court to compel compliance with a subpoena and to sanction refusal to comply with a subpoena.

II. Present Situation:

Fourth Amendment

The Fourth Amendment of the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[1]

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy, such as one's home.[2] A warrantless search is generally per se unreasonable,[3] unless an exception to the warrant requirement applies.[4]

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.[5] Both the Florida and federal constitutions require a warrant to be supported by

[1] U.S. CONST. AMEND. IV.
[2] *Katz v. United States*, 389 U.S. 347 (1967).
[3] *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir. 2012).
[4] Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.
[5] FLA. CONST. art. I, s. 12.

probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and items or people to be seized.[6]

Advancing technology has presented law enforcement with new means of investigation and surveillance, and the courts with new questions about the Fourth Amendment implications of this technology.

Advancing Technology - Location Tracking

Cell phones, smartphones, laptops, and tablets are all mobile devices that can be located whenever they are turned on.[7] There are essentially three methods of locating a mobile device:

- *Network-based location*, which occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device[8] can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location*, which uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods*, which facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.[9]

Mobile Tracking Devices

Mobile tracking devices can also be used to track a person's location. This broad category of devices includes radio frequency (RF)-enabled tracking devices (commonly referred to as "beepers"), satellite-based tracking devices, and cell-site tracking devices. Satellite-based tracking devices are commonly referred to as "GPS devices."[10]

Florida law defines a "tracking device" as an electronic or mechanical device which permits the tracking of movement of a person or object.[11] Section 934.42, F.S., requires a law enforcement officer to apply to a judge for a *court order* approving the "installation and use of a mobile tracking device."[12] If the court grants the order, the officer installs and uses the device.[13] The application for such an order must include:

- A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation;
- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency;

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[6] *Id*. and *supra*, n. 1.
[7] *Cell Phone Tracking Methods*, Electronic Privacy Information Center, available at https://epic.org/privacy/location/ (last visited on Feb. 21 2018).
[8] A service provider is the company that provides the internet to the mobile device. *Id.*
[9] *Id.*
[10] Ian Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Berkley J. of Crim. Law, Vol. 16, Issue 2, p. 442, n. 1 (Fall 2011), available at http://www.bjcl.org/articles/16_2%20herbert_formatted.pdf (last visited on Feb. 21, 2018).
[11] Section 934.42(6), F.S.
[12] Section 934.42(1)-(2), F.S.
[13] Section 934.42(3), F.S.

- A statement of the offense to which the information likely to be obtained relates; and
- A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.[14]

The court then must review the application and if it finds that the above-described requirements are met, the court will order the authorization of the installation and use of a mobile tracking device. The court is not allowed to require greater specificity or additional information then the information listed above.[15]

The installation and the monitoring of a mobile tracking device are governed by the standards established by the United States Supreme Court.[16]

Cellular-Site Location Data

In the United States, it has been reported that there are 327.6 million cell phones in use, which is more than the current U.S. population (315 million people).[17] "As the cell phone travels, it connects to various cell phone towers, which means an electronic record of its location is created[.]"[18] The cell phone's location record is held by the telecommunications company that services the device.[19]

Cellular-site location information (CSLI) is information generated when a cell phone connects and identifies its location to a nearby cell tower that, in turn, processed the phone call or text message made by the cell phone. "CSLI can be 'historic,' in which case the record is of a cell phone's past movements, or it can be 'real-time' or prospective, in which case the information reveals the phone's current location."[20] Historic CSLI enables law enforcement to piece together past events by connecting a suspect to the location of a past crime.[21] Prospective location information helps law enforcement trace the current whereabouts of a suspect.[22]

GPS Location Data

A cell phone's GPS capabilities allow it to be tracked to within 5 to 10 feet.[23] GPS provides users with positioning, navigation, and timing services based on data available from satellites

[14] Section 934.42(2), F.S.
[15] Section 934.42(3) and (4), F.S.
[16] Section 934.42(5), F.S.
[17] Mana Azarmi, *Location Data: The More They Know*, Center for Democracy and Technology (Nov. 27, 2017), available at https://cdt.org/blog/location-data-the-more-they-know/ (last visited on Feb. 21, 2018).
[18] *Id*.
[19] *Id*.
[20] *Id*.
[21] *Cell Phone Location Tracking*, National Association of Criminal Defense Lawyers, available at https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-06-07_Cell-Tracking-Primer_Final.pdf (last visited on Feb. 21, 2018).
[22] *Id*.
[23] *Id*.

orbiting the earth.[24] If a mobile device is equipped with GPS technology, significantly more precise location information is then sent from the handset to the carrier.[25]

Microphone-Enabled Household Devices

Another emerging technology raising privacy concerns is the smart speaker. Smart speakers, like the Google Home[26] or Amazon Echo,[27] are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible. [28]

Although the term "always on" is often used to describe smart speakers, this is not entirely accurate. Speech activated devices use the power of energy efficient processors to remain in an inert state of passive processing, or "listening," for the "wake words." The device buffers and re-records locally, without transmitting or storing any information, until it detects the word or phrase that triggers the device to begin actively recording and transmitting audio outside of the device to the service provider. [29]

In one ongoing murder investigation in Arkansas, the victim died during a party at the suspect's home. The suspect owned an Amazon Echo, which other guests remembered was on and playing music. A law enforcement agency sought the information recorded by the suspect's Echo on the night of the victim's death, but Amazon initially refused to turn the information over on First Amendment privacy grounds. Ultimately, it appears the suspect has given Amazon permission to turn the recordings over to the law enforcement agency.[30]

Chapter 934, F.S., Security of Communications Definitions

Chapter 934, F.S., closely mirrors the federal Electronic Communications Privacy Act of 1986 (ECPA).[31] Several definitions in this chapter are pertinent to the bill:

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[24] *GPS Location Privacy*, GPS.gov (last modified Aug. 22, 2017), available at https://www.gps.gov/policy/privacy (last visited on Feb. 21, 2018).
[25] Patrick Bertagna, *How does a GPS tracking system work?* (Oct. 26, 2010), EE Times, available at https://www.eetimes.com/document.asp?doc_id=1278363&page_number=2 (last visited on Feb. 21, 2018). Cell phone service providers were required by the Federal Communications Commission in 1996 to begin providing location data to 911 operators for a program called Enhanced 911 (E911) which ultimately required a high level of handset location accuracy. As a result, many cell service providers began putting GPS chips inside the handsets. *Supra*, n. 10.
[26] *Google Home*, Google Store, available at https://store.google.com/product/google_home (last visited on Feb. 21, 2018).
[27] *Echo & Alexa*, Amazon, available at https://www.amazon.com/all-new-amazon-echo-speaker-with-wifi-alexa-dark-charcoal/dp/B06XCM9LJ4 (last visited on Feb. 21, 2018).
[28] Jocelyn Baird, *Smart Speakers and Voice Recognition: Is Your Privacy at Risk?*, NextAdvisor (April 4, 2017), available at https://www.nextadvisor.com/blog/2017/04/04/smart-speakers-and-voice-recognition-is-your-privacy-at-risk/ (last visited on Feb. 21, 2018).
[29] *Id*. *See also* Stacey Gray, *Always On: Privacy Implications Of Microphone-Enabled Devices*, The Future of Privacy Forum (April 2016), available at https://fpf.org/wp-content/uploads/2016/04/FPF_Always_On_WP.pdf (last visited on Feb. 21, 2018).
[30] Eliott C. McLaughlin, *Suspect OKs Amazon to hand over Echo recordings in murder* case (Apr. 26, 2017), CNN, available at https://www.cnn.com/2017/03/07/tech/amazon-echo-alexa-bentonville-arkansas-murder-case/index.html (last visited on Feb. 21, 2018).
[31] The ECPA is codified at 18 U.S.C. s. 2510 et seq.

- "Contents," when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.[32]
- "Electronic communication" means the transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce. The definition does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.[33]
- "Electronic communication service" means any service which provides to users thereof the ability to send or receive wire or electronic communications.[34]
- "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications.[35]
- "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than any telephone or telegraph instrument, equipment, or facility, or any component thereof:
  - Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
  - Being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.[36]
- "Electronic storage" means any temporary intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof, and any storage of a wire or electronic communication by an electronic communication service for purposes of backup protection of such communication.[37]
- "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.[38]
- "Investigative or law enforcement officer" means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the state or political subdivision thereof in any

[32] Section 934.02(7), F.S.
[33] Section 934.02(12), F.S.
[34] Section 934.02(15), F.S.
[35] Section 934.02(14), F.S.
[36] Section 934.02(4), F.S.
[37] Section 934.02(17), F.S.
[38] Section 934.02(3), F.S.

civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.[39]

- "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation does not mean any public oral communication uttered at a public meeting or any electronic communication.[40]
- "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.[41]
- "Subpoena" means any administrative subpoena authorized by federal or Florida law, federal or Florida grand jury subpoena, or any criminal investigative subpoena as authorized by Florida statute which may be utilized on behalf of the government by an investigative or law enforcement officer.[42]
- "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.[43]

Prohibited Access to Stored Communications

Florida law also prohibits accessing stored communications. It is unlawful for a person to:

- Intentionally access a facility through which an electronic communication service is provided; or
- Intentionally exceed an authorization to access; and
- Obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system.[44]

The penalties for this offense vary based on the specific intent and the number of offenses.[45] It is a first degree misdemeanor[46] if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.[47] Any subsequent offense with this intent is a third degree felony.[48]

[39] Section 934.02(6), F.S.
[40] Section 934.02(2), F.S.
[41] Section 934.02(19), F.S.
[42] Section 934.02(23), F.S.
[43] Section 934.02(1), F.S.
[44] Section 934.21(1), F.S.
[45] *See* s. 934.21(2), F.S.
[46] A first degree misdemeanor is punishable by up to one year in jail, a fine of up $1,000, or both. Sections 775.082 and 775.083, F.S.
[47] Section 934.21(2), F.S.
[48] A third degree felony is punishable by up to 5 years in state prison, a fine of up to $5,000, or both. Sections 775.082 and 775.083, F.S.

If the person did not have the above-described intent then the above-described offense is a second degree misdemeanor.[49]

Section 934.23, F.S., and the Federal Stored Communications Act

Major Features of Section 934.23, F.S.

Section 934.23, F.S., is patterned after the federal Stored Communications Act (SCA).[50] It closely tracks 18 U.S.C. s. 2703. "The SCA protects communications held by two defined classes of network service providers[.]"[51] Those classes are electronic communication service (ECS) providers and remote computing service (RCS) providers.[52]

Section 934.23, F.S., specifies how an investigative or law enforcement officer may obtain the content of a wire or electronic communication that has been in electronic storage in an electronic communications system (for a specified period) or held or maintained in a remote computing service, and noncontent records or other information pertaining to a subscriber or customer of such service.

Section 934.23, F.S., also provides procedures for retention of records and other evidence pending issuance of process[53] and provides legal protections[54] and reasonable compensation for those providing assistance.[55]

Disclosure of Records or Information under Section 934.23, F.S.

The SCA (specifically, 18 U.S.C. s. 2703) "provides for different means of obtaining evidence, and different levels of privacy protection, depending on the type of evidence sought and the type

[49] A second degree misdemeanor is punishable by up to 60 days in county jail, a fine of up to $500, or both. Sections 775.082 and 775.083, F.S.
[50] The "Stored Communications Act" is a term used to describe Title II of the ECPA (codified at 18 U.S.C. ss. 2701-2712), though the term "appears nowhere in the language of the statute." *Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations* (July 2009), p. 115, n. 1, U.S. Department of Justice, available at http://www.justice.gov/criminal/cybercrime/docs/ssmanual2009.pdf (last visited on Feb. 21, 2018).
[51] *Id.* at p. 117.
[52] *Id.*
[53] An ECS provider or RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by such officer. Section 934.23(7), F.S.
[54] No cause of action lies in any court against an ECS provider, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28, F.S. Section 934.23(6), F.S. Further, an ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., is held harmless from any claim and civil liability resulting from the disclosure of information pursuant to that section. Section 934.23(8), F.S.
[55] An ECS provider, RCS provider, or any other person who furnished assistance pursuant to s. 934.23, F.S., must be reasonably compensated for reasonable expenses incurred in providing such assistance. Section 934.23(8), F.S.

of provider possessing it."[56] Section 934.23, F.S., mirrors this approach. The types of evidence obtainable by different means are discussed in detail below.[57]

No Process – Consent of the Subscriber or Customer

An investigative or law enforcement officer may require an ECS provider or RCS provider to disclose a record or other information pertaining to a subscriber or customer of such service, not including the contents of a communication, if the officer has the consent of the subscriber or customer to such disclosure.[58]

Subpoena

An investigative or law enforcement officer who obtains a subpoena may obtain from the ECS provider or RCS provider basic information, including session information, regarding a subscriber or customer of the provider.[59] This information includes:

- Name and address;
- Local and long-distance telephone connection records or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.[60]

Subpoena with Prior Notice to the Subscriber or Customer

An investigative or law enforcement officer who obtains a subpoena and provides prior notice to the subscriber or customer or with delayed notice pursuant to s. 934.25, F.S., may obtain:

- Whatever can be obtained by subpoena without prior notice;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;[61]
- An electronic communication that is held or maintained on a RCS:
    - On behalf of a subscriber or customer of the RCS and received by means of electronic transmission from, or created by means of computer processing of communications

[56] *Matter of Search Warrant for [redacted].com*, 248 F.Supp. 3d 970, 975 (C.D. Cal. 2017). "The structure of the SCA reflects a series of classifications that indicate the drafters' judgments about what kinds of information implicate greater or lesser privacy interests." *Supra*, n. 50, at p. 115. "Some information can be obtained from providers with a subpoena, other information requires a special court order; and still other information requires a search warrant. In addition, some types of legal process require notice to the subscriber, while other types do not." *Id.* at p. 116.

[57] This analysis follows the format provided by the DOJ in its discussion of the SCA. *Supra*, n. 50.

[58] Section 934.23(4)(a)3., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(C)).

[59] Section 934.23(4)(a)4. and (4)(b), F.S.

[60] Section 934.23(4)(b), F.S. (similar to 18 U.S.C s. 2703(c)(2)). "In general, the items in this list relate to the identity of a subscriber, his relationship with his service provider, and his basic session connection records. In the Internet context, 'any temporarily assigned network address' includes the IP address used by a customer for a particular session. For example, for a webmail service, the IP address used by a customer accessing her email account constitutes a 'temporarily assigned network address.' This list does not include other, more extensive transaction-related records, such as logging information revealing the email addresses of persons with whom a customer corresponded." *Supra*, n. 50, at p. 121.

[61] Section 934.23(1) and (2)(b)1., F.S. (similar to 18 U.S.C. s. 2703(a) and (b)(1)(B)(i)).

received by means of electronic transmission from, a subscriber or customer of such service; and
- Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.[62]

Court Order for Disclosure without Prior Notice

Pursuant to s. 934.23(5), F.S., a court may issue an order for disclosure only if the investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation.[63]

An investigative or law enforcement officer who obtains a court order for disclosure may obtain:
- Whatever can be obtained by subpoena without prior notice; and
- From an ECS provider or RCS provider, a record or other information pertaining to the subscriber or customer of such service, not including contents of communications.[64]

Court Order for Disclosure with Prior Notice

An investigative or law enforcement officer who obtains a court order for disclosure without prior notice, and either gives prior notice to the subscriber or customer or complies with delayed notice provisions of s. 934.25, F.S., may obtain:
- Whatever can be obtained by a court order for disclosure;
- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for more than 180 days;[65] and
- Contents of an electronic communication that is held or maintained on a RCS as described in s. 934.23(3), F.S.[66]

Search Warrant

An investigative or law enforcement officer who obtains a search warrant may obtain:
- Whatever can be obtained pursuant to a court order for disclosure with notice; and

[62] Section 934.23(2)(b)1. and (3), F.S. (similar to 18 U.S.C. s. 2703(b)(1)(B)(i) and (2)). According to the DOJ, "[o]utside the Ninth Circuit …, this third category will include opened and sent e-mail." *Supra*, n. 50, at p. 129.
[63] According to the DOJ, the equivalent federal court order for disclosure (under 18 U.S.C. s. 2703(d)) is needed "to obtain most account logs and most transactional records." *Supra*, n. 50, at p. 130.
[64] Section 934.23(4)(a)2., F.S. (similar to 18 U.S.C. s. 2703(c)(1)(B)). "This is a catch-all category that includes all records that are not contents, including basic subscriber and session information…. As one court explained, 'a record means something stored or archived. The term information is synonymous with data.' *In re United States*, 509 F. Supp. 2d 76, 80 (D. Mass. 2007)." *Supra*, n. 50, at p. 122.
[65] Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)).
[66] Section 934.23(2)(b)2. and (3), F.S. According to the DOJ, except in the federal Ninth Circuit, the federal government can obtain with a court order for disclosure with prior notice "the full contents of a subscriber's account except unopened email and voicemail that have been in the account for 180 days or less." *Supra*, n. 50, at p. 132.

- Contents of a wire or electronic communication that has been held in electronic storage in an electronic communication system for 180 days or less.[67]

Section 934.25, F.S. (Delayed Notice)

Section 934.25, F.S., is also patterned after the SCA. It closely tracks 18 U.S.C. s. 2705. Pursuant to s. 934.25(1), F.S., if an investigative or law enforcement officer seeks to obtain content of stored communications pursuant to a court order for disclosure (with prior subscriber notice) or subpoena (with prior subscriber notice) s. 934.23(2), F.S, the officer may delay the required notice for a period not exceeding 90 days as provided:

- Where a court order for disclosure is sought, the officer includes in the application a request for an order delaying the notification for a period not to exceed 90 days, which request the court must grant if it determines that there is reason to believe that notification of the existence of the court order *may* have an "adverse result."[68]
- Where a subpoena is obtained, the officer may delay the notification for a period not to exceed 90 days upon the execution of a written certification of a supervisory official[69] that there is reason to believe that notification of the existence of the subpoena may have an "adverse result"[70] described in subsection (2).[71]

Section 934.25(4), F.S., provides that the 90-day period may be extended by court order, but only in 90-day increments and only in accordance with s. 934.25(6), F.S., which effectively requires the officer to demonstrate to the court or certify that there is reason to believe notification *will* result in any act specified in that subsection (acts identical to those acts that constitute an "adverse result" [72] under subsection (2)).[73]

Section 934.25(5), F.S., provides that, upon the expiration of the period of delay of notification under s. 934.25(1), F.S., or s. 934.25(4), F.S., the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:

- States with reasonable specificity the nature of the law enforcement inquiry, and
- Informs the subscriber or customer:

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[67] Section 934.23(1), F.S. (similar to 18 U.S.C. s. 2703(a)). "Investigators can obtain everything associated with an account with a search warrant. The SCA does not require the government to notify the customer or subscriber when it obtains information from a provider using a search warrant." *Supra*, n. 50, at p. 133.

[68] Section 934.25(1)(a), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(A)). An "adverse result" is defined in s. 934.25(2) and (6), F.S., as any of the following acts: endangering the life or physical safety of an individual; fleeing from prosecution; destroying or tampering with evidence; intimidating potential witnesses; or seriously jeopardizing an investigation or unduly delaying a trial. This definition is identical to the definition of the term in 18 U.S.C. s. 2705(a)(2).

[69] A "supervisory official" is "the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subject subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification. Section 934.25(7), F.S. (similar to 18 U.S.C. s. 2705(a)(6)).

[70] *Supra*, n. 68.

[71] Section 934.25(1)(b), F.S. (similar to 18 U.S.C. s. 2705(a)(1)(B)). The investigative or law enforcement officer has to maintain a true copy of a certification obtained under paragraph (1)(b). Section 934.25(3), F.S. (similar to 18 U.S.C. s. 2705(a)(3)).

[72] *Supra*, n. 68.

[73] Similar to 18 U.S.C. s. 2705(a)(4).

