

<b>Tab 1 SPB 7022 by RC; Firearm Safety</b>						
504798	A	S		RC, Thurston	Delete L.161 - 214:	02/25 09:29 PM
197998	A	S		RC, Thurston	btw L.214 - 215:	02/25 04:18 PM
697008	A	S		RC, Rodriguez	btw L.214 - 215:	02/26 08:56 AM
812202	A	S		RC, Rodriguez	btw L.230 - 231:	02/26 08:45 AM
411458	A	S		RC, Rodriguez	btw L.826 - 827:	02/24 01:05 PM
772096	A	S		RC, Braynon	btw L.851 - 852:	02/26 09:14 AM

<b>Tab 2 SPB 7024 by RC; Public Records/Victim of a Crime of Mass Violence</b>						
442744	D	S	FAV	RC, Galvano, Benacquist	Delete everything after	02/26 06:52 PM

<b>Tab 3 SPB 7026 by RC; School Safety</b>						
345360	D	S	FAV	RC, Galvano, Benacquist	Delete everything after	02/26 07:22 PM
579360	AA	S	L UNFAV	RC, Braynon, Book	Delete L.1370 - 1561:	02/26 07:22 PM
957372	AA	S	L FAV	RC, Braynon	btw L.1711 - 1712:	02/26 07:22 PM
374978	AA	S	L UNFAV	RC, Rodriguez	btw L.225 - 226:	02/26 07:22 PM
831648	AA	S	L UNFAV	RC, Rodriguez	btw L.209 - 210:	02/26 07:22 PM
355256	AA	S	L UNFAV	RC, Thurston	Delete L.85 - 209:	02/26 07:22 PM
335906	AA	S	L UNFAV	RC, Rodriguez	btw L.209 - 210:	02/26 07:22 PM
403738	AA	S	L UNFAV	RC, Thurston	btw L.209 - 210:	02/26 07:22 PM
260340	AA	S	L FAV	RC, Galvano, Benacquist	Delete L.85 - 201:	02/26 07:22 PM
419876	A	S	WD	RC, Braynon, Book	Delete L.568 - 759:	02/26 07:22 PM

<b>Tab 5 SB 266 by Passidomo; (Identical to H 00617) Covenants and Restrictions</b>						
313106	A	S		RC, Passidomo	Delete L.131:	02/23 02:28 PM

<b>Tab 6 SB 582 by Rader; (Identical to H 06009) Write-in Candidate Qualifying</b>						
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<b>Tab 7 CS/SB 662 by CM, Stargel (CO-INTRODUCERS) Taddeo; (Similar to CS/CS/CS/H 00681) Protection for Vulnerable Investors</b>						
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<b>Tab 8 SB 756 by Grimsley; (Similar to CS/H 00533) Unfair Insurance Trade Practices</b>						
339504	A	S		RC, Grimsley	Delete L.37 - 38:	02/22 08:21 AM

<b>Tab 9 CS/SB 776 by CJ, Grimsley; (Similar to H 00491) Theft</b>						
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<b>Tab 10 CS/CS/SB 762 by CM, BI, Mayfield; (Similar to CS/CS/1ST ENG/H 00483) Permissible Insurance Acts</b>						
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<b>Tab 11 SB 806 by Baxley; (Similar to CS/H 00703) Water Management District Surplus Lands</b>						
936338	A	S		RC, Baxley	Delete L.21:	02/22 08:10 AM

<b>Tab 12 CS/SB 808 by EP, Baxley; (Similar to CS/CS/CS/H 00705) Public Records/Surplus Lands</b>						
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<b>Tab 13 SB 1500 by Baxley; (Identical to H 06033) Direct-support Organization of the Florida Commission on Community Service</b>						
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<b>Tab 14 CS/SB 820 by GO, Powell; (Similar to H 00637) Firesafety Inspectors</b>						
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<b>Tab 15</b>	<b>CS/CS/SB 822 by CM, RI, Hutson; (Compare to H 00775) Beverage Law</b>				
646760	A	S	RC, Hutson	Delete L.201 - 220:	02/23 12:52 PM
<b>Tab 16</b>	<b>CS/CS/SB 858 by CM, CA, Steube (CO-INTRODUCERS) Mayfield, Taddeo; (Identical to H 01013) Daylight Saving Time</b>				
<b>Tab 17</b>	<b>SB 922 by Bean; (Compare to CS/H 01265) Sale of Alcoholic Beverages</b>				
<b>Tab 18</b>	<b>SB 7008 by CU; (Similar to H 07095) OGSR/Local Government Electric Utility</b>				
417470	A	S	RC, Lee	Delete L.28:	02/23 12:57 PM
<b>Tab 19</b>	<b>SB 1094 by Simmons; (Identical to H 00523) Trespass on Airport Property</b>				
<b>Tab 20</b>	<b>CS/SB 520 by HP, Young (CO-INTRODUCERS) Campbell; (Similar to 1ST ENG/H 07059) Optometry</b>				
373208	A	S	RC, Young	Delete L.65 - 83:	02/23 01:45 PM
<b>Tab 21</b>	<b>CS/CS/SB 1876 by AP, HP, Young; (Similar to CS/CS/H 01165) Trauma Services</b>				
<b>Tab 22</b>	<b>CS/CS/SB 1880 by GO, BI, Broxson (CO-INTRODUCERS) Mayfield; (Similar to CS/CS/H 01127) Public Records and Public Meetings/Security of Data and Information Technology in Citizens Property Insurance Corporation</b>				
354542	A	S	RC, Broxson	Delete L.202 - 265:	02/22 12:22 PM
<b>Tab 23</b>	<b>CS/SB 28 by JU, Montford (CO-INTRODUCERS) Stewart; (Identical to CS/H 06527) Relief of Christopher Cannon by the City of Tallahassee</b>				
<b>Tab 24</b>	<b>CS/CS/SB 920 by AP, CM, Bradley (CO-INTRODUCERS) Braynon; (Similar to CS/CS/H 00857) Consumer Finance</b>				
951026	A	S	RC, Bradley	Delete L.67 - 76.	02/22 05:02 PM
<b>Tab 25</b>	<b>CS/SB 1044 by CF, Book (CO-INTRODUCERS) Campbell, Steube, Perry, Flores; (Similar to CS/H 00167) Victims of Human Trafficking</b>				
654858	D	S	RC, Book	Delete everything after	02/23 02:04 PM
<b>Tab 26</b>	<b>CS/SB 1226 by CJ, Book (CO-INTRODUCERS) Hutson; (Similar to CS/H 01301) Sentencing for Sexual Offenders and Sexual Predators</b>				
<b>Tab 27</b>	<b>SB 1302 by Brandes; (Similar to H 00953) Consumer Report Security Freezes</b>				
<b>Tab 28</b>	<b>SB 1426 by Lee; (Similar to H 00007) Local Government Fiscal Transparency</b>				
239684	A	S	RC, Lee	Delete L.46 - 494:	02/23 02:05 PM
<b>Tab 29</b>	<b>SB 7012 by BI; (Similar to H 07097) OGSR/Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse</b>				

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**

**Senator Benacquisto, Chair**  
**Senator Braynon, Vice Chair**

**MEETING DATE:** Monday, February 26, 2018

**TIME:** 2:30—6:00 p.m.

**PLACE:** *Pat Thomas Committee Room, 412 Knott 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
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Consideration of proposed bill:

1	<b>SPB 7022</b>	Firearm Safety; Authorizing a law enforcement officer to seize and hold firearms and ammunition if taking custody of a person who poses a potential danger to himself or herself or others and who has made a credible threat against another person; prohibiting a person who has been adjudicated mentally defective or been committed to a mental institution from owning or possessing a firearm until certain relief is obtained; prohibiting a person younger than a certain age from purchasing a firearm, etc.	Not Considered
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**(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)**

Consideration of proposed bill:

2	<b>SPB 7024</b>	Public Records/Victim of a Crime of Mass Violence; Providing an exemption from public records requirements for the address of a victim of a crime of mass violence that has occurred on the grounds of a K-12 school or a postsecondary education institution or the address of an immediate family member of a victim which is contained in a report of a law enforcement agency and held by an agency; providing for future legislative review and repeal; providing a statement of public necessity, etc.	Submitted and Reported Favorably as Committee Bill Yeas 13 Nays 0
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**(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)**

Consideration of proposed bill:

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Monday, February 26, 2018, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SPB 7026</b>	School Safety; Establishing the Office of Safe Schools within the Department of Education; creating the Commission on School Safety and Security within the Florida Department of Law Enforcement; establishing the Multiagency Service Network for Students with Severe Emotional Disturbance; requiring district school boards to formulate and prescribe policies and procedures for active shooter situations; requiring district school boards to establish or assign safe-school officers at each district school facility within the district, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 4

**(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)**

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
<b>Senate Confirmation Hearing:</b> A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
<b>Florida Public Service Commission</b>			
4	Clark, Gary F. (Chipley)	01/01/2019	Not Considered
	Graham, Art (Jacksonville Beach)	01/01/2022	Not Considered
	Fay, Andrew (Tallahassee)	01/01/2022	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 266</b> Passidomo (Identical H 617)	Covenants and Restrictions; Designating the "Marketable Record Title Act"; revising the notice filing requirements for a person claiming an interest in land and other rights; exempting a specified summary notice and amendment from certain notice content requirements; authorizing the parcel owners of a community not subject to a homeowners' association to use specified procedures to revive certain covenants or restrictions, subject to certain exceptions and requirements, etc.  CA 12/05/2017 Favorable JU 01/10/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
6	<b>SB 582</b> Rader (Identical H 6009)	Write-in Candidate Qualifying; Repealing provisions relating to write-in candidate residency requirements; repealing a requirement that all write-in candidates must reside within the district represented by the office sought at the time of qualification, etc.  EE 02/13/2018 Favorable CA 02/20/2018 Favorable RC 02/26/2018 Not Considered	Not Considered



**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Monday, February 26, 2018, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>CS/SB 662</b> Commerce and Tourism / Stargel (Similar CS/CS/CS/H 681)	Protection for Vulnerable Investors; Requiring securities dealers, investment advisers, and associated persons to immediately report knowledge or suspicion of abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families' central abuse hotline; authorizing dealers, investment advisers, and associated persons to delay certain transactions or disbursements if such persons reasonably believe certain exploitation of a specified adult has occurred, is occurring, has been attempted, or will be attempted, etc.  BI 02/06/2018 Favorable CM 02/20/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered
8	<b>SB 756</b> Grimsley (Similar CS/H 533)	Unfair Insurance Trade Practices; Authorizing insurers to refuse to insure or refuse to continue to insure an applicant or insured for failing to purchase certain noninsurance motor vehicle services, etc.  BI 01/16/2018 Favorable CM 01/29/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
9	<b>CS/SB 776</b> Criminal Justice / Grimsley (Similar H 491)	Theft; Increasing the fine for the theft of a commercially farmed animal or a bee colony of a registered beekeeper, etc.  CJ 01/29/2018 Fav/CS AG 02/15/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
10	<b>CS/CS/SB 762</b> Commerce and Tourism / Banking and Insurance / Mayfield (Similar CS/CS/H 483)	Permissible Insurance Acts; Revising the types, value, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing such insurers and agents to make specified charitable contributions on behalf of insureds or prospective insureds, etc.  BI 01/23/2018 Fav/CS CM 02/06/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered
11	<b>SB 806</b> Baxley (Similar CS/H 703, Compare CS/CS/CS/H 705, Linked CS/S 808)	Water Management District Surplus Lands; Revising the circumstances when a water management district must publish its intention to sell surplus lands; revising the process for selling certain lower valued surplus lands, etc.  EP 01/16/2018 Favorable GO 01/23/2018 Favorable RC 02/26/2018 Not Considered	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Monday, February 26, 2018, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	<b>CS/SB 808</b> Environmental Preservation and Conservation / Baxley (Similar CS/CS/CS/H 705, Compare CS/H 703, Linked S 806)	Public Records/Surplus Lands; Providing an exemption for valuations, certain records, and sales offers for sales related to surplus lands; authorizing disclosure of such records under certain circumstances; providing a statement of public necessity, etc.  EP 01/16/2018 Temporarily Postponed EP 02/05/2018 Fav/CS GO 02/13/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
13	<b>SB 1500</b> Baxley (Identical H 6033, S 1110)	Direct-support Organization of the Florida Commission on Community Service; Removing the scheduled repeal of provisions governing the commission's direct-support organization, etc.  GO 01/30/2018 Favorable AP 02/15/2018 Not Considered AP 02/22/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
14	<b>CS/SB 820</b> Governmental Oversight and Accountability / Powell (Similar H 637)	Firesafety Inspectors; Prohibiting certain actions to influence a firesafety inspector to violate the Florida Fire Prevention Code, other rules of the State Fire Marshal, or ch. 633, F.S., etc.  GO 01/23/2018 Fav/CS CJ 02/06/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
15	<b>CS/CS/SB 822</b> Commerce and Tourism / Regulated Industries / Hutson (Compare H 775)	Beverage Law; Prohibiting certain entities and persons from directly or indirectly assisting any vendor in certain ways; authorizing the Division of Alcoholic Beverages and Tobacco to impose administrative sanctions for a violation of certain limitations established in the Beverage Law; providing exemptions relating to tied house evil for certain sales and purchases of merchandise; prohibiting a manufacturer or importer of malt beverages from soliciting or receiving any portion of certain payments from its distributors, etc.  RI 01/10/2018 Fav/CS CM 02/06/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Monday, February 26, 2018, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	<b>CS/CS/SB 858</b> Commerce and Tourism / Community Affairs / Steube (Identical H 1013)	Daylight Saving Time; Creating the "Sunshine Protection Act"; providing legislative intent regarding the State of Florida and its political subdivisions observing daylight saving time year-round under certain conditions, etc.  CA 01/23/2018 Fav/CS CM 02/12/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered
17	<b>SB 922</b> Bean (Compare CS/H 1265)	Sale of Alcoholic Beverages; Providing an exception to the miniature bottle requirement for operators of intrastate railroads and sleeper cars, etc.  RI 01/23/2018 Favorable RI 01/24/2018 TR 02/13/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
18	<b>SB 7008</b> Communications, Energy, and Public Utilities (Similar H 7095)	OGSR/Local Government Electric Utility; Amending provisions relating to an exemption from public records requirements for proprietary confidential business information held by a local government electric utility; removing the scheduled repeal of the exemption, etc.  GO 01/10/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
19	<b>SB 1094</b> Simmons (Identical H 523)	Trespass on Airport Property; Providing enhanced criminal penalties for a trespass upon the operational area of an airport with specified intent if specified signage is posted, etc.  CJ 02/12/2018 Favorable CA 02/20/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
20	<b>CS/SB 520</b> Health Policy / Young (Similar H 7059, Compare CS/CS/H 1047)	Optometry; Requiring an applicant for licensure as an optometrist to submit proof to the Department of Health that she or he meets certain requirements; providing that an applicant must pass the licensure examination within a specified timeframe as a condition of licensure as an optometrist and certification to administer and prescribe ocular pharmaceutical agents, etc.  HP 12/05/2017 Fav/CS AP 01/24/2018 Favorable RC 02/26/2018 Not Considered	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Monday, February 26, 2018, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
21	<b>CS/CS/SB 1876</b> Appropriations / Health Policy / Young (Similar CS/CS/H 1165)	Trauma Services; Requiring that moneys received from specified penalties be allocated to certain trauma centers by a calculation that uses the Agency for Health Care Administration's hospital discharge data; revising the trauma service areas and provisions relating to the number and location of trauma centers; requiring the Department of Health to periodically prepare an analysis of the state trauma system using the agency's hospital discharge data and specified population data; requiring trauma centers to participate in the National Trauma Data Bank, etc.  HP 01/23/2018 Fav/CS AHS 02/14/2018 Fav/CS AP 02/22/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered
22	<b>CS/CS/SB 1880</b> Governmental Oversight and Accountability / Banking and Insurance / Broxson (Similar CS/CS/H 1127)	Public Records and Public Meetings/Security of Data and Information Technology in Citizens Property Insurance Corporation; Providing an exemption from public records requirements for certain records held by the Citizens Property Insurance Corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; providing for future legislative review and repeal; providing a statement of public necessity, etc.  BI 01/30/2018 Fav/CS GO 02/13/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered
23	<b>CS/SB 28</b> Judiciary / Montford (Identical CS/H 6527)	Relief of Christopher Cannon by the City of Tallahassee; Providing for the relief of Christopher Cannon; providing an appropriation to compensate him for injuries and damages sustained as a result of the alleged negligence of the City of Tallahassee, etc.  SM JU 02/13/2018 Fav/CS GO 02/20/2018 Favorable RC 02/26/2018 Not Considered	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Monday, February 26, 2018, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
24	<b>CS/CS/SB 920</b> Appropriations / Commerce and Tourism / Bradley (Similar CS/CS/H 857)	Consumer Finance ; Revising a requirement for an assignee of the right to bill and collect a consumer debt to give the debtor written notice of the assignment; specifying the maximum face amount of checks that may be taken for deferred presentment installment transactions, exclusive of fees; specifying the maximum rate and frequency of fees that deferred presentment providers or their affiliates may charge on deferred presentment installment transactions, etc.  BI 01/16/2018 Favorable CM 01/29/2018 Fav/CS AP 02/15/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered
25	<b>CS/SB 1044</b> Children, Families, and Elder Affairs / Book (Similar CS/H 167, S 338, Compare CS/H 169, S 340, S 342, Linked CS/S 1046)	Victims of Human Trafficking; Citing this act as the "Civil Cause of Action for Victims of Human Trafficking Act"; providing a civil cause of action for victims of human trafficking against a trafficker or facilitator; providing that such actions are not subject to a statute of limitations; providing an affirmative defense for owners or operators of public lodging establishments under certain circumstances, etc.  CF 02/12/2018 Fav/CS RC 02/26/2018 Not Considered	Not Considered
26	<b>CS/SB 1226</b> Criminal Justice / Book (Similar CS/H 1301)	Sentencing for Sexual Offenders and Sexual Predators; Redefining the terms "permanent residence," "temporary residence," and "transient residence" by decreasing the amount of days a person abides, lodges, or resides in a certain place to qualify for that type of residency category; revising existing criminal penalties for sexual predators to require mandatory minimum terms of community control with electronic monitoring for first, second, and third and subsequent felony violations if the court does not impose a prison sentence, etc.  CJ 02/06/2018 Fav/CS AP 02/22/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
27	<b>SB 1302</b> Brandes (Similar H 953)	Consumer Report Security Freezes; Deleting the authorization for consumer reporting agencies to charge specified fees to consumers electing to place, remove, or temporarily lift a security freeze on their consumer reports; deleting the authorization for consumer reporting agencies to charge a specified fee to representatives of protected consumers electing to place a security freeze on such consumer's consumer reports, etc.  BI 01/30/2018 Favorable CM 02/12/2018 Favorable RC 02/26/2018 Not Considered	Not Considered

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Monday, February 26, 2018, 2:30—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
28	<b>SB 1426</b> Lee (Similar H 7)	Local Government Fiscal Transparency; Expanding the scope of the Legislative Auditing Committee review to include compliance with local government fiscal transparency requirements; creating the "Local Government Fiscal Transparency Act"; requiring local governments to post certain voting record information on their websites, etc.  CA 01/30/2018 Favorable AP 02/22/2018 Favorable RC 02/26/2018 Not Considered	Not Considered
29	<b>SB 7012</b> Banking and Insurance (Similar H 7097)	OGSR/Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse; Amending provisions relating to an exemption from public records requirements for certain proprietary business information provided by insurers to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse; removing the scheduled repeal of the exemption, etc.  GO 01/30/2018 Favorable RC 02/26/2018 Not Considered	Not Considered

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SPB 7022

INTRODUCER: For consideration by the Rules Committee

SUBJECT: Firearm Safety

DATE: February 23, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cellon	Phelps		<b>Pre-meeting</b>

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**I. Summary:**

SPB 7022 provides law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence.

The bill amends s. 394.463, F.S., to authorize a law enforcement officer who is taking a person into custody for an involuntary examination under the Baker Act to seize and hold a firearm or ammunition the person possesses if the person poses a potential danger to himself or herself or others and has made a credible threat of violence against another person. The law enforcement officer's agency must hold any seized firearm or ammunition for at least 72 hours or until the person appears at the agency to retrieve the firearm or ammunition.

The bill provides that a person who has been adjudicated mentally defective or who has been committed to a mental institution may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained. The bill provides a process to remove this disability which mirrors the process that currently exists in s. 790.065(2), F.S., as it relates to the firearm purchase disability.

The bill amends s. 790.065, F.S., to raise the age from 18 to 21 years of age for all firearm purchases from licensed firearm dealers, importers, and manufacturers. This prohibition does not apply to a member of the military or naval forces of this state or of the United States or to a law enforcement or correctional officer as defined in s. 943.10, F.S.

The three-day waiting period between the purchase of and the delivery of a handgun as provided in s. 790.0655, F.S., is amended by the bill to create a three-day waiting period for all firearms, not just handguns. Additionally, the bill extends the waiting period beyond three days if additional time is necessary to complete the firearm purchase background check.

The bill defines “bump-fire stock” and prohibits the importation, transfer, distribution, transport, sale, keeping for sale, offering or exposing for sale, or giving away of a bump-fire stock. A violation of the prohibition is a felony of the third degree.

The bill creates a process for a law enforcement officer or law enforcement agency to petition a court for a risk protection order. The intent of the process and court intervention is to temporarily prevent persons who are at high risk of harming themselves or others by accessing firearms when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months. The bill also provides for an ex parte temporary risk protection order, in necessary, before the hearing on a final risk protection order.

Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System.

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm. The bill provides a procedure for the respondent to petition to vacate the risk protection order.

The respondent may submit one written request for a hearing to vacate a risk protection order issued under this section, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition.

A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent’s firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient specified criteria.

The bill will likely have an insignificant fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2018.



## II. Present Situation:

### Second Amendment

The Second Amendment to the United States Constitution states, “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>1</sup> Courts have consistently held that the Second Amendment is fully applicable to the states through the due process clause of the Fourteenth Amendment.<sup>2</sup>

State laws restricting the possession of gun possession and ownership have consistently been challenged on constitutional grounds. In *District of Columbia v. Heller*, a landmark case on interpreting the Second Amendment, a special police officer brought action to enjoin the District of Columbia from enforcing gun-control statutes.<sup>3</sup> In *Heller*, the Court found that while the Second Amendment confers an individual right to keep and bear arms, that right is not unlimited.<sup>4</sup> The Court held that the Second Amendment does not protect the right of citizens to carry arms for any sort of confrontation, but rather that it guarantees the individual right to possess and carry weapons in case of confrontation.<sup>5</sup> The Court struck down the District of Columbia’s ban on handgun possession in the home and the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock because both provisions made it impossible for citizens to use arms for the core lawful purpose of self-defense, making such provisions unconstitutional.<sup>6</sup>

The Court in *Heller* determined that the Second Amendment protects only “the sorts of weapons” that are “in common use” and “typically possessed by law-abiding citizens for lawful purposes.”<sup>7</sup> From *Heller*, courts have derived a two-prong approach to Second Amendment challenges. First, the court considers whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.<sup>8</sup> If it does not, the inquiry is complete.<sup>9</sup> If it does, the court must evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid.<sup>10</sup> In Second Amendment challenges, courts have consistently invoked intermediate scrutiny, which provides that a challenged law must further an important government interest and must do so by means that are substantially related to that interest in order to be upheld.<sup>11</sup> If the law passes muster under this standard, then it survives intermediate scrutiny and is constitutional.<sup>12</sup>

Since *Heller*, overbroad prohibitions on gun possession have been struck down, but more narrowly tailored restrictions on possession and control of guns have been upheld. The court in

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<sup>1</sup> U.S. CONST. amend II.

<sup>2</sup> *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

<sup>3</sup> 554 U.S. 570 (2008).

<sup>4</sup> *Id.* at 595.

<sup>5</sup> *Id.* at 592 and 595.

<sup>6</sup> *Id.* at 570.

<sup>7</sup> *Heller*, 554 U.S. at 625, 627.

<sup>8</sup> *Hope v. State*, 163 Conn. App. 36, 42 (Conn. App. Ct. 2016).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *State v. DeCiccio*, 315 Conn. 79, 144 (Conn. 2014).

<sup>12</sup> *Id.*

*Kachalsky v. County of Westchester* applied intermediate scrutiny to a state law that restricted individuals' ability to carry firearms in public.<sup>13</sup> The *Kachalsky* court held that the state's ability to regulate firearms is qualitatively different in public than in the home.<sup>14</sup>

Subsequently, in *New York State Rifle and Pistol Association, Inc. v. Cuomo*, the court was faced with two appeals challenging gun-control legislation enacted by the New York and Connecticut legislatures.<sup>15</sup> The court held that laws prohibiting possession of certain semiautomatic assault rifles and large-capacity magazines did not violate the Second Amendment.<sup>16</sup> The court also found that while semiautomatic assault weapons and large-capacity magazines are commonly owned by many law-abiding Americans, such weapons are not nearly as popularly owned and used for self-defense as the handgun.<sup>17</sup> Thus, the court applied intermediate scrutiny and found that prohibitions on semiautomatic assault weapons and large-capacity magazines were substantially related to the achievement of a compelling governmental interest in public safety and crime prevention.<sup>18</sup>

### Mass Shootings in Recent History

On February 14, 2018 a mass shooting occurred at Marjory Stoneman Douglas High School in Parkland, Florida which left 17 people dead.<sup>19</sup> It was the deadliest school shooting since the December 2012 Sandy Hook Elementary School shooting in Connecticut that resulted in the death of 28 people.

The Parkland shooter was 19 years of age and used an AR-15 semi-automatic rifle during the shooting spree, the same type of firearm used during the Sandy Hook shooting and the Pulse Nightclub shooting in Orlando that left 49 dead and 53 injured on June 12, 2016.<sup>20</sup>

Broward County Sheriff Scott Israel has said that the sheriff's office received about 20 calls for service over the past few years regarding the Parkland shooter and his younger brother.<sup>21</sup> Apparently the Federal Bureau of Investigation (FBI) had received information in 2017 about a YouTube comment ("I'm going to be a professional school shooter.") that some had attributed to the Parkland shooter but the identity of the person who posted the comment could not be

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<sup>13</sup> 701 F.3d 81 (2d. Cir. 2012).

<sup>14</sup> *Id.* at 94.