- That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested;
- That notification of such subscriber or customer was delayed;
- What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made; and
- Which provision of ss. 934.21-934.28, F.S., allowed such delay.[74]

Section 934.25(6), F.S., also authorizes an investigative or law enforcement officer acting under s. 934.23, F.S., when not required to notify the subscriber or customer under s. 934.23(2)(a), F.S. (warrant), or to the extent such notice may be delayed pursuant to s. 934.25(1), F.S. (court order for disclosure or subpoena in which notice is required), to apply to a court for an order commanding an ECS provider or RCS provider to whom a warrant, subpoena, or court order is directed not to notify any other person of the existence of the warrant, subpoena, or court order. The order of nondisclosure is "for such period as the court deems appropriate" and can only be entered if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order *will* result in any act specified in that subsection (acts identical to those acts that constitute an "adverse result").[75]

Investigative Subpoenas

Subpoenas Generally

A "subpoena," which literally means "under penalty,"[76] is a "process or a writ of a judicial nature" used by a court or, when authorized, by an investigative or administrative body, to compel compliance in a proceeding, usually after the proceeding has been initiated.[77] There are two types of subpoenas used in both the civil and criminal context. The subpoena ad testificandum is used to compel the attendance and testimony of witnesses.[78] The subpoena duces tecum is used to compel production of documents, materials, or other tangible information.[79]

Investigative Subpoena Powers

An investigative subpoena is used by the proper authority to investigate a crime after a crime is reported or a complaint is filed. "The purpose of an investigative subpoena is to allow the State to obtain the information necessary to determine whether criminal activity has occurred or is

[74] Similar to 18 U.S.C. s. 2705(a)(5) and (b).
[75] *Supra*, n. 68. Similar to 18 U.S.C. s. 2705(b).
[76] Webster's New World College Dictionary, 5th Ed. (2014).
[77] Op. Att'y Gen. Fla. 81-65 (1981) (citations omitted), available at http://www.myfloridalegal.com/ago.nsf/Opinions/6515E4FA246990B085256587004F3F07 (last visited on Feb. 21, 2018).
[78] *What is a Subpoena?*, FindLaw, available at http://litigation.findlaw.com/going-to-court/what-is-a-subpoena.html (last visited on Feb. 21, 2018).
[79] *Id.* Information may include data, such as "non-content information, connected to our Internet transactions (e.g., websites visited, to/from and time/date stamps on emails)." Richard M. Thompson II & Jared P. Cole, *Stored Communications Act: Reform of the Electronic Communications Privacy Act (ECPA)*, CRS Report 44036 (May 19, 2015), p. 2 (summary), Congressional Research Service, available at https://digital.library.unt.edu/ark:/67531/metadc811160/m1/1/ (last visited on Feb. 21, 2018).

occurring."[80] "[T]he State cannot be required to prove that a crime has occurred before it can issue an investigative subpoena because the entire purpose of the investigative subpoena is to determine whether a crime occurred."[81] "To require the State to prove that a crime occurred before it can issue an investigative subpoena puts the State in an impossible catch-22."[82]

Thus, to carry out its investigative duties, the State has "the authority to issue an investigative subpoena duces tecum."[83] As Florida courts have often recognized, "the state attorney acts as a one-person grand jury in carrying out investigations into noncapital criminal conduct"[84] where the state attorney must investigate to determine if there is probable cause to charge someone with a crime, and then charge that person by information. Because "the state attorney must be granted reasonable latitude" in its investigative role, "section 27.04, Florida Statutes . . . , allows the state attorney to issue subpoenas duces tecum for records as part of an ongoing investigation."[85]

Under s. 27.04, F.S., the state attorney's authority to "use the process of court" includes both compelling witness testimony and production of records and other information.[86] Section 16.56(3), F.S., provides the same authority to the statewide prosecutor. When the Department of Law Enforcement is involved in the investigation, the Department of Legal Affairs (Attorney General's Office) is the legal adviser and attorney to the department.[87]

"The decision to charge and prosecute criminal offenses is an executive responsibility over which the state attorney has complete discretion[.]"[88] "The State clearly has a strong interest in gathering information relevant to an initial inquiry into suspected criminal activity[.]"[89] However, the State's investigative powers are not unlimited. Rather, "[a] judicial limit to this discretion arises where constitutional constraints are implicated."[90]

Section 92.605, F.S., and the Federal Stored Communications Act

The provisions of s. 92.605, F.S., apply to a search warrant, court order, or subpoena issued in compliance with the federal Stored Communications Act (SCA). Section 92.605, F.S., allows a search for records that are in the actual or constructive possession of an out-of-state corporation that provides electronic communication services or remote computing services to the public, when those records would reveal:

- The identity of the customers using those services;
- Data stored by, or on behalf of, the customers;
- The customers' usage of those services; or

[80] *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).
[81] *Id.*
[82] *Id.*
[83] *Id.* at p. 1143-44.
[84] *Id.* at p. 1144 (citations omitted).
[85] *Id.*
[86] *State v. Jett*, 358 So.2d 875, 876-77 (Fla. 3d DCA 1978).
[87] Section 934.03(8), F.S.
[88] *State v. Gibson*, 935 So. 2d 611, 613 (Fla. 3d DCA 2006) (quoting *State v. Bloom*, 497 So. 2d 2, 3 (Fla. 1986) (internal quotations omitted)).
[89] *Id.* (quoting *Doe v. State*, 634 So.2d 613, 615 (Fla. 1994) (internal quotations omitted)).
[90] *State v. J.M.*, 718 So.2d 316, 317 (Fla. 2d DCA 1998).

- The recipients or destinations of communications sent to or from those customers.[91]

Under s. 92.605, F.S., when an out-of-state corporation subject to this section is properly served[92] by an applicant[93] for the subpoena, court order, or search warrant, the out-of-state-corporation must provide to the applicant all records sought pursuant to the process within 20 business days after receipt, or the date indicated within the subpoena, if later, including those records maintained or located outside the state.[94] If the records cannot be produced within the 20-day time period, the out-of-state corporation must notify the applicant within the 20-day time period and agree to produce the documents at the earliest possible time. The applicant must pay the out-of-state corporation the reasonable expenses associated with compliance.[95]

When the applicant makes a showing and the court finds that failure to produce records within 20 business days would cause an adverse result, the subpoena, court order, or warrant may require production of records within less than 20 business days. A court may reasonably extend the time required for production of the records upon finding that the out-of-state corporation needs the extension and that the extension would not cause an adverse result.[96]

Additionally, s. 92.605, F.S.:

- Requires that an out-of-state corporation seeking to quash or object to the subpoena, court order, or warrant seek relief from the court issuing such subpoena, court order, or warrant in accordance with s. 92.605, F.S.;[97]
- Requires verification of the authenticity of produced records upon written request from the applicant or if ordered by the court;[98]
- Provides that a cause of action does not arise against any out-of-state corporation or Florida business for providing records, information, facilities, or assistance in accordance with the terms of a subpoena, court order, or warrant subject to s. 92.605, F.S.;[99] and
- Provides for admissibility in evidence in a criminal proceeding of records produced in compliance with s. 92.605, F.S.[100]

[91] Section 92.605(2), F.S.
[92] "Properly served" means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity properly registered to do business in any state. In order for an out-of-state corporation to be properly served, the service must be effected on the corporation's registered agent. Section 92.605(1)(h), F.S.
[93] "Applicant" means a law enforcement officer who is seeking a court order or subpoena under s. 16.56, F.S., s. 27.04, F.S., s. 905.185, F.S., or s. 914.04, F.S., or who is issued a search warrant under s. 933.01, F.S., or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure. Section 92.605(1)(b), F.S.
[94] Section 92.605(2)(b), F.S. In any criminal case, the content of any electronic communication may be obtained under s. 92.605, F.S., only by court order or by the issuance of a search warrant, unless otherwise provided under the ECPA or other provision of law. Section 92.605(9), F.S.
[95] Section 92.605(2)(b), F.S.
[96] Section 92.605(2)(c), F.S. Section 92.605(1)(a), F.S., contains a definition of "adverse result" that is identical to the definitions of that term in s. 934.25(2) and (6), F.S. See, *infra*, n. 46.
[97] Section 92.605(2)(d), F.S.
[98] Section 92.605(2)(e), F.S.
[99] Section 92.605(4), F.S.
[100] Section 92.605(5)-(8), F.S A Florida ECS provider or RCS provider is required to produce the same records previously described when served with a subpoena, court order, or warrant issued by another state. Section 92.605(3), F.S.

III. Effect of Proposed Changes:

Communications Technology

Legislative Findings for Chapter 934, F.S.

The bill amends s. 934.01, F.S., by adding the term "electronic" to the current terminology of "wire and oral" communications in the legislative findings. The bill also creates three new legislative findings. First, the bill adds a legislative finding recognizing that a person has a subjective expectation of privacy in his or her precise location data that is objectively reasonable. As such, a law enforcement agency's collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the device owner should be allowed only when authorized by a warrant issued by a court and should remain under the control and supervision of the authorizing court.

Second, the bill adds a legislative finding recognizing that the use of portable electronic devices, which can store almost limitless amounts of personal or private data, is growing rapidly. Portable electronic devices can be used to access personal and business information and other data stored in computers and servers located anywhere in the world. Given the nature of the information that can be contained in a portable electronic device, the legislature recognizes that a person using such a device has a reasonable and justifiable expectation of privacy in the information contained in that device.

Third, the bill adds a legislative finding recognizing that microphone-enabled household devices, a new piece of technology being marketed to consumers, often contain microphones that listen for and respond to environmental triggers. These devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in either the device itself or in a remote computing service. In recognition of the private data such a device could transmit or store, the bill recognizes that an individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one's home.

Chapter 934, F.S., Security of Communications Definitions

The bill amends s. 934.02, F.S., the definitions section of ch. 934, F.S., to amend a current definition and create new definitions:

- The current definition of "oral communication" is amended to include the use of a *microphone-enabled device*.
- The definition of "microphone-enabled household device" is created and is defined as a device, sensor, or other physical object within a residence:
  - Capable of connecting to the Internet, directly or indirectly, or to another connected device;
  - Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
  - Which communicates with, by any means, another device, entity, or individual; and
  - Which contains a microphone designed to listen for and respond to environmental cues.
- The definition of "portable electronic communication device" is created and is defined as an object capable of being easily transported or conveyed by a person which is capable of

creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Location Tracking

The bill amends the definition for a "tracking device" in s. 934.42, F.S. to create the definition of a "mobile tracking device" or "tracking device." A "mobile tracking device" or "tracking device" is defined to mean any electronic or mechanical device which permits the tracking of a person's movements. Such devices are defined to include a cellular phone or a portable electronic communication device that can be used to access real time cellular-site location data, precise global positioning satellite location data, and historical global positioning satellite data.
The bill also amends s. 934.42, F.S., to require a *warrant* rather than a *court order* for the law enforcement officer to install and use a mobile tracking device. This means that law enforcement must meet the higher standard of having probable cause for purposes of a warrant rather than the lower standard of having a reasonable, articulable suspicion.

The bill requires that the application for a *warrant* set forth a reasonable length of time that the mobile tracking device may be used. The time may not exceed 45 days after the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each.

The bill requires the court to find probable cause in the required application statements in granting a warrant for the use of a tracking device or mobile tracking device. If the court issues a warrant, the warrant must also require the officer to complete any authorized installation within a specified timeframe after the warrant is issued, to be no longer than 10 days. Within 10 days after the use of the tracking device has ended, the officer executing the warrant must return the warrant to the judge. Additionally, when the warrant authorizes the collection of historical global positioning satellite data, the officer that executed the warrant must return it to the judge within 10 days after receiving the records.

Also, within 10 days after the use of the tracking device has ended, the officer executing the warrant must serve a copy of it on the person who was tracked or whose property was tracked. Upon a showing of good cause for postponement, the court may grant a postponement of notice in 90 day increments.

The bill requires that, in addition to the United States Supreme Court standards, standards established by Florida courts apply to the installation, use, or monitoring of any mobile tracking device as authorized by s. 934.42, F.S.

The bill also allows for the installation of a mobile tracking device without a warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;
- Requires the installation or use of a mobile tracking device before a warrant authorizing such installation or use can, with due diligence, be obtained; and

- There are grounds upon which a warrant could be issued to authorize such installation or use.[101]

Within 48 hours after the installation or use has occurred or begins to occur, a warrant approving the installation or use must be issued in accordance with s. 934.42, F.S. If an application for the warrant is denied, or when 48 hours have lapsed since the installation or use of the mobile tracking device began, whichever is earlier a law enforcement officer must immediately terminate the installation or use of a mobile tracking device.

Changes to Sections 934.21, 934.23, 934.24, and 934.25, F.S., Relating to Stored Communications

Penalties for Accessing Stored Communications

The bill amends s. 934.21, F.S., to make conforming changes and clarifies that the penalty for accessing a facility through which an electronic communication service is provided without authorization to obtain, alter, or prevent authorized access to a wire or electronic communication does not apply to conduct authorized:

- By the provider[102] or user[103] of wire, oral, or electronic communications services through cellular phones, portable electronic communication devices, or microphone-enabled household devices;
- Under ch. 933, F.S.;[104] or
- For legitimate business purposes that do not identify the user.

New Warrant Requirement under Section 934.23, F.S., for Contents of Stored Communications

The bill amends s. 934.23, F.S., to require a warrant for all contents of stored wire or electronic communications. The bill removes current provisions relating to obtaining some contents of stored communications with a court order for disclosure (with prior subscriber notice) or a subpoena (with prior subscriber notice).

Currently, s. 934.23(4)(b), F.S., specifies that certain basic subscriber information is obtainable with a subpoena. Paragraph (4)(c) states that no prior subscriber notice is required for this subpoena. The bill deletes paragraph (4)(c). This paragraph was only necessary to distinguish the subpoena in paragraph (4)(c) from the subpoena (with prior subscriber notice) in subsection (2), which the bill deletes.

The bill also creates a definitions subsection, which includes the current definition in the section of "a court of competent jurisdiction" and adds a definition of "investigative or law enforcement officer." An "investigative or law enforcement officer" is defined as having the same meaning as s. 934.02(6), F.S., *except that in any criminal investigation, if a law enforcement agency seeks disclosure of information obtainable by a subpoena under this section, the agency must request a*

[101] This exception is similar to that found in s. 934.09(7), F.S.
[102] Section 934.21(3)(a), F.S.
[103] Section 934.21(3)(b), F.S.
[104] Chapter 933, F.S., authorizes search and inspection warrants.

state attorney, an assistant state attorney, the statewide prosecutor, or an assistant statewide prosecutor obtain such subpoena.[105]

Repealing Section 934.24, F.S. (Backup Preservation)

Section 934.24, F.S., addresses backup preservation pertaining to some contents of stored communications obtained by court order for disclosure (with prior subscriber notice) or subpoena (with prior subscriber notice) under current s. 934.23(2)(b), F.S., and authorizes a subscriber to file a motion to quash such subpoena or vacate such order. However, since the bill deletes s. 934.23(2)(b), F.S., and requires a warrant for the contents of all stored communications, this section is no longer relevant. Preservation of records and other evidence is addressed in s. 934.23, F.S., which the bill does not delete.

Deleting Provisions in Section 934.25, F.S. (Delayed Notice)

Section 934.25, F.S., in part, addresses delay of subscriber notice required under s. 934.23(2), F.S. Section 934.23(2)(b), F.S., specifically provides that some contents of stored communications may be obtained with a court order for disclosure (with prior subscriber notice) or a subpoena (with prior subscriber notice). However, since the bill deletes s. 934.23(2)(b), F.S., and requires a warrant for the contents of all stored communications, these provisions are no longer relevant.

The bill retains a provision authorizing a court to prohibit disclosure of the existence of a warrant, court order for disclosure, or subpoena for such period as the court deems appropriate based on criteria specified in the statute.

Investigative Subpoenas

The bill creates s. 934.255, F.S., pertaining to investigative subpoenas in investigations of sexual abuse of a child and specified sex crimes.

Definitions

The bill provides the following definitions of terms relevant to the investigative subpoena provisions of the bill:

- "Adverse result" means any of the following acts:
  - Endangering the life or physical safety of an individual.
  - Fleeing from prosecution.
  - Destroying or tampering with evidence.
  - Intimidating potential witnesses.
  - Seriously jeopardizing an investigation or unduly delaying a trial.
- "Child" means a person under 18 years of age.
- "Investigative or law enforcement officer" has the same meaning as s. 934.02(6), F.S., *except that in any criminal investigation, if a law enforcement agency seeks disclosure of information obtainable by a subpoena under this section, the agency must request a state*

[105] The bill does not impose any requirement that a law enforcement agency request a prosecutor obtain a court order for disclosure or warrant. A law enforcement agency is not prohibited from *directly* obtaining a court order for disclosure or warrant.

attorney, an assistant state attorney, the statewide prosecutor, or an assistant statewide prosecutor obtain such subpoena.[106]

- "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(71), F.S.
- "Supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

Investigative Subpoena for Records, Documents, or Other Tangible Objects

In an investigation into allegations of the sexual abuse of a child or an individual's suspected commission of any of a list of specified sex crimes,[107] an investigative or law enforcement officer may use a subpoena to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient to authenticate such tangible objects. This investigative subpoena does not specifically address stored communications information, which is addressed separately in the bill.

Investigative Subpoena Directed to ECS Provider or RCS Provider

In an investigation involving sexual abuse of a child, an investigative or law enforcement officer may use a subpoena to require an ECS provider or RCS provider to disclose basic subscriber identity and session information described in s. 934.23(4)(b), F.S.:[108]

- Name and address;
- Local and long-distance telephone connection records, or records of session times or durations;
- Length of service, including the starting date of service;
- Types of services used;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment, including any credit card or bank account number of a subscriber to or customer.

Requirements Relating to Subpoena and Production of Subpoenaed Information

The bill requires that a subpoena describe the records, documents, or other tangible objects required to be produced, and prescribe a date by which such information must be produced. This provision applies to a subpoena to compel the production of records, documents, or other tangible objects, not a subpoena used to obtain basic subscriber identity and session information described in s. 934.23(4)(b), F.S.

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[106] *Id.*

[107] The crimes are listed in s. 943.0435(1)(h)1.a.(I), F.S., and include but are not limited to: various sex trafficking crimes under s. 787.06, F.S.; sexual battery offenses under ch. 794, F.S.; lewd offenses under ss. 800.04 and 825.1025, F.S.; sexual performance by a child under s. 827.071, F.S.; various computer pornography crimes under ch. 847, F.S.; and selling or buying a minor to engage in sexually explicit conduct under s. 847.0145, F.S.

[108] This is stored communications information.

Petition for an Order Modifying or Setting Aside a Disclosure Prohibition

At any time before the date prescribed in the subpoena for production of records, documents, or other tangible objects, or the subpoena for basic subscriber identity and session information, a person or entity receiving the subpoena may, before a judge of competent jurisdiction, petition for an order modifying or setting aside a prohibition of disclosure.

Retention of Subpoenaed Records or Other Information for Use in an Investigation

An investigative or law enforcement officer who uses a subpoena to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened. This provision applies to a subpoena to compel the production of records, documents, or other tangible objects, not a subpoena used to obtain basic subscriber identity and session information described in s. 934.23(4)(b), F.S.

Nondisclosure of the Existence of a Subpoena

The bill authorizes an investigative or law enforcement officer to prohibit a subpoena recipient from disclosing the existence of the subpoena to any person for 180 days if the subpoena is accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena *may* have an adverse result. However, a subpoena recipient may disclose information otherwise subject to any applicable nondisclosure requirement to:

- Persons as is necessary to comply with the subpoena;
- An attorney in order to obtain legal advice or assistance regarding compliance with the subpoena; or
- Any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification.

This provisions applies to a subpoena to compel the production of records, documents, or other tangible objects, and a subpoena used to obtain basic subscriber identity and session information described in s. 934.23(4)(b), F.S.

The subpoena recipient must notify any person to whom disclosure of the subpoena is made of the existence of, and length of time associated with, the nondisclosure requirement. A person to whom disclosure of the subpoena is made cannot disclose the existence of the subpoena during the nondisclosure period.

At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient must identify to the officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made. If the officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

Extension of the Nondisclosure Period

A court may grant an extension of the nondisclosure period. An investigative or law enforcement officer may apply to a court for an order prohibiting an ECS provider or RCS provider from notifying anyone of the existence of the subpoena for such period as the court deems appropriate. The court must enter the order if it determines that there is reason to believe that notification of the existence of the subpoena *will* result in an adverse result.

This provision applies to the subpoena used to obtain basic subscriber identity and session information described in s. 934.23(4)(b), F.S., not a subpoena to compel the production of records, documents, or other tangible objects.

Compelling Compliance with a Subpoena and Sanctioning Noncompliance

In the case of contumacy[109] by a person served a subpoena, i.e., his or her refusal to comply with the subpoena, the investigative or law enforcement officer who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure.

Any prohibited disclosure of a subpoena during an initial or extended period of prohibition of disclosure is punishable as provided in s. 934.43, F.S. As applicable to a subpoena, s. 934.43, F.S., provides that it is a third degree felony for a person having knowledge of a subpoena issued or obtained by an investigative or law enforcement officer to give notice or attempt to give notice of the subpoena with the intent to obstruct, impede or prevent:

- A criminal investigation or prosecution; or
- The officer from obtaining the information or materials sought pursuant to the subpoena.

Records Retention by a Provider

An ECS provider or a RCS provider, upon the request of an investigative or law enforcement officer, must take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. The records must be retained for a period of 90 days, which is extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

Protection from Claims and Civil Liability

No cause of action lies in any court against a provider of wire or electronic communication service for providing information, facilities, or assistance in accordance with the terms of a subpoena. An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) is held harmless from any claim and civil liability resulting from the disclosure of information (as provided in the bill).

[109] Merriam-Webster's online dictionary defines "contumacy" as "stubborn resistance to authority; *specifically*: willful contempt of court." *See* https://www.merriam-webster.com/dictionary/contumacy (last visited on Feb. 21, 2018).

Compensation

An ECS provider, a RCS provider, or any other person who furnished assistance with complying with a subpoena (as provided in the bill) must be reasonably compensated for reasonable expenses incurred in providing such assistance.

A witness who is subpoenaed to appear and provide testimony to authenticate subpoenaed records or other information must be paid the same fees and mileage rate paid to a witness appearing before a court in this state.

Effective Date

The bill is effective 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:

There may be some indeterminate litigation costs to the subpoena recipient if the recipient elects to challenge provisions of the bill in court.

C. Government Sector Impact:

The Florida Department of Law Enforcement does not expect any fiscal impact from this bill.[110]

There may be a workload impact in regard to preparing and submitting written certifications relevant to nondisclosure of investigative subpoenas, but this impact is

[110] *2018 Legislative Bill Analysis* (SB 1256) (Jan. 4, 2018), The Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

indeterminate. There may also be some indeterminate litigation costs associated with defending provisions of the bill if challenged in court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Although the SCA and current Florida law authorize obtaining some contents of stored communications with a court order for disclosure (with prior subscriber notice) or a subpoena (with prior subscriber notice),[111] this does not necessarily mean that content information is being obtained without a warrant. The federal Sixth Circuit held in *United States v. Warshak* that a warrant is required for all communications content.[112] Although the Sixth Circuit's holding is not binding on other federal circuits, it is a watershed case. "In those [f]ederal districts where *Warshak* has become the de facto law, law enforcement has been required to obtain a warrant even in those cases where lesser process is still permitted by statute. Soon after the decision, the Department of Justice began using warrants for email in all criminal cases. That practice became Department policy in 2013."[113]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 934.01, 934.02, 934.21, 934.23, 934.25, and 934.42.

This bill creates section 934.255 of the Florida Statutes.

This bill repeals section 934.24 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules on February 22, 2018:
The Committee Substitute:

- Requires a warrant for all contents of stored communications, and deletes provisions relating to obtaining such contents with a court order for disclosure (with prior subscriber notice) or a subpoena (with prior subscriber notice);
- Defines terms and specifies that an exception to the definition of "investigative or law enforcement officer" is that in any criminal investigation a law enforcement agency must request a prosecutor obtain a subpoena for information obtainable by a subpoena;

[111] See "Present Situation" section of this analysis.
[112] *United States v. Warshak*, 631 F.3d 266, 283-288 (6th Cir. 2010).
[113] *Email Privacy Act*, Report 114-528, p. 9, 114th Congress 2d Session, Committee on the Judiciary, U.S. House of Representatives, available at https://www.congress.gov/congressional-report/114th-congress/house-report/528/1 (last visited on Feb. 21, 2018).

- Deletes a provision on not providing notice regarding a subpoena for basic subscriber information;
- Repeals s. 934.24, F.S., which addresses backup protection for content of stored communication obtained by court order for disclosure (with prior subscriber notice) or subpoena (with prior subscriber notice), and authorizes a subscriber to move to quash such subpoena or vacate such order;
- Deletes provisions relating to delaying subscriber notice when such notice is required for obtaining contents of stored communications pursuant to a court order for disclosure or subpoena;
- Deletes reference to subscriber notice or delay of such notice in provisions relating to nondisclosure of a warrant, court order, or subpoena for stored communications;
- Defines terms relevant to an investigative subpoena in investigations of sexual abuse of a child and certain sex crimes, and includes a similar exception to the definition "investigative or law enforcement officer" (as previously described);
- In an investigation involving sexual abuse of a child or certain sex crimes, authorizes use of a subpoena to compel production of records, documents, or other tangible things;
- In an investigation of sexual abuse of a child, authorizes use of a subpoena to obtain disclosure of (noncontent) basic subscriber information;
- Specifies requirements for the issuance of a subpoena;
- Authorizes a subpoenaed person to petition a court for an order modifying or setting aside a prohibition on disclosure;
- Authorizes, under certain circumstances, retention of subpoenaed records, documents, or other tangible objects;
- Prohibits the disclosure of a subpoena for a specified period if the disclosure might result in an adverse result, and provides exceptions;
- Requires an investigative or law enforcement officer to maintain a true copy of a written certification required for nondisclosure;
- Authorizes an investigative or law enforcement officer to apply to a court for an order prohibiting certain entities from notifying any person of the existence of a subpoena under certain circumstances;
- Authorizes an investigative or law enforcement officer to petition a court to compel compliance with a subpoena;
- Authorizes a court to punish a person who does not comply with a subpoena as indirect criminal contempt;
- Provides for criminal penalties;
- Precludes a cause of action against certain entities or persons for providing information, facilities, or assistance in accordance with terms of a subpoena;
- Provides for preservation of evidence pending issuance of legal process;
- Provides that certain entities or persons shall be held harmless from any claim and civil liability resulting from disclosure of specified information;
- Provides for reasonable compensation for reasonable expenses incurred in providing assistance; and
- Requires that a subpoenaed witness be paid certain fees and mileage.

CS/CS by Judiciary on February 13, 2018:
The Committee Substitute:

- Eliminates penalty and violation provisions which may subject police officers to criminal penalties when a warrantless search is subsequently deemed illegal under the Fourth Amendment.
- Provides that a law enforcement officer must return a warrant to the judge for records of a subscriber's historical global positioning data within 10 days of receiving the records.
- Requires that a law enforcement officer show good cause before the court can grant a postponement in providing notice of the warrant's existence to the person being tracked.
- Makes various technical changes.

CS by Criminal Justice on February 6, 2018:
The Committee Substitute:

- Defines the terms "portable electronic communication device" and "microphone-enabled household device";
- Changes the current definition of oral communication to include the use of a microphone-enabled household device;
- Amends the definition of a tracking device;
- Requires a warrant for the installation and use of a tracking device;
- Sets forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked;
- Allows for emergency tracking under certain circumstances;
- Removes the requirement of a warrant instead of a court order for the interception of a wire, oral, or electronic communication; and
- Removes the misdemeanor the bill created for a person intentionally and unlawfully accessing a cell phone, portable electronic communication device, or microphone-enabled household device.

B. Amendments:

None.

654094

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/26/2018	.	
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	.	
	.	

The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Between lines 187 and 188
insert:

Section 4. Section 934.23, Florida Statutes, is amended to read:

934.23 Required disclosure of customer communications or records.—

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

(a) "A court of competent jurisdiction" means a court that has jurisdiction over the investigation or that is otherwise


654094

authorized by law.

(b) "Investigative or law enforcement officer" has the same meaning as s. 934.02(6), except that in any investigation relating to whether a crime has been or is being committed only a state attorney, an assistant state attorney, the statewide prosecutor, or an assistant statewide prosecutor may seek under this section the disclosure of a wire or electronic communication, including the contents of such communication, and any record or other information pertaining to a subscriber or customer of a provider of electronic communication service or provider of remote computing service.

(2) ~~(1)~~ An investigative or law enforcement officer may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication ~~that has been in electronic storage in an electronic communications system for 180 days or less~~ only pursuant to a warrant issued by the judge of a court of competent jurisdiction. ~~As used in this section, the term "a court of competent jurisdiction" means a court that has jurisdiction over the investigation or that is otherwise authorized by law.~~ An investigative or law enforcement officer may require the disclosure by a provider of electronic communication services of the contents of a wire or electronic communication ~~that has been in electronic storage in an electronic communications system for more than 180 days~~ by the means available under subsection (3) ~~(2)~~.

~~(2) An investigative or law enforcement officer may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this subsection~~


654094

~~is made applicable by subsection (3):~~

~~(a) Without required notice to the subscriber or customer if the investigative or law enforcement officer obtains a warrant issued by the judge of a court of competent jurisdiction; or~~

~~(b) With prior notice, or with delayed notice pursuant to s. 934.25, from the investigative or law enforcement officer to the subscriber or customer if the investigative or law enforcement officer:~~

~~1. Uses a subpoena; or~~

~~2. Obtains a court order for such disclosure under subsection (5).~~

(3) Subsection (2) is applicable with respect to any electronic communication that is held or maintained on a remote computing service:

(a) On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.

(b) Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

(4)(a) An investigative or law enforcement officer may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber or customer of such service, not


654094

including the contents of a communication, only when the investigative or law enforcement officer:

1. Obtains a warrant issued by the judge of a court of competent jurisdiction;

2. Obtains a court order for such disclosure under subsection (5);

3. Has the consent of the subscriber or customer to such disclosure; or

4. Seeks information under paragraph (b).

(b) A provider of electronic communication service or remote computing service shall disclose to an investigative or law enforcement officer the name; address; local and long-distance telephone connection records, or records of session times or durations; length of service, including the starting date of service; types of services used; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment, including any credit card or bank account number of a subscriber to or customer of such service when the governmental entity uses a subpoena or obtains such information in the manner specified in paragraph (a) for obtaining information under that paragraph.

~~(c) An investigative or law enforcement officer who receives records or information under this subsection is not required to provide notice to a subscriber or customer.~~

(5) A court order for disclosure under ~~subsection (2), subsection (3), or~~ subsection (4) shall issue only if the investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds to

654094

believe that a record or other information pertaining to a subscriber or customer of an electronic communication service or remote computing service ~~the contents of a wire or electronic communication or the records of other information sought~~ are relevant and material to an ongoing criminal investigation. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(6) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28.

(7)(a) A provider of wire or electronic communication services or a remote computing service, upon the request of an investigative or law enforcement officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(b) Records referred to in paragraph (a) shall be retained for a period of 90 days, which shall be extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

(8) A provider of electronic communication service, a remote computing service, or any other person who furnished assistance pursuant to this section shall be held harmless from


654094

any claim and civil liability resulting from the disclosure of information pursuant to this section and shall be reasonably compensated for reasonable expenses incurred in providing such assistance.

Section 5. Section 934.24, Florida Statutes is repealed.

Section 6. Section 934.25, Florida Statutes, is amended to read:

934.25 Nondisclosure by service provider ~~Delayed notice~~.—

~~(1) An investigative or law enforcement officer acting under s. 934.23(2) may:~~

~~(a) Where a court order is sought, include in the application a request for an order delaying the notification required under s. 934.23(2) for a period not to exceed 90 days, which request the court shall grant if it determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in subsection (2).~~

~~(b) Where a subpoena is obtained, delay the notification required under s. 934.23(2) for a period not to exceed 90 days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in subsection (2).~~

~~(2) Any of the following acts constitute an adverse result for purposes of subsection (1):~~

~~(a) Endangering the life or physical safety of an individual.~~

~~(b) Fleeing from prosecution.~~

~~(c) Destroying or tampering with evidence.~~


654094

~~(d) Intimidating potential witnesses.~~

~~(e) Seriously jeopardizing an investigation or unduly delaying a trial.~~

~~(3) The investigative or law enforcement officer shall maintain a true copy of a certification obtained under paragraph (1)(b).~~

~~(4) Extensions of the delay of notification provided in s. 934.23(2) of up to 90 days each may be granted by the court upon application, or by certification by an investigative or law enforcement officer, but only in accordance with subsection (6).~~

~~(5) Upon the expiration of the period of delay of notification under subsection (1) or subsection (4), the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:~~

~~(a) States with reasonable specificity the nature of the law enforcement inquiry, and~~

~~(b) Informs the subscriber or customer:~~

~~1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.~~

~~2. That notification of such subscriber or customer was delayed.~~

~~3. What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made.~~


654094

~~4. Which provision of ss. 934.21-934.28 allowed such delay.~~

(1)~~(6)~~ An investigative or law enforcement officer acting under s. 934.23~~, when not required to notify the subscriber or customer under s. 934.23(2)(a), or to the extent that such notice may be delayed pursuant to subsection (1),~~ may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of such warrant, subpoena, or court order. The court shall enter such order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result. ~~any of the following:~~

(2) For purposes of this section, an "adverse result" means any of the following acts:

(a) Endangering the life or physical safety of an individual.

(b) Fleeing from prosecution.

(c) Destroying or tampering with evidence.

(d) Intimidating potential witnesses.

(e) Seriously jeopardizing an investigation or unduly delaying a trial.

~~(7) As used in paragraph (1)(b), the term "supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subject subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor~~

~~specifically designated by the state attorney or statewide prosecutor to make such written certification.~~

~~(8) As used in subsection (5), the term "deliver" shall be construed in accordance with the definition of "delivery" as provided in Rule 1.080, Florida Rules of Civil Procedure.~~

Section 7. Section 934.255, Florida Statutes, is created to read:

934.255 Subpoenas in investigations of sexual offenses.—

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

(a) "Adverse result" means any of the following acts:

1. Endangering the life or physical safety of an individual.

2. Fleeing from prosecution.

3. Destroying or tampering with evidence.

4. Intimidating potential witnesses.

5. Seriously jeopardizing an investigation or unduly delaying a trial.

(b) "Child" means a person under 18 years of age.

(c) "Investigative or law enforcement officer" has the same meaning as s. 934.02(6), except that in any investigation relating to whether a crime has been or is being committed only a state attorney, an assistant state attorney, the statewide prosecutor, or an assistant statewide prosecutor may seek through use of a subpoena the information described in paragraphs (2)(a) and (2)(b).

(d) "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(71).

(e) "Supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's

654094

headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

(2) An investigative or law enforcement officer who is conducting an investigation into:

(a) Allegations of the sexual abuse of a child or an individual's suspected commission of a crime listed in s. 943.0435(1)(h)1.a.(I) may use a subpoena to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient concerning the production and authenticity of such records, documents, or objects, except as provided in paragraph (b).

(b) Allegations of the sexual abuse of a child may use a subpoena to require a provider of electronic communication services or remote computing services to disclose a record or other information pertaining to a subscriber or customer of such service as described in s. 934.23(4)(b).

(c) A subpoena issued under paragraph (a) must describe the records, documents, or other tangible objects required to be produced, and must prescribe a date by which such records, documents, or other tangible objects must be produced.

(3) At any time before the date prescribed in a subpoena issued under subsection (2)(a) for production of records, documents, or other tangible objects or the date prescribed in a subpoena issued under subsection (2)(b) for production of a record or other information, a person or entity receiving such


654094

subpoena may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the prohibition of disclosure issued under subsection (5).

(4) An investigative or law enforcement officer who uses a subpoena issued under paragraph (2)(a) to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

(5)(a) If a subpoena issued under subsection (2) is served upon a recipient and accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result, the subpoena recipient is prohibited from disclosing to any person for a period of 180 days the existence of the subpoena.

(b) A recipient of a subpoena issued under subsection (2) that is accompanied by a written certification issued pursuant to this subsection is authorized to disclose information otherwise subject to any applicable nondisclosure requirement to persons as is necessary to comply with the subpoena, to an attorney in order to obtain legal advice or assistance regarding compliance with the subpoena, or to any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification. The subpoena recipient shall notify any person to whom disclosure of the subpoena is made pursuant to this paragraph of the existence of, and length of time associated with, the nondisclosure requirement.

654094

(c) A person to whom disclosure of the subpoena is made under paragraph (a) is subject to the nondisclosure requirements of this subsection in the same manner as the subpoena recipient.

(d) At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient shall identify to the investigative or law enforcement officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made under paragraph (b). If the investigative or law enforcement officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

(e) The investigative or law enforcement officer shall maintain a true copy of a written certification obtained under this subsection.

(6) An investigative or law enforcement officer acting under paragraph (2)(b) may apply to a court for an order extending the nondisclosure period provided in subsection (5) for a subpoena and commanding a provider of electronic communication service or remote computing service to whom the subpoena is directed, for such period as the court deems appropriate, not to notify any other person of the existence of such subpoena. The court shall enter such order if it determines that there is reason to believe that notification of the existence of the subpoena will result in an adverse result.

(7) In the case of contumacy by a person served a subpoena issued under subsection (2), or his or her refusal to comply

654094

with such a subpoena, the investigative or law enforcement officer who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure. Any prohibited disclosure of a subpoena issued under subsection (2) for which a period of prohibition of disclosure provided in subsection (5) or an extension thereof under subsection (6) is in effect is punishable as provided in s. 934.43. However, limited disclosure is authorized as provided in subsection (5).

(8) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a subpoena under this section.

(9)(a) A provider of wire or electronic communication services or a remote computing service, upon the request of an investigative or law enforcement officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(b) Records referred to in paragraph (a) shall be retained for a period of 90 days, which shall be extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

(10) A provider of electronic communication service, a remote computing service, or any other person who furnished assistance pursuant to this section shall be held harmless from any claim and civil liability resulting from the disclosure of

654094

information pursuant to this section and shall be reasonably compensated for reasonable expenses incurred in providing such assistance. A witness who is subpoenaed to appear to testify under subsection (2) and who complies with the subpoena must be paid the same fees and mileage rate paid to a witness appearing before a court of competent jurisdiction in this state.

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

And the title is amended as follows:

Delete lines 2 - 12

and insert:

An act relating to security of communications; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the term "oral communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.21, F.S.; revising the exceptions to conduct that constitutes unlawful access to stored communications; amending s. 934.23, F.S.; defining "investigative or law enforcement officer" and specifying that an exception to such definition is that in any criminal investigation only a prosecutor may obtain disclosure of a stored communications through specified legal process; requiring a warrant for any content of a stored communications; deleting provisions relating to obtaining content of stored communications, with required subscriber notice, by obtaining a court order for disclosure or using a

654094

subpoena; deleting provisions relating to any electronic communication held or maintained in a remote computing service; deleting a provision on not providing notice applicable to a subpoena for basic subscriber information; repealing s. 934.24, F.S.; deleting provisions relating to backup protection for content of stored communication obtained, with prior subscriber notice, by court order for disclosure or subpoena; deleting provisions authorizing a subscriber to seek a court order to quash such subpoena or vacate such court order for disclosure; amending 934.25, F.S., deleting provisions relating to delaying subscriber notice when such notice is required for obtaining contents of stored communications pursuant to a court order for disclosure or subpoena; deleting reference to subscriber notice or delay of such notice in provisions relating to nondisclosure of a warrant, court order, or subpoena for stored communications; creating s. 934.255, F.S.; defining "adverse result," "child," "investigative or law enforcement officer," "sexual abuse of child," and "supervisory official"; specifying that an exception to the definition of "investigative or law enforcement officer" is that in any criminal investigation only a prosecutor may use a subpoena to obtain disclosure of basic subscriber information relevant to stored communications; authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for


654094

the production of records, documents, or other tangible things and testimony for stored communications, excluding basic subscriber information relevant to stored communications; authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain person or entities for basic subscriber information relevant to stored communications; specifying requirements for the issuance of a subpoena; authorizing a subpoenaed person to petition a court for an order modifying or setting aside a prohibition on disclosure; authorizing, under certain circumstances, an investigative or law enforcement officer to retain subpoenaed records, documents, or other tangible objects; prohibiting the disclosure of a subpoena for a specified period if the disclosure might result in an adverse result; providing exceptions; requiring an investigative or law enforcement officer to maintain a true copy of a written certification required for nondisclosure; authorizing an investigative or law enforcement officer to apply to a court for an order prohibiting certain entities from notifying any person of the existence of a subpoena under certain circumstances; authorizing an investigative or law enforcement officer to petition a court to compel compliance with a subpoena; authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt; providing criminal penalties; precluding a

654094

cause of action against certain entities or persons for providing information, facilities, or assistance in accordance with terms of a subpoena; providing for preservation of evidence pending issuance of legal process; providing that certain entities or persons shall be held harmless from any claim and civil liability resulting from disclosure of specified information; providing for reasonable compensation for reasonable expenses incurred in providing assistance; requiring that a subpoenaed witness be paid certain fees and mileage;

743964

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/26/2018	.	
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	.	

The Committee on Rules (Brandes) recommended the following:

Senate Substitute for Amendment (654094) (with title amendment)

Between lines 187 and 188
insert:

Section 4. Section 934.23, Florida Statutes, is amended to read:

934.23 Required disclosure of customer communications or records.—

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

(a) "A court of competent jurisdiction" means a court that

has jurisdiction over the investigation or that is otherwise authorized by law.

(b) "Investigative or law enforcement officer" has the same meaning as s. 934.02(6), except that in any criminal investigation, if a law enforcement agency seeks disclosure of information obtainable by a subpoena under this section, the agency must request a state attorney, an assistant state attorney, the statewide prosecutor, or an assistant statewide prosecutor obtain such subpoena.