<sup>15</sup> 804 F.3d 242, at 247 (2d. Cir. 2015).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 258.

<sup>18</sup> *Id.* at 261.

<sup>19</sup> Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

<sup>20</sup> *Id.*; National Public Radio, *3 Hours in Orlando: Piecing Together an Attack and Its Aftermath*, Ariel Zambelich and Alyson Hurt, June 26, 2016, available at <https://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update> (last visited February 22, 2018).

<sup>21</sup> Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

ascertained by the FBI.<sup>22</sup> It has also been reported that the FBI failed to investigate a tip it received in January 2018 concerning the Parkland shooter.<sup>23</sup>

The Parkland shooter is reported to have been expelled from Marjory Stoneman Douglas High School for disciplinary reasons and that he may have had what could be described as a hard time fitting in at school.<sup>24</sup> It has also been reported that the Parkland shooter began legally buying firearms, including the one used during the Valentine's Day shooting, on or around his eighteenth birthday in September 2016, and he had collected at least seven rifles during that time.<sup>25</sup>

### **Firearm Purchase Process**

Firearms are available for purchase from primarily two groups of people: private citizens and federally-licensed gun dealers. A private citizen does not necessarily engage in a business selling firearms but is able to sell firearms at a gun show or elsewhere. A federal firearms licensee (FFL) is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to sell or transfer a firearm. An individual must be licensed with the ATF to engage in the business of firearms.<sup>26</sup> A private citizen does not necessarily have to follow the processes required of FFLs.

### ***Background Checks***

FFL's must facilitate a background check on a person making a firearm purchase from the dealer. The National Instant Criminal Background Check System (NICS) was established for dealers to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of 18 U.S.C. s. 922(g) or (n), or state law.<sup>27</sup>

In Florida, the Florida Department of Law Enforcement (FDLE) acts as the contact for a FFL initiating a background check.<sup>28</sup> The background check for firearm purchases queries five FDLE and FBI Criminal Justice Information Systems.<sup>29</sup> Of the 990,314 inquiries the FDLE received in 2017, over 96 percent received an initial decision approving the firearm transfer at the time the transaction was processed.<sup>30</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> CBS News, FBI's deputy director admits there was "a mistake made" regarding tip on Florida shooter, Paula Reid, Rebecca Shabad, and Emily Tillett, February 22, 2018, available at <https://www.cbsnews.com/news/fbis-deputy-director-admits-there-was-a-mistake-made-regarding-tip-on-florida-shooter/> (last visited February 23, 2018).

<sup>24</sup> *Id.*

<sup>25</sup> Miami Herald, *Before the school killings, the shooter bought an arsenal of rifles, authorities say*, Jay Weaver and Daniel Chang, February 20, 2018, available at <http://www.miamiherald.com/news/local/article201236649.html> (last visited February 22, 2018).

<sup>26</sup> Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Types of Federal Firearms Licenses*, available at <https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls> (last visited February 21, 2018).

<sup>27</sup> FBI, *About NICS*, available at <https://www.fbi.gov/services/cjis/nics/about-nics> (last visited February 21, 2018).

<sup>28</sup> Thirteen states have agencies that act as full "Points of Contact." *Id.*

<sup>29</sup> FDLE, *Criminal Justice Information Services PowerPoint*, October 2017, (on file with Senate Committee on Criminal Justice).

<sup>30</sup> Email from the FDLE staff to Senate Committee on Criminal Justice staff on February 21, 2018 (on file with Senate Committee on Criminal Justice).

All FFLs who sell firearms in Florida to persons must:

- Obtain a completed form which provides the purchaser's identification information and verify identification by inspecting a photo ID;
- Collect a fee from the purchaser for processing the criminal history check of the purchaser;
- Contact the FDLE by means of a toll-free telephone number to conduct a criminal history check; and
- Receive an approval number from the FDLE and record the number on the consent form.<sup>31</sup>

### ***Firearm Purchase Disqualifiers***

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is a unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;
- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

In Florida, s. 790.065(2)(a), F.S., provides a person is disqualified from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.<sup>32</sup>
- Has been convicted of a misdemeanor crime of domestic violence,<sup>33</sup> and therefore is prohibited from purchasing a firearm.
- Has had an withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred.
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met.<sup>34</sup>

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<sup>31</sup> Section 790.065(1), F.S. Other FFLs are exempt from this provision.

<sup>32</sup> Section 790.23(1), F.S., provides that anyone who has been convicted of a felony in Florida, another state or a crime against the U.S. that would be a felony, or has committed a delinquent act in Florida or another state that would be a felony if committed by an adult and the person is under 24 years old is prohibited from possessing a firearm.

<sup>33</sup> Section 741.28, F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>34</sup> Section 790.065(2)(a)4.a., F.S., defines "adjudicated mentally defective" to mean a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), F.S., an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial. Section 790.065(2)(a)4.b.(I), F.S., defines "Committed to a mental institution" to mean involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in

The FDLE must also determine if a person has any of the following in his or her background check which disqualifies him or her from purchasing a firearm:

- Has been indicted or had an information filed against her or him for a felony offense.
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her.
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her.
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.<sup>35</sup>
- Has been arrested for any of the offenses enumerated in s. 790.065, F.S.<sup>36</sup>

The FDLE has 24 working hours to make such determinations as to whether the potential buyer is prohibited from receiving or possessing a firearm.<sup>37</sup> Section 790.065(2)(c)2., F.S., defines working hours to mean from the hours from 8 a.m. to 5 p.m. Monday through Friday excluding legal holidays.

The FDLE reports the following numbers and reasons for not approving a firearm sale during 2017:

- 4,170 for a felony conviction;
- 717 for being under indictment;
- 556 for being a fugitive from justice;
- 920 for being user or addicted to any controlled substance;
- 871 for having been adjudicated as a mental defective or having been committed to any mental institution;
- 449 for being an illegal alien;
- 11 for having been dishonorably discharged from the Armed Forces;
- 3 for renouncing his or her U.S. citizenship;
- 1,185 for being subject to a protection order;
- 1,174 for a misdemeanor crime of domestic violence; and

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s. 394.467, F.S., involuntary outpatient placement as defined in s. 394.4655, F.S., involuntary assessment and stabilization under s. 397.6818, F.S., and involuntary substance abuse treatment under s. 397.6957, F.S., but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution. A person may petition the court to have these particular firearm purchase disabilities removed.

<sup>35</sup> Section 907.041(4)(a), F.S., specifies the following as a dangerous crime: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S., home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

<sup>36</sup> Section 790.065(2)(c), F.S., lists the following offenses: criminal anarchy under ss. 876.01 and 876.02, F.S.; Extortion under s. 836.05, F.S., explosives violations under s. 552.22(1) and (2), F.S.; controlled substances violations under ch. 893 F.S.; resisting an officer with violence under s. 843.01, F.S.; weapons and firearms violations under ch. 790, F.S.; treason under s. 876.32, F.S.; assisting self-murder under s. 782.08, F.S.; sabotage under s. 876.38, F.S.; talking or aggravated stalking under s. 784.048, F.S.

<sup>37</sup> Section 790.065(2)(c)2., F.S.

- 2,587 for a state disqualifier.<sup>38</sup>

### ***Exemptions from Background Checks***

If a person has a valid concealed weapons or firearms license he or she is exempt from the background check requirements for the purchase of a firearm. A law enforcement officer, correctional officer, or correctional probation officer who holds an active certification from the Criminal Justice Standards and Training Commission is also exempt from the background check requirements in s. 790.065, F.S.<sup>39</sup>

### ***Three-Day Waiting Period***

Article I, section 8(b) of the Florida Constitution requires a three day waiting period between the purchase and delivery at retail of handguns. Specifically the Florida Constitution provides:

There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, 'purchase' means the transfer of money or other valuable consideration to the retailer, and 'handgun' means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.<sup>40</sup>

Section 790.0655, F.S., implements article I, section 8(b), of the Florida Constitution.<sup>41</sup> The 3-day waiting period only applies to handgun sales transacted by retailers, not private sales. A retailer includes every person engaged in the business of making sales at retail or for distribution, use, or consumption, or storage to be used or consumed in this state.<sup>42</sup>

The Florida Constitution and s. 790.0655, F.S., exempt the following circumstances from the 3-day handgun waiting period:

- A holder of a concealed weapons permit as defined in s. 790.06; F.S., and
- To a trade-in of another handgun.

It is a third degree felony for any retailer, or any employee or agent of a retailer, to deliver a handgun before the expiration of the 3-day waiting period.<sup>43</sup>

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<sup>38</sup> The numbers reflect non-approvals as of February 21, 2018. E-mail from the FDLE staff to the Senate Committee on Criminal Justice, February 21, 2018 (on file with Senate Committee on Criminal Justice).

<sup>39</sup> Law enforcement officer, correctional officer, and correctional probation officer are defined in s. 943.10, F.S.

<sup>40</sup> FLA. CONST. art. I, s. 8(b).

<sup>41</sup> There is a mandatory 3-day waiting period, which is 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Section 790.0655, F.S.

<sup>42</sup> Section 790.0655, F.S.

<sup>43</sup> Subject to the exceptions noted above and provided in s. 790.0655(2), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

### **Private Firearm Sale “Loophole”**

The widely-used term “gun show loophole” refers to the difference between the way private sales or transfers of firearms occur as compared to the requirements that must be met by FFLs. As discussed above, the FFL must implement the background check process for all firearm purchases and deliveries and the 3-day waiting period for handguns while a person conducting a private transaction does not.

### **Age Restrictions on Purchase and Use of Firearms**

Federal law prohibits FFLs from selling a handgun to a person less than 21 years of age.<sup>44</sup>

Florida law prohibits the sale or transfer of a firearm to a minor by *any* person although ownership of the firearm may be transferred to the minor with a parent or guardian’s permission. A person who violates this prohibition commits a third degree felony.<sup>45</sup>

In Florida it is unlawful for any firearm dealer to sell or transfer to a minor any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, or electric weapon or device. A firearm dealer who violates this provision commits a second degree felony.<sup>46</sup>

A minor under 18 years of age may not possess a firearm in Florida, other than an unloaded firearm at his or her home. There are exceptions to the general rule for these circumstances:

- The minor is engaged in a lawful hunting activity and is:
  - At least 16 years of age or
  - Under 16 years of age and supervised by an adult.
- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
  - At least 16 years of age or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor’s parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized above.<sup>47</sup>

### **Bump-Fire Stocks**

A bump stock (or bump-fire stock) is a piece of plastic or metal molded that attaches to the lower end of a rifle. The device allows a semi-automatic rifle to mimic a fully automatic rifle firing rate. This can allow a person to fire dozens of rounds in seconds by harnessing the gun’s natural

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<sup>44</sup> 18 U.S.C. s. 922(8)(b)1, specifically provides that it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

<sup>45</sup> Section 790.17, F.S.

<sup>46</sup> Section 790.18, F.S. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>47</sup> Section 790.22(3), F.S.

recoil without much concern for accuracy, as the recoil from simulated automatic fire would make it difficult to hit specific targets at a long range. A rifle with this type of mechanism works best with a high-capacity magazine that can hold between 60 and 100 rounds and a hand grip that allows a shooter to push the rifle away from the body to bounce, or bump, the weapon into the trigger finger.<sup>48</sup> Experts have stated that semi-automatic rifles with bump stocks could fire hundreds of rounds per minute.<sup>49</sup>

The shooter at the October 2017 Las Vegas county music festival had 12 rifles with bump stocks which allowed him to kill 59 people and injure more than 500 others.<sup>50</sup>

While machine guns are regulated under the National Firearms Act, the ATF concluded that bump stocks didn't convert a semi-automatic firearm into one that is fully automatic, which would make it equivalent to machine guns. Currently, bump stocks are legal and not regulated by the ATF.<sup>51</sup>

### ***Other States, Congress, Presidential Memorandum***

Following the Las Vegas shooting and the recent shooting at Marjory Stoneman Douglas High School in Parkland, Florida, much public attention has been focused on bump stock-type devices.

Congress has not passed any legislation to restrict bump stocks, but there is a bill filed that would require persons who possess bump-fire stocks to register them with the Secretary of the Treasury.<sup>52</sup>

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<sup>48</sup> The Washington Post, *Trump recommended outlawing bump stocks. Here's what they are*, Julie Vitkovskaya and Alex Horton, February 20, 2018, available at [https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks/?utm\\_term=.c0d30fa732a8](https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks/?utm_term=.c0d30fa732a8) (last visited February 22, 2018) and Fox News, *What are bump stocks? How they work and why Trump wants them banned*, Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

<sup>49</sup> Fox News, *What are bump stocks? How they work and why Trump wants them banned*, Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

<sup>50</sup> *Id.*; See also The Washington Post, *At least 59 killed in Las Vegas shooting rampage, more than 500 others injured*, Matt Zapotosky, Devlin Barrett and Mark Berman, October 3, 2017, available at <https://www.msn.com/en-us/news/breakingnews/at-least-59-killed-in-las-vegas-shooting-rampage-more-than-500-others-injured/ar-AA5M6kd> (last visited February 22, 2018).

<sup>51</sup> Federal Register: The Daily Journal of the United States Government, *Application of the Definition of Machinegun to "Bump Fire" Stocks and Other Similar Devices*, available at <https://www.federalregister.gov/documents/2017/12/26/2017-27898/application-of-the-definition-of-machinegun-to-bump-fire-stocks-and-other-similar-devices> (last visited February 22, 2018). *Id.*

<sup>52</sup> House Bill 4168, filed October 31, 2017. H.R.4168 – Closing the Bump-Stock Loophole Act, available at <https://www.congress.gov/bill/115th-congress/house-bill/4168> (last visited February 23, 2018).



At least four states have banned the possession and sale of bump-fire stocks, although the definitions and descriptions of the devices vary.<sup>53</sup> At least 15 states are considering legislation that would ban bump stocks.<sup>54</sup>

Additionally, President Trump issued a Memorandum on February 20, 2018, directing the Department of Justice to propose a rule banning “all devices that turn legal weapons into machine guns.”<sup>55</sup>

### **Baker Act**

In 1971, the Legislature adopted the Florida Mental Health Act, otherwise known as the Baker Act.<sup>56</sup> The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

### ***Receiving Facility***

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.<sup>57</sup> Involuntary patients must be taken to a receiving facility, which is a public or private facility or hospital designated by the Department of Children and Families (DCF) to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health evaluation and to provide treatment or transportation to the appropriate service provider. A county jail is not a receiving facility.<sup>58</sup>

### ***Criteria for Taking a Person to a Receiving Facility for Involuntary Examination***

An involuntary examination includes an examination performed under s. 394.463, F.S.<sup>59</sup> The purpose of the examination is to determine whether a person qualifies for involuntary services.<sup>60</sup> Involuntary services include court-ordered outpatient services or inpatient placement for mental

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<sup>53</sup> These states are: California (Sections 32900, 32990, and 16930, California Penal Code.); Michigan (Section 750.224e., Michigan Penal Code); Minnesota (Section 690.67, Minnesota Statutes); and New Jersey Senate Bill 3477 (SCS), signed by the Governor January 16, 2018, P.L. 2017, c. 323.

<sup>54</sup> The Washington Post, *Facing congressional inaction, states move to ban bump stocks*, January 18, 2018, available at [https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/?utm\\_term=.bbcb450f232f](https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/?utm_term=.bbcb450f232f) (last visited February 22, 2018).

<sup>55</sup> Presidential Memorandum on the Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices, Issued February 20, 2018, available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-application-definition-machinegun-bump-fire-stocks-similar-devices/> (last visited February 22, 2018).

<sup>56</sup> Section 394.451, F.S. The act was created by ch. 71-131, L.O.F., and is codified in Part I of ch. 394, F.S. (ss. 394.451-394.47892, F.S.).

<sup>57</sup> Sections 394.4625 and 394.463, F.S.

<sup>58</sup> Section 394.455(39), F.S.

<sup>59</sup> Section 394.455(22), F.S.

<sup>60</sup> *Id.*

health treatment.<sup>61</sup> Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness<sup>62</sup> and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is unable to determine for himself or herself whether examination is necessary; **and**
- Either of the following applies:
  - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being, and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services.
  - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.<sup>63</sup>

### *Initiation of Involuntary Examination*

There are three means of initiating an involuntary examination. First, a court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer or other designated agent of the court takes the person into custody and delivers him or her to an appropriate, or the nearest, facility within the designated receiving system for examination.<sup>64</sup>

Second, a law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility for examination. The officer executes a written report detailing the circumstances under which the person was taken into custody, which is made a part of the patient's clinical record.<sup>65</sup>

Third, a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer takes the person named in the certificate into custody and delivers him or her to the appropriate, or nearest, facility for examination. The law

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<sup>61</sup> Section 394.455(23), F.S.

<sup>62</sup> "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For purposes of Part I of ch. 394, F.S., the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse.

Section 394.455(28), F.S.

<sup>63</sup> Section 394.463(1), F.S.

<sup>64</sup> Section 394.463(2)(a)1., F.S.

<sup>65</sup> Section 394.463(2)(a)2., F.S.

enforcement officer executes a written report detailing the circumstances under which the person was taken into custody. The certificate and the law enforcement officer's report are made a part of the patient's clinical record.<sup>66</sup>

### ***Transportation to a Receiving Facility***

The Baker Act requires each county to designate a single law enforcement agency within the county to transfer the person in need of services to a receiving facility for involuntary examination.<sup>67</sup> If the person is in custody based on noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under s. 394.463, F.S., the law enforcement officer must transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply<sup>68</sup>

If the person is arrested for a felony and it appears the person meets the statutory guidelines for involuntary examination or placement under Part I of ch. 394, F.S., the person must first be processed in the same manner as any other criminal suspect. Thereafter, the law enforcement officer must immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply. The receiving facility is responsible for promptly arranging for the examination and treatment of the person, but is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security.<sup>69</sup>

If the law enforcement officer believes the person has an emergency medical condition, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.<sup>70</sup>

A designated law enforcement agency may decline to transport a person to a receiving facility only if:

- The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
- The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.<sup>71</sup>

The appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or the nearest receiving facility if neither apply, must accept a person brought by a law enforcement officer, or an emergency medical transport

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<sup>66</sup> Section 394.463(2)(a)3., F.S.

<sup>67</sup> Section 394.462(1)(a), F.S.

<sup>68</sup> Section 394.462(1)(g), F.S.

<sup>69</sup> Section 394.462(1)(h), F.S. If the facility is unable to provide adequate security, examination or treatment of the person is provided where he or she is held. *Id.*

<sup>70</sup> Section 394.462(1)(i), F.S.

<sup>71</sup> Section 394.462(1)(b)1., F.S.

service or private transport company authorized by the county, for involuntary examination pursuant to s. 394.463, F.S.<sup>72</sup>

### ***Time Limitations for Conducting an Involuntary Examination***

Specified time periods apply to holding a person in a receiving facility for involuntary examination. Generally, the examination period must be for up to 72 hours.<sup>73</sup> However, for a minor, the examination must be initiated within 12 hours after the minor arrives at the facility.<sup>74</sup> Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.<sup>75</sup>

### **Gun Violence Protective Orders**

Gun violence protective order laws, also known as gun violence restraining orders and extreme risk protection orders, operate as a temporary restraint on a person's possession of his or her guns. Specifically, gun violence protective order laws enables law enforcement, and in some states, family and household members, to petition a court to remove a person's access to guns if he or she poses an imminent danger to self or others.<sup>76</sup> With a court-ordered gun violence protective order, a person's access to firearms is temporarily blocked until they can demonstrate that there is no longer a risk.<sup>77</sup>

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<sup>72</sup> Section 394.462(1)(k), F.S.

<sup>73</sup> Section 394.463(2)(g), F.S.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a facility within the examination period specified in s. 394.463(2)(g), F.S. The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services or involuntary inpatient placement, the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. Section 394.463(2)(h), F.S. One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist: the patient must be examined by a facility and released; or the patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within two hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist. Section 394.463(2)(i), F.S.

<sup>76</sup> Giffords Law Center to Prevent Gun Violence, *Gun Violence Protective Orders*, available at <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/gun-violence-protective-orders/> (last visited February 22, 2018).

<sup>77</sup> ABC News, *How a Temporary Restraining Order for Guns Could Help Stop Mass Shootings*, Andy Fies, February 16, 2018, available at <http://abcnews.go.com/US/temporary-restraining-order-guns-stop-mass-shootings/story?id=51042163> (last visited February 21, 2018).

Under federal law, as discussed above, a person who has committed a violent act towards others is not prohibited from possessing guns unless he or she is the subject of a domestic violence restraining order, has been convicted of a felony, or has been convicted of a domestic violence misdemeanor.<sup>78</sup> Additionally, federal law provides that a person suffering from mental illness is not prohibited from purchasing and possessing a gun unless he or she has been formally, and involuntarily, committed to a mental institution, or undergone some other formalized court proceeding regarding his or her mental illness.<sup>79</sup>

Individual states have begun to implement laws that restrict a person's access to possession and control of firearms. Connecticut became the first state to pass a law providing for a gun violence protective order in 1999.<sup>80</sup> The state's risk-warrant law grants law enforcement or a state attorney the authority to temporarily remove firearms from individuals when there is probable cause to believe they pose a significant risk of harm to themselves or to others.<sup>81</sup> Indiana, California, Oregon, and Washington also have also implemented a gun violence protective order-type law.<sup>82</sup> Gun violence protective orders or "red flag" laws are currently pending in 18 states.<sup>83</sup>

A nationwide study of mass shootings from 2009 to 2016 indicated that in at least 42 percent of those incidents, the attacker exhibited dangerous warning signs prior to the shooting.<sup>84</sup> A recent analysis of Connecticut's risk-warrant law demonstrates that risk-based firearm removal laws provide effective tools to save lives. Specifically, research estimates that for every 10-20 risk-warrants issued, one life is saved.<sup>85</sup> Research also indicates that 29 percent of gun owners who had a risk-warrant ordered against them went on to receive mental health and substance abuse services in the state system.<sup>86</sup> Additionally, a study of Connecticut's risk-warrant laws found that, 99 percent of warrants issued from 1999 to 2013, which led to the confiscation of at least one gun, resulted in the gun owner receiving psychiatric treatment.<sup>87</sup>

States with a gun violence protective order-type law have a process outlined in statute for obtaining a court order. Typically, before a gun violence protective order may be issued, the person is entitled to a full legal proceeding. However, an emergency order may be issued when a

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<sup>78</sup> 18 U.S.C. s. 922(d)(9).

<sup>79</sup> 18 U.S.C. s. 922(d)(4).

<sup>80</sup> Section 29-38C, Conn. Gen. Stat.

<sup>81</sup> The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, September 2017, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

<sup>82</sup> Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

<sup>83</sup> Everytown for Gun Safety, *Red Flag Laws: Helping Prevent Mass Shootings*, February 15, 2018, available at <https://everytownresearch.org/red-flag-laws-helping-prevent-mass-shooting/> (last visited February 21, 2018).

<sup>84</sup> Everytown for Gun Safety, *Analysis of Recent Mass Shootings*, available at [https://everytownresearch.org/wp-content/uploads/2017/04/Analysis\\_of\\_Mass\\_Shooting\\_062117.pdf](https://everytownresearch.org/wp-content/uploads/2017/04/Analysis_of_Mass_Shooting_062117.pdf) (last visited February 21, 2018).

<sup>85</sup> The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

<sup>86</sup> *Id.*

<sup>87</sup> The New York Times, *In Wake of Florida Massacre, Gun Control Advocates Look to Connecticut*, Lisa W. Foderaro and Kristin Hussey, February 17, 2018, available at <https://www.nytimes.com/2018/02/17/nyregion/florida-shooting-parkland-gun-control-connecticut.html> (last visited February 21, 2018).

person poses an immediate danger. Standard protocol for obtaining a gun violence protective order or similar type of restraining order requires a family or household member or a law enforcement officer or agency to submit a petition that alleges that the gun owner poses a significant danger to themselves or to others by virtue of his or her custody or control of a firearm.<sup>88</sup>

Notice must be issued to the gun owner, or respondent, to make them aware of the impending court hearing, with certain exceptions provided if such notice would put others at risk of imminent danger or harm. At the hearing, the petitioner must establish that the respondent poses a significant danger of causing personal injury to themselves or to others. In the event that the petitioner meets the burden of proof, the court must issue a protection order. Though gun violence protective order-type laws vary between each state, they are uniform in the duration of such issued order – one year.<sup>89</sup>

Upon entering an order to temporarily restrain a gun owner from his or her firearms, the respondent must surrender his or her firearms. Additionally, the order must detail that the respondent has a right to request one hearing to terminate the order every 12-month period that such order is in effect.<sup>90</sup>

The question of constitutionality of such protective orders has been raised with respect to the Second Amendment to the United States Constitution. In *Heller*, the United States Supreme Court recognized that the Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”<sup>91</sup> However, in the same case, the Supreme Court also recognized that the Second Amendment does not confer the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” and that legislatures may use a variety of regulatory measures to prevent violence associated with firearms.<sup>92</sup>

The Supreme Court stated that lawful regulatory measures implemented by the legislatures include “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”<sup>93</sup> In *Hope v. State*, the court held that the Connecticut risk-warrant law did not implicate the Second Amendment because it does not restrict the right of law-abiding, responsible citizens to use arms in defense of their homes.<sup>94</sup> The court in *Hope* echoed the Supreme Court’s sentiments in *Heller*, reasoning that Connecticut’s risk-warrant statute was an example of the longstanding “presumptively lawful regulatory measures” that can be adopted by legislatures.<sup>95</sup>

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<sup>88</sup> See Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> 554 U.S. 570, 635 (2008).

<sup>92</sup> *Id.* at 626, 636 (2008).

<sup>93</sup> *Id.* at 626-27.

<sup>94</sup> 163 Conn.App. 36, 43 (Conn. App. Ct. 2016).

<sup>95</sup> *Id.*

Additionally, similar measures have been upheld in California. In *City of San Diego v. Boggess*, the court held that the protections of the Second Amendment do not extend to persons whose firearms are seized because they were found to be a danger to themselves by reason of their mental health.<sup>96</sup> Furthermore, the court reasoned that the government is not prohibited from regulating the possession of guns by persons proven to be dangerous due to mental illness and further held that such regulations do not appear to be in direct conflict with the Second Amendment.<sup>97</sup> The court held that California case law has affirmed that the state may ensure that firearms are not in the hands of someone who may use them dangerously.<sup>98</sup>

### **III. Effect of Proposed Changes:**

#### **Baker Act and Firearm Safety**

The bill amends s. 394.463, F.S., to authorize a law enforcement officer who is taking a person into custody for an involuntary examination under a court's ex parte order under the Baker Act to seize and hold a firearm or ammunition the person possesses if the person:

- Poses a potential danger to himself or herself or others; and
- Has made a credible threat of violence against another person.