(2) ~~(1)~~ An investigative or law enforcement officer may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication that is ~~has been~~ in electronic storage in an electronic communications system or remote computing system ~~for 180 days or less~~ only pursuant to a warrant issued by the judge of a court of competent jurisdiction. ~~As used in this section, the term "a court of competent jurisdiction" means a court that has jurisdiction over the investigation or that is otherwise authorized by law. An investigative or law enforcement officer may require the disclosure by a provider of electronic communication services of the contents of a wire or electronic communication that has been in electronic storage in an electronic communications system for more than 180 days by the means available under subsection (2).~~

~~(2) An investigative or law enforcement officer may require a provider of remote computing service to disclose the contents of any wire or electronic communication to which this subsection is made applicable by subsection (3):~~

~~(a) Without required notice to the subscriber or customer~~

~~if the investigative or law enforcement officer obtains a warrant issued by the judge of a court of competent jurisdiction; or~~

~~(b) With prior notice, or with delayed notice pursuant to s. 934.25, from the investigative or law enforcement officer to the subscriber or customer if the investigative or law enforcement officer:~~

~~1. Uses a subpoena; or~~

~~2. Obtains a court order for such disclosure under subsection (5).~~

(3) Subsection (2) is applicable with respect to any electronic communication that is held or maintained on a remote computing service:

(a) On behalf of a subscriber or customer of such service and received by means of electronic transmission from, or created by means of computer processing of communications received by means of electronic transmission from, a subscriber or customer of such service.

(b) Solely for the purposes of providing storage or computer processing services to a subscriber or customer, if the provider is not authorized to access the contents of any such communication for purposes of providing any service other than storage or computer processing.

(4)(a) An investigative or law enforcement officer may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber or customer of such service, not including the contents of a communication, only when the investigative or law enforcement officer:

1. Obtains a warrant issued by the judge of a court of competent jurisdiction;

2. Obtains a court order for such disclosure under subsection (5);

3. Has the consent of the subscriber or customer to such disclosure; or

4. Seeks information under paragraph (b).

(b) A provider of electronic communication service or remote computing service shall disclose to an investigative or law enforcement officer the name; address; local and long-distance telephone connection records, or records of session times or durations; length of service, including the starting date of service; types of services used; telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and means and source of payment, including any credit card or bank account number of a subscriber to or customer of such service when the governmental entity uses a subpoena or obtains such information in the manner specified in paragraph (a) for obtaining information under that paragraph.

~~(c) An investigative or law enforcement officer who receives records or information under this subsection is not required to provide notice to a subscriber or customer.~~

(5) A court order for disclosure under ~~subsection (2), subsection (3), or~~ subsection (4) shall issue only if the investigative or law enforcement officer offers specific and articulable facts showing that there are reasonable grounds to believe that a record or other information pertaining to a subscriber or customer of an electronic communication service or

remote computing service ~~the contents of a wire or electronic communication or the records of other information sought~~ are relevant and material to an ongoing criminal investigation. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

(6) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under ss. 934.21-934.28.

(7)(a) A provider of wire or electronic communication services or a remote computing service, upon the request of an investigative or law enforcement officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(b) Records referred to in paragraph (a) shall be retained for a period of 90 days, which shall be extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

(8) A provider of electronic communication service, a remote computing service, or any other person who furnished assistance pursuant to this section shall be held harmless from any claim and civil liability resulting from the disclosure of information pursuant to this section and shall be reasonably

compensated for reasonable expenses incurred in providing such assistance.

Section 5. Section 934.24, Florida Statutes is repealed.

Section 6. Section 934.25, Florida Statutes, is amended to read:

934.25 Nondisclosure by service provider ~~Delayed notice~~.—

~~(1) An investigative or law enforcement officer acting under s. 934.23(2) may:~~

~~(a) Where a court order is sought, include in the application a request for an order delaying the notification required under s. 934.23(2) for a period not to exceed 90 days, which request the court shall grant if it determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in subsection (2).~~

~~(b) Where a subpoena is obtained, delay the notification required under s. 934.23(2) for a period not to exceed 90 days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in subsection (2).~~

~~(2) Any of the following acts constitute an adverse result for purposes of subsection (1):~~

~~(a) Endangering the life or physical safety of an individual.~~

~~(b) Fleeing from prosecution.~~

~~(c) Destroying or tampering with evidence.~~

~~(d) Intimidating potential witnesses.~~

~~(e) Seriously jeopardizing an investigation or unduly~~

~~delaying a trial.~~

~~(3) The investigative or law enforcement officer shall maintain a true copy of a certification obtained under paragraph (1)(b).~~

~~(4) Extensions of the delay of notification provided in s. 934.23(2) of up to 90 days each may be granted by the court upon application, or by certification by an investigative or law enforcement officer, but only in accordance with subsection (6).~~

~~(5) Upon the expiration of the period of delay of notification under subsection (1) or subsection (4), the investigative or law enforcement officer must serve upon or deliver by registered or first-class mail to the subscriber or customer a copy of the process or request together with notice which:~~

~~(a) States with reasonable specificity the nature of the law enforcement inquiry, and~~

~~(b) Informs the subscriber or customer:~~

~~1. That information maintained for such subscriber or customer by the service provider named in the process or request was supplied to or requested by the investigative or law enforcement officer and the date on which such information was so supplied or requested.~~

~~2. That notification of such subscriber or customer was delayed.~~

~~3. What investigative or law enforcement officer or what court made the certification or determination pursuant to which that delay was made.~~

~~4. Which provision of ss. 934.21-934.28 allowed such delay.~~

(1)~~(6)~~ An investigative or law enforcement officer acting

under s. 934.23~~, when not required to notify the subscriber or customer under s. 934.23(2)(a), or to the extent that such notice may be delayed pursuant to subsection (1),~~ may apply to a court for an order commanding a provider of electronic communication service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any ~~other~~ person of the existence of such warrant, subpoena, or court order. The court shall enter such order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in an adverse result. ~~any of the following:~~

(2) For purposes of this section, an "adverse result" means any of the following acts:

(a) Endangering the life or physical safety of an individual.

(b) Fleeing from prosecution.

(c) Destroying or tampering with evidence.

(d) Intimidating potential witnesses.

(e) Seriously jeopardizing an investigation or unduly delaying a trial.

~~(7) As used in paragraph (1)(b), the term "supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subject subpoena has been issued; the statewide prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.~~


743964

~~(8) As used in subsection (5), the term "deliver" shall be construed in accordance with the definition of "delivery" as provided in Rule 1.080, Florida Rules of Civil Procedure.~~

Section 7. Section 934.255, Florida Statutes, is created to read:

934.255 Subpoenas in investigations of sexual offenses.—

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

(a) "Adverse result" means any of the following acts:

1. Endangering the life or physical safety of an individual.

2. Fleeing from prosecution.

3. Destroying or tampering with evidence.

4. Intimidating potential witnesses.

5. Seriously jeopardizing an investigation or unduly delaying a trial.

(b) "Child" means a person under 18 years of age.

(c) "Investigative or law enforcement officer" has the same meaning as s. 934.02(6), except that in any criminal investigation, if a law enforcement agency seeks disclosure of information obtainable by a subpoena under this section, the agency must request a state attorney, an assistant state attorney, the statewide prosecutor, or an assistant statewide prosecutor obtain such subpoena.

(d) "Sexual abuse of a child" means a criminal offense based on any conduct described in s. 39.01(71).

(e) "Supervisory official" means the person in charge of an investigating or law enforcement agency's or entity's headquarters or regional office; the state attorney of the circuit from which the subpoena has been issued; the statewide

prosecutor; or an assistant state attorney or assistant statewide prosecutor specifically designated by the state attorney or statewide prosecutor to make such written certification.

(2) An investigative or law enforcement officer who is conducting an investigation into:

(a) Allegations of the sexual abuse of a child or an individual's suspected commission of a crime listed in s. 943.0435(1)(h)1.a.(I) may use a subpoena to compel the production of records, documents, or other tangible objects and the testimony of the subpoena recipient concerning the production and authenticity of such records, documents, or objects, except as provided in paragraph (b).

(b) Allegations of the sexual abuse of a child may use a subpoena to require a provider of electronic communication services or remote computing services to disclose a record or other information pertaining to a subscriber or customer of such service as described in s. 934.23(4)(b).

(c) A subpoena issued under paragraph (a) must describe the records, documents, or other tangible objects required to be produced, and must prescribe a date by which such records, documents, or other tangible objects must be produced.

(3) At any time before the date prescribed in a subpoena issued under subsection (2)(a) for production of records, documents, or other tangible objects or the date prescribed in a subpoena issued under subsection (2)(b) for production of a record or other information, a person or entity receiving such subpoena may, before a judge of competent jurisdiction, petition for an order modifying or setting aside the prohibition of

disclosure issued under subsection (5).

(4) An investigative or law enforcement officer who uses a subpoena issued under paragraph (2)(a) to obtain any record, document, or other tangible object may retain such items for use in any ongoing criminal investigation or a closed investigation with the intent that the investigation may later be reopened.

(5)(a) If a subpoena issued under subsection (2) is served upon a recipient and accompanied by a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result, the subpoena recipient is prohibited from disclosing to any person for a period of 180 days the existence of the subpoena.

(b) A recipient of a subpoena issued under subsection (2) that is accompanied by a written certification issued pursuant to this subsection is authorized to disclose information otherwise subject to any applicable nondisclosure requirement to persons as is necessary to comply with the subpoena, to an attorney in order to obtain legal advice or assistance regarding compliance with the subpoena, or to any other person as allowed and specifically authorized by the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification. The subpoena recipient shall notify any person to whom disclosure of the subpoena is made pursuant to this paragraph of the existence of, and length of time associated with, the nondisclosure requirement.

(c) A person to whom disclosure of the subpoena is made under paragraph (a) is subject to the nondisclosure requirements

of this subsection in the same manner as the subpoena recipient.

(d) At the request of the investigative or law enforcement officer who obtained the subpoena or the supervisory official who issued the written certification, the subpoena recipient shall identify to the investigative or law enforcement officer or supervisory official, before or at the time of compliance with the subpoena, the name of any person to whom disclosure was made under paragraph (b). If the investigative or law enforcement officer or supervisory official makes such a request, the subpoena recipient has an ongoing duty to disclose the identity of any individuals notified of the subpoena's existence throughout the nondisclosure period.

(e) The investigative or law enforcement officer shall maintain a true copy of a written certification obtained under this subsection.

(6) An investigative or law enforcement officer acting under paragraph (2)(b) may apply to a court for an order extending the nondisclosure period provided in subsection (5) for a subpoena and commanding a provider of electronic communication service or remote computing service to whom the subpoena is directed, for such period as the court deems appropriate, not to notify any person of the existence of such subpoena. The court shall enter such order if it determines that there is reason to believe that notification of the existence of the subpoena will result in an adverse result.

(7) In the case of contumacy by a person served a subpoena issued under subsection (2), or his or her refusal to comply with such a subpoena, the investigative or law enforcement officer who sought the subpoena may petition a court of

competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt pursuant to Rule 3.840 of the Florida Rules of Criminal Procedure. Any prohibited disclosure of a subpoena issued under subsection (2) for which a period of prohibition of disclosure provided in subsection (5) or an extension thereof under subsection (6) is in effect is punishable as provided in s. 934.43. However, limited disclosure is authorized as provided in subsection (5).

(8) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a subpoena under this section.

(9)(a) A provider of wire or electronic communication services or a remote computing service, upon the request of an investigative or law enforcement officer, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process.

(b) Records referred to in paragraph (a) shall be retained for a period of 90 days, which shall be extended for an additional 90 days upon a renewed request by an investigative or law enforcement officer.

(10) A provider of electronic communication service, a remote computing service, or any other person who furnished assistance pursuant to this section shall be held harmless from any claim and civil liability resulting from the disclosure of information pursuant to this section and shall be reasonably compensated for reasonable expenses incurred in providing such


743964

assistance. A witness who is subpoenaed to appear to testify under subsection (2) and who complies with the subpoena must be paid the same fees and mileage rate paid to a witness appearing before a court of competent jurisdiction in this state.

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

And the title is amended as follows:

Delete lines 2 - 12

and insert:

An act relating to security of communications; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the term "oral communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.21, F.S.; revising the exceptions to conduct that constitutes unlawful access to stored communications; amending s. 934.23, F.S.; defining "investigative or law enforcement officer" and specifying that an exception to such definition is that in any criminal investigation a law enforcement agency must request a prosecutor obtain a subpoena for information obtainable by a subpoena; requiring a warrant for any content of a stored communications; deleting provisions relating to obtaining content of stored communications, with required subscriber notice, by obtaining a court order for disclosure or using a subpoena; deleting provisions relating to any electronic communication held or maintained in a

remote computing service; deleting a provision on not providing notice applicable to a subpoena for basic subscriber information; repealing s. 934.24, F.S.; deleting provisions relating to backup protection for content of stored communication; deleting provisions authorizing a subscriber to seek a court order to quash such subpoena or vacate such court order for disclosure; amending 934.25, F.S., deleting provisions relating to delaying subscriber notice when such notice is required for obtaining contents of stored communications pursuant to a court order for disclosure or subpoena; deleting reference to subscriber notice or delay of such notice in provisions relating to nondisclosure of a warrant, court order, or subpoena for stored communications; creating s. 934.255, F.S.; defining "adverse result," "child," "investigative or law enforcement officer," "sexual abuse of child," and "supervisory official"; specifying that an exception to the definition of "investigative or law enforcement officer" is that in any criminal investigation a law enforcement agency must request a prosecutor obtain a subpoena for information obtainable by a subpoena; authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain persons or entities for the production of records, documents, or other tangible things and testimony for stored communications, excluding basic subscriber information relevant to stored

communications; authorizing an investigative or law enforcement officer conducting an investigation into specified matters to subpoena certain person or entities for basic subscriber information relevant to stored communications; specifying requirements for the issuance of a subpoena; authorizing a subpoenaed person to petition a court for an order modifying or setting aside a prohibition on disclosure; authorizing, under certain circumstances, an investigative or law enforcement officer to retain subpoenaed records, documents, or other tangible objects; prohibiting the disclosure of a subpoena for a specified period if the disclosure might result in an adverse result; providing exceptions; requiring an investigative or law enforcement officer to maintain a true copy of a written certification required for nondisclosure; authorizing an investigative or law enforcement officer to apply to a court for an order prohibiting certain entities from notifying any person of the existence of a subpoena under certain circumstances; authorizing an investigative or law enforcement officer to petition a court to compel compliance with a subpoena; authorizing a court to punish a person who does not comply with a subpoena as indirect criminal contempt; providing criminal penalties; precluding a cause of action against certain entities or persons for providing information, facilities, or assistance in accordance with terms of a subpoena; providing for preservation of evidence

743964

pending issuance of legal process; providing that certain entities or persons shall be held harmless from any claim and civil liability resulting from disclosure of specified information; providing for reasonable compensation for reasonable expenses incurred in providing assistance; requiring that a subpoenaed witness be paid certain fees and mileage;

By the Committees on Judiciary; and Criminal Justice; and
Senator Brandes

590-03194-18 20181256c2

A bill to be entitled

An act relating to the search of the content, information, and communications of cellular phones, portable electronic communication devices, and microphone-enabled household devices; amending s. 934.01, F.S.; revising and providing legislative findings; amending s. 934.02, F.S.; redefining the term "oral communication"; defining the terms "microphone-enabled household device" and "portable electronic communication device"; amending s. 934.21, F.S.; revising the exceptions to conduct that constitutes unlawful access to stored communications; amending s. 934.42, F.S.; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a warrant, rather than an order, authorizing the acquisition of cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite location data; requiring an application for a warrant to include a statement of a reasonable period of time that a mobile tracking device may be used, not to exceed a specified limit; authorizing a court to grant extensions that do not individually exceed a specified limit, for good cause; deleting a provision requiring a certification to be included in the application for an order; requiring the warrant to command the officer to complete an installation authorized by the warrant within a certain timeframe; providing requirements for the return of the warrant

590-03194-18 20181256c2

to the judge and service of a copy of the warrant on the person who was tracked or whose property was tracked; authorizing a court, for good cause, to postpone the notice requirement for a specified time period; requiring that the standards established by Florida courts for the installation, use, or monitoring of mobile tracking devices apply to the installation, use, or monitoring of certain devices; redefining the term "tracking device"; authorizing any investigative or law enforcement officer who is specially designated by certain persons and who makes specified determinations to install or use a mobile tracking device under certain circumstances; providing requirements for the installation and use of such mobile tracking devices; providing an effective date.

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

Section 1. Section 934.01, Florida Statutes, is amended to read:

934.01 Legislative findings.—On the basis of its own investigations and of published studies, the Legislature makes the following findings:

(1) Wire communications are normally conducted through the use of facilities which form part of an intrastate network. The same facilities are used for interstate and intrastate communications.

(2) In order to protect effectively the privacy of wire, ~~and~~ oral, and electronic communications, to protect the

integrity of court and administrative proceedings, and to prevent the obstruction of intrastate commerce, it is necessary for the Legislature to define the circumstances and conditions under which the interception of wire, ~~and~~ oral, and electronic communications may be authorized and to prohibit any unauthorized interception of such communications and the use of the contents thereof in evidence in courts and administrative proceedings.

(3) Organized criminals make extensive use of wire, ~~and~~ oral, and electronic communications in their criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission is an indispensable aid to law enforcement and the administration of justice.

(4) To safeguard the privacy of innocent persons, the interception of wire, ~~or~~ oral, or electronic communications when none of the parties to the communication has consented to the interception should be allowed only when authorized by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court. Interception of wire, ~~and~~ oral, and electronic communications should further be limited to certain major types of offenses and specific categories of crime with assurance that the interception is justified and that the information obtained thereby will not be misused.

(5) To safeguard the privacy of innocent persons, the Legislature recognizes that the subjective expectation of privacy in precision location data that society is now prepared to accept is objectively reasonable. As such, the law

enforcement collection of the precise location of a person, cellular phone, or portable electronic communication device without the consent of the person or owner of the cellular phone or portable electronic communication device should be allowed only when authorized by a warrant issued by a court of competent jurisdiction and should remain under the control and supervision of the authorizing court.

(6) The Legislature recognizes that the use of portable electronic communication devices is growing at a rapidly increasing rate. These devices can store, and encourage the storing of, an almost limitless amount of personal and private information. Often linked to the Internet, these devices are commonly used to access personal and business information and databases in computers and servers that can be located anywhere in the world. The user of a portable electronic communication device has a reasonable and justifiable expectation of privacy in the information that these devices contain.

(7) The Legislature recognizes that the use of household electronic devices, including microphone-enabled household devices, is growing at a rapidly increasing rate. These devices often contain microphones that listen for and respond to environmental triggers. These household devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility to daily household information in a device itself or in a remote computing service. Persons should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one’s home.

Section 2. Subsection (2) of section 934.02, Florida

Statutes, is amended, and subsections (27) and (28) are added to that section, to read:

934.02 Definitions.—As used in this chapter:

(2) "Oral communication" means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation, including the use of a microphone-enabled household device, and does not mean any public oral communication uttered at a public meeting or any electronic communication.

(27) "Microphone-enabled household device" means a device, sensor, or other physical object within a residence:

(a) Capable of connecting to the Internet, directly or indirectly, or to another connected device;

(b) Capable of creating, receiving, accessing, processing, or storing electronic data or communications;

(c) Which communicates with, by any means, another entity or individual; and

(d) Which contains a microphone designed to listen for and respond to environmental cues.

(28) "Portable electronic communication device" means an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Section 3. Section 934.21, Florida Statutes, is amended to read:

934.21 Unlawful access to stored communications; penalties.—

(1) Except as provided in subsection (3), whoever:

(a) Intentionally accesses without authorization a facility through which an electronic communication service is provided, or

(b) Intentionally exceeds an authorization to access such facility,

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (2).

(2) The punishment for an offense under subsection (1) is as follows:

(a) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, the person ~~is~~:

1. In the case of a first offense under this subsection, commits ~~guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 934.41.

2. In the case of any subsequent offense under this subsection, commits ~~guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

(b) In any other case, the person commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Subsection (1) does not apply with respect to conduct authorized:

(a) By the person or entity providing a wire, oral, or

electronic communications service, including through cellular phones, portable electronic communication devices, or microphone-enabled household devices;

(b) By a user of a wire, oral, or electronic communications service, including through cellular phones, portable electronic communication devices, or microphone-enabled household devices, with respect to a communication of or intended for that user; ~~or~~

(c) In s. 934.09, s. 934.23, or s. 934.24;

(d) In chapter 933; or

(e) For accessing for a legitimate business purpose information that is not personally identifiable or that has been collected in a way that prevents identification of the user of the device.

Section 4. Section 934.42, Florida Statutes, is amended to read:

934.42 Mobile tracking device and location tracking authorization.—

(1) An investigative or law enforcement officer may make application to a judge of competent jurisdiction for a warrant ~~an order~~ authorizing or approving the installation and use of a mobile tracking device.