The law enforcement officer's agency must hold any seized firearm or ammunition for at least 72 hours or until the person appears at the agency to retrieve the firearm or ammunition. The agency must develop policies and procedures relative to the seizure, storage, and return of the firearms or ammunition provided for in the bill.

If the person has a firearm that was not seized when he or she was taken into custody for the involuntary examination under the Baker Act, a law enforcement officer may petition a court for a risk protection order pursuant to a newly-created procedure in the bill.

#### **Firearm Possession and Ownership Disability**

The bill provides that a person who has been adjudicated mentally defective or who has been committed to a mental institution as those terms are defined in s. 790.065(2), F.S. may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained.

The term "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), F.S., an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

Committed to a mental institution means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes

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<sup>96</sup> 216 Cal.App.4th 1494, at 1505-06 (Cal. Ct. App. 2013).

<sup>97</sup> *Id.* at 1506.

<sup>98</sup> *Id.*

involuntary inpatient placement as defined in s. 394.467, F.S., involuntary outpatient placement as defined in s. 394.4655, F.S., involuntary assessment and stabilization under s. 397.6818, F.S., and involuntary substance abuse treatment under s. 397.6957, F.S., but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution. The term also includes persons who have been involuntary examined under the Baker Act statute but then consented to voluntary inpatient or outpatient treatment.

The bill provides a process for the person who has the firearm disability related to possession and ownership of a firearm to petition a court to have the disability removed. This process currently exists in s. 790.065(2), F.S., as it relates to the firearm purchase disability.

### **Firearm Purchase Age Restriction**

The bill amends s. 790.065, F.S., to raise the age from 18 to 21 years of age for all firearm purchases from licensed firearm dealers, importers, and manufacturers. A violation of the prohibition against the sale or purchase is a felony of the third degree.

The prohibition on the purchase of a firearm by a person younger than 21 years of age or the sale or transfer by a licensed importer, licensed manufacturer, or licensed dealer to a person younger than 21 years of age does not apply to a member of the military or naval forces of this state or of the United States or to a law enforcement or correctional officer as defined in s. 943.10, F.S.

### **Three-Day Waiting Period**

The three-day waiting period between the purchase of and the delivery of a handgun as provided in s. 790.0655, F.S., is amended by the bill to create a three-day waiting period for all firearms, not just handguns.

Additionally, the bill extends the waiting period beyond three days if additional time is necessary to complete the firearm purchase background check.

The bill adds a new exception to the waiting period requirement for persons who complete a 16-hour hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or similar agency of another state.

### **Bump-Fire Stock Purchase**

The bill defines “bump-fire stock” as a gun conversion kit, a tool, an accessory, or a device used to alter the rate of fire of a firearm to mimic automatic weapon fire or which is used to increase the rate of fire of a semiautomatic firearm to a faster rate than is possible for a person to fire such semiautomatic firearm unassisted by a kit, a tool, an accessory, or a device.

The bill prohibits the importation, transfer, distribution, transport, sale, keeping for sale, offering or exposing for sale, or giving away of a bump-fire stock. A violation of the prohibition is a felony of the third degree.



## **Risk Protection Order**

The bill creates a process for a law enforcement officer to petition a court for a temporary ex parte risk protection order and a final risk protection order in s. 790.401, F.S. The intent of the process and court intervention is to temporarily prevent persons who are at high risk of harming themselves or others by accessing firearms when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.

The court must find by clear and convincing evidence based on the following considerations that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm to issue a risk protection order:

- A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;
- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28, F.S.;
- The respondent's ownership of, access to, or intent to possess firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;
- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent; and
- Any relevant information from family and household members concerning the respondent.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.

The procedure for an ex parte temporary risk protection order is expedited and intended to prevent any death or injury during the time immediately following an involuntary examination and before the hearing on a final risk protection order.

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm. The law enforcement officer must conduct a search authorized by law for such firearms and ammunition and take possession of all firearms and ammunition belonging to the respondent which are surrendered, in plain sight, or discovered pursuant to a lawful search.

Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender the firearms and ammunition in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present.

At the time of surrender, a law enforcement officer taking possession of a firearm, any ammunition, or a license to carry a concealed weapon or firearm shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered and must provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and ensure that his or her law enforcement agency retains a copy of the receipt. All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms or ammunition required to be surrendered.

Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition as required by a risk protection order, the court must determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition in his or her custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.

The respondent may submit one written request for a hearing to vacate a risk protection order starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any. The respondent shall have the burden of proving by clear and convincing evidence that he or she does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition. If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

The petitioner may, by motion, request an extension of a risk protection order at any time within 30 calendar days before the end of the order. If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no

modification of the order is sought, the order may be extended. The court may extend a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate or to another extension order by the court.

If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon or firearm pursuant to this section, must reinstate such license only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.

A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition.

A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient:

- Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and
- Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.

Also within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms or ammunition, and into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered.

A person who files a petition knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a first degree misdemeanor.<sup>99</sup>

A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by a risk protection order commits a third felony of the third degree felony.

The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms must be used after January 1, 2019,

The bill is effective October 1, 2018.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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<sup>99</sup> A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Although local law enforcement agencies may incur some additional expense resulting from the law enforcement officer's participation in the newly-created risk protection order process and related administration of the firearms and ammunition seizure, storage and release and will likely have an insignificant fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 394.463, 790.065, and 790.0655.

This bill creates the following sections of the Florida Statutes: 790.064, 790.34, and 790.401.

This bill reenacts the following sections of the Florida Statutes: 397.6760 and 790.335.

**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.



504798

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Thurston) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 161 - 214

and insert:

Section 3. Present subsection (13) of section 790.065, F.S., is redesignated as subsection (12) of that section, subsections (1), (3), and (10) of that section are amended, and a new subsection (11) is added to that section, to read:

790.065 Sale and delivery of firearms.—

(1)(a) A licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his



504798

inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until she or he has:

1. Obtained a completed form from the potential buyer or transferee, which form shall have been adopted ~~promulgated~~ by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

2. Collected a fee from the potential buyer for processing the criminal history check of the potential buyer. The fee shall be established by the Department of Law Enforcement and may not exceed \$8 per transaction. The Department of Law Enforcement may reduce, or suspend collection of, the fee to reflect payment received from the Federal Government applied to the cost of maintaining the criminal history check system established by this section as a means of facilitating or supplementing the National Instant Criminal Background Check System. The Department of Law Enforcement shall, by rule, establish procedures for the fees to be transmitted by the licensee to the Department of Law Enforcement. All such fees shall be deposited into the Department of Law Enforcement Operating Trust Fund, but shall be segregated from all other funds deposited into such trust fund and must be accounted for separately. Such segregated funds must not be used for any purpose other than the operation of the criminal history checks required by this section. The



504798

41 Department of Law Enforcement, each year before ~~prior to~~  
42 February 1, shall make a full accounting of all receipts and  
43 expenditures of such funds to the President of the Senate, the  
44 Speaker of the House of Representatives, the majority and  
45 minority leaders of each house of the Legislature, and the  
46 chairs of the appropriations committees of each house of the  
47 Legislature. In the event that the cumulative amount of funds  
48 collected exceeds the cumulative amount of expenditures by more  
49 than \$2.5 million, excess funds may be used for the purpose of  
50 purchasing soft body armor for law enforcement officers.

51 3. Requested, by means of a toll-free telephone call, the  
52 Department of Law Enforcement to conduct a check of the  
53 information as reported and reflected in the Florida Crime  
54 Information Center and National Crime Information Center systems  
55 as of the date of the request.

56 4. Received a unique approval number for that inquiry from  
57 the Department of Law Enforcement, and recorded the date and  
58 such number on the consent form.

59 (b) However, if the person purchasing, or receiving  
60 delivery of, the firearm is a holder of a valid concealed  
61 weapons or firearms license pursuant to ~~the provisions of~~ s.  
62 790.06 or holds an active certification from the Criminal  
63 Justice Standards and Training Commission as a "law enforcement  
64 officer," a "correctional officer," or a "correctional probation  
65 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or  
66 (9), this subsection does not apply.

67 (c) This subsection does not apply to the purchase, trade,  
68 or transfer of a rifle or shotgun by a resident of this state  
69 when the resident makes such purchase, trade, or transfer from a





504798

licensed importer, licensed manufacturer, or licensed dealer in another state.

(d)1. If neither party to a prospective firearms sale, lease, or transfer is a licensed dealer, the parties to the transaction must complete the sale, lease, or transfer through a licensed dealer as follows:

a. The seller, lessor, or transferor must deliver the firearm to a licensed dealer, who shall process the sale, lease, or transfer as if she or he were the seller, lessor, or transferor, except that the seller, lessor, or transferor who is not a licensed dealer may remove the firearm from the business premises of the licensed dealer while the background check is being conducted and while the waiting period requirement set forth in s. 790.0655 is being met. Other than allowing the unlicensed seller or transferor to remove the firearm from the licensed dealer's business premises, the licensed dealer shall comply with all requirements of federal and state law which would apply if she or he were the seller, lessor, or transferor of the firearm;

b. The licensed dealer shall conduct a background check on the buyer or other transferee as provided in this section and, unless the transaction is prohibited, and after all other legal requirements are met, including those set forth in s. 790.0655, the licensed dealer shall either:

(I) Deliver the firearm to the seller, lessor, or transferor, who shall complete the transaction and deliver the firearm to the buyer; or

(II) If the seller, lessor, or transferor has removed the firearm from the licensed dealer's business premises, contact



504798

the seller, lessor, or transferor to let her or him know that he or she may complete the transaction and deliver the firearm to the buyer.

c. If the licensed dealer cannot legally complete the transaction, the dealer must:

(I) Return the firearm to the seller, lessor, or transferor; or

(II) If the seller, lessor, or transferor has removed the firearm from the licensed dealer's business premises, contact the seller, lessor, or transferor to let her or him know that the transaction is prohibited, and that the seller, lessor, or transferor may not deliver the firearm to the buyer; and

d. The licensed dealer may require the buyer or other transferee to pay a fee covering the administrative costs incurred by the licensed dealer for facilitating the transfer of the firearm, plus applicable fees pursuant to federal and state law.

2. This paragraph does not apply to:

a. The activities of the United States Marshals Service, members of the United States Armed Forces or the National Guard, or federal officials required to carry firearms while engaged in performing their official duties; or

b. The following activities, unless the lawful owner knows or has reasonable cause to believe that federal, state, or local law prohibits the transferee from purchasing or possessing firearms, or that the transferee is likely to use the firearm for unlawful purposes:

(I) The delivery of a firearm to a gunsmith for service or repair, or the return of the firearm to its owner by the



504798

gunsmith;

(II) The transfer of a firearm to a carrier, warehouseman, or other person engaged in the business of transportation or storage, to the extent that the receipt, possession, or having on or about the person any firearm is in the ordinary course of business and in conformity with federal, state, and local laws, and not for the personal use of any such person;

(III) The loan of a firearm solely for the purpose of shooting at targets, if the loan occurs on the premises of a properly licensed target facility and if the firearm is at all times kept within the premises of the target facility;

(IV) The loan of a firearm to a person who is under 18 years of age for lawful hunting, sporting, or educational purposes while under the direct supervision and control of a responsible adult;

(V) The loan of a firearm to a person who is 18 years of age or older if the firearm remains in the person's possession only while the person is accompanying the lawful owner and using the firearm for lawful hunting, sporting, or recreational purposes; or

(VI) The loan of a firearm to an adult family member of the lawful owner of the firearm if the lawful owner resides with the family member but is not present in the residence, provided that the family member does not maintain control over the firearm for more than 10 consecutive days.

~~(3) In the event of scheduled computer downtime, electronic failure, or similar emergency beyond the control of the Department of Law Enforcement, the department shall immediately notify the licensee of the reason for, and estimated length of,~~



504798

~~such delay. After such notification, the department shall  
forthwith, and in no event later than the end of the next  
business day of the licensee, either inform the requesting  
licensee if its records demonstrate that the buyer or transferee  
is prohibited from receipt or possession of a firearm pursuant  
to Florida and Federal law or provide the licensee with a unique  
approval number. Unless notified by the end of said next  
business day that the buyer or transferee is so prohibited, and  
without regard to whether she or he has received a unique  
approval number, the licensee may complete the sale or transfer  
and shall not be deemed in violation of this section with  
respect to such sale or transfer.~~

~~(10) A licensed importer, licensed manufacturer, or  
licensed dealer is not required to comply with the requirements  
of this section in the event of:~~

~~(a) Unavailability of telephone service at the licensed  
premises due to the failure of the entity which provides  
telephone service in the state, region, or other geographical  
area in which the licensee is located to provide telephone  
service to the premises of the licensee due to the location of  
said premises; or the interruption of telephone service by  
reason of hurricane, tornado, flood, natural disaster, or other  
act of God, war, invasion, insurrection, riot, or other bona  
fide emergency, or other reason beyond the control of the  
licensee; or~~

~~(b) Failure of the Department of Law Enforcement to comply  
with the requirements of subsections (2) and (3).~~

(11) A person younger than 21 years of age may not purchase  
a firearm. The sale or transfer of a firearm to a person younger



504798

than 21 years of age may not be made or facilitated by a  
licensed importer, licensed manufacturer, or licensed dealer. A  
person who violates this subsection commits a felony of the  
third degree, punishable as provided in s. 775.082, s. 775.083,  
or s. 775.084. The prohibition on the purchase of a firearm by a  
person younger than 21 years of age or the sale or transfer by a  
licensed importer, licensed manufacturer, or licensed dealer to  
a person younger than 21 years of age does not apply to a member  
of the military or naval forces of this state or of the United  
States or to a law enforcement officer or a correctional  
officer, as those terms are defined in s. 943.10.

Section 4. Section 790.0655, Florida Statutes, is amended  
to read:

790.0655 Purchase and delivery of firearms ~~handguns~~;  
mandatory waiting period; exceptions; penalties.—

(1)(a) ~~There shall be~~ A mandatory ~~3-day~~ waiting period is  
imposed between the purchase and delivery of a firearm. The  
mandatory waiting period is, ~~which shall be~~ 3 days, excluding  
weekends and legal holidays, or expires upon the completion of  
the records checks required under s. 790.065, whichever occurs  
later. The mandatory waiting period applies to the delivery of a  
firearm through a private sale facilitated through a licensed  
dealer under s. 790.065(1)(d) ~~between the purchase and the~~  
~~delivery at retail of any handgun.~~ "Purchase" means the transfer  
of money or other valuable consideration to the retailer.  
~~"Handgun" means a firearm capable of being carried and used by~~  
~~one hand, such as a pistol or revolver.~~ "Retailer" means and  
includes a licensed importer, licensed manufacturer, or licensed  
dealer ~~every person~~ engaged in the business of making firearm



504798

sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).

(b) Records of firearm handgun sales must be available for inspection by any law enforcement agency, as defined in s. 934.02, during normal business hours.

(2) The ~~3-day~~ waiting period does ~~shall~~ not apply in the following circumstances:

(a) When a firearm handgun is being purchased by a holder of a concealed weapons permit as defined in s. 790.06.

(b) To a trade-in of another firearm handgun.

(c) To a person who completes a 16-hour hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or similar agency of another state, unless that person is purchasing a handgun.

(3) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) For any retailer, or any employee or agent of a retailer, to deliver a firearm handgun before the expiration of the ~~3-day~~ waiting period, subject to the exceptions provided in subsection (2).

(b) For a purchaser to obtain delivery of a firearm handgun by fraud, false pretense, or false representation.

Section 5. Paragraph (e) of subsection (3) of section 790.335, Florida Statutes, is amended to read:

790.335 Prohibition of registration of firearms; electronic records.—

(3) EXCEPTIONS.—The provisions of this section shall not apply to:



504798

(e)1. Records kept pursuant to the recordkeeping provisions of s. 790.065; however, nothing in this section shall be construed to authorize the public release or inspection of records that are made confidential and exempt from the provisions of s. 119.07(1) by s. 790.065(3)(a) ~~s. 790.065(4)(a)~~.

2. Nothing in this paragraph shall be construed to allow the maintaining of records containing the names of purchasers or transferees who receive unique approval numbers or the maintaining of records of firearm transactions.

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

And the title is amended as follows:

Delete lines 25 - 41

and insert:

s. 790.065, F.S.; requiring that, if neither party to a prospective firearms sale, lease, or transfer is a licensed dealer, the parties complete the sale, lease, or transfer through a licensed dealer; specifying procedures and requirements for a licensed dealer, a seller, lessor, or transferor, and a buyer, lessee, or transferee, including a required background check; authorizing a licensed dealer to charge a buyer or transferee specified fees; providing applicability; deleting provisions authorizing a licensee to complete the sale or transfer of a firearm to a person without receiving notification from the Department of Law Enforcement informing the licensee as to whether such person is prohibited from receipt or possession of a firearm or providing a unique approval number under



504798

certain circumstances; deleting provisions exempting a  
licensed importer, licensed manufacturer, or licensed  
dealer from the sale and delivery requirements, under  
certain circumstances; prohibiting a person younger  
than a certain age from purchasing a firearm;  
prohibiting the sale or transfer, or facilitation of a  
sale or transfer, of a firearm to a person younger  
than a certain age by a licensed importer, licensed  
manufacturer, or licensed dealer; providing criminal  
penalties; providing an exception; amending s.  
790.0655, F.S.; revising the mandatory waiting period  
to the later of either 3 days, excluding weekends and  
legal holidays, or upon the completion of certain  
records checks; applying the mandatory 3-day waiting  
period to private sales of firearms facilitated  
through a licensed dealer; revising and redefining  
terms; requiring that records of firearm sales be  
available for inspection by any law enforcement agency  
during normal business hours; revising applicability  
of the waiting period; conforming provisions to  
changes made by the act; amending s. 790.335, F.S.;  
conforming a cross-reference;





197998

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Thurston) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 214 and 215

insert:

Section 5. Section 790.335, Florida Statutes, is amended to  
read:

~~790.335 Prohibition of registration of firearms; electronic  
records.—~~

~~(1) LEGISLATIVE FINDINGS AND INTENT.—~~

~~(a) The Legislature finds and declares that:~~

~~1. The right of individuals to keep and bear arms is~~



197998

~~guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.~~

~~2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.~~

~~3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution.~~

~~4. Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.~~

~~(b) The Legislature intends through the provisions of this section to:~~

~~1. Protect the right of individuals to keep and bear arms as guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.~~

~~2. Protect the privacy rights of law-abiding firearm owners.~~

~~(2) PROHIBITIONS. No state governmental agency or local government, special district, or other political subdivision or~~



197998

~~official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.~~

~~(3) EXCEPTIONS. The provisions of this section shall not apply to:~~

~~(a) Records of firearms that have been used in committing any crime.~~

~~(b) Records relating to any person who has been convicted of a crime.~~

~~(c) Records of firearms that have been reported stolen that are retained for a period not in excess of 10 days after such firearms are recovered. Official documentation recording the theft of a recovered weapon may be maintained no longer than the balance of the year entered, plus 2 years.~~

~~(d) Firearm records that must be retained by firearm dealers under federal law, including copies of such records transmitted to law enforcement agencies. However, no state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, private or public, shall accumulate, compile, computerize, or otherwise collect or convert such written records into any form of list, registry, or database for any purpose.~~

~~(e) 1. Records kept pursuant to the recordkeeping provisions of s. 790.065; however, nothing in this section shall be construed to authorize the public release or inspection of records that are made confidential and exempt from the~~



197998

~~provisions of s. 119.07(1) by s. 790.065(4)(a).~~

~~2. Nothing in this paragraph shall be construed to allow the maintaining of records containing the names of purchasers or transferees who receive unique approval numbers or the maintaining of records of firearm transactions.~~

~~(f) Firearm records, including paper pawn transaction forms and contracts on firearm transactions, required by chapters 538 and 539.~~

~~1. Electronic firearm records held pursuant to chapter 538 may only be kept by a secondhand dealer for 30 days after the date of the purchase of the firearm by the secondhand dealer.~~

~~2. Electronic firearm records held pursuant to chapter 539 may only be kept by a pawnbroker for 30 days after the expiration of the loan that is secured by a firearm or 30 days after the date of purchase of a firearm, whichever is applicable.~~

~~3. Except as required by federal law, any firearm records kept pursuant to chapter 538 or chapter 539 shall not, at any time, be electronically transferred to any public or private entity, agency, business, or enterprise, nor shall any such records be copied or transferred for purposes of accumulation of such records into lists, registries, or databases.~~

~~4. Notwithstanding subparagraph 3., secondhand dealers and pawnbrokers may electronically submit firearm transaction records to the appropriate law enforcement agencies as required by chapters 538 and 539; however, the law enforcement agencies may not electronically submit such records to any other person or entity and must destroy such records within 60 days after receipt of such records.~~



197998

99           ~~5. Notwithstanding subparagraph 3., secondhand dealers and~~  
100 ~~pawnbrokers may electronically submit limited firearms records~~  
101 ~~consisting solely of the manufacturer, model, serial number, and~~  
102 ~~caliber of pawned or purchased firearms to a third-party private~~  
103 ~~provider that is exclusively incorporated, exclusively owned,~~  
104 ~~and exclusively operated in the United States and that restricts~~  
105 ~~access to such information to only appropriate law enforcement~~  
106 ~~agencies for legitimate law enforcement purposes. Such records~~  
107 ~~must be destroyed within 30 days by the third-party provider. As~~  
108 ~~a condition of receipt of such records, the third-party provider~~  
109 ~~must agree in writing to comply with the requirements of this~~  
110 ~~section. Any pawnbroker or secondhand dealer who contracts with~~  
111 ~~a third-party provider other than as provided in this act or~~  
112 ~~electronically transmits any records of firearms transactions to~~  
113 ~~any third-party provider other than the records specifically~~  
114 ~~allowed by this paragraph commits a felony of the second degree,~~  
115 ~~punishable as provided in s. 775.082 or s. 775.083.~~

116           ~~(g) Records kept by the Department of Law Enforcement of~~  
117 ~~NCIC transactions to the extent required by federal law and a~~  
118 ~~log of dates of requests for criminal history record checks,~~  
119 ~~unique approval and nonapproval numbers, license identification~~  
120 ~~numbers, and transaction numbers corresponding to such dates.~~

121           ~~(h) Records of an insurer that, as a condition to providing~~  
122 ~~insurance against theft or loss of a firearm, identify such~~  
123 ~~firearm. Such records may not be sold, commingled with records~~  
124 ~~relating to other firearms, or transferred to any other person~~  
125 ~~or entity. The insurer may not keep a record of such firearm~~  
126 ~~more than 60 days after the policy of insurance expires or after~~  
127 ~~notification by the insured that the insured is no longer the~~



197998

~~owner of such firearm.~~

~~(i) Lists of customers of a firearm dealer retained by such dealer, provided that such lists do not disclose the particular firearms purchased. Such lists, or any parts thereof, may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity.~~

~~(j) Sales receipts retained by the seller of firearms or by a person providing credit for such purchase, provided that such receipts shall not serve as or be used for the creation of a database for registration of firearms.~~

~~(k) Personal records of firearms maintained by the owner of such firearms.~~

~~(l) Records maintained by a business that stores or acts as the selling agent of firearms on behalf of the lawful owner of the firearms.~~

~~(m) Membership lists of organizations comprised of firearm owners.~~

~~(n) Records maintained by an employer or contracting entity of the firearms owned by its officers, employees, or agents, if such firearms are used in the course of business performed on behalf of the employer.~~

~~(o) Records maintained pursuant to s. 790.06 by the Department of Agriculture and Consumer Services of a person who was a licensee within the prior 2 years.~~

~~(p) Records of firearms involved in criminal investigations, criminal prosecutions, criminal appeals, and postconviction motions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, Baker Act commitments, and sheriff's levies~~



197998

~~pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm.~~

~~(q) Paper documents relating to firearms involved in criminal cases, criminal investigations, and criminal prosecutions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, Baker Act commitments, and sheriff's levies pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm.~~

~~(r) Noncriminal records relating to the receipt, storage or return of firearms, including, but not limited to, records relating to firearms impounded for storage or safekeeping, receipts proving that a firearm was returned to the rightful owner and supporting records of identification and proof of ownership, or records relating to firearms impounded pursuant to levies or court orders, provided, however, that such records shall not be compiled, sorted, or otherwise arranged into any lists, indexes, or registries of firearms or firearms owners.~~

~~(4) PENALTIES.—~~

~~(a) Any person who, or entity that, violates a provision of this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(b) Except as required by the provisions of s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, no public funds shall be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against such person are dismissed or such person is determined to be not guilty at trial.~~

~~Notwithstanding this paragraph, public funds may be expended to~~



197998

~~provide the services of the office of public defender or court  
appointed conflict counsel as provided by law.~~

~~(c) The governmental entity, or the designee of such  
governmental entity, in whose service or employ a list, record,  
or registry was compiled in violation of this section may be  
assessed a fine of not more than \$5 million, if the court  
determines that the evidence shows that the list, record, or  
registry was compiled or maintained with the knowledge or  
complicity of the management of the governmental entity. The  
Attorney General may bring a civil cause of action to enforce  
the fines assessed under this paragraph.~~

~~(d) The state attorney in the appropriate jurisdiction  
shall investigate complaints of criminal violations of this  
section and, where evidence indicates a violation may have  
occurred, shall prosecute violators.~~

~~(5) ELECTRONIC RECORDS. Secondhand dealers and pawnbrokers  
who electronically submit firearms transaction records to the  
appropriate law enforcement agencies as required by chapters 538  
and 539 shall submit the name of the manufacturer and caliber  
information of each firearm in Florida Crime Information Center  
coding, and shall include the model and serial number of each  
firearm.~~

~~(6) CONSTRUCTION. This section shall be construed to  
effectuate its remedial and deterrent purposes. This section may  
not be construed to grant any substantive, procedural privacy  
right or civil claim to any criminal defendant, and a violation  
of this section may not be grounds for the suppression of  
evidence in any criminal case.~~

Section 6. Section 790.336, Florida Statutes, is amended to





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read:

~~790.336 Lists, records, or registries to be destroyed. Any list, record, or registry maintained or under construction on the effective date of this act shall be destroyed, unless prohibited by law, within 60 calendar days after this act becomes law. Thereafter, failure to destroy any such list, record, or registry may result in prosecution under this act.~~

Section 7. Paragraph (b) of subsection (5) and paragraph (b) of subsection (9) of section 409.175, Florida Statutes, are amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(5)

(b) The requirements for the licensure and operation of a child-placing agency shall also include compliance with the requirements of s. 63.0422 ~~ss. 63.0422 and 790.335~~.