(2) An application under subsection (1) ~~of this section~~ must include:

(a) A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.

(b) A statement setting forth a reasonable period of time that the tracking device may be used or the location data may be obtained in real-time, not to exceed 45 days from the date the

warrant is issued. The court may, for good cause, grant one or more extensions for a reasonable period of time, not to exceed 45 days each ~~certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency~~.

(c) A statement of the offense to which the information likely to be obtained relates.

(d) A statement as to whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.

(3) Upon application made as provided under subsection (2), the court, if it finds probable cause, ~~that the certification~~ and finds that the statements required by subsection (2) have been made in the application, shall grant a warrant ~~enter an~~ ex parte ~~order~~ authorizing the installation and use of a mobile tracking device. Such warrant ~~order~~ may authorize the use of the device within the jurisdiction of the court and outside that jurisdiction but within the State of Florida if the device is installed within the jurisdiction of the court. The warrant must command the officer to complete any installation authorized by the warrant within a specified period of time not to exceed 10 calendar days.

(4) A court may not require greater specificity or additional information beyond that which is required by law and this section as a requisite for issuing a warrant ~~an order~~.

(5) Within 10 days after the time period specified in paragraph (2)(b) has ended, the officer executing a warrant must return the warrant to the issuing judge. When the warrant is authorizing historical global positioning satellite location

data, the officer executing the warrant must return the warrant to the issuing judge within 10 days after receipt of the records. The officer may do so by reliable electronic means.

(6) Within 10 days after the time period specified in paragraph (2)(b) has ended, the officer executing a warrant must serve a copy of the warrant on the person who, or whose property, was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon a showing of good cause to a court of competent jurisdiction, the court may grant one or more postponements of this notice for a period of 90 days each.

(7)~~(5)~~ The standards established by Florida courts and the United States Supreme Court for the installation, use, or ~~and~~ monitoring of mobile tracking devices shall apply to the installation, use, or monitoring ~~and use~~ of any device as authorized by this section.

(8)~~(6)~~ As used in this section, the term "mobile tracking device" or ~~a~~ "tracking device" means an electronic or mechanical device that allows ~~which permits~~ the tracking of the movement of a person or object, including a cellular phone or a portable electronic communication device, and may be used to obtain real-time cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite location data.

(9)(a) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer specially

designated by the Governor, the Attorney General, the statewide prosecutor, or a state attorney acting pursuant to this chapter who reasonably determines that:

1. An emergency exists which:

a. Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner; and

b. Requires the installation or use of a mobile tracking device before a warrant authorizing such installation or use can, with due diligence, be obtained; and

2. There are grounds upon which a warrant could be issued under this chapter to authorize such installation or use,

may install or use a mobile tracking device if, within 48 hours after the installation or use has occurred or begins to occur, a warrant approving the installation or use is issued in accordance with this section.

(b) In the absence of an authorizing warrant, such installation or use must immediately terminate when the information sought is obtained, when the application for the warrant is denied, or when 48 hours have lapsed since the installation or use of the mobile tracking device began, whichever is earlier.

Section 5. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/2018
Meeting Date

1256
Bill Number (if applicable)

743964
Amendment Barcode (if applicable)

Topic Electronic Privacy

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto
Committee on Rules

Subject: Committee Agenda Request

Date: February 13, 2018

I respectfully request that **Senate Bill #1256**, relating to **Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone- enabled Household Devices**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Jeff Brandes
Florida Senate, District 24

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 1028
INTRODUCER:	Senator Thurston
SUBJECT:	Corporations
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	**Favorable**
2.	Davis	Cibula	JU	**Favorable**
3.	Harmsen	Phelps	RC	**Favorable**

I. Summary:

SB 1028 allows state banks and trust companies to form as social purpose corporations or benefit corporations. Social purpose corporations and benefit corporations are formed to make profits, but also to use corporate assets to pursue public interest goals. They differ from not-for-profit entities because they are for-profit entities and are permitted to distribute dividends to shareholders.

The bill also authorizes social purpose corporations and benefit corporations to omit confidential information from their annual benefit reports, but the entity must expressly state that it has omitted the information from the report.

State banks and trust companies are authorized to modify their form articles of incorporation with the Office of Financial Regulation (OFR) to include provisions required for social purpose corporations or benefit corporations. They are also authorized to approve special stock offering plans.

II. Present Situation:

State-Chartered Banks or Trust Companies

The Office of Financial Regulation regulates state-chartered depository and non-depository financial institutions and financial service companies. One of the OFR's primary goals is to provide for and promote the safety and soundness of financial institutions while preserving the integrity of Florida's markets and financial service industries.[1] The OFR has regulatory authority over banks and trust companies, pursuant to ch. 658, F.S., of the Financial Institutions Codes ("codes"). These banks and trust companies operate pursuant to part I of ch. 607, F.S., relating to

[1] Section 655.001, F.S.

for-profit corporations, to the extent that ch. 607, F.S., does not conflict with, or is expressly superseded by, the codes.

A corporation that seeks to organize as a state-chartered bank or trust company in Florida must submit an application for authority to organize to the OFR.[2] The application must include the financial, business, and reasonably required biographical information for each proposed director, executive officer, and, if applicable, each trust officer.[3] The OFR is required to grant the corporation's request to organize if it meets certain criteria relating to local conditions, capitalization, paid-in capital-in surplus, qualifications of the proposed officer and directors, the corporate name of the proposed state bank or trust company, and provision of suitable quarters at the location.[4]

After OFR grants a corporation's approval to organize, the corporation must submit its articles of incorporation and filing fee to the OFR to become chartered and begin its corporate existence as a banking corporation or trust company.[5] The OFR must then provide the proposed directors with form articles of incorporation that reflect only those provisions that are required under s. 658.23, F.S. and part I of ch. 607, F.S., dealing with for-profit corporations.[6]

Currently, state banks and trust companies are not permitted to be formed as social purpose or benefit corporations.[7]

Social Purpose Corporations and Benefit Corporations, Generally

In 2014, the Florida Legislature adopted legislation that governs social purpose corporations and benefit corporations.[8] These "hybrid corporations" serve dual purposes. They allow their directors and officers to both optimize stockholder welfare, commonly viewed as profit maximization, and create general public benefit.[9] Public benefit is generally defined as having a positive effect, or minimizing negative effects, on the environment or on one or more categories of people or entities, other than shareholders in their capacity as shareholders, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature.[10] Social purpose and benefit corporations retain profit-making goals, and therefore do not qualify as charities or not-for-profit corporations; however, their directive to create public benefit distinguishes them from traditional corporations.[11]

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[2] Section 658.19, F.S.
[3] *Id*.
[4] Section 658.21, F.S.
[5] Section 658.23(1), F.S.
[6] *See, e.g.*, Florida Office of Financial Regulation, *Model Articles of Incorporation Bank, Trust Company, or Association* (Revised Jul. 2005), https://www.flofr.com/PDFs/model_articles_OFR.pdf.
[7] Section 658.30(1), F.S.
[8] Chapter 2014-209, ss. 7-33, Laws of Fla (creating ss. 607.501-607.613, F.S., "Social Purpose Corporations" and "Benefit Corporations" effective Jul. 1, 2014).
[9] John Montgomery Business Law Today, *Mastering the Benefit Corporation* (Jul. 2, 2016), available at https://www.americanbar.org/publications/blt/2016/07/02_montgomery.html .
[10] Section 607.502(6), F.S.
[11] Stuart Cohn, Stuart Ames, *Now It's Easier Being Green: Florida's New Benefit and Social Purpose Corporations* at 2 (Nov. 2014) 88-Nov. Fla. B.J. 38, *https://www.floridabar.org/news/tfb-journal/?durl=/divcom%2fjn%2fjnjournal01%2ensf%2f8c9f13012b96736985256aa900624829%2fc655f4f9d7d009b585257d7e004bcb18%21OpenDocument*.

The primary difference between a social purpose corporation (governed by part II of ch. 607, F.S.) and a benefit corporation (governed by part III of ch. 607, F.S.) is the public benefit purpose imposed upon each of the corporations.[12] A social purpose corporation must pursue or create one or more public benefits, which may be specific.[13] In contrast, a benefit corporation must pursue or create a "general public benefit," which is a broad purpose intended to encompass many societal and environmental factors that are affected by the business and operations of the corporation.[14] For both types of corporation, the directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation. Both of these corporations can be the subject of a benefit enforcement proceeding to compel them to pursue or create a general or specific public benefit.[15] However, neither corporation, nor any of its directors and officers, may be found monetarily liable for a failure to create or pursue public benefit. For-profit corporations and their officers and directors are not subject to a requirement to pursue public benefit.

As of May 2017, 32 states permitted benefit corporations[16] and four states have legislation that allows social purpose corporations.[17] Kickstarter, Ben & Jerry's, Patagonia, and King Arthur Flour are examples of benefit corporations that all operate with a commitment to environmental and social factors, as well as to their shareholders' financial interests.[18] Virginia Community Capital was the first federally chartered bank to become a benefit corporation in April 2016.[19]

Annual Benefit Report

Section 607.612, F.S., requires benefit corporations to prepare an annual benefit report (report). The report must contain information such as:[20]

- A description of the ways the benefit corporation pursued the general and specific public benefit goal;
- An explanation of the third-party standard against which the benefit corporation's performance is assessed, if applicable;
- The contact information of certain directors and officers; and
- If any benefit director resigned from, refused to stand for reelection to, or was removed from his or her position.

[12] *Id*.
[13] Section 607.506, F.S.
[14] Section 607.606, F.S.
[15] Sections 607.602, 607.511, 607.611 F.S.
[16] Benefit Corporation Gateway, *State-by-State Guide*, http://www.benefitcorporationgateway.org/h/entrepreneurs-main/state-by-state-guide/ (last visited Jan. 28, 2018).
[17] Rob Esposito, Shawn Pelsinger, *Social Enterprise Law Tracker: Status Tool*, http://socentlawtracker.org/#/spcs (last visited Jan. 26, 2018).
[18] B Lab, *FAQ's*, http://benefitcorp.net/faq (last visited Jan. 19, 2018).
[19] Cision PRWeb, *For-Profit Bank Becomes First Benefit Corporation Bank in U.S.* (Apr. 4, 2016), http://www.prweb.com/releases/2016/03/prweb13301237.htm.
[20] Section 607.612, F.S.

A social purpose corporation's annual benefit report is substantially similar to a benefit corporation's, but it need only describe how it pursued a *particular* rather than *general* public benefit.[21]

These annual benefit reports are not required to be audited or certified by a third-party standards provider, such as B-Lab, unless a corporation's articles of incorporation state otherwise.[22]

Additionally, a social purpose or benefit corporation must deliver its annual benefit report to each of its shareholders and post the report publicly.[23] If a social purpose or benefit corporation fails to publicly furnish its annual benefit report, one of its shareholders may bring an action to compel its provision in circuit court. The court may award the suing shareholder costs and attorney's fees.

III. Effect of Proposed Changes:

Authorization to Form as a Social Purpose or Benefit Corporation (Section 3)

The bill amends s. 658.23, F.S., to allow state banks and trust companies regulated under ch. 658, F.S., to form as social purpose or benefit corporations. Specifically, the banks and trust companies that seek to form as a social purpose or benefit corporation may amend the OFR's form articles of incorporation to conform the articles to the requirements of parts II or III of ch. 607, F.S.

Currently, these banks and trust companies must file articles of incorporation as a for-profit corporation under part I of ch. 607, F.S.

Authorization to Form and Hold Authorized Meetings (Section 4)

The bill amends s. 658.30, F.S., to clarify that bank and trust companies are subject to ch. 607, F.S., including parts II or III (Social Purpose Corporations and Benefit Corporations), to the extent that ch. 658, F.S., does not directly conflict or expressly supersede. The bill permits meetings of stockholders, directors, and committees as authorized under part I of ch. 607.

Authorization to Omit Confidential Information from Annual Report (Sections 1 and 2)

The bill amends sections 607.512 and 607.612, F.S., to allow social purpose corporations and benefit corporations to omit information required to be kept confidential under state or federal law from their annual benefit reports. If the social purpose corporation or benefit corporation does omit the information, however, it must expressly state that it did so in its annual benefit report. This allows banks and trust companies that form as social purpose or benefit corporations to maintain the confidentiality of information that is required to be confidential under the Financial Institution Codes.

[21] Section 607.512(1)(a)1., F.S.
[22] Sections 607.512(3), 607.612(4), F.S.
[23] Sections 607.513 and 607.613, F.S.

Authorization for Special Stock Approval (Section 5)

The bill amends s. 658.36, F.S., changes in capital, to permit the inclusion of social purpose corporations and benefit corporations in the special stock approval provisions that currently pertain to state banks and trust companies.

Effective Date (Section 6)

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:

It may be more difficult for a benefit or social purpose corporation's annual benefit report to be measured against a third-party standard if information is omitted from the report. This may frustrate the purpose of certain investors, who may choose to divest themselves of a company with a redacted annual benefit report.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

While the provisions in sections 1 and 2 of the bill are made with the intent to allow banks to keep information confidential as required by law, the amendments will have the effect of allowing all social purpose or benefit corporations to omit confidential information.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 607.512, 607.612, 658.23, 658.30, and 658.36.

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 Thurston

33-01230-18 20181028__

A bill to be entitled

An act relating to corporations; amending ss. 607.512 and 607.612, F.S.; authorizing social purpose corporations and benefit corporations to omit certain information from annual benefit reports; requiring that annual benefit reports expressly state that such information was omitted; amending s. 658.23, F.S.; authorizing banking or trust corporation applicants to modify form articles to include certain provisions; amending s. 658.30, F.S.; providing that the provisions of part II of ch. 607, F.S., entitled "Social Purpose Corporations," and part III of ch. 607, F.S., entitled "Benefit Corporations," extend to certain banks and trust companies under certain circumstances; amending s. 658.36, F.S.; providing applicability for parts II and III of ch. 607, F.S.; providing an effective date.

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

Section 1. Subsection (4) is added to section 607.512, Florida Statutes, to read:

607.512 Preparation of annual benefit report.—

(4) Notwithstanding this section, any information that must be included in the annual benefit report which is required by state or federal law to be kept confidential may be omitted from the annual benefit report. If any such information is omitted, the annual benefit report must expressly state that such information was omitted pursuant to this subsection.

33-01230-18 20181028__

Section 2. Subsection (5) is added to section 607.612, Florida Statutes, to read:

607.612 Preparation of annual benefit report.—

(5) Notwithstanding this section, any information that must be included in the annual benefit report which is required by state or federal law to be kept confidential may be omitted from the annual benefit report. If any such information is omitted, the annual benefit report must expressly state that such information was omitted pursuant to this subsection.

Section 3. Subsection (2) of section 658.23, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

658.23 Submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.—

(1) Within 3 months after approval by the office and the appropriate federal regulatory agency, the applicant shall submit its duly executed articles of incorporation to the office, together with the filing fee due the Department of State under s. 607.0122.

(2) The articles of incorporation must ~~shall~~ contain:

(a) The name of the proposed bank or trust company.

(b) The general nature of the business to be transacted or a statement that the corporation may engage in any activity or business permitted by law. Such statement must ~~shall~~ authorize all such activities and business by the corporation.

(c) The amount of capital stock authorized, showing the maximum number of shares of par value common stock and of preferred stock, and of every kind, class, or series of each,

together with the distinguishing characteristics and the par value of all shares.

(d) The amount of capital with which the corporation will begin business, which may not be less than the amount required by the office pursuant to s. 658.21.

(e) A provision that the corporation is to have perpetual existence unless existence is terminated pursuant to the financial institutions codes.

(f) The initial street address of the main office of the corporation, which must ~~shall~~ be in this state.

(g) The number of directors, which must ~~shall~~ be five or more, and the names and street addresses of the members of the initial board of directors.

(h) A provision for preemptive rights, if applicable.

(i) A provision authorizing the board of directors to appoint additional directors, pursuant to s. 658.33, if applicable.

The office shall provide to the proposed directors form articles of incorporation which must include only those provisions required under this section or under ~~part I of~~ chapter 607. The form articles may be modified by the applicant to include any of the additional provisions required by part II or part III of chapter 607 which are necessary for a corporation to be a social purpose or benefit corporation. The form articles shall be acknowledged by the proposed directors and returned to the office for filing with the Department of State.

Section 4. Section 658.30, Florida Statutes, is amended to read:

658.30 Application of the Florida Business Corporation Act.—

(1) When not in direct conflict with or superseded by specific provisions of the financial institutions codes, the provisions of the Florida Business Corporation Act, part I of chapter 607 and, if applicable, part II or part III of chapter 607, extend to state banks and trust companies formed under the financial institutions codes. This section shall be liberally construed to accomplish the purposes stated herein.

(2) Without limiting the generality of subsection (1), stockholders, directors, and committees of state banks and trust companies may hold meetings in any manner authorized by part I of chapter 607 and, if applicable, part II or part III of chapter 607, and any action by stockholders, directors, or committees required or authorized to be taken at a meeting may be taken without a meeting in any manner authorized by part I of chapter 607.

Section 5. Subsection (3) of section 658.36, Florida Statutes, is amended to read:

658.36 Changes in capital.—

(3) If a bank or trust company's capital accounts have been diminished by losses to less than the minimum required pursuant to the financial institutions codes, the market value of its shares of capital stock is less than the present par value, and the bank or trust company cannot reasonably issue and sell new shares of stock to restore its capital accounts at a share price of par value or greater of the previously issued capital stock, the office, notwithstanding any other provisions of part I of chapter 607 and, if applicable, part II or part III of chapter

607, or the financial institutions codes, may approve special stock offering plans.

(a) Such plans may include, but are not limited to, mechanisms for stock splits including reverse splits; revaluations of par value of outstanding stock; changes in voting rights, dividends, or other preferences; and creation of new classes of stock.

(b) The plan must be approved by majority vote of the bank or trust company's entire board of directors and by holders of two-thirds of the outstanding shares of stock.

(c) The office shall disapprove a plan that provides unfair or disproportionate benefits to existing shareholders, directors, executive officers, or their related interests. The office shall also disapprove any plan that is not likely to restore the capital accounts to sufficient levels to achieve a sustainable, safe, and sound financial institution.

(d) For any bank or trust company that the office determines to be a failing financial institution pursuant to s. 655.4185, the office may approve special stock offering plans without a vote of the shareholders.

Section 6. This act shall take effect July 1, 2018.

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

2.22.2018
Meeting Date

1028
Bill Number (if applicable)

Topic Corporations

Amendment Barcode (if applicable)

Name Katie Crofoot ("Crow-foot")

Job Title Asst. VP of Gov't Affairs

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Banking and Insurance
Education
Judiciary
Regulated Industries
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR PERRY E. THURSTON, JR.
Democratic Caucus Rules Chair
33rd District

February 12, 2018

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

Dear Senator Benacquisto,

Please be advised that I am writing this letter with regards to my bill, SB 1028: Corporations. It has been referred to the Senate Rules Committee. 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 do not hesitate to contact me if you have any questions.

Respectfully,

Perry E. Thurston, Jr.

Perry E. Thurston, Jr., District 33

CC: Oscar Braynon II, Vice Chair
John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:
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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL:	CS/SB 1212
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senator Book
SUBJECT:	Public Records/Child Advocacy Centers
DATE:	February 22, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Brown	Caldwell	GO	**Favorable**
3.	Preston	Phelps	RC	**Favorable**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1212 makes exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of current and former employees of a child advocacy center (CAC). This same information of current or former child protection team (CPT) members whose duties are related to child abuse and neglect investigations is also made exempt under the bill. The bill additionally exempts names, home addresses, telephone numbers, photographs, dates of birth, places of employment, and schools and day care facilities of spouses and children.

In the required public necessity statement, the bill provides as justification for the exemption that the exemption is needed to keep personnel and their families safe from persons disgruntled by the actions of CACs and CPTs and who may commit violence against them.

The bill includes a provision for an Open Government Sunset Review and provides an automatic repeal date of October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill requires a two-thirds vote from each chamber to pass.

II. Present Situation:

Public Records Law

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

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

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

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

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House 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]

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[1] FLA. CONST., art. I, s. 24(a).
[2] *Id*.
[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.
[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] *Id*.
[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

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 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 meetings exemptions.[14] 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.[15] 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.[16] 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;[17]
- 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;[18] or
- It protects trade or business secrets.[19]

The OGSR also requires specified questions to be considered during the review process.[20] In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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

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

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

[14] Section 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.