(9)

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.

2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

3. Noncompliance with the requirements for good moral character as specified in paragraph (5)(a).

4. Failure to dismiss personnel found in noncompliance with requirements for good moral character.



197998

244 5. Failure to comply with the requirements of s. 63.0422  
245 ~~ss. 63.0422 and 790.335.~~

246 Section 8. Paragraph (a) of subsection (6) of section  
247 790.0625, Florida Statutes, is amended to read:

248 790.0625 Appointment of tax collectors to accept  
249 applications for a concealed weapon or firearm license; fees;  
250 penalties.—

251 (6) (a) A tax collector appointed under this section may not  
252 maintain a list or record of persons who apply for or are  
253 granted a new or renewal license to carry a concealed weapon or  
254 firearm. A tax collector who violates this paragraph commits a  
255 felony of the third degree, punishable as provided in s. 775.082  
256 or s. 775.083 ~~violation of this paragraph is subject to s.~~  
257 ~~790.335.~~

258  
259 ===== T I T L E A M E N D M E N T =====  
260 And the title is amended as follows:

261 Between lines 41 and 42  
262 insert:

263 repealing s. 790.335, F.S., relating to the  
264 prohibition of registration of firearms and the  
265 treatment of electronic records; repealing s. 790.336,  
266 F.S., relating to lists, records, or registries  
267 required to be destroyed; amending ss. 409.175 and  
268 790.0625, F.S.; conforming provisions to changes made  
269 by the act;



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 214 and 215  
insert:

Section 5. Section 790.174, Florida Statutes, is amended to  
read:

790.174 Safe storage of firearms required.—

(1) As used in this section, the term "minor" means a  
person younger than 18 years of age.

(2)~~(1)~~ A person who stores or leaves, on a premise under  
his or her control, a loaded firearm, as defined in s. 790.001,



697008

and who knows or reasonably should know that a minor is likely to gain access to the firearm without the lawful permission of the minor's parent or the person having charge of the minor, or without the supervision required by law, shall keep the firearm in a securely locked box or container ~~or in a location which a reasonable person would believe to be secure~~ or shall secure it with a trigger lock, ~~except when the person is carrying the firearm on his or her body or within such close proximity thereto that he or she can retrieve and use it as easily and quickly as if he or she carried it on his or her body.~~

(3)(2) It is A person who violates subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, ~~if a person violates subsection (1) by failing to store or leave a firearm in the required manner and as a result thereof a minor gains access to the firearm, without the lawful permission of the minor's parent or the person having charge of the minor, and possesses or exhibits it, without the supervision required by law:~~

~~(a) In a public place; or~~

~~(b) In a rude, careless, angry, or threatening manner in violation of s. 790.10.~~

~~This subsection does not apply if the minor obtains the firearm as a result of an unlawful entry by any person.~~

~~(3) As used in this act, the term "minor" means any person under the age of 16.~~

Section 6. For the purpose of incorporating the amendment made by this act to section 790.174, Florida Statutes, in a reference thereto, paragraph (f) of subsection (5) of section



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409.175, Florida Statutes, is reenacted to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(5)

(f) The department's rules shall include adoption of a form to be used by child-placing agencies during an adoption home study that requires all prospective adoptive applicants to acknowledge in writing the receipt of a document containing solely and exclusively the language provided for in s. 790.174 verbatim.

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

And the title is amended as follows:

Between lines 41 and 42  
insert:

amending s. 790.174, F.S.; redefining the term "minor"; requiring that, in specified circumstances, a loaded firearm be kept in a securely locked box or container or be secured with a trigger lock; deleting conditions that pertain to the crime of failing to safely store, leave, or secure a loaded firearm in a specified manner; reenacting s. 409.175(5)(f), F.S., relating to certain rules of the Department of Children and Families, to incorporate the amendment made to s. 790.174, F.S., in a reference thereto;



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 230 and 231  
insert:

(3) POSSESSION.—A person may not, within this state, possess a bump-fire stock. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) RELINQUISHMENT AND DESTRUCTION.—A person who owns or is in possession of a bump-fire stock may arrange in advance to relinquish the device to a law enforcement agency, as defined in



812202

s. 934.02, or the Department of Law Enforcement or, if the bump-fire stock is not relinquished, the person must destroy the device. The law enforcement agency or the department must destroy any relinquished or acquired bump-fire stock within a reasonable time.

(5) APPLICABILITY.—This section does not apply to a law enforcement agency or the Department of Law Enforcement after taking possession of a bump-fire stock through relinquishment or other lawful means or while preparing to destroy the device.

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

And the title is amended as follows:

Delete lines 44 - 46

and insert:

distribution, transport, sale, giving, or possession of a bump-fire stock in this state; providing criminal penalties; authorizing a person to relinquish a bump-fire stock to a law enforcement agency or the Department of Law Enforcement; requiring a person who does not relinquish a bump-fire stock to destroy the device; requiring the law enforcement agency or the department to destroy relinquished or acquired bump-fire stocks; providing applicability; providing legislative intent; providing a



411458

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 826 and 827

insert:

Section 9. Section 790.30, Florida Statutes, is created to  
read:

790.30 Assault weapons.—

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

(a) "Assault weapon" means:

1. A selective-fire firearm capable of fully automatic,  
semiautomatic, or burst fire at the option of the user or any of





411458

the following specified semiautomatic firearms:

a. Algimec AGM1.

b. All AK series, including, but not limited to, the following: AK, AK-47, AK-74, AKM, AKS, ARM, MAK90, MISR, NHM90, NHM91, Rock River Arms LAR-47, SA 85, SA 93, Vector Arms AK-47, VEPR, WASR-10, and WUM.

c. All AR series, including, but not limited to, the following: AR-10, AR-15, Armalite AR-180, Armalite M-15, AR-70, Bushmaster XM15, Colt AR-15, DoubleStar AR rifles, DPMS tactical rifles, Olympic Arms, Rock River Arms LAR-15, and Smith & Wesson M&P15 rifles.

d. Barrett 82A1 and REC7.

e. Beretta AR-70 and Beretta Storm.

f. Bushmaster automatic rifle.

g. Calico Liberty series rifles.

h. Chartered Industries of Singapore SR-88.

i. Colt Sporter.

j. Daewoo K-1, K-2, Max-1, and Max-2.

k. FAMAS MAS .223.

l. Federal XC-900 and SC-450.

m. FN FAL (or FN LAR) and FN FNC.

n. FN FS2000, FN PS90, and FN SCAR.

o. Galil and UZI Sporter, Galil sniper rifle (Galatz), Galil Sporter, UZI, or Vector Arms UZI.

p. Goncz High-Tech carbine.

q. Hi-Point carbine.

r. HK-91, HK-93, HK-94, HK-PSG-1, and SP-89.

s. Kel-Tec RFB, Sub-2000, and SU series.

t. M1 carbine.



411458

- u. M2HB and TNW M230.
- v. Ruger Mini-14 with folding stock.
- w. SAR-8, SAR-4800, and SR9.
- x. SIG 57 AMT and 500 Series.
- y. Sig Sauer MCX rifle.
- z. SKS capable of accepting a detachable magazine.
- aa. SLG 95.
- bb. SLR 95 and 96.
- cc. Spectre automatic carbine.
- dd. Springfield Armory BM59, G-3, and SAR-48.
- ee. Sterling MK-6 and MK-7.
- ff. Steyr AUG.
- gg. Thompson series, including Thompson T5.
- hh. Weaver Arms Nighthawk.
- 2. All of the following handguns, copies, duplicates, or  
altered facsimiles with the capability of any such weapon  
thereof:
  - a. AK-47 pistol and Mini AK-47 pistol.
  - b. AR-15 pistol.
  - c. Australian Automatic Arms SAP pistol.
  - d. Bushmaster automatic pistol.
  - e. Calico Liberty series pistols.
  - f. Chiappa Firearms Mfour-22.
  - g. Colefire Magnum.
  - h. DSA SA58 PKP FAL.
  - i. Encom MK-IV, MP-9, and MP-45.
  - j. Feather AT-9 and Mini-AT.
  - k. German Sport 522 PK.
  - l. Goncz High-Tech Long pistol.



411458

70       m. Holmes MP-83.  
71       n. Intratec AB-10, TEC-9, TEC-22 Scorpion, and TEC-DC9.  
72       o. I.O. Inc. PPS-43C.  
73       p. Iver Johnson Enforcer.  
74       q. Kel-Tec PLR-16 pistol.  
75       r. MAC-10, MAC-11, Masterpiece Arms MPA pistol series, and  
76 Velocity Arms VMA series.  
77       s. Scarab Skorpion.  
78       t. Sig Sauer P556 pistol.  
79       u. Spectre automatic pistol.  
80       v. Thompson TA5 series pistols.  
81       w. UZI pistol and Micro-UZI pistol.  
82       x. Wilkinson "Linda" pistol.  
83       3. All of the following shotguns, copies, duplicates, or  
84 altered facsimiles with the capability of any such weapon  
85 thereof:  
86       a. Armscor 30 BG.  
87       b. Franchi LAW-12 and SPAS-12.  
88       c. Kel-Tec KSG.  
89       d. Remington TAC-2 and TACB3 FS.  
90       e. Saiga.  
91       f. Streetsweeper.  
92       g. Striker 12.  
93       h. USAS-12.  
94       4. A part or combination of parts that convert a firearm  
95 into an assault weapon, or any combination of parts from which  
96 an assault weapon may be assembled if those parts are in the  
97 possession or under the control of the same person.  
98       5. A semiautomatic firearm not listed in this paragraph



411458

which meets the criteria of one of the following sub-  
subparagraphs:

a. A semiautomatic rifle that has an ability to accept a detachable magazine and that has one or more of the following:

(I) A folding or telescoping stock.

(II) A pistol grip that protrudes conspicuously beneath the action of the weapon or any feature functioning as a protruding grip that can be held by the nontrigger hand or a thumbhole stock.

(III) A bayonet mount.

(IV) A flash suppressor or threaded barrel designed to accommodate a flash suppressor.

(V) A grenade launcher.

(VI) A shroud that is attached to the barrel, or that partially or completely encircles the barrel and allows the bearer to hold the firearm with the nontrigger hand without being burned, but excluding a slide that encloses the barrel.

b. A semiautomatic pistol that has an ability to accept a detachable magazine and that has one or more of the following:

(I) The capacity to accept an ammunition magazine that attaches to the pistol at any location outside the pistol grip.

(II) A threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer.

(III) A slide that encloses the barrel and that allows the shooter to hold the firearm with the nontrigger hand without being burned.

(IV) A manufactured weight of 50 ounces or more when the pistol is unloaded.

(V) A semiautomatic version of an automatic firearm.



411458

(VI) Any feature capable of functioning as a protruding grip that can be held by the nontrigger hand.

(VII) A folding, telescoping, or thumbhole stock.

c. A semiautomatic shotgun that has one or more of the following:

(I) A folding or telescoping stock.

(II) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(III) A thumbhole stock.

(IV) A fixed-magazine capacity in excess of 5 rounds.

(V) An ability to accept a detachable magazine.

d. A semiautomatic pistol or a semiautomatic, centerfire, or rimfire rifle with a fixed magazine that has the capacity to accept more than 10 rounds of ammunition.

e. A part or combination of parts designed or intended to convert a firearm into an assault weapon, or any combination of parts from which an assault weapon may be assembled if those parts are in the possession or under the control of the same person.

(b) "Detachable magazine" means an ammunition feeding device that can be removed from a firearm without disassembly of the firearm action.

(c) "Fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

(d) "Large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 7 rounds, or any conversion kit, part, or combination of parts from which such a



411458

device can be assembled if those parts are in the possession or under the control of the same person, but does not include any of the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 7 rounds;
2. A .22 caliber tube ammunition feeding device; or
3. A tubular magazine that is contained in a lever-action firearm.

(e) "Licensed gun dealer" means a person who has a federal firearms license.

(2) SALE OR TRANSFER.—

(a) A person may not import into the state or, within this state, distribute, transport, sell, keep for sale, offer or expose for sale, or give an assault weapon or large-capacity magazine. Except as provided in paragraph (b), any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 2 years.

(b) A person may not transfer, sell, or give an assault weapon or large-capacity magazine to a person under 18 years of age. Any person who violates this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 6 years.

(c) Paragraph (a) does not apply to:

1. The sale of assault weapons or large-capacity magazines to the Department of Law Enforcement, to a law enforcement agency, as defined in s. 934.02, to the Department of Corrections, or to the military, air, or naval forces of this



411458

state or the United States for use in the discharge of their  
official duties.

2. A person who is the executor or administrator of an  
estate that includes an assault weapon or large-capacity  
magazine for which a certificate of possession has been issued  
under subsection (4) which is disposed of as authorized by the  
probate court, if the disposition is otherwise authorized under  
this section.

3. The transfer by bequest or intestate succession of an  
assault weapon or large-capacity magazine for which a  
certificate of possession has been issued under subsection (4).

(3) POSSESSION.—

(a) Except as provided in subsection (5) or otherwise  
provided in this section or authorized by any other law, a  
person may not, within this state, possess an assault weapon or  
large-capacity magazine. Any person who violates this paragraph  
commits a felony of the third degree, punishable as provided in  
s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum  
term of imprisonment of 1 year.

(b) Paragraph (a) does not apply to the possession of an  
assault weapon or large-capacity magazine by a member or  
employee of the Department of Law Enforcement, a law enforcement  
agency, as defined in s. 934.02, the Department of Corrections,  
or the military, air, or naval forces of this state or of the  
United States for use in the discharge of his or her official  
duties; nor does this section prohibit the possession or use of  
an assault weapon or large-capacity magazine by a sworn member  
of one of these agencies when on duty and when the use is within  
the scope of his or her duties.



411458

(c) Paragraph (a) does not apply to the possession of an assault weapon or large-capacity magazine by any person before July 1, 2019, if all of the following are applicable:

1. The person is eligible to apply for a certificate of possession for the assault weapon or large-capacity magazine by July 1, 2019;

2. The person lawfully possessed the assault weapon or large-capacity magazine before October 1, 2018; and

3. The person is otherwise in compliance with this section and the applicable requirements of this chapter for possession of a firearm.

(d) Paragraph (a) does not apply to a person who is the executor or administrator of an estate that includes an assault weapon or large-capacity magazine for which a certificate of possession has been issued under subsection (4), if the assault weapon or large-capacity magazine is possessed at a place set forth in subparagraph (4)(c)1. or as authorized by the probate court.

(4) CERTIFICATE OF POSSESSION.—

(a) Any person who lawfully possesses an assault weapon or large-capacity magazine before October 1, 2018, shall apply by October 1, 2019, or, if such person is a member of the military or naval forces of this state or of the United States and cannot apply by October 1, 2019, because he or she is or was on official duty outside this state, shall apply within 90 days after returning to the state, to the Department of Law Enforcement for a certificate of possession with respect to such assault weapon or large-capacity magazine. The certificate must contain a description of the assault weapon or large-capacity





411458

magazine which identifies the assault weapon or large-capacity  
magazine uniquely, including all identification marks; the full  
name, address, date of birth, and thumbprint of the owner; and  
any other information as the department may deem appropriate.  
The department shall adopt rules no later than January 1, 2019,  
to establish procedures with respect to the application for, and  
issuance of, certificates of possession under this section.

(b)1. An assault weapon or large-capacity magazine lawfully  
possessed in accordance with this section may not be sold or  
transferred on or after January 1, 2019, to any person within  
this state other than to a licensed gun dealer, as provided in  
subsection (5); or by a bequest or intestate succession.

2. A person who obtains title to an assault weapon or  
large-capacity magazine for which a certificate of possession  
has been issued under this subsection shall, within 90 days  
after obtaining title, apply to the Department of Law  
Enforcement for a certificate of possession, render the assault  
weapon or large-capacity magazine permanently inoperable, sell  
the assault weapon or large-capacity magazine to a licensed gun  
dealer, or remove the assault weapon or large-capacity magazine  
from the state.

3. A person who moves into the state and who is in lawful  
possession of an assault weapon or large-capacity magazine,  
shall, within 90 days, either render the assault weapon or  
large-capacity magazine permanently inoperable, sell the assault  
weapon or large-capacity magazine to a licensed gun dealer, or  
remove the assault weapon or large-capacity magazine from this  
state, unless the person is a member of the military, air, or  
naval forces of this state or of the United States, is in lawful



411458

possession of an assault weapon or large-capacity magazine, and  
has been transferred into the state after October 1, 2019.

(c) A person who has been issued a certificate of  
possession for an assault weapon or large-capacity magazine  
under this subsection may possess it only if the person is:

1. At the residence, the place of business, or any other  
property owned by that person, or on a property owned by another  
person with the owner's express permission;

2. On the premises of a target range of a public or private  
club or organization organized for the purpose of practicing  
shooting at targets;

3. On a target range that holds a regulatory or business  
license for the purpose of practicing shooting at that target  
range;

4. On the premises of a licensed shooting club;

5. Attending an exhibition, display, or educational project  
on firearms which is sponsored by, conducted under the auspices  
of, or approved by a law enforcement agency or a nationally or  
state-recognized entity that fosters proficiency in, or promotes  
education about, firearms; or

6. Transporting the assault weapon or large-capacity  
magazine between any of the places mentioned in this paragraph,  
or from or to any licensed gun dealer for servicing or repair  
pursuant to paragraph (7) (b), provided the assault weapon or  
large-capacity magazine is transported as required by subsection  
(7).

(5) CERTIFICATE OF TRANSFER.—If an owner of an assault  
weapon or large-capacity magazine sells or transfers the weapon  
or magazine to a licensed gun dealer, he or she must, at the



411458

time of delivery of the weapon, execute a certificate of transfer and cause the certificate to be mailed or delivered to the Department of Law Enforcement. The certificate must contain:

(a) The date of sale or transfer.

(b) The name and address of the seller or transferor and the licensed gun dealer and their social security numbers or driver license numbers.

(c) The licensed gun dealer's federal firearms license number.

(d) A description of the weapon, including the caliber of the weapon and its make, model, and serial number.

(e) Any other information the Department of Law Enforcement prescribes.

The licensed gun dealer shall present his or her driver license or social security card and federal firearms license to the seller or transferor for inspection at the time of purchase or transfer. The Department of Law Enforcement shall maintain a file on all certificates of transfer at its headquarters.

(6) RELINQUISHMENT.—An individual may arrange in advance to relinquish an assault weapon or large-capacity magazine to a law enforcement agency, as defined in s. 934.02, or the Department of Law Enforcement. The assault weapon or large-capacity magazine must be transported in accordance with subsection (7).

(7) TRANSPORTATION.—

(a) A licensed gun dealer who lawfully purchases for resale an assault weapon or large-capacity magazine pursuant to subsection (2) may transport the assault weapon or large-capacity magazine between licensed gun dealers or out of this



411458

state, but no person shall carry a loaded assault weapon  
concealed from public view, or knowingly have in any motor  
vehicle owned, operated, or occupied by him or her a loaded or  
unloaded assault weapon, unless such weapon is kept in the trunk  
of such vehicle or in a case or other container that is  
inaccessible to the operator of or any passenger in such  
vehicle. Any person who violates this paragraph commits a  
misdemeanor of the second degree, punishable as provided in s.  
775.082 or s. 775.083. Any licensed gun dealer may display the  
assault weapon or large-capacity magazine at any gun show or  
sell it to a resident outside this state.

(b) Any licensed gun dealer may transfer possession of any  
assault weapon or large-capacity magazine received pursuant to  
paragraph (a) to a gunsmith for purposes of accomplishing  
service or repair of the same. Transfers are permissible only to  
a gunsmith who is:

1. In the licensed gun dealer's employ; or  
2. Contracted by the licensed gun dealer for gunsmithing  
services, provided the gunsmith holds a dealer's license issued  
pursuant to chapter 44 of Title 18 the United States Code, 18  
U.S.C. ss. 921 et seq., and the regulations issued pursuant  
thereto.

(8) CIRCUMSTANCES IN WHICH MANUFACTURE OR TRANSPORTATION  
NOT PROHIBITED.—This section does not prohibit any person, firm,  
or corporation engaged in the business of manufacturing assault  
weapons or large-capacity magazines in this state from  
manufacturing or transporting assault weapons or large-capacity  
magazines in this state for sale within this state in accordance  
with subparagraph (2)(c)1. or for sale outside this state.



411458

(9) EXCEPTION.—This section does not apply to any firearm modified to render it permanently inoperable.

Section 10. Paragraph (a) of subsection (3) of section 775.087, Florida Statutes, is amended to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(3)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a firearm is an element of the felony, and the conviction was for:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated battery;
- g. Kidnapping;
- h. Escape;
- i. Sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking; or
- q. Trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital



411458

importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1);

and during the commission of the offense, such person possessed a semiautomatic firearm and its high-capacity detachable box magazine, an assault weapon and its large-capacity magazine as defined in s. 790.30, or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 15 years.

2. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine, an assault weapon and its large-capacity magazine as defined in s. 790.30, or a "machine gun" as defined in s. 790.001 shall be sentenced to a minimum term of imprisonment of 20 years.

3. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine, an assault weapon and its large-capacity magazine as



411458

defined in s. 790.30, or a "machine gun" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

Section 11. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, section 27.366, Florida Statutes, is reenacted to read:

27.366 Legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3).—It is the intent of the Legislature that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms provided therein. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life. It is also the intent of the Legislature that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime. For every case in which the offender meets the criteria in this act and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.

Section 12. For the purpose of incorporating the amendment



411458

made by this act to section 775.087, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is reenacted to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:





411458

I. The violation does not include a new felony conviction;  
and

II. The community sanction violation is not based solely on  
the probationer or offender's failure to pay costs or fines or  
make restitution payments.

b. Twenty-four (24) community sanction violation points are  
assessed for the violation and for each successive violation of  
felony probation or community control where the violation  
includes a new felony conviction.

Multiple counts of community sanction violations before the  
sentencing court shall not be a basis for multiplying the  
assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary  
offense or any additional offense ranked in level 8, level 9, or  
level 10, and one or more prior serious felonies, a single  
assessment of thirty (30) points shall be added. For purposes of  
this section, a prior serious felony is an offense in the  
offender's prior record that is ranked in level 8, level 9, or  
level 10 under s. 921.0022 or s. 921.0023 and for which the  
offender is serving a sentence of confinement, supervision, or  
other sanction or for which the offender's date of release from  
confinement, supervision, or other sanction, whichever is later,  
is within 3 years before the date the primary offense or any  
additional offense was committed.

Prior capital felony points: If the offender has one or more  
prior capital felonies in the offender's criminal record, points



411458

shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of



411458

a level 7 or level 8 offense, if the offender provides  
substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a  
violation of the Law Enforcement Protection Act under s.  
775.0823(2), (3), or (4), the subtotal sentence points are  
multiplied by 2.5. If the primary offense is a violation of s.  
775.0823(5), (6), (7), (8), or (9), the subtotal sentence points  
are multiplied by 2.0. If the primary offense is a violation of  
s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement  
Protection Act under s. 775.0823(10) or (11), the subtotal  
sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand  
theft of the third degree involving a motor vehicle and in the  
offender's prior record, there are three or more grand thefts of  
the third degree involving a motor vehicle, the subtotal  
sentence points are multiplied by 1.5.

Offense related to a criminal gang: If the offender is convicted  
of the primary offense and committed that offense for the  
purpose of benefiting, promoting, or furthering the interests of  
a criminal gang as defined in s. 874.03, the subtotal sentence  
points are multiplied by 1.5. If applying the multiplier results  
in the lowest permissible sentence exceeding the statutory  
maximum sentence for the primary offense under chapter 775, the  
court may not apply the multiplier and must sentence the  
defendant to the statutory maximum sentence.



411458

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Adult-on-minor sex offense: If the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Section 13. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 947.146, Florida Statutes, is reenacted to read:

947.146 Control Release Authority.—



411458

(3) Within 120 days prior to the date the state correctional system is projected pursuant to s. 216.136 to exceed 99 percent of total capacity, the authority shall determine eligibility for and establish a control release date for an appropriate number of parole ineligible inmates committed to the department and incarcerated within the state who have been determined by the authority to be eligible for discretionary early release pursuant to this section. In establishing control release dates, it is the intent of the Legislature that the authority prioritize consideration of eligible inmates closest to their tentative release date. The authority shall rely upon commitment data on the offender information system maintained by the department to initially identify inmates who are to be reviewed for control release consideration. The authority may use a method of objective risk assessment in determining if an eligible inmate should be released. Such assessment shall be a part of the department's management information system. However, the authority shall have sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the release of a sufficient number of inmates to maintain the inmate population between 99 percent and 100 percent of total capacity. Inmates who are ineligible for control release are inmates who are parole eligible or inmates who:

(b) Are serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

In making control release eligibility determinations under this subsection, the authority may rely on any document leading to or



411458

generated during the course of the criminal proceedings,  
including, but not limited to, any presentence or postsentence  
investigation or any information contained in arrest reports  
relating to circumstances of the offense.