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

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

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

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

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

[20] Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by 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.[21] 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.[22]

Child Advocacy Centers (CAC)

Child advocacy centers (CAC) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed and may receive medical exams, therapy, and other critical services.[23] Professionals at CACs consult about investigations, treatment, and prosecution of child abuse cases. The primary function of a CAC is to minimize trauma for child victims, improve prosecutions and provide efficient and thorough provision of necessary services to the child victim and the child's family.[24] CACs provide services such as:

- Forensic interviews conducted in a non-threatening, child-friendly environment.
- Crisis intervention and emotional support for victims and non-offending family members.
- Counseling for victims and non-offending family members.
- Medical evaluations and services.
- Multidisciplinary review of cases by a team of professionals, such as law enforcement officials, child protection teams, prosecutors, medical professionals, mental health professionals, victim assistance staff, and child advocates.
- Evidence-based prevention and intervention programs to reduce the likelihood of child maltreatment and to provide safe and caring homes for children.
- Professional training and community education on child abuse.[25]

The Florida Network of Children's Advocacy Centers (FNCAC) is the statewide membership organization for all local CACs in Florida.[26] Currently, Florida provides 27 CACs throughout the state.[27]

To receive funding, a CAC must appropriately screen employees and volunteers[28], and:

- Be a private, nonprofit incorporated agency or a governmental entity; and

- 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?

[21] FLA. CONST. art. I, s. 24(c).
[22] Section 119.15(7), F.S.
[23] Florida Network of Child Advocacy Centers, *What is a CAC?*, available at: https://www.fncac.org/what-**cac** (last visited Jan. 29, 2018).
[24] *Id*.
[25] *Id*.
[26] Florida Network of Child Advocacy Centers, *About Us*, available at: https://www.fncac.org/about-us (last visited Jan. 29, 2018).
[27] *Id*.
[28] Section 39.035(2), F.S.

- Be a child protection team, or by written agreement incorporate the participation and services of a child protection team, with established community protocols that meet the requirements of the National Network of Children's Advocacy Centers, Inc.

Further, a CAC must provide:

- A neutral, child-focused facility where joint department and law enforcement interviews take place with children in cases of suspected child sexual abuse or physical abuse.
- Staff subject to supervision of a board of directors or governmental entity.
- A case review team that regularly meets or as the caseload requires, with representatives from the Office of the State Attorney, the Department of Children and Families (department), the child protection team, mental health services, law enforcement, and the child advocacy center staff. Medical personnel and a victim's advocate may participate.
- Case tracking and data collection on child abuse cases by sex, race, age, and other relevant data; cases referred for prosecution; and cases referred for mental health therapy.
- Community training and referrals for medical exams and mental health therapy.
- A written, interagency commitment, on a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.[29]

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the department and local sheriffs' offices in cases of child abuse and neglect.[30] CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment.[31] The Department of Health (DOH) Children's Medical Services (CMS) program contracts for CPT services with local community-based programs. CPTs, located in each of the 15 service circuits of the department, are supervised by one or more child protection team medical directors.[32]

The following reports made to the department central abuse hotline that must be referred to a CPT for assessment are:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises on a child five years of age or younger.
- Allegations of sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.

[29] Section 39.3035(1), F.S.
[30] Florida Department of Health, Children's Medical Services. *Child Protection Teams*, available at: http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Jan. 30, 2018).
[31] *Id*.
[32] Section 39.303(1), F.S.

- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.[33]

Upon referral from the department or law enforcement, the CPT may provide:
- Medical diagnoses and evaluations;
- Child forensic interviews;
- Child and family assessments;
- Multidisciplinary staffings;
- Psychological and psychiatric evaluations; and
- Expert court testimony.[34]

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of:
- Current or former directors, managers, supervisors, and clinical employees of a CAC that meets statutory requirements;
- Current or former CPT employees whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or providing services as part of a multidisciplinary case review team; and
- Spouses and children of CAC and CPT personnel, and including the places of employment, schools, and day care facilities attended by these family members.

The bill also provides that the public records exemption is subject to an Open Government Sunset Review and will stand repealed October 2, 2023, unless reviewed and saved from repeal by the Legislature before that date.

Section 2 provides a public necessity statement for the exemption, specifying that CAC and CPT personnel and their families may be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by the personnel. The bill further finds that the risk continues after the personnel no longer holds a position at a CAC or CPT. The bill finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3 provides that the bill takes effect 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.

[33] Section 39.303(4), F.S.
[34] Section 39.303(3), F.S.

B. Public Records/Open Meetings Issues:

Voting Requirement
Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemption to pass.

Public Necessity Statement
Article I, section 24(c) of the Florida Constitution requires a public records exemption bill to contain a public necessity statement for a newly created or expanded public record or public meeting exemption and to state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of personnel of the CAC and CPT and their families from potential violence by persons disgruntled by the actions of the CAC and CPT.

Breadth of Exemption
Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure of specified identifying information of CPT and CAC personnel and their families to protect their safety. Therefore, the bill appears to be no broader than necessary to accomplish the public necessity of the exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 119.071 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 Children, Families, and Elder Affairs on January 16, 2018:
The amendment does the following:

- Removes the reference to "social security numbers" from the exemption and the public necessity statement because there is currently a general exemption for social security numbers.
- Adds the names of spouses and children of exempted personnel to the information to be held exempt. This will standardize information to be held exempt.
- Alters the public necessity statement to more closely mirror the substance of the bill by adding the qualifying phrase "whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as a part of a multidisciplinary case review team" in reference to child protection team members.

B. Amendments:

None.

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

586-02133-18 20181212c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain identifying and location information of current or former directors, managers, supervisors, and clinical employees of child advocacy centers that meet certain standards and requirements, members of a child protection team, and the spouses and children thereof; providing for retroactive application; 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. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional

586-02133-18 20181212c1

probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open

Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through

reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division

of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth,

and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation

therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and

saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

p. The home addresses, telephone numbers, dates of birth,

and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an

agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a child protection team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph 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.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

Section 2. (1) The Legislature finds that it is a public necessity that the following identifying and location information be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1), Florida Statutes, and fulfills the screening requirement of s. 39.3035(2), Florida Statutes.

(b) The home addresses, telephone numbers, dates of birth, and photographs of current or former members of a child protection team as described in s. 39.303, Florida Statutes, whose duties include supporting the investigation of child abuse, or sexual abuse, child abandonment, child neglect, or

child exploitation or to provide services as part of a multidisciplinary case review team.

(c) The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of personnel and members identified in paragraphs (a) and (b).

(d) The names and locations of schools and day care facilities attended by the children of such personnel and members.

(2) The Legislature finds that the release of such identifying and location information may place current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1), Florida Statutes, and fulfills the screening requirement of s. 39.3035(2), Florida Statutes, and the members of a child protection team as described in s. 39.303, Florida Statutes, whose duties include supporting the investigation of child abuse, or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as part of a multidisciplinary case review team, and the family members of such personnel, in danger of physical and emotional harm from hostile persons who may react inappropriately and violently to actions taken by such directors, managers, supervisors, or clinical employees of a child advocacy center or a member of a child protection team. These personnel and members provide services that are necessary and appropriate for abused, abandoned, neglected, and exploited children. In addition, these personnel and members provide valuable and supportive services to the state's most vulnerable residents. Despite the value of

such services, some persons may become hostile toward these personnel and members and may pose a threat to them indefinitely. The harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1212
Bill Number (if applicable)

Topic Public Records / Child Advocacy Centers

Amendment Barcode (if applicable)

Name Devan West

Job Title Policy Advisor

Address 115 S. Andrews Ave
Street

Ft Lauderdale FL 33301
City *State* *Zip*

Phone 954-789-9293

Email dewest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Broward 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

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/CS/CS/SB 1650
INTRODUCER:	Governmental Oversight and Accountability Committee; Children, Families and Elder Affairs Committee; and Senator Montford
SUBJECT:	Child Welfare
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Fav/CS**
2.	Brown	Caldwell	GO	**Fav/CS**
3.	Preston	Phelps	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 1650 revises child dependency law to improve coordination and communication among parties in dependency proceedings and add accountability measures to remove barriers to, and expedite permanency for abused and neglected children. Specifically, the bill:

- Revises grounds for the termination of parental rights, changes notice to parents regarding termination proceedings, expedites service referrals, and increases the frequency of hearings.
- Requires a parent to notify the parties or the court of barriers to being able to comply with a case plan task soon after discovering the barrier. Once notified of the barrier, the Department of Children and Families (department) must provide parents with strategies to overcome it.
- Requires a parent to keep updated contact information and progress on completing the tasks of a case plan.
- Requires a new caseworker to timely and diligently notify a parent with updated contact information.
- Requires the department to make service referrals sooner and increase reporting to the court on case progress; limits continuances by the court's own motion; and requires more frequent permanency hearings after the child has been in out-of-home care for 12 months but has not achieved permanency.
- Requires the court to apply certain criteria in determining whether to amend a case plan and in ruling in a permanency hearing or a judicial review hearing.

Under the bill, the term "harm" is expanded to include certain instances in which a new child is born to a family that is currently subject to an open dependency case.

II. Present Situation:

Permanency for Children in the Child Welfare System

When children are placed in out-of-home care, it is critical that child welfare agencies find safe, permanent homes for them as quickly as possible. In most circumstances, children can be reunited with their families, but in some cases children find homes with relatives, fictive kin[1], or adoptive families. Both federal and state laws provide requirements related to permanency for children.[2]

Many of the federal requirements related to the dependency process can be traced to the Adoption and Safe Families Act (ASFA) of 1997. The ASFA expanded the use of detailed case planning, while emphasizing the well-being of children at all critical points during the dependency case process. It further requires that states make timely decisions regarding permanency. The permanency goal is enforced primarily via a requirement that states terminate the parental rights of children who have spent 15 or more months of the past 22 months in foster care.[3]

Florida law requires the court to set at least one permanency goal for a child. If that goal is reunification with the child's parent, the court may also set a second concurrent goal to provide greater options for the child. A "permanency goal" is defined as the living arrangement identified for the child to return to the family home or identified as the permanent living arrangement of the child.[4] Permanency goals available under this chapter, listed in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; and
- Placement in another planned permanent living arrangement.[5]

The goal of maintaining and strengthening the placement with the child's parent is also an option under certain circumstances, such as when the child has been reunified with a parent but the case is still under the court's jurisdiction. The court must hold hearings at least every 12 months to assess progress towards permanency.[6]

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[1] The term "fictive kin" is defined as people who are considered part of a family even though they are unrelated by blood or marriage. MOSBY'S MEDICAL DICTIONARY, 9th ed. (2009).
[2] U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau, Child Welfare Information Gateway, *Achieving and Maintaining Permanency*, available at: https://www.childwelfare.gov/topics/permanency/ (last visited Feb. 6, 2018).
[3] Adoption and Safe Families Act of 1997, P. L. No. 105-89, H.R. 867, 105th Cong. (1997), available at: https://www.congress.gov/105/plaws/publ89/PLAW-105publ89.pdf.
[4] Section 39.01(53), F.S.
[5] Section 39.621(3), F.S.
[6] Section 39.621(1), F.S.

Reasonable Efforts

Since passage of the Adoption Assistance and Child Welfare Act of 1980,[7] federal law has required states to show, except in certain circumstances such as where the parent committed an especially egregious act, that they have made "reasonable efforts" to provide assistance and services to prevent a child's removal or to reunify a child with his or her family prior to terminating parental rights. The Adoption and Safe Families Act of 1997 does provide, however, that the child's health and safety are the primary concern when assessing the degree to which a state has to go in demonstrating reasonable efforts.[8]

Under Florida law, the department's failure to make reasonable efforts to reunify the parent and child may excuse the parent's noncompliance with the case plan, thereby invalidating noncompliance as grounds for a termination of parental rights.[9] However, the department does not need to show reasonable efforts if the court finds that the parents have engaged in certain egregious conduct.[10]

Case Plans

Throughout the dependency process, the department must develop and refine a case plan with input from all parties to the dependency case which details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.[11] The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights. Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.[12] Specifically, the law provides for:

- The development of a case plan and who must be involved, such as the parent, guardian ad litem, and if appropriate, the child.[13]
- What must be included in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.[14]
- The types of tasks and services that must be provided to the parents as well as the type of care that must be provided to the child. Services must be designed to improve the conditions in the home, facilitate the child's safe return to the home, ensure proper care of the child, and facilitate permanency.[15]

When determining whether to place a child back into the home from which he or she was removed, or whether to move forward with another permanency option, the court must determine whether the circumstances that caused the out-of-home placement have been remedied to the extent that the safety, well-being, and health of the child are not endangered by an in-home

[7] Adoption Assistance and Child Welfare Act of 1980, P. L. No. 96-272, H.R. 3434, 96th Cong. (1980), available at: https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg500.pdf..
[8] Adoption and Safe Families Act of 1997, *supra* note 3.
[9] Section 39.621(5)(c) and (8), F.S.
[10] Section 39.806(2), F.S.
[11] Sections 39.6011 and 39.6012, F.S.
[12] Section 39.521, F.S.
[13] Section 39.6011, F.S.
[14] *Id*.
[15] Section 39.6012(1)(b), F.S.

placement.[16] To support the permanency goal, the court continues to monitor a parent's efforts to comply with the tasks assigned in the case plan.[17]

Parental Responsibilities and Terminations of Parental Rights

Parents involved in the child welfare system have a number of responsibilities they must carry out in order to be reunified with their children, if permanency is a goal. A primary responsibility is to comply with the case plan. Parental lack of compliance with a case plan constitutes grounds for termination of parental rights. Specifically, noncompliance is shown if a parent fails to substantially comply for 12 months after the child's adjudication of dependency or if a child has been in care for 12 of the last 22 months, or a parent materially breaches the case plan such that noncompliance is likely before the expiration of time to comply. However, generally if noncompliance is due to the parent's lack of financial resources or the department's failure to make reasonable efforts, grounds for termination are not established.[18]

Section 39.6011, F.S., requires the case plan to contain a written notice that a parent's noncompliance with the case plan may lead to the termination of parental rights. This message is also delivered by the judge during the hearing on the child's placement in a shelter and[19] the adjudicatory hearing.[20]

State Specific Factors Affecting Permanency

The federal Department of Health and Human Services, through the Children's Bureau, conducts periodic Child and Family Services Reviews (CFSR) in each state. As authorized by federal law, these reviews assess state compliance with the federal requirements for child welfare systems in Title IV-B and Title IV-E of the Social Security Act. In particular, the Children's Bureau examines whether desired child outcomes are being achieved and whether the child welfare system is structured appropriately and operates effectively. Reviews are done every 4 years.

The report summarizing Florida's results from the third round of reviews was issued in late 2016. The report indicated the following related to achieving permanency:

- Despite establishing timely and appropriate permanency goals, case review results found that agencies and courts struggle to make concerted efforts to achieve identified permanency goals in a timely manner.
- Delays in achieving reunification and guardianship goals are affected by case plans not being updated timely to reflect the current needs of the family, delays in referral for services, and any failure to engage parents.
- The agency and court do not make concerted efforts to achieve the goal of adoption timely in nearly half of applicable cases.
- Barriers affecting timely adoptions include the lack of concurrent planning when a parent's compliance level is minimal, and providing parents additional time to work on case plan goals.

[16] Section 39.522, F.S.
[17] Section 39.621, F.S.
[18] Section 39.806, F.S.
[19] Section 39.402 (18), F.S.
[20] Section 39.507(7)(c), F.S.

- In over half of applicable cases, the agency failed to make concerted efforts to provide services, removed children without providing appropriate services, or did not monitor safety plans and engage the family in needed safety-related services.[21]

The report also concluded that there are concerns with gaps in key services, long waiting lists, insurance barriers, and an inability to tailor services to meet the cultural needs of the diverse population. Substance abuse and domestic violence are the main reasons for agency involvement. The review found that substance abuse, in particular, contributes to various safety concerns for children. Stakeholders noted that there are major gaps in services to address both substance abuse and domestic violence in the non-metro areas of the state.[22]

Harm to a Child

For the purposes of ch. 39, F.S., the term "harm" to a child's health or welfare can occur when a person inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating a physical, mental, or emotional injury to a child: the age of the child; a prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Section 39.01(30), F.S., further defines and delineates examples of harm against a child.

III. Effect of Proposed Changes:

Section 1. Amends s. 39.001, F.S., relating to the purposes of the chapter, to recognize the responsibility of the parent of a child who has been placed into out-of-home care, the department and its community-based providers, and the court in achieving timely permanency for the child. It also provides that the guardian ad litem or attorney ad litem's name must be entered on all orders of the court so that a child will have the ability to contact his or her guardian ad litem, and requires parents to take action to comply with the case plan, including notifying the department and the court of barriers to case plan compliance.

Section 2. Amends s. 39.01, F.S., relating to definitions, adds to the definition of harm against a child the situation in which a new child is born into a family while an open dependency case is pending for which a parent or caregiver has been found to not have:
- Had protective capacity to safely care for the children in the home; and
- Substantially complied with the case plan toward successful reunification or conditions for return of the children.

Section 3. Amends s. 39.0136, F.S., relating to time limitations and continuances, to require the department to ensure that parents have accurate contact information for the caseworker, and that a court order granting a continuance include the new court date, consistent with the goal of expediting permanency.

[21] U.S. Department Of Health And Human Services, Children's Bureau, Child and Family Services Reviews, *Florida Final Report, 2016,* available at: http://centerforchildwelfare.org/qa/CFSRTools/2016%20CFSR%20Final%20Report.pdf.
[22] *Id*.

Section 4. Amends s. 39.402, F.S., relating to placement in a shelter, to require the court order to specify the new court day for the continued hearing when a continuance or extension of time is granted. It also requires the court in plain language to advise the parents what is expected of them, so that reunification may occur promptly, and no longer than 1 year after the dependency process has begun. The parents must provide the attorney and the caseworker with updated contact information if their phone number, mailing address, or e-mail address changes. Parents must also notify the parties and the court of barriers to completing case plan tasks within a reasonable time after discovering the barriers.

Section 5. Amends s. 39.507, F.S., relating to adjudicator hearings and orders of adjudication, to require the parents to:

- Provide identification and location information of relatives identified as a potential placement for the child.
- Comply with the case plan so that reunification with the child happens within the shortest period of time possible.
- Update the attorney and the caseworker with contact information if a phone number, mailing address, or e-mail address changes.

Section 6. Amends s. 39.521, F.S., relating to disposition hearings and powers of disposition, to clarify current language related to the provision of copies of the case plan.

Section 7. Amends s. 39.522, F.S., relating to postdisposition change of custody, to provide that at any time before a child achieves the permanency option approved at the permanency hearing, a child may be brought before the court by the department or any additional interested person upon a filing of a motion alleging a need for a change in the conditions of protective supervision or in the placement.

Section 8. Amends s. 39.6011, F.S., relating to case plan development, to require parents to notify the parties of any barriers to completion of the case plan. It also requires the department to work with the parent to overcome any barrier to case plan completion and requires that service referrals be completed not more than 7 days after case plan approval, with exceptions.

Section 9. Amends s. 39.6012, F.S., relating to case plan tasks and services, to require the case plan to include strategies for overcoming barriers to case plan completion and to require parents to notify the parties if a new barrier is discovered. Additionally, parents must provide accurate contact information, including updates of contact information, to the department or the contracted case management agency. Parents must proactively contact the department or the contracted case management agency at least every 14 calendar days to provide information on the status of case plan task completion, barriers to completion, and plans towards reunification.

Section 10. Amends s. 39.6013, F.S., relating to case plan amendments, to require the court to consider the following in determining whether to amend the case plan:

- The length of time the case has been open;
- The level of parental involvement;
- The number of case plan tasks complied with;
- The child's type of placement and attachment; and

- The potential for successful reunification.

Section 11. Amends s. 39.621, F.S., relating to permanency determination by the court, to add as a factor for the court to consider in determining permanency at the permanency hearing whether the frequency, duration, manner, and level of engagement of the parent or legal guardian meets the case plan requirements. This language also provides that if the court determines that the child's goal is appropriate but the child will be in out-of-home care for more than 12 months before achieving permanency, in those cases where the goal is reunification or adoption, the court shall hold permanency status hearings for the child every 60 days until the child reaches permanency or the court makes a determination that it is in the child's best interest to change the permanency goal.

Section 12. Amends s. 39.701, F.S., relating to judicial review, to provide that the court at the judicial review hearing must make written findings regarding the parent or legal guardian's compliance with the case plan and demonstrable change in parental capacity to achieve timely reunification. If concurrent planning is already being used, the department must file with the court, and serve on all parties, a motion to amend the case plan to reflect the concurrent goal as the child's primary permanency goal, document the efforts the department is taking to complete the concurrent goal, and identify any additional services needed to reach the permanency goal by a date certain. The court may allow the parties to continue to pursue a secondary goal if the court determines that is in the best interest of the child.

Section 13. Amends s. 39.806, F.S., relating to grounds for termination of parental rights, to clarify that a parent may materially breach a case plan by action or inaction.

Section 14. Amends s. 39.811, F.S., relating to powers of disposition and order of disposition, to require the court to enter a written order of disposition within 30 days after the conclusion of the hearing to terminate parental rights.

Section 15. 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:

Staff of contracted entities may incur additional workload related to expedited timeframes for referrals and attending the additional hearings mandated by the bill.

C. Government Sector Impact:

The bill has an indeterminate impact on the state court system due to the higher frequency of hearings regarding permanency.

The bill has an indeterminate impact on the department. To the extent expedited permanency for children results, a cost savings could be realized due to the shorter time in care. Alternatively, if a higher number of terminations of parental rights results rather than reunifications and children remain in care, costs could increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends ss. 39.001, 39.01, 39.0136, 39.402, 39.507, 39.521, 39.522, 39.6011, 39.6012, 39.6013, 39.621, 39.701, 39.806, and 39.811 of the Florida Statutes.

IX. Additional Information:

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

CS/CS/CS by Rules Committee on February 22, 2018:
The CS**:**

- Removes the provision amending s. 39.202, F.S., relating to confidentiality of reports and records in cases of child abuse or neglect, to protect the confidentiality of instructional personnel as defined in s. 1012.01(2), F.S., school administrators as defined in s. 1012.01(3)(c), F.S., and educational support employees as defined in s.1012(6)(a), F.S., who have provided information as collateral contacts to child protective investigators, even if the individual was not the individual reporting the alleged maltreatment to the Hotline.

CS/CS by Governmental Oversight and Accountability on February 13, 2018:
The CS:

- Adds to the definition of harm against a child the situation in which a new child is born into a family while an open dependency case is pending for which a parent or caregiver has been found to not have:
  - Had protective capacity to safely care for the children in the home; and
  - Substantially complied with the case plan toward successful reunification or conditions for return of the children.
- Requires a new caseworker to timely and diligently notify the parent with updated contact information.
- Requires parents to update contact information with the attorney and caseworker during various phases of the dependency process.
- Requires parents subject to a case plan to update at least every 14 calendar days the department or the contracted case management agency on progress and barriers to completing the case plan.
- Deletes language from the bill which authorized the court to deny a request for an extension of time to comply with a case plan task if the parent failed to notify the parties and the court within a reasonable time of discovering a barrier to completion of the task.
- Provides greater guidance for the court by:
  - Providing criteria for the court to consider in determining whether to amend a case plan.
  - Requiring the court in a permanency hearing to additionally determine whether the frequency, duration, manner, and level of engagement of the parent or legal guardian complies with the case plan.
  - Requiring the court in a judicial review hearing to issue specific, written findings on the parent or legal guardian's compliance with the case plan and demonstrable change in parental capacity.

CS by Children, Families, and Elder Affairs on January 29, 2018:
The CS:

- Makes a number of changes to ch. 39, relating to dependency proceedings for children, to improve coordination and communication among parties in dependency proceedings and add accountability measures to remove barriers to, and expedite permanency for, abused and neglected children.
- Revises grounds for termination of parental rights, changes notice to parents regarding these grounds, limits the continuances available, expedites service referrals, and increases the frequency of hearings.
- Adds the requirement that a parent notify the parties or the court of barriers to compliance with a case plan task soon after discovering the barrier. If a parent fails to do so, he or she cannot cite the barrier as a reason for noncompliance when the court is considering termination of his or her parental rights. Once notified of the barrier, DCF must provide parents with strategies to overcome them.
- Requires the department to make service referrals sooner and increase reporting to the court on case progress. It limits continuances by the court's own motion and requires

more frequent permanency hearings after the child has been in out-of-home care for 12 months but has not achieved permanency.

B. Amendments:

None.

494764

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/22/2018	.	
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	.	
	.	

The Committee on Rules (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 334 - 498.

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

And the title is amended as follows:

Delete lines 13 - 17

and insert:

amending s. 39.402, F.S.; providing

By the Committees on Governmental Oversight and Accountability; and Children, Families, and Elder Affairs; and Senators Montford and Book

585-03160-18 20181650c2

A bill to be entitled

An act relating to child welfare; amending s. 39.001, F.S.; providing an additional purpose of ch. 39, F.S.; providing for the name of a child's guardian ad litem or attorney ad litem to be entered on court orders in dependency proceedings; amending s. 39.01, F.S.; expanding the definition of the term "harm" to encompass infants born under certain circumstances; amending s. 39.0136, F.S.; requiring cooperation between certain parties and the court to achieve permanency for a child in a timely manner; requiring certain court orders to specify certain deadlines; amending s. 39.202, F.S.; prohibiting the Department of Children and Families from releasing the names of certain persons who have provided information during a protective investigation except under certain circumstances; amending s. 39.402, F.S.; providing that time limitations governing placement of a child in a shelter do not include continuances requested by the court; providing limitations on continuances; providing requirements for parents to achieve reunification with the child; amending s. 39.507, F.S.; requiring the court to advise the parents during an adjudicatory hearing of certain actions that are required to achieve reunification; amending s. 39.521, F.S.; requiring the department to provide copies of the family functioning assessment to certain persons; amending s. 39.522, F.S.; providing conditions for the court to consider the continuity of the child's

585-03160-18 20181650c2

placement in the same out-of-home residence before the permanency placement is approved in a postdisposition proceeding to modify custody; amending s. 39.6011, F.S.; requiring a case plan for a child receiving services from the department to include a protocol for parents to achieve reunification with the child; providing that certain action or inaction by a parent may result in termination of parental rights; requiring the department to provide certain information to a parent before signing a case plan; providing a timeframe for referral for services; amending s. 39.6012, F.S.; requiring a case plan to contain certain information; requiring parents or legal guardians to provide certain information to the department or contracted case management agency and to update the information as appropriate; requiring the parents or legal guardians to make proactive contact with the department or contracted case management agency; amending s. 39.6013, F.S.; requiring the court to consider certain factors when determining whether to amend a case plan; conforming a cross-reference; amending s. 39.621, F.S.; requiring the court to determine certain factors at a permanency hearing; requiring the court to hold permanency hearings within specified timeframes until permanency is determined; amending s. 39.701, F.S.; revising the findings a court must make at a judicial review hearing relating to a child's permanency goal; requiring the department to file a motion to amend a case plan when concurrent

planning is used, under certain circumstances; amending s. 39.806, F.S.; specifying that a parent or parents may materially breach a case plan by action or inaction; amending s. 39.811, F.S.; requiring the court to enter a written order of disposition of the child following termination of parental rights within a specified timeframe; providing an effective date.

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

Section 1. Subsection (7) of section 39.001, Florida Statutes, is amended, and paragraph (q) is added to subsection (1) and paragraph (j) is added to subsection (3) of that section, to read:

39.001 Purposes and intent; personnel standards and screening.—

(1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

(q) To recognize the responsibility of:

1. The parent from whose custody a child has been taken to take action to comply with the case plan so reunification with the child may occur within the shortest period of time possible, but not more than 1 year after removal or adjudication of the child.

2. The department and its community-based care providers to make reasonable efforts to finalize a family's permanency plan, including assisting parents with developing strategies to overcome barriers to case plan compliance.

3. The court to affirmatively determine what the barriers are to timely reunification, and address such barriers as

frequently as needed to ensure compliance with the time limitations established in this chapter.

(3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of the Legislature that the children of this state be provided with the following protections:

(j) The ability to contact their guardian ad litem or attorney ad litem, if appointed, by having that individual's name entered on all orders of the court.

(7) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—Parents, custodians, and guardians are deemed by the state to be responsible for providing their children with sufficient support, guidance, and supervision. The state further recognizes that the ability of parents, custodians, and guardians to fulfill those responsibilities can be greatly impaired by economic, social, behavioral, emotional, and related problems. It is therefore the policy of the Legislature that it is the state's responsibility to ensure that factors impeding the ability of caregivers to fulfill their responsibilities are identified through the dependency process and that appropriate recommendations and services to address those problems are considered in any judicial or nonjudicial proceeding. The Legislature also recognizes that time is of the essence for establishing permanency for a child in the dependency system. Therefore, parents must take action to comply with the case plan so reunification with the child may occur within the shortest period of time possible, but not more than 1 year after removal or adjudication of the child, including by notifying the parties and the court of barriers to case plan compliance.

Section 2. Subsection (30) of section 39.01, Florida

Statutes, is amended to read:

39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

(30) "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the

intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and

regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term "abandoned" does not include a surrendered newborn infant as described in s. 383.50, a child in need of services as defined in chapter 984, or a family in need of services as defined in chapter 984. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(f) Neglects the child. Within the context of the definition of "harm," the term "neglects the child" means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;

2. Prevent the department from investigating such a case; or

3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a

physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or

2. Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

Harm to a child's health or welfare can also occur when a new child is born into the family during the course of an open dependency case where a parent or caregiver has been determined to not have protective capacity to safely care for the children in the home and has not substantially complied with the case plan toward successful reunification or met conditions for return of the children into the home.

Section 3. Section 39.0136, Florida Statutes, is amended to read:

39.0136 Time limitations; continuances.—

(1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.

(2)(a) All parties and the court must work together to ensure that permanency is achieved as soon as possible for every child through timely performance of their responsibilities under this chapter.

(b) The department shall ensure that parents have the information necessary to contact their caseworker. When a new caseworker is assigned to a case, the caseworker shall make a timely and diligent effort to notify the parent and provide updated contact information.

(3)~~(2)~~ The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child. The court must consider the best interests of the child when determining periods of delay under this section.

(b) Periods of delay resulting from a continuance granted at the request of any party if the continuance is granted:

1. Because of an unavailability of evidence that is material to the case if the requesting party has exercised due diligence to obtain evidence and there are substantial grounds to believe that the evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(c) Reasonable periods of delay necessary to accomplish notice of the hearing to the child's parent or legal custodian; however, the petitioner shall continue regular efforts to provide notice to the parents during the periods of delay.

(4)~~(3)~~ Notwithstanding subsection (3) ~~(2)~~, in order to expedite permanency for a child, the total time allowed for continuances or extensions of time, including continuances or extensions by the court on its own motion, may not exceed 60

days within any 12-month period for proceedings conducted under this chapter.

(a) A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed.

(b) An order entered under this section shall specify the new date for the continued hearing or deadline.

(5)~~(4)~~ Notwithstanding subsection (3) ~~(2)~~, a continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child.

Section 4. Subsections (2) and (5) of section 39.202, Florida Statutes, are amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter and the names of instructional personnel as defined in s. 1012.01(2), school administrators as defined in s. 1012.01(3)(c), and educational support employees as described in s. 1012.01(6)(a) who have provided information during a protective investigation which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, the Office of Early Learning, or county

agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4. Healthy Start services;

5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, family day care homes, providers who receive school readiness funding under part VI of chapter 1002, or other homes used to provide for the care and welfare of children;

6. Employment screening for caregivers in residential group homes; or

7. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(b) Criminal justice agencies of appropriate jurisdiction.

(c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access must ~~shall~~ be made available no later than 60 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt

by law may ~~shall~~ not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access must ~~shall~~ be made available no later than 60 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, must ~~shall~~ be limited to information involving the protective investigation only and may ~~shall~~ not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

(f) A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must ~~shall~~ be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have

perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

3. Employing and continuing employment of personnel of the department or the agency.

(i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and may ~~shall~~ not be released in any form.

(j) The Division of Administrative Hearings for purposes of any administrative challenge.

(k) Any appropriate official of an ~~a Florida~~ advocacy council in this state investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the guardian ad litem for the child.

(l) Employees or agents of an agency of another state that has comparable jurisdiction to the jurisdiction described in paragraph (a).

(m) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information which specifically identifies persons other than the

employee.

(n) Employees or agents of the Department of Revenue responsible for child support enforcement activities.

(o) Any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect may ~~shall~~ not be released. Any information otherwise made confidential or exempt by law may ~~shall~~ not be released pursuant to this paragraph.

(p) An employee of the local school district who is designated as a liaison between the school district and the department pursuant to an interagency agreement required under s. 39.0016 and the principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the liaison or the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.

(q) An employee or agent of the Department of Education who is responsible for the investigation or prosecution of misconduct by a certified educator.

(r) Staff of a children's advocacy center that is established and operated under s. 39.3035.

(s) A physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a mental health professional licensed under chapter 491 engaged in the care or treatment of the child.

(t) Persons with whom the department is seeking to place the child or to whom placement has been granted, including

foster parents for whom an approved home study has been conducted, the designee of a licensed residential group home described in s. 39.523, an approved relative or nonrelative with whom a child is placed pursuant to s. 39.402, preadoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of preadoptive or adoptive parents.

(5)(a) The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person made the report is not disclosed. Any person who reports a case of child abuse or neglect may, at the time he or she makes the report, request that the department notify him or her that a child protective investigation occurred as a result of the report. Any person specifically listed in s. 39.201(1) who makes a report in his or her official capacity may also request a written summary of the outcome of the investigation. The department must ~~shall~~ mail such a notice to the reporter within 10 days after completing the child protective investigation.

(b) The names of instructional personnel as defined in s. 1012.01(2), school administrators as defined in s. 1012.01(3)(c), and educational support employees as described in s. 1012.01(6)(a) who have provided information during a

protective investigation may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney without the written consent of such personnel.

Section 5. Paragraph (f) of subsection (14) and subsections (15) and (18) of section 39.402, Florida Statutes, are amended to read:

39.402 Placement in a shelter.—

(14) The time limitations in this section do not include:

(f) Continuances or extensions of time may not total more than 60 days for all parties, and the court on its own motion, within any 12-month period during proceedings under this chapter. A continuance or extension beyond the 60 days may be granted only for extraordinary circumstances necessary to preserve the constitutional rights of a party or when substantial evidence demonstrates that the child's best interests will be affirmatively harmed without the granting of a continuance or extension of time. When a continuance or extension is granted, the order shall specify the new date for the continued hearing or deadline.

(15) The department, at the conclusion of the shelter hearing, shall make available to parents or legal custodians seeking voluntary services, any referral information necessary for participation in such identified services to allow the parents to begin the services immediately. The parents' or legal custodians' participation in the services shall not be considered an admission or other acknowledgment of the allegations in the shelter petition.

(18) The court shall advise the parents in plain language what is expected of them to achieve reunification with their child, including that:~~,~~

(a) Parents must take action to comply with the case plan so reunification with the child may occur within the shortest period of time possible, but not more than 1 year after removal or adjudication of the child.

(b) Parents must stay in contact with their attorney and their caseworker. If the parents' phone number, mailing address, or e-mail address changes, the parents must provide the attorney and caseworker with updated contact information.

(c) Parents must notify the parties and the court of barriers to completing case plan tasks within a reasonable time after discovering such barriers.

(d) If the parents fail to substantially comply with the case plan, their parental rights may be terminated and that the child's out-of-home placement may become permanent.

Section 6. Paragraph (c) of subsection (7) of section 39.507, Florida Statutes, is amended to read:

39.507 Adjudicatory hearings; orders of adjudication.—

(7)

(c) If a court adjudicates a child dependent and the child is in out-of-home care, the court shall inquire of the parent or parents whether the parents have relatives who might be considered as a placement for the child. The parent or parents shall provide the court and all parties with identification and location information for such relatives. The court shall advise the parents in plain language that:~~,~~

1. Parents must take action to comply with the case plan so

reunification with the child may occur within the shortest period of time possible, but not more than 1 year after removal or adjudication of the child.

2. Parents must stay in contact with their attorney and their caseworker. If the parents' phone number, mailing address, or e-mail address changes, the parents must provide the attorney and caseworker with updated contact information.

3. Parents must notify the parties and the court of barriers to completing case plan tasks within a reasonable time after discovering such barriers.

4. If the parents fail to substantially comply with the case plan, their parental rights may be terminated and that the child's out-of-home placement may become permanent. ~~The parent or parents shall provide to the court and all parties identification and location information of the relatives.~~

Section 7. Paragraph (a) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(a) A written case plan and a family functioning assessment prepared by an authorized agent of the department must be approved by the court. The department must file the case plan

and the family functioning assessment with the court, serve copies ~~a copy of the case plan~~ on the parents of the child, and provide copies ~~a copy of the case plan~~ to the representative of the guardian ad litem program, if the program has been appointed, and copies ~~a copy~~ to all other parties:

1. Not less than 72 hours before the disposition hearing, if the disposition hearing occurs on or after the 60th day after the date the child was placed in out-of-home care. All such case plans must be approved by the court.

2. Not less than 72 hours before the case plan acceptance hearing, if the disposition hearing occurs before the 60th day after the date the child was placed in out-of-home care and a case plan has not been submitted pursuant to this paragraph, or if the court does not approve the case plan at the disposition hearing. The case plan acceptance hearing must occur within 30 days after the disposition hearing to review and approve the case plan.

Section 8. Subsection (1) of section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.—The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(1) At any time before a child achieves the permanency placement approved at the permanency hearing, a child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or

by any other interested person, upon the filing of a motion ~~petition~~ alleging a need for a change in the conditions of protective supervision or the placement. If the parents or other legal custodians deny the need for a change, the court shall hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after such hearing, the court shall enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. The standard for changing custody of the child shall be the best interest of the child. When applying this standard, the court shall consider the continuity of the child's placement in the same out-of-home residence as a factor when determining the best interests of the child. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.

Section 9. Present subsections (4) through (8) of section 39.6011, Florida Statutes, are redesignated as subsections (5) through (9), respectively, a new subsection (4) is added to that section, and paragraph (e) of subsection (2), subsection (3), and present subsection (6) of that section are amended, to read:

39.6011 Case plan development.—

(2) The case plan must be written simply and clearly in English and, if English is not the principal language of the child's parent, to the extent possible in the parent's principal language. Each case plan must contain:

(e) A written notice to the parent that it is the parents' responsibility to take action to comply with the case plan so reunification with the child may occur within the shortest

period of time possible, but not more than 1 year after removal or adjudication of the child; the parent must notify the parties and the court of barriers to completing case plan tasks within a reasonable time after discovering such barriers; failure of the parent to substantially comply with the case plan may result in the termination of parental rights;~~,~~ and ~~that~~ a material breach of the case plan by the parent's action or inaction may result in the filing of a petition for termination of parental rights sooner than the compliance period set forth in the case plan.

(3) The case plan must be signed by all parties, except that the signature of a child may be waived if the child is not of an age or capacity to participate in the case-planning process. Signing the case plan constitutes an acknowledgment that the case plan has been developed by the parties and that they are in agreement as to the terms and conditions contained in the case plan. The refusal of a parent to sign the case plan does not prevent the court from accepting the case plan if the case plan is otherwise acceptable to the court. Signing the case plan does not constitute an admission to any allegation of abuse, abandonment, or neglect and does not constitute consent to a finding of dependency or termination of parental rights.

(4) Before signing the case plan, the department shall explain the provisions of the plan to all persons involved in its implementation, including, when appropriate, the child. The department shall ensure that the parent has contact information for all entities necessary to complete the tasks in the plan. The department shall explain the strategies included in the plan that the parent can use to overcome barriers to case plan compliance and that if a barrier is discovered and the parties

are not actively working to overcome such barrier, the parent must notify the parties and the court within a reasonable time after discovering such barrier.

(7)~~(6)~~ After the case plan has been developed, the department shall adhere to the following procedural requirements:

(a) If the parent's substantial compliance with the case plan requires the department to provide services to the parents or the child and the parents agree to begin compliance with the case plan before the case plan's acceptance by the court, the department shall make the appropriate referrals for services that will allow the parents to begin the agreed-upon tasks and services immediately.

(b) All other referrals for services shall be completed as soon as possible, but not more than 7 days after the date of the case plan approval, unless the case plan specifies that a task may not be undertaken until another specified task has been completed.

(c)~~(b)~~ After the case plan has been agreed upon and signed by the parties, a copy of the plan must be given immediately to the parties, including the child if appropriate, and to other persons as directed by the court.

1. A case plan must be prepared, but need not be submitted to the court, for a child who will be in care no longer than 30 days unless that child is placed in out-of-home care a second time within a 12-month period.

2. In each case in which a child has been placed in out-of-home care, a case plan must be prepared within 60 days after the department removes the child from the home and shall be

submitted to the court before the disposition hearing for the court to review and approve.

3. After jurisdiction attaches, all case plans must be filed with the court, and a copy provided to all the parties whose whereabouts are known, not less than 3 business days before the disposition hearing. The department shall file with the court, and provide copies to the parties, all case plans prepared before jurisdiction of the court attached.

Section 10. Paragraph (b) of subsection (1) of section 39.6012, Florida Statutes, is amended, paragraph (d) is added to subsection (1) of that section, to read:

39.6012 Case plan tasks; services.—

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(b) The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem, including:

1. The type of services or treatment.

2. The date the department will provide each service or referral for the service if the service is being provided by the department or its agent.