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

And the title is amended as follows:

Delete line 91

and insert:

and informational material; creating s. 790.30, F.S.;  
defining terms; prohibiting the sale or transfer of an  
assault weapon or large-capacity magazine; providing  
criminal penalties; providing exceptions to the  
prohibition; prohibiting possession of an assault  
weapon or large-capacity magazine; providing criminal  
penalties; providing exceptions to the prohibition;  
requiring that a person who lawfully possessed such a  
weapon or magazine before a specified date obtain a  
certificate of possession; providing requirements for  
the certificate; requiring the Department of Law  
Enforcement to adopt rules by a certain date; limiting  
transfers of assault weapons or large-capacity  
magazines represented by such certificates as of a  
specified date; providing conditions for continued  
possession of such weapons or magazines; requiring  
certificates of transfer for the sale or transfer of  
such weapons or magazines; requiring that the  
department maintain records of such sales or  
transfers; providing for relinquishment of assault



411458

weapons or large-capacity magazines to law enforcement agencies or the department; providing requirements for transportation of assault weapons or large-capacity magazines; providing criminal penalties for violations; specifying circumstances in which the manufacture or transportation of assault weapons or large-capacity magazines is not prohibited; exempting permanently inoperable firearms from all such provisions; amending s. 775.087, F.S.; providing enhanced criminal penalties for certain offenses when a person committed them with an assault weapon and large-capacity magazine; reenacting ss. 27.366, 921.0024(1)(b), and 947.146(3)(b), F.S., relating to legislative intent and policy in certain cases, the Criminal Punishment Code worksheet key, and the Control Release Authority, respectively, to incorporate the amendment made to s. 775.087, F.S., in references thereto; reenacting ss. 397.6760(2)



772096

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Braynon) recommended the following:

**Senate Amendment (with title amendment)**

Between lines 851 and 852

insert:

Section 11. Section 16.63, Florida Statutes, is created to read:

16.63 Medical Reimbursement Program for Victims of Mass Shootings.—The Medical Reimbursement Program for Victims of Mass Shootings is established in the Department of Legal Affairs to reimburse trauma centers verified or designated pursuant to s. 395.4025 for the medical costs of treating victims for injuries





772096

associated with a mass shooting. As used in this section, the term "mass shooting" means an incident in which four or more people are killed or injured by firearms in one or more locations in close proximity. The Department of Legal Affairs must reimburse such trauma centers based on a department-approved fee schedule for the documented medical costs of treating victims for injuries associated with a mass shooting. A trauma center that requests a reimbursement through the program must accept the reimbursement as payment in full and may not bill the victim of a mass shooting or his or her family.

Section 12. The sum of \$10 million in recurring funds from the General Revenue Fund is appropriated to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 13. Each January 1, the Department of Agriculture and Consumer Services shall transfer 10 percent of the fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

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

And the title is amended as follows:

Delete line 96  
and insert:



772096

in references thereto; creating s. 16.63, F.S.;  
establishing the Medical Reimbursement Program for  
Victims of Mass Shootings in the Department of Legal  
Affairs; defining the term "mass shooting"; requiring  
the department to reimburse verified or designated  
trauma centers for certain costs associated with  
treating victims for injuries associated with a mass  
shooting; requiring a verified or designated trauma  
center that requests a reimbursement to accept it as  
payment in full; providing an appropriation; requiring  
the Department of Agriculture and Consumer Services to  
transfer, annually and by a specified date, a  
percentage of the fees collected for new and renewal  
concealed weapon or firearm licenses from the Division  
of Licensing Trust Fund to the Department of Legal  
Affairs to reimburse the trauma centers; providing an  
effective date.

FOR CONSIDERATION By the Committee on Rules

595-03525-18

20187022pb

1 A bill to be entitled  
 2 An act relating to firearm safety; amending s.  
 3 394.463, F.S.; authorizing a law enforcement officer  
 4 to seize and hold firearms and ammunition if taking  
 5 custody of a person who poses a potential danger to  
 6 himself or herself or others and who has made a  
 7 credible threat against another person; requiring the  
 8 law enforcement officer's agency to hold seized  
 9 firearms and ammunition under certain circumstances;  
 10 requiring law enforcement agencies to develop certain  
 11 policies and procedures; authorizing a law enforcement  
 12 officer to petition a court for a risk protection  
 13 order under certain circumstances; creating s.  
 14 790.064, F.S.; prohibiting a person who has been  
 15 adjudicated mentally defective or been committed to a  
 16 mental institution from owning or possessing a firearm  
 17 until certain relief is obtained; specifying that the  
 18 firearm possession and ownership disability runs  
 19 concurrently with the firearm purchase disability  
 20 under certain provisions; authorizing a person to  
 21 petition for relief from the firearm possession and  
 22 ownership disability; requiring that petitions for  
 23 relief follow certain procedures; authorizing such  
 24 person to petition for simultaneous relief; amending  
 25 s. 790.065, F.S.; prohibiting a person younger than a  
 26 certain age from purchasing a firearm; prohibiting the  
 27 sale or transfer, or facilitation of a sale or  
 28 transfer, of a firearm to a person younger than a  
 29 certain age by a licensed importer, licensed

Page 1 of 30

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595-03525-18

20187022pb

30 manufacturer, or licensed dealer; providing criminal  
 31 penalties; providing an exception; amending s.  
 32 790.0655, F.S.; revising the mandatory waiting period  
 33 to the later of either 3 days, excluding weekends and  
 34 legal holidays, or upon the completion of certain  
 35 records checks, whichever occurs first; prohibiting  
 36 the waiting period from being longer than a certain  
 37 time; revising and redefining terms; requiring that  
 38 records of firearm sales be available for inspection  
 39 by any law enforcement agency during normal business  
 40 hours; revising applicability of the waiting period;  
 41 conforming provisions to changes made by the act;  
 42 creating s. 790.34, F.S.; defining the term "bump-fire  
 43 stock"; prohibiting the importation, transfer,  
 44 distribution, transport, sale, or giving of a bump-  
 45 fire stock in this state; providing criminal  
 46 penalties; providing legislative intent; providing a  
 47 short title; creating s. 790.401, F.S.; defining  
 48 terms; creating an action known as a petition for a  
 49 risk protection order to prevent persons who are at  
 50 high risk of harming themselves or others from  
 51 accessing firearms or ammunition; providing  
 52 requirements for petitions for such orders; providing  
 53 duties for courts and clerks of court; prohibiting  
 54 fees for the filing of or service of process of such  
 55 petitions; providing for jurisdiction for such  
 56 petitions; requiring hearings on petitions within a  
 57 specified period; providing service requirements;  
 58 providing grounds that may be considered in

Page 2 of 30

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595-03525-18

20187022pb

59 determining whether to grant such a petition;  
 60 providing requirements for proceedings; providing  
 61 requirements for risk protection orders; requiring the  
 62 court to inform a respondent of his or her right to  
 63 request a certain hearing; authorizing temporary ex  
 64 parte orders under certain circumstances; providing  
 65 requirements for petitions for such ex parte orders;  
 66 providing for service of orders; providing for the  
 67 termination or extension of an order; providing for  
 68 the surrender and storage of firearms and ammunition  
 69 after issuance of a risk protection order; requiring  
 70 law enforcement agencies to develop certain policies  
 71 and procedures by a certain date; providing for return  
 72 of firearms and ammunition upon the vacating or end  
 73 without the extension of an order under certain  
 74 circumstances; authorizing a respondent to elect to  
 75 transfer all firearms and ammunition surrendered or  
 76 seized by a law enforcement agency to another person  
 77 under certain circumstances; requiring an issuing  
 78 court to forward specified information concerning a  
 79 respondent to the department; requiring the department  
 80 to suspend a license to carry a concealed weapon or  
 81 firearm which is held by a person subject to such an  
 82 order; prohibiting a person from knowingly filing a  
 83 petition for such an order which contains materially  
 84 false or misleading information; providing criminal  
 85 penalties; prohibiting violations of such an order;  
 86 providing criminal penalties; providing construction;  
 87 providing that the risk protection order provisions do

595-03525-18

20187022pb

88 not create liability for certain acts or omissions;  
 89 requiring the Office of the State Courts Administrator  
 90 to develop and distribute certain instructional  
 91 and informational material; reenacting ss. 397.6760(2)  
 92 and 790.335(3)(e), F.S., relating to the  
 93 confidentiality of court records and exceptions to the  
 94 prohibition of registration of firearms, respectively,  
 95 to incorporate the amendment made to s. 790.065, F.S.,  
 96 in references thereto; providing an effective date.

97  
 98 Be It Enacted by the Legislature of the State of Florida:  
 99

100 Section 1. Paragraphs (c) and (d) of subsection (2) of  
 101 section 394.463, Florida Statutes, are amended to read:

102 394.463 Involuntary examination.—

103 (2) INVOLUNTARY EXAMINATION.—

104 (c) A law enforcement officer acting in accordance with an  
 105 ex parte order issued pursuant to this subsection may:

106 1. Serve and execute such order on any day of the week, at  
 107 any time of the day or night; and

108 2. Use such reasonable physical force as is necessary to  
 109 gain entry to the premises, and any dwellings, buildings, or  
 110 other structures located on the premises, and take custody of  
 111 the person who is the subject of the ex parte order.

112 (d) A law enforcement officer taking custody of a person  
 113 under this subsection may seize and hold a firearm or any  
 114 ammunition the person possesses at the time of taking him or her  
 115 into custody if the person poses a potential danger to himself  
 116 or herself or others and has made a credible threat of violence

595-03525-18

20187022pb

117 against another person.

118 1. If a law enforcement officer seizes a firearm or any  
 119 ammunition, the law enforcement officer's agency must hold the  
 120 seized firearm or ammunition for at least a 72-hour period or  
 121 until the person goes to the law enforcement agency to retrieve  
 122 the seized firearm or ammunition. Law enforcement agencies must  
 123 develop policies and procedures relating to the seizure,  
 124 storage, and return of such seized firearms or ammunition.

125 2. If the person has a firearm or any ammunition that was  
 126 not seized when he or she was taken into custody, a law  
 127 enforcement officer may petition the appropriate court for a  
 128 risk protection order against the person pursuant to s. 790.401.  
 129 A law enforcement officer acting in accordance with an ex parte  
 130 order issued pursuant to this subsection may use such reasonable  
 131 physical force as is necessary to gain entry to the premises,  
 132 and any dwellings, buildings, or other structures located on the  
 133 premises, and to take custody of the person who is the subject  
 134 of the ex parte order.

135 Section 2. Section 790.064, Florida Statutes, is created to  
 136 read:

137 790.064 Firearm possession and firearm ownership  
 138 disability.—

139 (1) A person who has been adjudicated mentally defective or  
 140 who has been committed to a mental institution as those terms  
 141 are defined in s. 790.065(2) may not own a firearm or possess a  
 142 firearm until relief from the firearm possession and firearm  
 143 ownership disability is obtained.

144 (2) The firearm possession and firearm ownership disability  
 145 runs concurrently with the firearm purchase disability provided

595-03525-18

20187022pb

146 in s. 790.065(2).

147 (3) A person may petition the court that made the  
 148 adjudication or commitment, or that ordered the record be  
 149 submitted to the Department of Law Enforcement pursuant to s.  
 150 790.065(2), for relief from the firearm possession and firearm  
 151 ownership disability.

152 (4) The person seeking relief must follow the procedures  
 153 set forth in s. 790.065(2) for obtaining relief from the firearm  
 154 purchase disability in seeking relief from the firearm  
 155 possession and firearm ownership disability.

156 (5) The person may seek relief from the firearm possession  
 157 and firearm ownership disability simultaneously with the relief  
 158 being sought from the firearm purchase disability, if such  
 159 relief is sought, pursuant to the procedure set forth in s.  
 160 790.065(2).

161 Section 3. Present subsection (13) of section 790.065,  
 162 Florida Statutes, is redesignated as subsection (14), and a new  
 163 subsection (13) is added to that section, to read:

164 790.065 Sale and delivery of firearms.—

165 (13) A person younger than 21 years of age may not purchase  
 166 a firearm. The sale or transfer of a firearm to a person younger  
 167 than 21 years of age may not be made or facilitated by a  
 168 licensed importer, licensed manufacturer, or licensed dealer. A  
 169 person who violates this subsection commits a felony of the  
 170 third degree, punishable as provided in s. 775.082, s. 775.083,  
 171 or s. 775.084. The prohibition on the purchase of a firearm by a  
 172 person younger than 21 years of age or the sale or transfer by a  
 173 licensed importer, licensed manufacturer, or licensed dealer to  
 174 a person younger than 21 years of age does not apply to a member

595-03525-18

20187022pb

of the military or naval forces of this state or of the United States or to a law enforcement officer or a correctional officer, as those terms are defined in s. 943.10.

Section 4. Section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of firearms handguns; mandatory waiting period; exceptions; penalties.—

(1) (a) ~~There shall be~~ A mandatory ~~3-day~~ waiting period is imposed between the purchase and delivery of a firearm. The mandatory waiting period is, which shall be 3 days, excluding weekends and legal holidays, or upon the completion of the records checks required under s. 790.065, whichever occurs later between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. ~~"Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver.~~ "Retailer" means and includes a licensed importer, licensed manufacturer, or licensed dealer ~~every person~~ engaged in the business of making firearm sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).

(b) Records of firearm handgun sales must be available for inspection by any law enforcement agency, as defined in s. 934.02, during normal business hours.

(2) The ~~3-day~~ waiting period does shall not apply in the following circumstances:

(a) When a firearm handgun is being purchased by a holder of a concealed weapons permit as defined in s. 790.06.

(b) To a trade-in of another firearm handgun.

595-03525-18

20187022pb

(c) To a person who completes a 16-hour hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or similar agency of another state.

(3) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) For any retailer, or any employee or agent of a retailer, to deliver a firearm handgun before the expiration of the ~~3-day~~ waiting period, subject to the exceptions provided in subsection (2).

(b) For a purchaser to obtain delivery of a firearm handgun by fraud, false pretense, or false representation.

Section 5. Section 790.34, Florida Statutes, is created to read:

790.34 Prohibited device for firearm.—

(1) DEFINITION.—As used in this section, the term "bump-fire stock" means a gun conversion kit, a tool, an accessory, or a device used to alter the rate of fire of a firearm to mimic automatic weapon fire or which is used to increase the rate of fire of a semiautomatic firearm to a faster rate than is possible for a person to fire such semiautomatic firearm unassisted by a kit, a tool, an accessory, or a device.

(2) SALE OR TRANSFER.—A person may not import into this state or, within this state, transfer, distribute, transport, sell, keep for sale, offer or expose for sale, or give a bump-fire stock to another person. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. (1) Section 790.401, Florida Statutes, is intended to temporarily prevent individuals who are at high risk

595-03525-18

20187022pb

of harming themselves or others from accessing firearms or ammunition by allowing law enforcement officers to obtain a court order when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.

(2) The purpose and intent of s. 790.401, Florida Statutes, is to reduce deaths and injuries as a result of certain individuals' use of firearms while respecting constitutional rights by providing a judicial procedure for law enforcement officers to obtain a court order temporarily restricting a person's access to firearms and ammunition. The process established by s. 790.401, Florida Statutes, is intended to apply only to situations in which the person poses a significant danger of harming himself or herself or others by possessing a firearm or ammunition and to include standards and safeguards to protect the rights of respondents and due process of law.

Section 7. Section 790.401, Florida Statutes, may be cited as "The Risk Protection Order Act."

Section 8. Section 790.401, Florida Statutes, is created to read:

790.401 Risk protection orders.—

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

(a) "Petitioner" means a law enforcement officer or a law enforcement agency who petitions a court for a risk protection order under this section.

(b) "Respondent" means the individual who is identified as the respondent in a petition filed under this section.

(c) "Risk protection order" means a temporary ex parte

595-03525-18

20187022pb

order or a final order granted under this section.

(2) PETITION FOR A RISK PROTECTION ORDER.—There is created an action known as a petition for a risk protection order.

(a) A petition for a risk protection order may be filed by a law enforcement officer or law enforcement agency.

(b) An action under this section must be filed in the county where the petitioner's law enforcement office is located or the county where the respondent resides.

(c) Such petition for a risk protection order does not require either party to be represented by an attorney.

(d) Notwithstanding any other law, attorney fees may not be awarded in any proceeding under this section.

(e) A petition must:

1. Allege that the respondent poses a significant danger of causing personal injury to himself or herself or others by having a firearm or any ammunition in his or her custody or control or by potentially purchasing, possessing, or receiving a firearm or any ammunition, and must be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;

2. Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control; and

3. Identify whether there is a known existing protection order governing the respondent under s. 741.30, s. 784.046, or s. 784.0485, or under any other applicable statute.

(f) The petitioner must make a good faith effort to provide

595-03525-18

20187022pb

notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so, and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice.

(g) A petitioner must list the address of record on the petition as being where the appropriate law enforcement agency is located.

(h) A court or a public agency may not charge fees for filing or for service of process to a petitioner seeking relief under this section and must provide the necessary number of certified copies, forms, and instructional brochures free of charge.

(i) A person is not required to post a bond to obtain relief in any proceeding under this section.

(j) The circuit courts of this state have jurisdiction over proceedings under this section.

### (3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

(a) Upon receipt of a petition, the court must order a hearing to be held no later than 14 days after the date of the order and must issue a notice of hearing to the respondent for the same.

1. The clerk of the court shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in subsection (5).

595-03525-18

20187022pb

2. The court may, as provided in subsection (4), issue a temporary ex parte risk protection order pending the hearing ordered under this subsection. Such temporary ex parte order must be served concurrently with the notice of hearing and petition as provided in subsection (5).

3. The court may conduct a hearing by telephone pursuant to a local court rule to reasonably accommodate a disability or exceptional circumstances. The court must receive assurances of the petitioner's identity before conducting a telephonic hearing.

(b) Upon notice and a hearing on the matter, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months.

(c) In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

1. A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm.

2. An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others.

3. Evidence of the respondent being seriously mentally ill



595-03525-18

20187022pb

or having recurring mental health issues.

4. A violation by the respondent of a protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.

5. A previous or existing risk protection order issued against the respondent.

6. A violation of a previous or existing risk protection order issued against the respondent.

7. Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28.

8. The respondent's ownership of, access to, or intent to possess firearms or ammunition.

9. The unlawful or reckless use, display, or brandishing of a firearm by the respondent.

10. The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person.

11. Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.

12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.

13. Evidence of recent acquisition of firearms or ammunition by the respondent.

14. Any relevant information from family and household members concerning the respondent.

595-03525-18

20187022pb

(d) A person, including an officer of the court, who offers evidence or recommendations relating to the cause of action must either present the evidence or recommendations in writing to the court with copies to each party and their attorney, if one is retained, or must present the evidence under oath at a hearing at which all parties are present.

(e) In a hearing under this section, the rules of evidence apply to the same extent as in a domestic violence injunction proceeding under s. 741.30.

(f) During the hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination is made, may order such evaluations, if appropriate.

(g) A risk protection order must include all of the following:

1. A statement of the grounds supporting the issuance of the order;

2. The date the order was issued;

3. The date the order ends;

4. Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

5. The address of the court in which any responsive pleading should be filed;

6. A description of the requirements for the surrender of firearms and ammunition under subsection (7); and

7. The following statement:

"To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you

595-03525-18

20187022pb

407 must surrender immediately to the (insert name of local law  
 408 enforcement agency) all firearms and ammunition in your custody,  
 409 control, or possession and any license to carry a concealed  
 410 weapon or firearm issued to you under s. 790.06, Florida  
 411 Statutes. You may not have in your custody or control, or  
 412 purchase, possess, receive, or attempt to purchase or receive, a  
 413 firearm or ammunition while this order is in effect. You have  
 414 the right to request one hearing to vacate this order, starting  
 415 after the date of the issuance of this order, and to request  
 416 another hearing after every extension of the order, if any. You  
 417 may seek the advice of an attorney as to any matter connected  
 418 with this order."

419  
 420 (h) If the court issues a risk protection order, the court  
 421 must inform the respondent that he or she is entitled to request  
 422 a hearing to vacate the order in the manner provided by  
 423 subsection (6). The court shall provide the respondent with a  
 424 form to request a hearing to vacate.

425 (i) If the court denies the petitioner's request for a risk  
 426 protection order, the court must state the particular reasons  
 427 for the denial.

428 (4) TEMPORARY EX PARTE RISK PROTECTION ORDERS.—

429 (a) A petitioner may request that a temporary ex parte risk  
 430 protection order be issued before a hearing for a risk  
 431 protection order, without notice to the respondent, by including  
 432 in the petition detailed allegations based on personal knowledge  
 433 that the respondent poses a significant danger of causing  
 434 personal injury to himself or herself or others in the near  
 435 future by having in his or her custody or control, or by

595-03525-18

20187022pb

436 purchasing, possessing, or receiving a firearm or ammunition.

437 (b) In considering whether to issue a temporary ex parte  
 438 risk protection order under this section, the court shall  
 439 consider all relevant evidence, including the evidence described  
 440 in paragraph (3) (c).

441 (c) If a court finds there is reasonable cause to believe  
 442 that the respondent poses a significant danger of causing  
 443 personal injury to himself or herself or others in the near  
 444 future by having in his or her custody or control, or by  
 445 purchasing, possessing, or receiving a firearm or ammunition,  
 446 the court must issue a temporary ex parte risk protection order.

447 (d) The court must hold a temporary ex parte risk  
 448 protection order hearing in person or by telephone on the day  
 449 the petition is filed or on the business day immediately  
 450 following the day the petition is filed.

451 (e) A temporary ex parte risk protection order must include  
 452 all of the following:

- 453 1. A statement of the grounds asserted for the order;
- 454 2. The date the order was issued;
- 455 3. The address of the court in which any responsive
- 456 pleading may be filed;
- 457 4. The date and time of the scheduled hearing;
- 458 5. A description of the requirements for surrender of
- 459 firearms and ammunition under subsection (7); and
- 460 6. The following statement:

461  
 462 "To the subject of this protection order: This order is valid  
 463 until the date noted above. You are required to surrender all  
 464 firearms and ammunition in your custody, control, or possession.

595-03525-18

20187022pb

465 You may not have in your custody or control, or purchase,  
 466 possess, receive, or attempt to purchase or receive, a firearm  
 467 or ammunition while this order is in effect. You must surrender  
 468 immediately to the (insert name of local law enforcement agency)  
 469 all firearms and ammunition in your custody, control, or  
 470 possession and any license to carry a concealed weapon or  
 471 firearm issued to you under s. 790.06, Florida Statutes. A  
 472 hearing will be held on the date and at the time noted above to  
 473 determine if a risk protection order should be issued. Failure  
 474 to appear at that hearing may result in a court ruling on an  
 475 order against you which is valid for 1 year. You may seek the  
 476 advice of an attorney as to any matter connected with this  
 477 order.”

478  
 479 (f) A temporary ex parte risk protection order ends upon  
 480 the hearing on the risk protection order.

481 (g) A temporary ex parte risk protection order must be  
 482 served by a law enforcement officer in the same manner as  
 483 provided for in subsection (5) for service of the notice of  
 484 hearing and petition and must be served concurrently with the  
 485 notice of hearing and petition.

486 (h) If the court denies the petitioner's request for a  
 487 temporary ex parte risk protection order, the court must state  
 488 the particular reasons for the denial.

489 (5) SERVICE.—

490 (a) The clerk of the court shall furnish a copy of the  
 491 notice of hearing, petition, and temporary ex parte risk  
 492 protection order or risk protection order, as applicable, to the  
 493 sheriff of the county where the respondent resides or can be

595-03525-18

20187022pb

494 found, who shall serve it upon the respondent as soon thereafter  
 495 as possible on any day of the week and at any time of the day or  
 496 night. When requested by the sheriff, the clerk of the court may  
 497 transmit a facsimile copy of a temporary ex parte risk  
 498 protection order or a risk protection order that has been  
 499 certified by the clerk of the court, and this facsimile copy may  
 500 be served in the same manner as a certified copy. Upon receiving  
 501 a facsimile copy, the sheriff must verify receipt with the  
 502 sender before attempting to serve it upon the respondent. The  
 503 clerk of the court shall be responsible for furnishing to the  
 504 sheriff information on the respondent's physical description and  
 505 location. Notwithstanding any other provision of law to the  
 506 contrary, the chief judge of each circuit, in consultation with  
 507 the appropriate sheriff, may authorize a law enforcement agency  
 508 within the jurisdiction to effect service. A law enforcement  
 509 agency effecting service pursuant to this section shall use  
 510 service and verification procedures consistent with those of the  
 511 sheriff. Service under this section takes precedence over the  
 512 service of other documents, unless the other documents are of a  
 513 similar emergency nature.

514 (b) All orders issued, changed, continued, extended, or  
 515 vacated after the original service of documents specified in  
 516 paragraph (a) must be certified by the clerk of the court and  
 517 delivered to the parties at the time of the entry of the order.  
 518 The parties may acknowledge receipt of such order in writing on  
 519 the face of the original order. In the event a party fails or  
 520 refuses to acknowledge the receipt of a certified copy of an  
 521 order, the clerk shall note on the original order that service  
 522 was effected. If delivery at the hearing is not possible, the

595-03525-18

20187022pb

clerk shall mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

(6) TERMINATION AND EXTENSION OF ORDERS.—

(a) The respondent may submit one written request for a hearing to vacate a risk protection order issued under this section, starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any.

1. Upon receipt of the request for a hearing to vacate a risk protection order, the court shall set a date for a hearing. Notice of the request must be served on the petitioner in accordance with subsection (5). The hearing must occur no sooner than 14 days and no later than 30 days after the date of service of the request upon the petitioner.

2. The respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition. The court may consider any relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

3. If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

4. The law enforcement agency holding any firearm or

595-03525-18

20187022pb

ammunition that has been surrendered pursuant to this section shall be notified of the court order to vacate the risk protection order.

(b) The court must notify the petitioner of the impending end of a risk protection order. Notice must be received by the petitioner 30 calendar days before the date the order ends.

(c) The petitioner may, by motion, request an extension of a risk protection order at any time within 30 calendar days before the end of the order.

1. Upon receipt of the motion to extend, the court shall order that a hearing be held no later than 14 days after the date the order is issued and shall schedule such hearing.

a. The court may schedule a hearing by telephone in the manner provided by subparagraph (3)(a)3.

b. The respondent must be personally served in the same manner provided by subsection (5).

2. In determining whether to extend a risk protection order issued under this section, the court may consider all relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

3. If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order as provided in subsection (3) continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension.

595-03525-18

20187022pb

581 4. The court may extend a risk protection order for a  
 582 period that it deems appropriate, up to and including but not  
 583 exceeding 12 months, subject to an order to vacate as provided  
 584 in paragraph (a) or to another extension order by the court.

585 (7) SURRENDER OF FIREARMS AND AMMUNITION.—

586 (a) Upon issuance of a risk protection order under this  
 587 section, including a temporary ex parte risk protection order,  
 588 the court shall order the respondent to surrender to the local  
 589 law enforcement agency all firearms and ammunition in the  
 590 respondent's custody, control, or possession except as provided  
 591 in subsection (9), and any license to carry a concealed weapon  
 592 or firearm issued under s. 790.06.

593 (b) The law enforcement officer serving a risk protection  
 594 order under this section, including a temporary ex parte risk  
 595 protection order, shall request that the respondent immediately  
 596 surrender all firearms and ammunition in his or her custody,  
 597 control, or possession and any license to carry a concealed  
 598 weapon or firearm issued under s. 790.06, and shall conduct a  
 599 search authorized by law for such firearms and ammunition. The  
 600 law enforcement officer shall take possession of all firearms  
 601 and ammunition belonging to the respondent which are  
 602 surrendered, in plain sight, or discovered pursuant to a lawful  
 603 search. Alternatively, if personal service by a law enforcement  
 604 officer is not possible or is not required because the  
 605 respondent was present at the risk protection order hearing, the  
 606 respondent shall surrender the firearms and ammunition in a safe  
 607 manner to the control of the local law enforcement agency  
 608 immediately after being served with the order by service or  
 609 immediately after the hearing at which the respondent was

595-03525-18

20187022pb

610 present.

611 (c) At the time of surrender, a law enforcement officer  
 612 taking possession of a firearm, any ammunition, or a license to  
 613 carry a concealed weapon or firearm shall issue a receipt  
 614 identifying all firearms and the quantity and type of ammunition  
 615 that have been surrendered and shall provide a copy of the  
 616 receipt to the respondent. Within 72 hours after service of the  
 617 order, the law enforcement officer serving the order shall file  
 618 the original receipt with the court and shall ensure that his or  
 619 her law enforcement agency retains a copy of the receipt.

620 (d) Notwithstanding ss. 933.02 and 933.18, upon the sworn  
 621 statement or testimony of any person alleging that the  
 622 respondent has failed to comply with the surrender of firearms  
 623 or ammunition as required by an order issued under this section,  
 624 the court shall determine whether probable cause exists to  
 625 believe that the respondent has failed to surrender all firearms  
 626 or ammunition in his or her custody, control, or possession. If  
 627 the court finds that probable cause exists, the court must issue  
 628 a warrant describing the firearms or ammunition and authorizing  
 629 a search of the locations where the firearms or ammunition are  
 630 reasonably believed to be found and the seizure of any firearms  
 631 or ammunition discovered pursuant to such search.

632 (e) If a person other than the respondent claims title to  
 633 any firearms or ammunition surrendered pursuant to this section,  
 634 and he or she is determined by the law enforcement agency to be  
 635 the lawful owner of the firearm or ammunition, the firearm or  
 636 ammunition shall be returned to him or her, provided that:

637 1. The lawful owner agrees to store the firearm or  
 638 ammunition in a manner such that the respondent does not have

595-03525-18

20187022pb

access to or control of the firearm or ammunition.

2. The firearm or ammunition is not otherwise unlawfully possessed by the owner.

(f) Upon the issuance of a risk protection order, the court shall order a new hearing date and require the respondent to appear no later than 3 business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition in his or her custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.

(g) All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms or ammunition required to be surrendered under this section.

(8) RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION.—

(a) If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized pursuant to this section must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

(b) If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon or firearm pursuant to this section, must reinstate such license

595-03525-18

20187022pb

only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06.

(c) A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition.

(d) Any firearm and ammunition surrendered by a respondent pursuant to subsection (7) which remains unclaimed by the lawful owner after an order to vacate the risk protection order shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

(9) TRANSFER OF FIREARMS AND AMMUNITION.—A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency pursuant to subsection (7) to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient:

(a) Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;

(b) Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and

(c) Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the

595-03525-18

20187022pb

respondent is vacated or ends without extension.

(10) REPORTING OF ORDERS.—

(a) Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.

(b) Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms or ammunition, and into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

(c) The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall

595-03525-18

20187022pb

determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

(d) If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to paragraph (b).

(11) PENALTIES.—

(a) A person who files a petition under this section knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by an order issued under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) LAW ENFORCEMENT RETAINS OTHER AUTHORITY.—This section does not affect the ability of a law enforcement officer to remove a firearm or ammunition or license to carry a concealed weapon or concealed firearm from any person or to conduct any search and seizure for firearms or ammunition pursuant to other

595-03525-18

20187022pb

lawful authority.

(13) LIABILITY.—Except as provided in subsection (10), this section does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a risk protection order or temporary ex parte risk protection order, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file, a petition under this section.

(14) INSTRUCTIONAL AND INFORMATIONAL MATERIAL.—

(a) The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms must be used after January 1, 2019, for all petitions filed and orders issued pursuant to this section. The office shall determine the significant non-English-speaking or limited English-speaking populations in the state and prepare the instructions and informational brochures, standard petitions and risk protection order forms in these languages. The instructions, brochures, forms, and handbook must be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and must be available online to the public.

1. The instructions must be designed to assist petitioners in completing the petition and must include a sample of a

595-03525-18

20187022pb

standard petition and order for protection forms.

2. The instructions and standard petition must include a means for the petitioner to identify, with only layman's knowledge, the firearms or ammunition the respondent may own, possess, receive, or have in his or her custody or control. The instructions must provide pictures of types of firearms and ammunition that the petitioner may choose from to identify the relevant firearms or ammunition, or must provide an equivalent means to allow petitioners to identify firearms or ammunition without requiring specific or technical knowledge regarding the firearms or ammunition.

3. The informational brochure must describe the use of and the process for obtaining, extending, and vacating a risk protection order under this section, and must provide relevant forms.

4. The risk protection order form must include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written request."

5. The court staff handbook must allow for the addition of a community resource list by the clerk of the court.

(b) Any clerk of court may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in paragraph (a).



595-03525-18

20187022pb

813 (c) The Office of the State Courts Administrator shall  
 814 distribute a master copy of the petition and order forms,  
 815 instructions, and informational brochures to the clerks of  
 816 court. Distribution of all documents shall, at a minimum, be in  
 817 an electronic format or formats accessible to all courts and  
 818 clerks of court in the state.

819 (d) Within 90 days of receipt of the master copy from the  
 820 Office of the State Courts Administrator, the clerk of the court  
 821 shall make available the standardized forms, instructions, and  
 822 informational brochures required by this subsection.

823 (e) The Office of the State Courts Administrator shall  
 824 update the instructions, brochures, standard petition and risk  
 825 protection order forms, and court staff handbook as necessary,  
 826 including when changes in the law make an update necessary.

827 Section 9. For the purpose of incorporating the amendment  
 828 made by this act to section 790.065, Florida Statutes, in a  
 829 reference thereto, subsection (2) of section 397.6760, Florida  
 830 Statutes, is reenacted to read:

831 397.6760 Court records; confidentiality.—

832 (2) This section does not preclude the clerk of the court  
 833 from submitting the information required by s. 790.065 to the  
 834 Department of Law Enforcement.

835 Section 10. For the purpose of incorporating the amendment  
 836 made by this act to section 790.065, Florida Statutes, in a  
 837 reference thereto, paragraph (e) of subsection (3) of section  
 838 790.335, Florida Statutes, is reenacted to read:

839 790.335 Prohibition of registration of firearms; electronic  
 840 records.—

841 (3) EXCEPTIONS.—The provisions of this section shall not

595-03525-18

20187022pb

842 apply to:

843 (e)1. Records kept pursuant to the recordkeeping provisions  
 844 of s. 790.065; however, nothing in this section shall be  
 845 construed to authorize the public release or inspection of  
 846 records that are made confidential and exempt from the  
 847 provisions of s. 119.07(1) by s. 790.065(4)(a).

848 2. Nothing in this paragraph shall be construed to allow  
 849 the maintaining of records containing the names of purchasers or  
 850 transferees who receive unique approval numbers or the  
 851 maintaining of records of firearm transactions.

852 Section 11. This act shall take effect October 1, 2018.

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7024

INTRODUCER: Rules Committee

SUBJECT: Public Records/Victim of a Crime of Mass Violence

DATE: February 26, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Brown	Phelps		<b>RC Submitted as Comm. Bill/Fav</b>

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## **I. Summary:**

SB 7024 creates a new public records exemption for the address of a victim of an incident of mass violence. Specifically, the bill makes exempt from public records disclosure the address of a victim of an incident of mass violence, defined as an incident in which three or more people other than the perpetrator, are severely injured or killed by an intentional act of violence. A victim is considered to be a person killed or injured during an incident of mass violence.

The bill includes the required statement of public necessity.

The bill provides for an Open Government Sunset Review and specifies that the bill stands repealed October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that time.

The Rules Committee voted on February 26, 2018, to include definitions in the bill for the term “incident of mass violence,” and “victim”; protect an address of a victim of mass violence that takes place anywhere and that appears in any public record; and remove the retroactivity provision.

A two-thirds vote of each chamber is required for passage of the bill because it creates a new public records exemption.

The bill takes effect upon becoming a law.

## **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.<sup>1</sup> This applies to the official business

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.<sup>9</sup> 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.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

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<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *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.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>12</sup> 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.<sup>13</sup>

### **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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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;<sup>17</sup>
- 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;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>20</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

<sup>12</sup> 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).

<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> 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.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
5. Is the record or meeting protected by another exemption?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>21</sup> 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.<sup>22</sup>

### **Public Records and Information about a Victim**

General exemptions from public records disclosure are provided in s. 119.071, F.S. Certain information that is received or held by an agency regarding an agency investigation including a criminal investigation is protected from disclosure under public records law. The following are examples of exemptions which apply to information about a victim:

- Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime received by an agency that regularly receives information from or concerning victims of a crime, is exempt from public records requirements<sup>23</sup>;
- Criminal intelligence or criminal investigative information that reveals the identity of a victim of child abuse, human trafficking of a child, or a sexual offense is confidential and exempt from public records requirements<sup>24</sup>; and
- Personal identifying information of an alleged victim in an allegation of sexual harassment is confidential and exempt from public records requirements.<sup>25</sup>

Although an exemption may apply to protect from disclosure addresses of victims in certain instances, current law does not specifically make exempt the address of a victim of an incident of mass violence.

### **III. Effect of Proposed Changes:**

This bill creates a public records exemption in s. 119.071(2), F.S., relating to agency investigations, for the address of a victim of a certain crime. Specifically, the bill makes exempt from public disclosure the address of a victim of an incident of mass violence.

The bill defines as an incident of mass violence an incident in which three or more people, not including the perpetrator, are severely injured or killed by an intentional act of violence by a perpetrator. Further, the bill considers as a victim a person who is injured or killed by an incident of mass violence.

In its statement of public necessity, the bill provides as justification that without the exemption the victim may be harassed, taken advantage of, or otherwise subjected to additional pain and suffering. After an incident of mass violence, victims are in a vulnerable state as they assist law

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6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.

<sup>23</sup> Section 119.071(2)(j)1., F.S.

<sup>24</sup> Section 119.071(2)(h)1. a. and b., F.S.

<sup>25</sup> Section 119.071(n), F.S.

enforcement with the investigation and try to recover from the traumatic event. The public availability of the victim's address may be used to locate the victim or the victim's family. Therefore, without the exemption, victims and their families may encounter media intrusions at their homes and other unwelcome intrusions into their privacy.

The bill provides for an Open Government Sunset Review and specifies that the bill will stand repealed on October 2, 2023, unless the Legislature reviews the exemption and saves it from repeal before that date.

The bill takes effect upon becoming a law.

#### **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:**

###### **Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for newly created or expanded public records exemptions to pass. This bill creates a new public records exemption. Therefore, a two-thirds vote is required.

###### **Public Necessity Statement**

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that without the exemption the victim may be harassed, taken advantage of, or otherwise subjected to additional pain and suffering. After an incident of mass violence, victims are in a vulnerable state as they assist law enforcement with the investigation and try to recover from the traumatic event. The public availability of the victim's address may be used to locate the victim or the victim's family. Therefore, without the exemption, victims and their families may encounter media intrusions at their homes and other unwelcome intrusions into their privacy.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates an exemption for the address of a victim of an incident of mass violence, and defines as an incident of mass violence an incident in which three or more people other than the perpetrator are killed or severely injured. Further, the bill limits as a victim a person who is injured or killed during the incidence of mass violence. The bill appears to be no broader than necessary to accomplish the public necessity for the public records exemption.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An agency may incur an indeterminate, but de minimus fiscal impact from administering the exemption in this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 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.



442744

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/26/2018	.	
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	.	
	.	

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The Committee on Rules (Galvano and Benacquisto) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (o) is added to subsection (2) of  
section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of  
public records.—

(2) AGENCY INVESTIGATIONS.—

(o) The address of a victim of an incident of mass violence





442744

is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this paragraph, the term "incident of mass violence" means an incident in which three or more people, not including the perpetrator, are severely injured or killed by an intentional act of violence of another. For purposes of this paragraph, the term "victim" means a person killed or injured during an incident of mass violence, not including the perpetrator. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (c) of subsection (3) of section 119.011, Florida Statutes, is amended to read:

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

(3)

(c) "Criminal intelligence information" and "criminal investigative information" shall not include:

1. The time, date, location, and nature of a reported crime.

2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2) (h) or (o).

3. The time, date, and location of the incident and of the arrest.

4. The crime charged.

5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2) (h) or (m), and, except that the court in a criminal case may order that certain information required by law or



442744

agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:

a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

b. Impair the ability of a state attorney to locate or prosecute a codefendant.

6. Informations and indictments except as provided in s. 905.26.

Section 3. The Legislature finds that it is a public necessity that the address of victims of an incident of mass violence be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. After an incident of mass violence has occurred, victims of such an incident are in a vulnerable state as they assist law enforcement with the investigation of the incident and try to recover from the events that occurred. In some instances, the victim may have been killed or injured leaving their families to deal with the aftermath of the crime. The public availability of such victim's address may be used to locate the victim or the victim's family. The availability of such information has allowed people to take advantage of the victims or their families by subjecting the victims or their families to media intrusions at their homes and other unwelcome intrusions into their privacy. Therefore, it is necessary that the address of victims of incidents of mass violence be protected to ensure that persons affected by such incidents are not harassed, taken advantage of, or otherwise subjected to additional pain and suffering.



442744

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

===== 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 public records; amending s.  
119.071, F.S.; creating an exemption from public  
records requirements for the address of a victim of an  
incident of mass violence; providing definitions;  
providing for future legislative review and repeal of  
the exemption; amending s. 119.011, F.S.; designating  
the address of a victim of an incident of mass  
violence as criminal intelligence information and  
criminal investigative information; providing a  
statement of public necessity; providing an effective  
date.

FOR CONSIDERATION By the Committee on Rules

595-03524-18

20187024pb

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 the address of a victim of a crime of mass violence that has occurred on the grounds of a K-12 school or a postsecondary education institution or the address of an immediate family member of a victim which is contained in a report of a law enforcement agency and held by an agency; providing for retroactive application; providing for future legislative review and repeal; providing a statement of public necessity; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Paragraph (o) is added to subsection (2) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(2) AGENCY INVESTIGATIONS.—

(o) The address of a victim of a crime of mass violence that has occurred on the grounds of a public or private K-12 school or a public or private postsecondary education institution or the address of an immediate family member of a victim which is contained in a report of a law enforcement agency and held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This

Page 1 of 3

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

595-03524-18

20187024pb

exemption applies to such records held before, on, or after the effective date of this act. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the address of a victim of a crime of mass violence that has occurred on the grounds of a public or private K-12 school or a public or private postsecondary education institution or the address of an immediate family member of a victim which is contained in a report by a law enforcement agency and held by an agency be made confidential and exempt from public records requirements. Without this exemption, the victim, or an immediate family member of a victim, could be subject to further emotional trauma and threats to personal safety. Furthermore, the disclosure of such an address could place a victim or an immediate family member of a victim at risk of harassment or less likely to cooperate with law enforcement agencies in any subsequent investigation. The harm that may result from the release of the victim's or immediate family member's address outweighs any public benefit that may be derived from the disclosure of the address. The public records exemption preserves public oversight as the exemption is narrowly drawn to only apply to the victim's or immediate family member's address contained in the report of a law enforcement agency. The Legislature further finds that the exemption should be given retroactive application because it is remedial in nature.

Section 3. The Division of Law Revision and Information is

Page 2 of 3

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

595-03524-18

20187024pb

59 directed to replace the phrase "the effective date of this act"  
60 wherever it occurs in this act with the date this act becomes a  
61 law.

62 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)

2/26/18

Meeting Date

7024

Bill Number (if applicable)

Topic Guns

Amendment Barcode (if applicable)

Name Greg Pound

Job Title Father

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

City

Fl.

State

33773

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Saving Families 70@gmail.com

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7026

INTRODUCER: Rules Committee

SUBJECT: Public Safety

DATE: February 26, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Androff, Bouck, Cellon	Phelps		<b>RC Submitted as Comm. Bill/Fav</b>

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**I. Summary:**

SB 7026 provides law enforcement, the courts, and schools with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence. The bill also promotes school safety and enhanced coordination between education and law enforcement entities at the state and local level. Specifically, the bill:

- Creates the Medical Reimbursement Program for Victims of Mass Shootings to reimburse trauma centers from the medical costs of treating victims for injuries associated with a mass shooting.
- Authorizes a law enforcement officer who is taking a person into custody for an involuntary examination under the Baker Act to seize and hold a firearm or ammunition from the person for at least 72 hours or until the person appears at the agency to retrieve the firearm or ammunition.
- Prohibits a person who has been adjudicated mentally defective or who has been committed to a mental institution from owning or possessing a firearm until a court orders otherwise.
- Requires a three-day waiting period for all firearms, not just handguns or until the background check is complete, whichever is later.
- Prohibits a person under 21 years of age from purchasing a firearm.
- Prohibits a licensed firearm dealers, importers, and manufacturers, excluding a member of the military, or a law enforcement or correctional officer.
- Prohibits a bump-fire stock from being imported, transferred, distributed, transported, sold, keeping for sale, offering or exposing for sale, or given away within the state.
- Creates a process for a law enforcement officer or law enforcement agency to petition a court for a risk protection order to temporarily prevent persons who are at high risk of harming themselves or others from accessing firearms when a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior.
- Provides a court can issue a risk protection order for up to 12 months.

- Allows a court to issue temporary ex parte risk protection order in certain circumstances.
- Requires the surrender of all firearms and ammunition if a risk protection order or ex parte risk protection order is issued.
- Provides a process for a risk protection order to be vacated or extended.
- Establishes the Marjory Stoneman Douglas High School Public Safety Commission within the Florida Department of Law Enforcement (FDLE) to investigate system failures in the Parkland school shooting and prior mass violence incidents, and develop recommendations for system improvements.
- Codifies the Office of Safe Schools (office) within the Florida Department of Education (DOE) and specifies the purpose of the office is to serve as the state education agency's primary coordinating division for promoting and supporting safe-learning environments.
- Creates the Florida Sheriff's Marshal Program within the DOE as a voluntary program to assist school districts and public schools in enhancing the safety and security of students, faculty, staff, and visitors to Florida's public schools and campuses.
- Codifies the Multiagency Service Network for Students with Severe Emotional Disturbance (SEDNET) as a function of the DOE in partnership with other state, regional, and local entities to facilitate collaboration and communication between the specified entities.
- Establishes the Public School Emergency Response Learning System Program to assist school personnel in preparing for and responding to active emergency situations and to implement local notification systems for all Florida public schools.
- Requires the FDLE to procure a mobile suspicious activity reporting tool that allows students and the community to report information anonymously about specified activities or the threat of such activities to appropriate public safety agencies and school officials.
- Requires each district school board and school district superintendent to cooperate with law enforcement agencies to assign one or more safe-school officers at each school facility, and:
  - Requires each district school board to designate a district school safety specialist to serve as the district's primary point of public contact for public school safety functions.
  - Requires each school district to designate a threat assessment team at each school, and requires the team to operate under the district school safety specialist's direction.
- Creates the mental health assistance allocation to provide supplemental funding to assist school districts and charter schools in establishing or expanding comprehensive mental health programs and to connect students and families with appropriate services.
- Clarifies the applicability of public records exemptions for security systems and plans.

The bill is effective October 1, 2018, except as otherwise provided in the act.



## II. Present Situation:

The present situation for the relevant portions of the bill is discussed in Section III. Effect of Proposed Changes of this bill analysis.

## III. Effect of Proposed Changes:

### Mass Shootings in Recent History

On February 14, 2018, a mass shooting occurred at Marjory Stoneman Douglas High School in Parkland, Florida which left 17 people dead.<sup>1</sup> It was the deadliest school shooting since the December 2012 Sandy Hook Elementary School shooting in Connecticut that resulted in the death of 28 people.

The Parkland shooter was 19 years of age and used an AR-15 semi-automatic rifle during the shooting spree, the same type of firearm used during the Sandy Hook shooting and the Pulse Nightclub shooting in Orlando that left 49 dead and 53 injured on June 12, 2016.<sup>2</sup>

Broward County Sheriff Scott Israel has said that the sheriff's office received about 20 calls for service over the past few years regarding the Parkland shooter and his younger brother.<sup>3</sup> Apparently the Federal Bureau of Investigation (FBI) had received information in 2017 about a YouTube comment ("I'm going to be a professional school shooter.") that some had attributed to the Parkland shooter but the identity of the person who posted the comment could not be ascertained by the FBI.<sup>4</sup> It has also been reported that the FBI failed to investigate a tip it received in January 2018 concerning the Parkland shooter.<sup>5</sup>

The Parkland shooter is reported to have been expelled from Marjory Stoneman Douglas High School for disciplinary reasons and that he may have had what could be described as a hard time fitting in at school.<sup>6</sup> It has also been reported that the Parkland shooter began legally buying firearms, including the one used during the Valentine's Day shooting, on or around his eighteenth birthday in September 2016, and he had collected at least seven rifles during that time.<sup>7</sup>

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<sup>1</sup> Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

<sup>2</sup> *Id.*; National Public Radio, *3 Hours in Orlando: Piecing Together an Attack and Its Aftermath*, Ariel Zambelich and Alyson Hurt, June 26, 2016, available at <https://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update> (last visited February 22, 2018).

<sup>3</sup> Time, *Sheriff's Office Had Received About 20 Calls Regarding Suspect: The Latest on the Florida School Shooting*, Lisa Marie Segarra, Katie Reilly, Eli Meixler, and Jennifer Calfas, Updated February 18, 2018, available at <http://time.com/5158678/what-to-know-about-the-active-shooter-situation/> (last visited February 22, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> CBS News, *FBI's deputy director admits there was "a mistake made" regarding tip on Florida shooter*, Paula Reid, Rebecca Shabad, and Emily Tillett, February 22, 2018, available at <https://www.cbsnews.com/news/fbis-deputy-director-admits-there-was-a-mistake-made-regarding-tip-on-florida-shooter/> (last visited February 23, 2018).

<sup>6</sup> *Id.*

<sup>7</sup> Miami Herald, *Before the school killings, the shooter bought an arsenal of rifles, authorities say*, Jay Weaver and Daniel Chang, February 20, 2018, available at <http://www.miamiherald.com/news/local/article201236649.html> (last visited February 22, 2018).

### Effect of Proposed Changes

The Legislature finds there is a need to comprehensively address the crisis of gun violence, including but not limited to, gun violence on school campuses. The Legislature intends to address this crisis by providing law enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence, and by promoting school safety and enhanced coordination between education and law enforcement entities at the state and local level.

### **Trauma Centers**

The regulation of trauma centers in Florida is established under part II of ch. 395, F.S. Trauma centers treat individuals who have incurred single or multiple injuries because of blunt or penetrating means or burns, and who require immediate medical intervention or treatment. Currently, there are 36 verified and provisional trauma centers in the state.<sup>8</sup> A hospital may operate as a provisional trauma center based on approval of the Department of Health pending verification of full compliance with trauma center standards for the applicable category of trauma center.<sup>9</sup>

Trauma centers in Florida are divided into three categories including Level I, Level II, and Pediatric trauma centers.

- A Level I trauma center has formal research and education programs for the enhancement of trauma care; serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals; and meets the Level I trauma center standards for adult and pediatric patients.<sup>10</sup>
- A Level II trauma center serves as a resource to general hospitals and meets the trauma center standards for a Level II trauma center for adult patients.<sup>11</sup>
- A Pediatric trauma center meets the pediatric trauma center standards.<sup>12, 13</sup>

### Effect of Proposed Changes

The bill creates the Medical Reimbursement Program for Victims of Mass Shootings to reimburse trauma centers verified or designated pursuant to s. 395.4025, F.S., for the medical costs of treating victims for injuries associated with a mass shooting. The bill defines a “mass shooting” to mean an incident in which four or more people are killed or injured by firearms in one or more locations in close proximity.

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<sup>8</sup> Department of Health, *Senate Bill 1876 Analysis* (January 17, 2018) (on file with the Senate Committee on Criminal Justice).

<sup>9</sup> Section 395.4025(5) and (6), F.S.

<sup>10</sup> Section 395.4001(6), F.S.

<sup>11</sup> Section 395.4001(7), F.S.

<sup>12</sup> Section 395.4001(9), F.S.

<sup>13</sup> For Level I, Level II, and pediatric trauma center standards see <http://www.floridahealth.gov/licensing-and-regulation/trauma-system/documents/traumacntrstandpamphlet150-9-2009rev1-14-10.pdf> (last visited on February, 26, 2018).

The Medical Reimbursement Program for Victims of Mass Shootings requires the Department of Legal Affairs to reimburse such trauma centers based on a department-approved fee schedule for the documented medical costs of treating victims for injuries associated with a mass shooting. A trauma center that requests a reimbursement through the program must accept the reimbursement as payment in full and may not bill the victim of a mass shooting or his or her family.

## Second Amendment

The Second Amendment to the United States Constitution states, “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”<sup>14</sup> Courts have consistently held that the Second Amendment is fully applicable to the states through the due process clause of the Fourteenth Amendment.<sup>15</sup>

State laws restricting gun possession and ownership have consistently been challenged on constitutional grounds. In *District of Columbia v. Heller*, a landmark case on interpreting the Second Amendment, a special police officer brought action to enjoin the District of Columbia from enforcing gun-control statutes.<sup>16</sup> In *Heller*, the Court found that while the Second Amendment confers an individual right to keep and bear arms, that right is not unlimited.<sup>17</sup> The Court held that the Second Amendment does not protect the right of citizens to carry arms for any sort of confrontation, but rather that it guarantees the individual right to possess and carry weapons in case of confrontation.<sup>18</sup> The Court struck down the District of Columbia’s ban on handgun possession in the home and the requirement that any lawful firearm in the home be disassembled or bound by a trigger lock because both provisions made it impossible for citizens to use arms for the core lawful purpose of self-defense, making such provisions unconstitutional.<sup>19</sup>

The Court in *Heller* determined that the Second Amendment protects only “the sorts of weapons” that are “in common use” and “typically possessed by law-abiding citizens for lawful purposes.”<sup>20</sup> From *Heller*, courts have derived a two-prong approach to Second Amendment challenges. First, the court considers whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee.<sup>21</sup> If it does not, the inquiry is complete.<sup>22</sup> If it does, the court must evaluate the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid.<sup>23</sup> In Second Amendment challenges, courts have consistently invoked intermediate scrutiny, which provides that a challenged law must further an important government interest and must do so by means

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<sup>14</sup> U.S. CONST. amend II.