3. The date by which the parent must complete each task.

4. The frequency of services or treatment provided. The frequency of the delivery of services or treatment provided shall be determined by the professionals providing the services or treatment on a case-by-case basis and adjusted according to their best professional judgment.

5. The location of the delivery of the services.

6. The staff of the department or service provider accountable for the services or treatment.

7. A description of the measurable objectives, including the timeframes specified for achieving the objectives of the case plan and addressing the identified problem.

8. Strategies to overcome barriers to case plan compliance, including, but not limited to, the provision of contact information, information on acceptable alternative services or providers, and an explanation that the parent must notify the parties within a reasonable time of discovering a barrier that the parties are not actively working to overcome.

(d) Parents must provide accurate contact information to the department or the contracted case management agency and update such information as appropriate. Parents must make proactive contact with the department or the contracted case management agency at least every 14 calendar days to provide information on the status of case plan task completion, barriers to completion, and plans toward reunification.

Section 11. Present subsection (6) of section 39.6013, Florida Statutes, is redesignated as subsection (7), a new subsection (6) is added to that section, and present subsection (7) is amended, to read:

39.6013 Case plan amendments.—

(6) When determining whether to amend the case plan, the court must consider the length of time the case has been open, level of parental engagement to date, number of case plan tasks complied with, child's type of placement and attachment, and potential for successful reunification.

(8) ~~(7)~~ Amendments must include service interventions that

are the least intrusive into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care. A copy of the amended plan must be immediately given to the persons identified in s. 39.6011(7)(c) ~~s. 39.6011(6)(b)~~.

Section 12. Present subsections (7) through (10) of section 39.621, Florida Statutes, are redesignated as subsections (8) through (11), respectively, subsection (5) and present subsections (9), (10), and (11) are amended, and a new subsection (7) is added to that section, to read:

39.621 Permanency determination by the court.—

(5) At the permanency hearing, the court shall determine:

(a) Whether the current permanency goal for the child is appropriate or should be changed;

(b) When the child will achieve one of the permanency goals; ~~and~~

(c) Whether the department has made reasonable efforts to finalize the permanency plan currently in effect; and~~.~~

(d) Whether the frequency, duration, manner, and level of engagement of the parent or legal guardian's visitation with the child meets the case plan requirements.

(7) If the court determines that the child's goal is appropriate but the child will be in out-of-home care for more than 12 months before achieving permanency, in those cases where the goal is reunification or adoption, the court shall hold permanency status hearings for the child every 60 days until the child reaches permanency or the court makes a determination that

it is in the child's best interest to change the permanency goal.

(10)~~(9)~~ The case plan must list the tasks necessary to finalize the permanency placement and shall be updated at the permanency hearing unless the child will achieve permanency within 60 days after the hearing ~~if necessary~~. If a concurrent case plan is in place, the court may choose between the permanency goal options presented and shall approve the goal that is in the child's best interest.

(11)~~(10)~~ The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child.

(a) If, after a child has achieved the permanency placement approved at the permanency hearing, a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall hold a hearing to determine whether the dependency case should be reopened and whether there should be a modification of the order.

(b) At the hearing, the parent must demonstrate that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the modification.

(c)~~(11)~~ The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the

order on the motion must include:

1.~~(a)~~ The compliance or noncompliance of the parent with the case plan;

2.~~(b)~~ The circumstances which caused the child's dependency and whether those circumstances have been resolved;

3.~~(c)~~ The stability and longevity of the child's placement;

4.~~(d)~~ The preferences of the child, if the child is of sufficient age and understanding to express a preference;

5.~~(e)~~ The recommendation of the current custodian; and

6.~~(f)~~ The recommendation of the guardian ad litem, if one has been appointed.

Section 13. Paragraph (d) of subsection (2) of section 39.701, Florida Statutes, is amended to read:

39.701 Judicial review.—

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(d) *Orders.*—

1. Based upon the criteria set forth in paragraph (c) and the recommended order of the citizen review panel, if any, the court shall determine whether or not the social service agency shall initiate proceedings to have a child declared a dependent child, return the child to the parent, continue the child in out-of-home care for a specified period of time, or initiate termination of parental rights proceedings for subsequent placement in an adoptive home. Amendments to the case plan must be prepared as prescribed in s. 39.6013. If the court finds that the prevention or reunification efforts of the department will allow the child to remain safely at home or be safely returned to the home, the court shall allow the child to remain in or

return to the home after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

2. The court shall return the child to the custody of the parents at any time it determines that they have substantially complied with the case plan, if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.

3. If, in the opinion of the court, the social service agency has not complied with its obligations as specified in the written case plan, the court may find the social service agency in contempt, shall order the social service agency to submit its plans for compliance with the agreement, and shall require the social service agency to show why the child could not safely be returned to the home of the parents.

4. If, at any judicial review, the court finds that the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interest of the child, on its own motion, the court may order the filing of a petition for termination of parental rights, whether or not the time period as contained in the case plan for substantial compliance has expired.

5. Within 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make written findings regarding the parent or legal guardian's compliance

with the case plan and demonstrable change in parental capacity to achieve timely reunification ~~likelihood of the child's reunification with the parent or legal custodian~~ within 12 months after the removal of the child from the home. The court shall consider the frequency, duration, manner, and level of engagement of the parent or legal custodian's visitation with the child in compliance with the case plan. If the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court, and serve on all parties, a motion to amend the case plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion within 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the department must file with the court, and serve on all parties, a motion to amend the case plan to reflect the concurrent goal as the child's primary permanency goal, document the efforts the department is taking to complete the concurrent goal, and identify any additional services needed to reach the permanency goal by a date certain. The court may allow the parties to continue to pursue a secondary goal if the court determines that is in the best interest of the child ~~case plan must document the efforts the department is taking to complete the concurrent goal~~.

6. The court may issue a protective order in assistance, or as a condition, of any other order made under this part. In addition to the requirements included in the case plan, the

protective order may set forth requirements relating to reasonable conditions of behavior to be observed for a specified period of time by a person or agency who is before the court; and the order may require any person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe.

Section 14. Paragraph (e) of subsection (1) of section 39.806, Florida Statutes, is amended to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 12 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 12-month period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's approval of a case plan having the goal of reunification with the parent, whichever occurs first; or

2. The parent or parents have materially breached the case

plan by their action or inaction. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with the case plan before time to comply with the case plan expires.

3. The child has been in care for any 12 of the last 22 months and the parents have not substantially complied with the case plan so as to permit reunification under s. 39.522(2) unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child.

Section 15. Subsection (5) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.—

(5) If the court terminates parental rights, the court shall enter a written order of disposition within 30 days after conclusion of the hearing briefly stating the facts upon which its decision to terminate the parental rights is made. An order of termination of parental rights, whether based on parental consent or after notice served as prescribed in this part, permanently deprives the parents of any right to the child.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/22/18
Meeting Date

1650
Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Alan Abramowitz

Job Title Executive Director

Address 600 S. Calhoun
Street

Tallahassee | Fl | 32399
City | *State* | *Zip*

Phone 850.922.7213

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 Statewide Guardian ad Litem Program

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Senate Committee on Rules

Subject: Committee Agenda Request

Date: February 15, 2018

I respectfully request that SB 1650 on Child Abuse, Abandonment, and Neglect be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Bill Montford

Senator Bill Montford
Florida Senate, District 3

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:	SB 7020
INTRODUCER:	Ethics and Elections Committee
SUBJECT:	OGSR/Complaints of Violations and Referrals
DATE:	February 22, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Carlton	Ulrich		**EE Submitted as Committee Bill**
1.	Brown	Caldwell	GO	**Favorable**
2.	Carlton	Phelps	RC	**Favorable**

I. Summary:

SB 7020 is based upon an Open Government Sunset Review (OGSR) of a public records and public meetings exemption for certain information relating to complaints of violations by public officers and public employees. The public records exemption upon which the OGSR is based makes confidential and exempt from public records disclosure a complaint and records relating to a complaint or to any preliminary investigation held by:

- The Commission on Ethics (commission) or its agents;
- A Commission on Ethics and Public Trust established by a county or municipality; or
- A county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics.

The public records exemption additionally applies to written referrals and related records held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to a preliminary investigation of referrals held by the commission.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meeting requirements. Similarly, a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meeting requirements.

The above records and meetings are exempt until:

- The complaint is dismissed;
- The alleged violator requests in writing that the records or proceedings be made public;
- The commission determines it will not investigate the referral; or

- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed as release of the information could defame or otherwise damage the reputation of the individual under investigation, or significantly impair the integrity of the investigation.

The justification upon which the exemption is based remains valid. Additionally, the exemption is time-limited. Therefore, the bill deletes the repeal date of the public records exemption.

As the bill continues an existing public records exemption, a vote of each house by simply majority for passage is required.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

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

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

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

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme

[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.
[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

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 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]

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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).

[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

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 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.

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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.

[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.

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]

Florida Commission on Ethics

The Florida Commission on Ethics (commission) serves as guardian of the standards of conduct for the officers and employees of the state and its political subdivisions.[37] It is an independent commission, created by the Florida Constitution,[38] responsible for investigating and issuing public reports on complaints of breaches of the public trust[39] by public officers and employees. The commission must investigate sworn complaints of violations of the Code of Ethics for Public

[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.
[37] Section 112.320, F.S.
[38] Article II, s. 8(f), FLA. CONST.
[39] Section 112.312(3), F.S., defines "breach of the public trust" as a violation of a provision of the State Constitution or the Code of Ethics which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, Art. II of the State Constitution or of the Code of Ethics.

Officers and Employees (Code of Ethics)[40] or of any other law over which it has jurisdiction.[41] The commission may initiate an investigation if it receives a sworn complaint.[42] It may also investigate an alleged violation submitted to the commission via referral from the Governor, Florida Department of Law Enforcement, a state attorney, or a U.S. Attorney.[43]

Complaints or referrals against a candidate in any election may not be filed, nor may any intention of filing such a complaint or referral be disclosed, on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

Current law provides that the Code of Ethics does not prohibit the governing body of a political subdivision or an agency from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of the Code of Ethics.[44]

Public Record and Public Meeting Exemptions under Review

Current law provides that the complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county[45] or by any municipality,[46] or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics are confidential and exempt[47] from public records requirements.[48]

Written referrals, and records relating thereto, held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to any preliminary investigation of such referrals held by the commission, are confidential and exempt from public records requirements.[49]

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[40] Chapter 112, Part III, F.S.
[41] Section 112.322(1), F.S.
[42] Section 112.324(1)(a), F.S.
[43] Section 112.324(1)(b), F.S.
[44] Section 112.326, F.S.
[45] Section 125.011(1), F.S., defines "county" as a county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.
[46] Section 165.031(3), F.S., defines "municipality" as a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.
[47] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (*See* Attorney General Opinion 85-62, August 1, 1985).
[48] Section 112.324(2)(a), F.S.
[49] Section 112.324(2)(b), F.S.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meetings requirements.[50] Additionally, any proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meetings requirements.[51]

The above records and meetings are exempt until:
- The complaint is dismissed;
- The alleged violator requests in writing that such records or proceeding be made public;
- The commission determines it will not investigate the referral; or
- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.[52]

The 2013 public necessity statement for the public records and public meetings exemption provides as justification that release of this information could:
- Be defamatory to the individual under investigation;
- Cause unwarranted damage to the reputation of the individual under investigation; or
- Significantly impair the integrity of the investigation.

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2018, unless reenacted by the Legislature.

Open Government Sunset Review

During the 2017 interim, committee staff sent a questionnaire to the commission and to every county and city in the state. In all, 43 responses were received.[53] The commission stated it has received approximately five or six public record requests for the confidential and exempt information, however, the commission has not taken a position on whether the exemptions should be reenacted.

Of those received from the counties and cities, only three attested that they either had a Commission on Ethics and Public Trust or had established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics. Those respondents stated they have received public record requests for the confidential and exempt records and each recommended reenactment of the exemptions.

III. Effect of Proposed Changes:

This bill is based upon an Open Government Sunset Review (OGSR) of a public records and public meetings exemption for certain information relating to complaints of violations by public officers and public employees. The public records exemption upon which the OGSR is based

[50] Section 112.324(2)(c), F.S.
[51] Section 112.324(2)(d), F.S.
[52] Section 112.324(2)(e), F.S.
[53] The questionnaire and responses are on file with the Senate Committee on Ethics and Elections.

makes confidential and exempt from public records disclosure a complaint and records relating to a complaint or to any preliminary investigation held by:

- The Commission on Ethics (commission) or its agents;
- A Commission on Ethics and Public Trust established by a county or municipality; or
- A county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics.

The public records exemption additionally applies to written referrals and related records held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to a preliminary investigation of referrals held by the commission.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meeting requirements. Similarly, a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meeting requirements.

The above records and meetings are exempt until:

- The complaint is dismissed;
- The alleged violator requests in writing that the records or proceedings be made public;
- The commission determines it will not investigate the referral; or
- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed as release of the information could defame or otherwise damage the reputation of the individual under investigation, or significantly impair the integrity of the investigation.

The justification upon which the exemption is based remains valid. Additionally, the exemption is time-limited. Therefore, the bill deletes the repeal date of the public records exemption.

As the bill continues an existing public records exemption, a vote of each house by simply majority for passage is required.

The bill takes effect October 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:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption. Therefore, just a simple majority vote suffices for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.324 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 the Committee on Ethics and Elections

582-02647-18 20187020__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 112.324, F.S., which provides exemptions from public records and public meetings requirements for complaints alleging a violation of part III of ch. 112, F.S., and related records that are held by the Commission on Ethics or its agents and specified local government entities, for written referrals and related records that are held by the commission or its agents, the Governor, the Department of Law Enforcement, and state attorneys, and for portions of meetings at which complaints or referrals are discussed or acted upon; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure

582-02647-18 20187020__

requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Any portion of a proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any portion of a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e) The exemptions in paragraphs (a)-(d) apply until:

1. The complaint is dismissed as legally insufficient;

2. The alleged violator requests in writing that such records and proceedings be made public;

3. The commission determines that it will not investigate the referral; or

4. The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation,

whether probable cause exists to believe that a violation has occurred.

(f) A complaint or referral under this part against a candidate in any general, special, or primary election may not be filed nor may any intention of filing such a complaint or referral be disclosed on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

~~(g) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Health and Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 15, 2018

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

Dear Senator Benacquisto,

I respectfully request that the following OSGR bills which include: SB7008, SB7010, SB7012, SB7016, SB7018 and SB7020 be heard in your next available Rules Committee.

I appreciate your consideration.

Onward & Upward,

Senator Dennis Baxley
Senate District 12

THANKS!
— THESE ARE REALLY OUR COMMITTEE RESPONSIBILITIES!
— DENNIS

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

CourtSmart Tag Report

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

Started: 2/22/2018 10:02:30 AM
Ends: 2/22/2018 11:58:47 AM Length: 01:56:18

10:02:34 AM Chair calls meeting to order
10:03:04 AM Roll call Quorum is present
10:03:59 AM tab 6 Cs/SB 1252 by Senator Passidomo
10:05:06 AM roll call vote on CS/SB 1252 reported favorably
10:05:26 AM tab 5 SB 676 by Senator Passidomo
10:06:43 AM question by Senator Lee
10:07:41 AM Senator Passidomo to claify
10:08:26 AM Senator Lee asks further questions
10:10:37 AM amendment 534390 adopted
10:12:09 AM Senator Lee ask question to Florida Bar Family Section
10:13:10 AM Senator Lee asks further question to Florida Bar
10:14:23 AM Senator Thurston asks question to Florida Bar
10:15:09 AM Senator Book asks question to Florida Bar
10:17:14 AM Roll call vote on SB 676 reported favorably
10:17:43 AM tab 4 CS/SB 616 by Senator Passidomo
10:19:23 AM 325944 strike all amendment adopted
10:19:40 AM 277 040 amendment withdrawn
10:20:10 AM 855974 amendment by Senator Brandes withdrawn
10:21:26 AM Albert Gore to speak
10:25:02 AM roll call vote on bill as amended reported favorably
10:25:26 AM tab 10 SB 810 by Senator Powell
10:25:59 AM Senator Thurston asks question
10:27:14 AM amendment 243126 late filed adopted
10:27:35 AM Senator Flores ask question regarding early vote locations
10:28:38 AM Senator Powell clarifies bill for Senator Flores
10:29:10 AM Senator Brandes ask question
10:29:33 AM Senator Powell responds
10:30:13 AM Senator Lee asks question on the amount of ballots
10:31:12 AM Senator Lee with more questions
10:32:05 AM Chair Benacquisto responds
10:32:15 AM back on bill as amended
10:34:00 AM student from UF to speak on bill
10:35:27 AM roll call vote on SB 810 reported favorably
10:35:52 AM tab 3 CS/SB 394 by Senator Bracy
10:36:29 AM John Miller Fire Chief in support of the bill
10:37:27 AM Senator Book in support of bill
10:37:53 AM roll call vote on SB 394 reported favorablyj
10:38:06 AM tab 1 Sb 48 by Senator Gibson
10:38:49 AM Senator Lee asks question on claims bill
10:40:37 AM Senator Lee asks question to the Attorney for the family
10:41:17 AM roll call vote on SB 48 reported favorably
10:41:34 AM tab 2 SR 210 by Senator Campbell

10:43:55 AM Indian Association of Tallahassee in support of the bill
10:47:21 AM roll call vote on SR 210 reported favorably
10:48:13 AM tab 12 CS/SB 1282 by Senator Taddeo
10:49:32 AM roll call vote on CS/SB 1282
10:50:02 AM tab 11 CS/Sb 1128 by Senator Stargel
10:51:12 AM roll call vote on CS/SB 1128 reported favorably
10:51:26 AM tab 7 Cs/SB 664 by Senator Young
10:56:53 AM substitute delete all amendment 968778 with drawn
10:57:33 AM Senator Rodriquez ask question on the main delete all 694526
10:58:26 AM Senator Young to respond
10:59:34 AM Senator Thurston asks question about notice to boat owners
11:00:20 AM Senator Thurston follow up
11:00:38 AM Senator Perry asks question
11:01:01 AM Vice Chair Braynon asks question
11:02:23 AM Senator Montfort asks question
11:02:32 AM Senator Young to respond
11:03:00 AM Senator Rodriguez asks further questions
11:03:42 AM Senator Young to respond
11:04:37 AM back on delete all694526
11:16:51 AM back on delete all 694526 reported favorable
11:20:27 AM Senator Thurston asks quesiton
11:21:56 AM Senator Thurston follow up
11:23:26 AM Tina Cordone Seaport Operations
11:25:21 AM Michael Black Seaport Attorney
11:28:33 AM John Costello Florida Public Advacocy
11:29:45 AM Senator Lee asks question
11:30:00 AM in debate of the bill as amended
11:31:24 AM roll call vote on bill as amended reported favorably CS/CS 664
11:32:05 AM tab 8 Cs/SB 746 by Senator Bean
11:33:19 AM Senator Book asks question about concerns from Fire fighters
11:35:00 AM roll call vote on Cs/SB 746 reported favorably
11:35:43 AM tab 9 CS/SB 1018 by Senator Bean
11:37:27 AM roll call vote on Cs/CS/SB 1018 reported favorably
11:37:41 AM tab 14 Cs/SB 46 by Senator Galvano
11:38:43 AM roll call vote CS/Sb 46 reported favorably
11:39:12 AM tab 15 Cs/SB 1004 by Senator Brandes
11:39:55 AM roll call vote on CS/SB 1004 reported favorably
11:40:12 AM tab 16 Cs/CS/SB 1256 by Senator Brandes
11:42:59 AM substitute amendment 743964 adopted
11:43:17 AM back on bill as amended
11:43:32 AM Senator Thurston asks questions
11:45:51 AM Senator Brandes speaks on the content
11:46:39 AM follow up by Senator Thurston
11:48:01 AM Senator Brandes claifies question on content and the evidence is destroyed
11:48:32 AM roll call vote on CS/CS/SB 1256 reported favorably
11:49:25 AM tab 13 SB 7016 by Senator Grimsley and explained by Senator Montford
11:50:03 AM roll call vote on SB 7016 reported favorably
11:50:32 AM tab 17 SB 1028 nby Senator Thurston
11:51:46 AM roll call vote on on SB 1028 reported favorably
11:52:08 AM tab 18 CS/SB 1212 by Senator Book
11:53:57 AM roll call vote on CS/SB 1212 reported favorably
11:54:24 AM tab 19 CS/CS/SB 1650 by Senator Montford

11:56:01 AM amendment 494764 by Senator Montford adopted
11:56:46 AM roll call vote on bill as amendment CS/Cs/SB 1650 reported favorably
11:57:02 AM tab 20 SB 7020 by Senator Perry
11:57:46 AM roll call vote on SB 7020 reported favorably
11:58:39 AM Senator Beancquisto moves we adjourn