<sup>15</sup> *McDonald v. Chicago*, 561 U.S. 742, 778 (2010).

<sup>16</sup> 554 U.S. 570 (2008).

<sup>17</sup> *Id.* at 595.

<sup>18</sup> *Id.* at 592 and 595.

<sup>19</sup> *Id.* at 570.

<sup>20</sup> *Heller*, 554 U.S. at 625, 627.

<sup>21</sup> *Hope v. State*, 163 Conn. App. 36, 42 (Conn. App. Ct. 2016).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

that are substantially related to that interest in order to be upheld.<sup>24</sup> If the law passes muster under this standard, then it survives intermediate scrutiny and is constitutional.<sup>25</sup>

Since *Heller*, overbroad prohibitions on gun possession have been struck down, but more narrowly tailored restrictions on possession and control of guns have been upheld. The court in *Kachalsky v. County of Westchester* applied intermediate scrutiny to a state law that restricted individuals' ability to carry firearms in public.<sup>26</sup> The *Kachalsky* court held that the state's ability to regulate firearms is qualitatively different in public than in the home.<sup>27</sup>

Subsequently, in *New York State Rifle and Pistol Association, Inc. v. Cuomo*, the court was faced with two appeals challenging gun-control legislation enacted by the New York and Connecticut legislatures.<sup>28</sup> The court held that laws prohibiting possession of certain semiautomatic assault rifles and large-capacity magazines did not violate the Second Amendment.<sup>29</sup> The court also found that while semiautomatic assault weapons and large-capacity magazines are commonly owned by many law-abiding Americans, such weapons are not nearly as popularly owned and used for self-defense as the handgun.<sup>30</sup> Thus, the court applied intermediate scrutiny and found that prohibitions on semiautomatic assault weapons and large-capacity magazines were substantially related to the achievement of a compelling governmental interest in public safety and crime prevention.<sup>31</sup>

### **Firearm Purchase Process**

Firearms are available for purchase from primarily two groups of people: private citizens and federally-licensed gun dealers. A private citizen does not necessarily engage in a business selling firearms but is able to sell firearms at a gun show or elsewhere. A federal firearms licensee (FFL) is licensed by the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) to sell or transfer a firearm. An individual must be licensed with the ATF to engage in the business of firearms.<sup>32</sup> A private citizen does not necessarily have to follow the processes required of FFLs.

### ***Private Firearm Sale “Loophole”***

The widely-used term “gun show loophole” refers to the difference between the way private sales or transfers of firearms occur as compared to the requirements that must be met by FFLs. A FFL must have FDLE conduct a background check for all firearm purchases and deliveries and wait 3 days between the purchase and delivery of all handgun sales; a person conducting a private transaction is not subject these requirements.

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<sup>24</sup> *State v. DeCiccio*, 315 Conn. 79, 144 (Conn. 2014).

<sup>25</sup> *Id.*

<sup>26</sup> 701 F.3d 81 (2d. Cir. 2012).

<sup>27</sup> *Id.* at 94.

<sup>28</sup> 804 F.3d 242, at 247 (2d. Cir. 2015).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 258.

<sup>31</sup> *Id.* at 261.

<sup>32</sup> Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Types of Federal Firearms Licenses*, available at <https://www.atf.gov/resource-center/types-federal-firearms-licenses-ffls> (last visited February 21, 2018).

### ***Background Checks***

FFL's must facilitate a background check on a person making a firearm purchase from the dealer. The National Instant Criminal Background Check System (NICS) was established for dealers to contact by telephone, or other electronic means, for information to be supplied immediately on whether the transfer of a firearm would be in violation of 18 U.S.C. s. 922(g) or (n), or state law.<sup>33</sup>

In Florida, the Florida Department of Law Enforcement (FDLE) acts as the contact for a FFL initiating a background check.<sup>34</sup> The background check for firearm purchases queries five FDLE and FBI Criminal Justice Information Systems.<sup>35</sup> Of the 990,314 inquiries the FDLE received in 2017, over 96 percent received an initial decision approving the firearm transfer at the time the transaction was processed.<sup>36</sup>

All FFLs who sell firearms in Florida to persons must:

- Obtain a completed form which provides the purchaser's identification information and verify identification by inspecting a photo ID;
- Collect a fee from the purchaser for processing the criminal history check of the purchaser;
- Contact the FDLE by means of a toll-free telephone number to conduct a criminal history check; and
- Receive an approval number from the FDLE and record the number on the consent form.<sup>37</sup>

### ***Exemptions from Background Checks***

If a person has a valid concealed weapons or firearms license he or she is exempt from the background check requirements for the purchase of a firearm. A law enforcement officer, correctional officer, or correctional probation officer who holds an active certification from the Criminal Justice Standards and Training Commission is also exempt from the background check requirements in s. 790.065, F.S.<sup>38</sup>

### ***Firearm Purchase Disqualifiers***

Under 18 U.S.C. s. 922(g), a person is disqualified from purchasing a firearm if the person:

- Is convicted of a crime punishable by imprisonment exceeding one year;
- Is a fugitive from justice;
- Is a unlawful user or addicted to any controlled substance as defined in 21 U.S.C s. 802;
- Has been adjudicated as a mental defective or has been committed to any mental institution;
- Is an illegal alien;
- Has been discharged from the Armed Forces under dishonorable conditions;
- Has renounced his or her U.S. citizenship;

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<sup>33</sup> FBI, *About NICS*, available at <https://www.fbi.gov/services/cjis/nics/about-nics> (last visited February 21, 2018).

<sup>34</sup> Thirteen states have agencies that act as full "Points of Contact." *Id.*

<sup>35</sup> FDLE, *Criminal Justice Information Services PowerPoint*, October 2017, (on file with Senate Committee on Criminal Justice).

<sup>36</sup> Email from the FDLE staff to Senate Committee on Criminal Justice staff on February 21, 2018 (on file with Senate Committee on Criminal Justice).

<sup>37</sup> Section 790.065(1), F.S. Other FFLs are exempt from this provision.

<sup>38</sup> Law enforcement officer, correctional officer, and correctional probation officer are defined in s. 943.10, F.S.

- Is subject to a court order restraining the person from harassing, stalking or threatening an intimate partner or child of the intimate partner; or
- Has been convicted of a misdemeanor crime of domestic violence.

In Florida, s. 790.065(2)(a), F.S., provides a person is disqualified from purchasing a firearm if the person:

- Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23, F.S.<sup>39</sup>
- Has been convicted of a misdemeanor crime of domestic violence,<sup>40</sup> and therefore is prohibited from purchasing a firearm.
- Has had an withhold of adjudication or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other court set conditions have been fulfilled or an expunction has occurred.
- Has been adjudicated mentally defective, or has been committed to a mental institution by a court or by voluntary admission to a mental institution after having been involuntarily examined where additional criteria are met.<sup>41</sup>

The FDLE must also determine if a person has any of the following in his or her background check which disqualifies him or her from purchasing a firearm:

- Has been indicted or had an information filed against her or him for a felony offense.
- Has had an injunction for protection against domestic violence under s. 741.30, F.S., entered against him or her.
- Has had an injunction for protection against repeat violence under s. 784.046, F.S., entered against him or her.
- Has been arrested for a dangerous crime as specified in s. 907.041(4)(a), F.S.<sup>42</sup>
- Has been arrested for any of the offenses enumerated in s. 790.065, F.S.<sup>43</sup>

<sup>39</sup> Section 790.23(1), F.S., provides that anyone who has been convicted of a felony in Florida, another state or a crime against the U.S. that would be a felony, or has committed a delinquent act in Florida or another state that would be a felony if committed by an adult and the person is under 24 years old is prohibited from possessing a firearm.

<sup>40</sup> Section 741.28, F.S., defines domestic violence as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>41</sup> Section 790.065(2)(a)4., F.S.

<sup>42</sup> Section 907.041(4)(a), F.S., specifies the following as a dangerous crime: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking.

<sup>43</sup> Section 790.065(2)(c), F.S., lists the following offenses: criminal anarchy under ss. 876.01 and 876.02, F.S.; Extortion under s. 836.05, F.S.; explosives violations under s. 552.22(1) and (2), F.S.; controlled substances violations under ch. 893 F.S.; resisting an officer with violence under s. 843.01, F.S.; weapons and firearms violations under ch. 790, F.S.; treason under s. 876.32, F.S.; assisting self-murder under s. 782.08, F.S.; sabotage under s. 876.38, F.S.; stalking or aggravated stalking under s. 784.048, F.S.

The FDLE has 24 working hours to make such determinations as to whether the potential buyer is prohibited from receiving or possessing a firearm.<sup>44</sup> Section 790.065(2)(c)2., F.S., defines working hours to mean from the hours from 8 a.m. to 5 p.m. Monday through Friday excluding legal holidays.

The FDLE reports the following numbers and reasons for not approving a firearm sale during 2017:

- 4,170 for a felony conviction;
- 717 for being under indictment;
- 556 for being a fugitive from justice;
- 920 for being user or addicted to any controlled substance;
- 871 for having been adjudicated as a mental defective or having been committed to any mental institution;
- 449 for being an illegal alien;
- 11 for having been dishonorably discharged from the Armed Forces;
- 3 for renouncing his or her U.S. citizenship;
- 1,185 for being subject to a protection order;
- 1,174 for a misdemeanor crime of domestic violence; and
- 2,587 for a state disqualifier.<sup>45</sup>

### ***Firearm Purchase Disability***

A person who has been adjudicated mentally defective or has been committed to a mental institution cannot purchase a firearm in Florida until the firearm disability is removed by the court.<sup>46</sup>

The term “adjudicated mentally defective” means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity,<sup>47</sup> an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.<sup>48</sup>

“Committed to a mental institution” means involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes

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<sup>44</sup> Section 790.065(2)(c)2., F.S.

<sup>45</sup> The numbers reflect non-approvals as of February 21, 2018. E-mail from the FDLE staff to the Senate Committee on Criminal Justice, February 21, 2018 (on file with Senate Committee on Criminal Justice).

<sup>46</sup> Section 790.065(2)(a)4., F.S.

<sup>47</sup> Section 744.331(6)(a), F.S., provides that a court should consider the person’s unique needs and abilities and may only remove those rights that the court finds the person does not have the capacity to exercise.

<sup>48</sup> Section 790.065(2)(a)4.b., F.S.

involuntary inpatient placement,<sup>49</sup> involuntary outpatient placement,<sup>50</sup> involuntary<sup>51</sup> assessment and stabilization,<sup>52</sup> and involuntary substance abuse treatment,<sup>53</sup> but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.<sup>54</sup> The term also includes when a person has been involuntary examined under the Baker Act statute but then consents to voluntary inpatient or outpatient treatment if certain conditions are met.<sup>55</sup>

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<sup>49</sup> Section 394.4655, F.S., provides a person may be ordered for involuntary inpatient placement if he or she has a mental illness and because of his or her mental illness: has refused voluntary inpatient placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of inpatient placement for treatment; or is unable to determine for himself or herself whether inpatient placement is necessary; and is incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or there is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others, as evidenced by recent behavior causing, attempting, or threatening such harm; and all available less restrictive treatment alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

<sup>50</sup> Section 397.6818, F.S., provides a person may be ordered to involuntary outpatient services if the person is 18 years of age or older; has a mental illness; is unlikely to survive safely in the community without supervision, based on a clinical determination; has a history of lack of compliance with treatment for mental illness; the person has: at least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility as defined in s. 394.455, F.S., or has received mental health services in a forensic or correctional facility; or engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months; as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and has refused voluntary services for treatment after sufficient and conscientious explanation and disclosure of why the services are necessary or is unable to determine for himself or herself whether services are necessary; in view of the person's treatment history and current behavior, is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1), F.S., it is likely that the person will benefit from involuntary outpatient services; and all available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

<sup>51</sup> A person meets the criteria for involuntary admission if there is good faith reason to believe that the person is substance abuse impaired or has a co-occurring mental health disorder and, because of such impairment or disorder: has lost the power of self-control with respect to substance abuse; and is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard, although mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services; or without care or treatment, is likely to suffer from neglect or refuse to care for himself or herself; that such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and that it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services, or there is substantial likelihood that the person has inflicted, or threatened to or attempted to inflict, or, unless admitted, is likely to inflict, physical harm on himself, herself, or another. Section 397.675, F.S.

<sup>52</sup> A person who meets the criteria for involuntary admission may be admitted for a period of 5 days to a hospital or licensed detoxification facility or addictions receiving facility, for involuntary assessment and stabilization. Sections 397.6811(1), and 397.6818, F.S.

<sup>53</sup> A person who meets the criteria for involuntary admission may be the subject of petition of a for involuntary treatment if the person has been placed under a protective custody within the previous 10 days; has been subject to an emergency admission within the previous 10 days; has been assessed by a qualified professional within 5 days; has been subject to involuntary assessment and stabilization within the previous 12 days; or has been subject to alternative involuntary admission within the previous 12 days. Sections 397.693 and 397.6957, F.S.

<sup>54</sup> Section 790.065(2)(a)4., F.S.

<sup>55</sup> Section 790.065(2)(a)4.b.(II), F.S.



A person with a firearm disability may petition the court that adjudicated or committed him or her to have the firearm disability removed. The petition must be served on the state attorney of the county in which the person was adjudicated or committed. The petitioner can choose whether the hearing is open or closed. The petitioner and the state attorney present evidence. The court must make written findings. For the firearm disability to be removed, the court must find that the petitioner will not be likely to act in a manner that is dangerous to public safety and that removing the firearm disability would not be contrary to the public interest. If the court denies the petition, the person must wait one year from the final order denying the removal of the firearm disability to petition the court again for such relief.<sup>56</sup>

#### Effect of Proposed Changes

The bill provides that a person who has been adjudicated mentally defective or who has been committed to a mental institution as those terms are defined in s. 790.065(2)(a)4., F.S., may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained.

The bill provides a process for the person who has the firearm disability related to possession and ownership of a firearm to petition a court to have the disability removed. This mirrors the process provided in s. 790.065(2), F.S., as it relates to the firearm purchase disability.

#### ***Three-Day Waiting Period***

Article I, section 8(b) of the Florida Constitution requires a three day waiting period between the purchase and delivery at retail of handguns. Specifically, the Florida Constitution provides:

There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, 'purchase' means the transfer of money or other valuable consideration to the retailer, and 'handgun' means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph.<sup>57</sup>

Section 790.0655, F.S., implements article I, section 8(b), of the Florida Constitution.<sup>58</sup> The 3-day waiting period only applies to handgun sales transacted by retailers, not private sales. A retailer includes every person engaged in the business of making sales at retail or for distribution, use, or consumption, or storage to be used or consumed in this state.<sup>59</sup>

The Florida Constitution and s. 790.0655, F.S., exempt the following circumstances from the 3-day handgun waiting period:

- A holder of a concealed weapons permit as defined in s. 790.06; F.S., and

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<sup>56</sup> Section 790.065(2)(a)4.d., F.S.

<sup>57</sup> FLA. CONST. art. I, s. 8(b).

<sup>58</sup> There is a mandatory 3-day waiting period, which is 3 days, excluding weekends and legal holidays, between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. "Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Section 790.0655, F.S.

<sup>59</sup> Section 790.0655, F.S.

- To a trade-in of another handgun.

It is a third degree felony for any retailer, or any employee or agent of a retailer, to deliver a handgun before the expiration of the 3-day waiting period.<sup>60</sup>

#### Effect of Proposed Changes

The three-day waiting period between the purchase of and the delivery of a handgun as provided in s. 790.0655, F.S., is amended by the bill to create a three-day waiting period for all firearms, not just handguns.

Additionally, the bill extends the waiting period beyond three days if more time is necessary to complete the firearm purchase background check.

The bill adds a new exception to the waiting period requirement for a person who completes minimum of a 16-hour hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or similar agency of another state, if that person is not purchasing a handgun.

#### **Age Restrictions on Purchase and Use of Firearms**

Federal law prohibits FFLs from selling a handgun to a person less than 21 years of age.<sup>61</sup>

Florida law prohibits the sale or transfer of a firearm to a minor by *any* person although ownership of the firearm may be transferred to the minor with a parent or guardian's permission. A person who violates this prohibition commits a third degree felony.<sup>62</sup>

In Florida it is unlawful for any firearm dealer to sell or transfer to a minor any firearm, pistol, Springfield rifle or other repeating rifle, bowie knife or dirk knife, brass knuckles, or electric weapon or device. A firearm dealer who violates this provision commits a second degree felony.<sup>63</sup>

A minor under 18 years of age may not possess a firearm in Florida, other than an unloaded firearm at his or her home. There are exceptions to the general rule for these circumstances:

- The minor is engaged in a lawful hunting activity and is:
  - At least 16 years of age; or
  - Under 16 years of age and supervised by an adult.

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<sup>60</sup> Subject to the exceptions noted above and provided in s. 790.0655(2), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

<sup>61</sup> 18 U.S.C. s. 922(8)(b)1, specifically provides that it shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age.

<sup>62</sup> Section 790.17, F.S.

<sup>63</sup> Section 790.18, F.S. A second degree felony is punishable by up to 15 years imprisonment and up to a \$10,000 fine. Sections 775.082 and 775.083, F.S.

- The minor is engaged in a lawful marksmanship competition or practice or other lawful recreational shooting activity and is:
  - At least 16 years of age or
  - Under 16 years of age and supervised by an adult who is acting with the consent of the minor's parent or guardian.
- The firearm is unloaded and is being transported by the minor directly to or from an event authorized above.<sup>64</sup>

#### Effect of the Proposed Changes

The bill amends s. 790.065, F.S., to raise the age from 18 to 21 years of age for all firearm purchases. The bill also prohibits the sale or transfer of a firearm to a person under the age of 21 from being made or facilitated by a licensed firearm dealers, importer, or manufacturer. A person who violates this prohibition commits a third degree felony.

The prohibition on the purchase of a firearm by a person younger than 21 years of age or the sale or transfer by a licensed importer, licensed manufacturer, or licensed dealer to a person younger than 21 years of age does not apply to a member of the military or naval forces of this state or of the United States or to a law enforcement or correctional officer as defined in s. 943.10, F.S.

#### **Bump-Fire Stocks**

A bump stock (or bump-fire stock) is a piece of plastic or metal molded that attaches to the lower end of a rifle. The device allows a semi-automatic rifle to mimic a fully automatic rifle firing rate. This can allow a person to fire dozens of rounds in seconds by harnessing the gun's natural recoil without much concern for accuracy, as the recoil from simulated automatic fire would make it difficult to hit specific targets at a long range. A rifle with this type of mechanism works best with a high-capacity magazine that can hold between 60 and 100 rounds and a hand grip that allows a shooter to push the rifle away from the body to bounce, or bump, the weapon into the trigger finger.<sup>65</sup> Experts have stated that semi-automatic rifles with bump stocks could fire hundreds of rounds per minute.<sup>66</sup>

The shooter at the October 2017 Las Vegas county music festival had 12 rifles with bump stocks which allowed him to kill 59 people and injure more than 500 others.<sup>67</sup>

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<sup>64</sup> Section 790.22(3), F.S.

<sup>65</sup> The Washington Post, *Trump recommended outlawing bump stocks. Here's what they are*, Julie Vitkovskaya and Alex Horton, February 20, 2018, available at [https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks/?utm\\_term=.c0d30fa732a8](https://www.washingtonpost.com/news/checkpoint/wp/2017/10/05/what-are-bump-stocks/?utm_term=.c0d30fa732a8) (last visited February 22, 2018) and Fox News, *What are bump stocks? How they work and why Trump wants them banned*, Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

<sup>66</sup> Fox News, *What are bump stocks? How they work and why Trump wants them banned*, Jennifer Earl, February 21, 2018, available at <http://www.foxnews.com/us/2018/02/20/what-are-bump-stocks-how-work-and-why-trump-wants-them-banned.html> (last visited February 23, 2018).

<sup>67</sup> *Id.*; See also The Washington Post, *At least 59 killed in Las Vegas shooting rampage, more than 500 others injured*, Matt Zapotosky, Devlin Barrett and Mark Berman, October 3, 2017, available at <https://www.msn.com/en-us/news/breakingnews/at-least-59-killed-in-las-vegas-shooting-rampage-more-than-500-others-injured/ar-AAsM6kd> (last visited February 22, 2018).

While machine guns are regulated under the National Firearms Act, the ATF concluded that bump stocks didn't convert a semi-automatic firearm into one that is fully automatic, which would make it equivalent to machine guns. Currently, bump stocks are legal and not regulated by the ATF.<sup>68</sup>

### ***Other States, Congress, Presidential Memorandum***

Following the Las Vegas shooting and the recent shooting at Marjory Stoneman Douglas High School in Parkland, Florida, much public attention has been focused on bump stock-type devices.

Congress has not passed any legislation to restrict bump stocks, but there is a bill filed that would require persons who possess bump-fire stocks to register them with the Secretary of the Treasury.<sup>69</sup>

At least four states have banned the possession and sale of bump-fire stocks, although the definitions and descriptions of the devices vary.<sup>70</sup> At least 15 states are considering legislation that would ban bump stocks.<sup>71</sup>

Additionally, President Trump issued a Memorandum on February 20, 2018, directing the Department of Justice to propose a rule banning “all devices that turn legal weapons into machine guns.”<sup>72</sup>

### **Effect of Proposed Changes**

The bill defines “bump-fire stock” as a gun conversion kit, a tool, an accessory, or a device used to alter the rate of fire of a firearm to mimic automatic weapon fire or which is used to increase the rate of fire of a semiautomatic firearm to a faster rate than is possible for a person to fire such semiautomatic firearm unassisted by a kit, a tool, an accessory, or a device.

The bill prohibits the importation, transfer, distribution, transport, sale, keeping for sale, offering or exposing for sale, or giving away of a bump-fire stock. A violation of the prohibition is a felony of the third degree.

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<sup>68</sup> Federal Register: The Daily Journal of the United States Government, *Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices*, available at <https://www.federalregister.gov/documents/2017/12/26/2017-27898/application-of-the-definition-of-machinegun-to-bump-fire-stocks-and-other-similar-devices> (last visited February 22, 2018). *Id.*

<sup>69</sup> House Bill 4168, filed October 31, 2017. H.R.4168 – Closing the Bump-Stock Loophole Act, available at <https://www.congress.gov/bill/115th-congress/house-bill/4168> (last visited February 23, 2018).

<sup>70</sup> These states are: California (Sections 32900, 32990, and 16930, California Penal Code.); Michigan (Section 750.224e., Michigan Penal Code); Minnesota (Section 690.67, Minnesota Statutes); and New Jersey Senate Bill 3477 (SCS), signed by the Governor January 16, 2018, P.L. 2017, c. 323.

<sup>71</sup> The Washington Post, *Facing congressional inaction, states move to ban bump stocks*, January 18, 2018, available at [https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/?utm\\_term=.bbcb450f232f](https://www.washingtonpost.com/national/2018/01/18/facing-congressional-inaction-states-move-to-ban-bump-stocks/?utm_term=.bbcb450f232f) (last visited February 22, 2018).

<sup>72</sup> Presidential Memorandum on the Application of the Definition of Machinegun to “Bump Fire” Stocks and Other Similar Devices, Issued February 20, 2018, available at <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-application-definition-machinegun-bump-fire-stocks-similar-devices/> (last visited February 22, 2018).

## **Baker Act**

In 1971, the Legislature adopted the Florida Mental Health Act, otherwise known as the Baker Act.<sup>73</sup> The Baker Act authorizes treatment programs for mental, emotional, and behavioral disorders. The Baker Act requires programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

### ***Receiving Facility***

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.<sup>74</sup> Involuntary patients must be taken to a receiving facility, which is a public or private facility or hospital designated by the Department of Children and Families (DCF) to receive and hold or refer, as appropriate, involuntary patients under emergency conditions for mental health evaluation and to provide treatment or transportation to the appropriate service provider. A county jail is not a receiving facility.<sup>75</sup>

### ***Criteria for Taking a Person to a Receiving Facility for Involuntary Examination***

An involuntary examination includes an examination performed under s. 394.463, F.S.<sup>76</sup> The purpose of the examination is to determine whether a person qualifies for involuntary services.<sup>77</sup> Involuntary services include court-ordered outpatient services or inpatient placement for mental health treatment.<sup>78</sup> Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness<sup>79</sup> and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; **or**
- The person is unable to determine for himself or herself whether examination is necessary; **and**
- Either of the following applies:
  - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial

<sup>73</sup> Section 394.451, F.S. The act was created by ch. 71-131, L.O.F., and is codified in Part I of ch. 394, F.S. (ss. 394.451-394.47892, F.S.).

<sup>74</sup> Sections 394.4625 and 394.463, F.S.

<sup>75</sup> Section 394.455(39), F.S.

<sup>76</sup> Section 394.455(22), F.S.

<sup>77</sup> *Id.*

<sup>78</sup> Section 394.455(23), F.S.

<sup>79</sup> “Mental illness” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living. For purposes of Part I of ch. 394, F.S., the term does not include a developmental disability as defined in ch. 393, F.S., intoxication, or conditions manifested only by antisocial behavior or substance abuse. Section 394.455(28), F.S.

- harm to his or her well-being, and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services.
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.<sup>80</sup>

### ***Initiation of Involuntary Examination***

There are three means of initiating an involuntary examination. First, a court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer or other designated agent of the court takes the person into custody and delivers him or her to an appropriate, or the nearest, facility within the designated receiving system for examination.<sup>81</sup>

Second, a law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility for examination. The officer executes a written report detailing the circumstances under which the person was taken into custody, which is made a part of the patient's clinical record.<sup>82</sup>

Third, a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer takes the person named in the certificate into custody and delivers him or her to the appropriate, or nearest, facility for examination. The law enforcement officer executes a written report detailing the circumstances under which the person was taken into custody. The certificate and the law enforcement officer's report are made a part of the patient's clinical record.<sup>83</sup>

### ***Transportation to a Receiving Facility***

The Baker Act requires each county to designate a single law enforcement agency within the county to transfer the person in need of services to a receiving facility for involuntary examination.<sup>84</sup> If the person is in custody based on noncriminal or minor criminal behavior that meets the statutory guidelines for involuntary examination under s. 394.463, F.S., the law enforcement officer must transport the person to the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply<sup>85</sup>

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<sup>80</sup> Section 394.463(1), F.S.

<sup>81</sup> Section 394.463(2)(a)1., F.S.

<sup>82</sup> Section 394.463(2)(a)2., F.S.

<sup>83</sup> Section 394.463(2)(a)3., F.S.

<sup>84</sup> Section 394.462(1)(a), F.S.

<sup>85</sup> Section 394.462(1)(g), F.S.

If the person is arrested for a felony and it appears the person meets the statutory guidelines for involuntary examination or placement under Part I of ch. 394, F.S., the person must first be processed in the same manner as any other criminal suspect. Thereafter, the law enforcement officer must immediately notify the appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or to the nearest receiving facility if neither apply. The receiving facility is responsible for promptly arranging for the examination and treatment of the person, but is not required to admit a person charged with a crime for whom the facility determines and documents that it is unable to provide adequate security.<sup>86</sup>

If the law enforcement officer believes the person has an emergency medical condition, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.<sup>87</sup>

A designated law enforcement agency may decline to transport a person to a receiving facility only if:

- The jurisdiction designated by the county has contracted on an annual basis with an emergency medical transport service or private transport company for transportation of persons to receiving facilities pursuant to this section at the sole cost of the county; and
- The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the person or others.<sup>88</sup>

The appropriate facility within the designated receiving system pursuant to a transportation plan or an exception granted by the DCF Secretary, or the nearest receiving facility if neither apply, must accept a person brought by a law enforcement officer, or an emergency medical transport service or private transport company authorized by the county, for involuntary examination pursuant to s. 394.463, F.S.<sup>89</sup>

### ***Time Limitations for Conducting an Involuntary Examination***

Specified time periods apply to holding a person in a receiving facility for involuntary examination. Generally, the examination period must be for up to 72 hours.<sup>90</sup> However, for a minor, the examination must be initiated within 12 hours after the minor arrives at the facility.<sup>91</sup> Within the examination period or, if the examination period ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;

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<sup>86</sup> Section 394.462(1)(h), F.S. If the facility is unable to provide adequate security, examination or treatment of the person is provided where he or she is held. *Id.*

<sup>87</sup> Section 394.462(1)(i), F.S.

<sup>88</sup> Section 394.462(1)(b)1., F.S.

<sup>89</sup> Section 394.462(1)(k), F.S.

<sup>90</sup> Section 394.463(2)(g), F.S.

<sup>91</sup> *Id.*

- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.<sup>92</sup>

### Effect of Proposed Changes

The bill amends s. 394.463, F.S., to authorize a law enforcement officer who is taking a person into custody for an involuntary examination under a court's ex parte order under the Baker Act to seize and hold a firearm or ammunition the person possesses if the person:

- Poses a potential danger to himself or herself or others; and
- Has made a credible threat of violence against another person.

The law enforcement officer's agency must hold any seized firearm or ammunition for at least 72 hours or until the person appears at the agency to retrieve the firearm or ammunition. The agency must develop policies and procedures relative to the seizure, storage, and return of the firearms or ammunition provided for in the bill.

If the person has a firearm that was not seized when he or she was taken into custody for the involuntary examination under the Baker Act, a law enforcement officer may petition a court for a risk protection order pursuant to a newly-created procedure in the bill.

### **Gun Violence Protective Orders**

Gun violence protective order laws, also known as gun violence restraining orders and extreme risk protection orders, operate as a temporary restraint on a person's possession of his or her guns. Specifically, gun violence protective order laws enable law enforcement, and in some states, family and household members, to petition a court to remove a person's access to guns if he or she poses an imminent danger to self or others.<sup>93</sup> With a court-ordered gun violence protective order, a person's access to firearms is temporarily blocked until they can demonstrate that there is no longer a risk.<sup>94</sup>

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<sup>92</sup> *Id.* A person for whom an involuntary examination has been initiated who is being evaluated or treated at a hospital for an emergency medical condition must be examined by a facility within the examination period specified in s. 394.463(2)(g), F.S. The examination period begins when the patient arrives at the hospital and ceases when the attending physician documents that the patient has an emergency medical condition. If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient services or involuntary inpatient placement, the patient may be offered voluntary services or placement, if appropriate, or released directly from the hospital providing emergency medical services. Section 394.463(2)(h), F.S. One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist: the patient must be examined by a facility and released; or the patient must be transferred to a designated facility in which appropriate medical treatment is available. However, the facility must be notified of the transfer within two hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist. Section 394.463(2)(i), F.S.

<sup>93</sup> Giffords Law Center to Prevent Gun Violence, *Gun Violence Protective Orders*, available at <http://lawcenter.giffords.org/gun-laws/policy-areas/who-can-have-a-gun/gun-violence-protective-orders/> (last visited February 22, 2018).

<sup>94</sup> ABC News, *How a Temporary Restraining Order for Guns Could Help Stop Mass Shootings*, Andy Fies, February 16, 2018, available at <http://abcnews.go.com/US/temporary-restraining-order-guns-stop-mass-shootings/story?id=51042163> (last visited February 21, 2018).



Under federal law, as discussed above, a person who has committed a violent act towards others is not prohibited from possessing guns unless he or she is the subject of a domestic violence restraining order, has been convicted of a felony, or has been convicted of a domestic violence misdemeanor.<sup>95</sup> Additionally, federal law provides that a person suffering from mental illness is not prohibited from purchasing and possessing a gun unless he or she has been formally, and involuntarily, committed to a mental institution, or undergone some other formalized court proceeding regarding his or her mental illness.<sup>96</sup>

Individual states have begun to implement laws that restrict a person's access to possession and control of firearms. Connecticut became the first state to pass a law providing for a gun violence protective order in 1999.<sup>97</sup> The state's risk-warrant law grants law enforcement or a state attorney the authority to temporarily remove firearms from individuals when there is probable cause to believe they pose a significant risk of harm to themselves or to others.<sup>98</sup> Indiana, California, Oregon, and Washington have also implemented a gun violence protective order-type law.<sup>99</sup> Gun violence protective orders or "red flag" laws are currently pending in 18 states.<sup>100</sup>

A nationwide study of mass shootings from 2009 to 2016 indicated that in at least 42 percent of those incidents, the attacker exhibited dangerous warning signs prior to the shooting.<sup>101</sup> A recent analysis of Connecticut's risk-warrant law demonstrates that risk-based firearm removal laws provide effective tools to save lives. Specifically, research estimates that for every 10-20 risk-warrants issued, one life is saved.<sup>102</sup> Research also indicates that 29 percent of gun owners who had a risk-warrant ordered against them went on to receive mental health and substance abuse services in the state system.<sup>103</sup> Additionally, a study of Connecticut's risk-warrant laws found that, 99 percent of warrants issued from 1999 to 2013, which led to the confiscation of at least one gun, resulted in the gun owner receiving psychiatric treatment.<sup>104</sup>

States with a gun violence protective order-type law have a process outlined in statute for obtaining a court order. Typically, before a gun violence protective order may be issued, the person is entitled to a full legal proceeding. However, an emergency order may be issued when a person poses an immediate danger. Standard protocol for obtaining a gun violence protective

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<sup>95</sup> 18 U.S.C. s. 922(d)(9).

<sup>96</sup> 18 U.S.C. s. 922(d)(4).

<sup>97</sup> Section 29-38C, Conn. Gen. Stat.

<sup>98</sup> The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, September 2017, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

<sup>99</sup> Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

<sup>100</sup> Everytown for Gun Safety, *Red Flag Laws: Helping Prevent Mass Shootings*, February 15, 2018, available at <https://everytownresearch.org/red-flag-laws-helping-prevent-mass-shooting/> (last visited February 21, 2018).

<sup>101</sup> Everytown for Gun Safety, *Analysis of Recent Mass Shootings*, available at [https://everytownresearch.org/wp-content/uploads/2017/04/Analysis\\_of\\_Mass\\_Shooting\\_062117.pdf](https://everytownresearch.org/wp-content/uploads/2017/04/Analysis_of_Mass_Shooting_062117.pdf) (last visited February 21, 2018).

<sup>102</sup> The Educational Fund to Stop Gun Violence, *Data Behind Extreme Risk Protective Order Policies*, available at <http://efsgv.org/wp-content/uploads/2017/09/CT-Risk-Warrant-Data-One-pager-ERPO-9-15-17-FINAL.pdf> (last visited February 21, 2018).

<sup>103</sup> *Id.*

<sup>104</sup> The New York Times, *In Wake of Florida Massacre, Gun Control Advocates Look to Connecticut*, Lisa W. Foderaro and Kristin Hussey, February 17, 2018, available at <https://www.nytimes.com/2018/02/17/nyregion/florida-shooting-parkland-gun-control-connecticut.html> (last visited February 21, 2018).

order or similar type of restraining order requires a family or household member or a law enforcement officer or agency to submit a petition that alleges that the gun owner poses a significant danger to themselves or to others by virtue of his or her custody or control of a firearm.<sup>105</sup>

Notice must be issued to the gun owner, or respondent, to make them aware of the impending court hearing, with certain exceptions provided if such notice would put others at risk of imminent danger or harm. At the hearing, the petitioner must establish that the respondent poses a significant danger of causing personal injury to themselves or to others. In the event that the petitioner meets the burden of proof, the court must issue a protection order. Though gun violence protective order-type laws vary between each state, they are uniform in the duration of such issued order – one year.<sup>106</sup>

Upon entering an order to temporarily restrain a gun owner from his or her firearms, the respondent must surrender his or her firearms. Additionally, the order must detail that the respondent has a right to request one hearing to terminate the order every 12-month period that such order is in effect.<sup>107</sup>

The question of constitutionality of such protective orders has been raised with respect to the Second Amendment to the United States Constitution. In *Heller*, the United States Supreme Court recognized that the Second Amendment protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”<sup>108</sup> However, in the same case, the Supreme Court also recognized that the Second Amendment does not confer the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,” and that legislatures may use a variety of regulatory measures to prevent violence associated with firearms.<sup>109</sup>

The Supreme Court stated that lawful regulatory measures implemented by the legislatures include “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.”<sup>110</sup> In *Hope v. State*, the court held that the Connecticut risk-warrant law did not implicate the Second Amendment because it does not restrict the right of law-abiding, responsible citizens to use arms in defense of their homes.<sup>111</sup> The court in *Hope* echoed the Supreme Court’s sentiments in *Heller*, reasoning that Connecticut’s risk-warrant statute was an example of the longstanding “presumptively lawful regulatory measures” that can be adopted by legislatures.<sup>112</sup>

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<sup>105</sup> See Section 35-47-14, Ind. Code Ann.; Section 18100 Cal. Penal Code; SB 719, 2017 Regular Session (Oregon 2017); Section 7.94.010, Wash. Rev. Code Ann.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> 554 U.S. 570, 635 (2008).

<sup>109</sup> *Id.* at 626, 636 (2008).

<sup>110</sup> *Id.* at 626-27.

<sup>111</sup> 163 Conn.App. 36, 43 (Conn. App. Ct. 2016).

<sup>112</sup> *Id.*

Additionally, similar measures have been upheld in California. In *City of San Diego v. Boggess*, the court held that the protections of the Second Amendment do not extend to persons whose firearms are seized because they were found to be a danger to themselves by reason of their mental health.<sup>113</sup> Furthermore, the court reasoned that the government is not prohibited from regulating the possession of guns by persons proven to be dangerous due to mental illness and further held that such regulations do not appear to be in direct conflict with the Second Amendment.<sup>114</sup> The court held that California case law has affirmed that the state may ensure that firearms are not in the hands of someone who may use them dangerously.<sup>115</sup>

### Effect of Proposed Changes

The bill creates a process for a law enforcement officer to petition a court for a temporary ex parte risk protection order and a final risk protection order in s. 790.401, F.S. The intent of the process and court intervention is to temporarily prevent persons who are at high risk of harming themselves or others by accessing firearms when there is demonstrated evidence that a person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.

The court must find by clear and convincing evidence based on the following considerations that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm to issue a risk protection order:

- A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;
- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28, F.S.;
- The respondent's ownership of, access to, or intent to possess firearms;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;
- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;

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<sup>113</sup> 216 Cal.App.4th 1494, at 1505-06 (Cal. Ct. App. 2013).

<sup>114</sup> *Id.* at 1506.

<sup>115</sup> *Id.*

- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent; and
- Any relevant information from family and household members concerning the respondent.

If the court issues a risk protection order it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.

The bill allows a petitioner to request a temporary ex parte risk protection order be issued before the hearing for a risk protection order has occurred. The court must find that the respondent poses a significant danger of causing personal injury to himself or herself or to others in the near future by having in his or her custody or control or by purchasing, possessing or receiving a firearm or ammunition to issue an ex parte temporary risk protection order.

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm. The law enforcement officer must conduct a search authorized by law for such firearms and ammunition and take possession of all firearms and ammunition belonging to the respondent which are surrendered, in plain sight, or discovered pursuant to a lawful search.

Alternatively, if personal service by a law enforcement officer is not possible or is not required because the respondent was present at the risk protection order hearing, the respondent must surrender the firearms and ammunition in a safe manner to the control of the local law enforcement agency immediately after being served with the order by service or immediately after the hearing at which the respondent was present.

At the time of surrender, a law enforcement officer taking possession of a firearm, any ammunition, or a license to carry a concealed weapon or firearm shall issue a receipt identifying all firearms and the quantity and type of ammunition that have been surrendered and must provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the law enforcement officer serving the order shall file the original receipt with the court and ensure that his or her law enforcement agency retains a copy of the receipt. All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms or ammunition required to be surrendered.

Upon the sworn statement or testimony of any person alleging that the respondent has failed to comply with the surrender of firearms or ammunition as required by a risk protection order or temporary ex parte risk protection order, the court must determine whether probable cause exists to believe that the respondent has failed to surrender all firearms or ammunition in his or her

custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.

The respondent may submit one written request for a hearing to vacate a risk protection order starting after the date of the issuance of the order, and may request another hearing after every extension of the order, if any. The respondent shall have the burden of proving by clear and convincing evidence that the he or she does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition. If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

The petitioner may, by motion, request an extension of a risk protection order at any time within 30 calendar days before the end of the order. If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended. The court may extend a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate or to another extension order by the court.

If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon or firearm pursuant to this section, must reinstate such license only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06, F.S.

A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition.

A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency to another person who is willing to receive the respondent's firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient:

- Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;
- Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and
- Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.

Also within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms or ammunition, and into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered.

A person who files a petition knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a first degree misdemeanor.<sup>116</sup>

A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by a risk protection order commits a felony of the third degree.

The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The standard petition and order forms must be used after January 1, 2019.

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<sup>116</sup> A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

## **School Safety**

### Present Situation

#### ***Office of Safe Schools***

The Office of Safe Schools within the Florida Department of Education (DOE) serves to promote and support safe learning environments by addressing issues of student safety and academic success on state, district, and school levels.<sup>117</sup>

#### ***District School Board Responsibilities***

A district school board must provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students.<sup>118</sup> Among other duties, the district school board is required to:<sup>119</sup>

- Formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, and bomb threats, for all the public schools of the district which comprise grades K-12. District school board policies must include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law and fire protection codes. The emergency response agency that is responsible for notifying the school district for each type of emergency must be listed in the district's emergency response policy.
- Establish model emergency management and emergency preparedness procedures, including emergency notification procedures for the following life-threatening emergencies:
  - Weapon-use and hostage situations.
  - Hazardous materials or toxic chemical spills.
  - Weather emergencies, including hurricanes, tornadoes, and severe storms.
  - Exposure as a result of a manmade emergency.

#### ***Superintendent Responsibilities***

The district superintendent must recommend plans to the district school board for the proper attention to health, safety, and other matters that will best promote the welfare of students.<sup>120</sup>

#### ***Florida Safe Schools Assessment Tool***

Each district school board is required to use the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability to conduct a self-assessment of the school districts' current safety and security practices.<sup>121</sup> Based on these self-assessment findings, the district school superintendent must provide recommendations to the

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<sup>117</sup> Florida Department of Education, *Office of Safe Schools*, <http://www.fldoe.org/schools/safe-healthy-schools/safe-schools/index.stml> (last visited Feb. 23, 2018).

<sup>118</sup> Section 1006.07, F.S.

<sup>119</sup> *Id.* at (4).

<sup>120</sup> Section 1006.08(1), F.S.

<sup>121</sup> Section 1006.07(6), F.S.

district school board which identify strategies and activities that the district school board should implement in order to improve school safety and security.<sup>122</sup>

Annually each district school board must receive the self-assessment results at a publicly noticed district school board meeting to provide the public an opportunity to hear the district school board members discuss and take action on the report findings.<sup>123</sup> Each district school superintendent must report the self-assessment results and school board action to the commissioner within 30 days after the district school board meeting.<sup>124</sup>

The 2013 General Appropriations Act<sup>125</sup> required the DOE to contract with a security consulting firm that specializes in development of risk assessment software solutions with experience in conducting security assessments of public facilities firm to provide a risk assessment tool for conducting security assessments for use by school officials at each public school site in the state. The tool was intended to help school officials to identify threats, vulnerabilities and appropriate safety controls for the schools that they supervise. The assessment was required to, at a minimum, address the following issues:<sup>126</sup>

- School emergency and crisis preparedness planning;
- Security, crime and violence prevention policies and procedures;
- Physical security measures;
- Professional development training needs;
- An examination of support service roles in school safety, security, and emergency planning;
- School security and school police staffing, operational practices, and related services;
- School-community collaboration on school safety;
- Return on investment analysis of the recommended physical security controls.

The system was also required to generate written automated reports on assessment findings for review by the DOE and school and district officials.<sup>127</sup> A final report on implementation was required to identify the positive school safety measures in place at the time of the assessment, as well as the areas for continued school safety planning and improvement.<sup>128</sup>

### ***Safe Schools Allocation***

Safe Schools funds are to be used by school districts to help them comply with the sections of Florida law dedicated to school discipline and school safety (sections 1006.07 through 1006.148, F.S.), with priority given to establishing a school resources officer program pursuant to section 1006.12, F.S.<sup>129</sup>

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<sup>122</sup> Section 1006.07(6), F.S.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Specific Appropriation 102A, ch. 2013-40, L.O.F.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Section 1011.62,(15), F.S.



For the 2017-18 fiscal year, \$64,456,019 is appropriated for Safe Schools activities with each school district receiving a guaranteed minimum of \$62,660.<sup>130</sup> From the remaining appropriation, two-thirds must be allocated to school districts based on the latest official Florida Crime Index provided by the Florida Department of Law Enforcement and one-third must be allocated based on each district's share of the state's total unweighted student enrollment.<sup>131</sup>

### Effect of Proposed Changes

#### ***Legislative Intent***

The bill provides legislative intent that the provisions of the Florida education code be liberally constructed by the State Board of Education (SBE), the Commissioner of Education, district school boards, district school superintendents, and law enforcement agencies to the end that student discipline and school safety policy objectives may be effective.

Additionally, the bill provides legislative intent that school district and law enforcement personnel be authorized to take necessary actions to ensure the fundamental protection and safety of public school students, personnel, and visitors, notwithstanding any other provision of the Florida education code.

#### ***Marjory Stoneman Douglas High School Public Safety Commission***

The bill creates the Marjory Stoneman Douglas High School Public Safety Commission (commission) within the Florida Department of Law Enforcement.<sup>132</sup> The bill requires the commission to convene before June 1, 2018.

#### ***Membership, Chair, and Staff***

The bill specifies that the commission must be composed of fifteen members: five appointed by the President of the Senate, five appointed by the Speaker of the House of Representatives, and five appointed by the Governor. The bill specifies that appointments must be made before April 30, 2018. Additionally, the bill requires the Secretary of Children and Families, the Secretary of Juvenile Justice, the Secretary of Health Care Administration, the Commissioner of Education and the executive director must serve as ex officio, nonvoting members of the commission.

The bill specifies that members serve at the pleasure of the officer who appointed the member. The bill provides that a vacancy on the task force must be filled in the same manner as the original appointment.

The bill provides that the Commissioner of the Florida Department of Law Enforcement (FDLE) must chair the commission, the FDLE General Counsel must serve as the commission's general counsel, and FDLE staff, as assigned by the chair, must assist the commission in performing its duties.

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<sup>130</sup> Chapter 2017-234, Laws of Florida. Section 6 (11)

<sup>131</sup> Section 1011.62,(15), F.S.

<sup>132</sup> The bill specifies that the commission is defined as a body created by specific statutory enactment within a department and exercising limited quasi-legislative or quasi-judicial powers, or both, independently of the head of the department. Section 20.03, F.S.

*Meetings*

The bill specifies that the commission must meet as necessary to conduct the commission's work at the call of the chair and at a time designated by him or her at locations throughout the state. The bill authorizes the commission to conduct its meetings through teleconferences or other similar means.

The bill provides that members of the task force are entitled to receive reimbursement for per diem and travel expenses as provided in law.

*Responsibilities*

The bill specifies that the commission must investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents and develop recommendations for system improvements. The bill provides that, at a minimum, the commission must analyze evidence from the Marjory Stoneman Douglas High School shooting and other mass violence incidents in this state and other states, and:

- Develop a timeline of the incident, incident response, and all relevant events preceding the incident, with particular attention to all perpetrator contacts with local, state and national government agencies and any contract providers of such agencies and entities.
- Investigate any failures in incident responses by local law enforcement agencies and school resource officers. As a part of this investigation, the commission must:
  - Identify existing policies and procedures for active assailant incidents on school premises and evaluate the compliance with such policies and procedures in the execution of incident responses.
  - Evaluate existing policies and procedures for active assailant incidents on school premises in comparison with national best practices.
  - Evaluate the extent to which any failures in policy, procedure, or execution contributed to an inability to prevent deaths and injuries.
  - Make specific recommendations for improving law enforcement and school resource officer incident response in the future.
- Investigate any failures in interactions with perpetrators preceding mass violence incidents. As a part of this investigation, the commission must:
  - Identify the history of interactions between perpetrators and government entities such as schools, law enforcement agencies, courts and social service agencies, and identify any failures to adequately communicate or coordinate regarding indicators of risk or possible threats.
  - Evaluate the extent to which any such failures contributed to an inability to prevent deaths and injuries.
  - Make specific recommendations for improving communication and coordination among entities with knowledge of indicators of risk or possible threats of mass violence in the future.
  - Identify available state and local tools and resources for enhancing communication and coordination regarding indicators of risk or possible threats, including but not limited to the Florida Department of Law Enforcement Fusion Center or the Judicial Inquiry System, and make specific recommendations for using such tools and resources more effectively in the future.

*Powers*

The bill provides that:

- The commission has the power to investigate and specifies that the commission may delegate the authority to administer oaths and affirmations to its investigators.
- The commission has standing to petition the court for a subpoena to compel the attendance of witnesses to testify before the commission. Additionally, the bill grants the commission standing to petition the court to compel the production of any books, papers, records, documentary evidence, and other items, including confidential information, relevant to the performance of the duties of the commission or to the exercise of its power. The bill states that the commission must specify in the petition to the court for a subpoena, the relevancy of such information to the performance of the commission's duties or to the exercise of the commission's powers.
- The chair and any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the commission for the purpose of testifying in any matter that concerning which the commission desires evidence. The bill specifies that in the case of a refusal to obey a subpoena issued by the court to any person, the commission may make application to any Florida circuit court which must have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. The bill specifies that the failure to obey such order may be punished by the court as contempt.

Additionally, the bill authorizes the commission to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of the commission's duties and requires such agencies to provide such assistance in a timely manner.

The bill provides that, notwithstanding any other law, the commission is authorized to request and to be provided with access to any information or records, including confidential or exempt information or records, that pertain to the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida being reviewed by the commission and that are necessary for the commission to carry out its duties. The bill specifies that information or records obtained by the commission that are otherwise confidential or exempt must retain such confidential or exempt status and prohibits the commission from disclosing any such information or records.

*Report*

The bill requires the commission to submit an initial report on the commission's findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2019, and authorizes the commission to issue reports annually thereafter. The bill provides that on July 1, 2023, the commission sunsets and the statute authorizing the commission is repealed.

*Office of Safe Schools*

The bill codifies the Office of Safe Schools (office), within the DOE. The bill provides that the office is fully accountable to the Commissioner of Education, but must cooperate and coordinate with the Board of Governors of the State University System, public and nonpublic postsecondary

institutions, school districts, public and nonpublic schools, state and local agencies, community organizations, and other organizations and persons, as directed by the commissioner.

### *Purpose*

The bill specifies that the purpose of the office is to serve as the state education agency's primary coordinating division assigned to promote and support safe-learning environments by addressing issues of student safety and academic success at the state, district, and school levels. The bill states that the office must, at a minimum:

- Function as the state's primary contact for the coordination of activities, information, and reporting related to the implementation of the student discipline and school safety requirements in law related to education support for learning and student services, as well as other requirements of law pertaining to school safety partnerships and responsibilities, as assigned by the commissioner.
- Function as the state contact and state education agency coordination office for school district safety specialist and primary emergency operations contact staff assigned by Florida College System institutions, state universities, and other entities identified by the commissioner.
- Coordinate with state and local agencies, school district personnel, and safety and security experts to establish safe school and security standards, review school safety and security plans, establish guidelines regarding school district appointments to and functions of public school threat assessment teams and district school safety specialists, and update risk assessment procedures, as appropriate.
- Develop and implement a training program for district school safety specialties designated or appointed by a district school board. Such training program elements must include, but are not limited to:
  - School safety specialist participation in active shooter situation training;
  - Campus safety tours performed pursuant to s. 1006.07(7), F.S.;
  - Program activities of the Public School Emergency Response Learning System Program; and
  - Training associated with the Florida Safe Schools Assessment Tool.

### ***District School Board Responsibilities***

#### *Emergency Drills*

The bill requires a school district to formulate and prescribe policies and procedures for emergency drills for hostage and active shooter situations and establish model emergency management and emergency preparedness procedures for active shooter situations. The bill specifies that active shooter situation training must be conducted by the law enforcement agency or agencies that are designated as the first responders to the school's campus.

#### *Security Assessment*

The bill also requires each school district to conduct security risk assessments at each public school and conduct a self-assessment of the school districts' current safety and security practices using a format prescribed by the DOE and develop a plan that includes having a secure, single point of entry onto school grounds, using a format prescribed by the DOE.

*Safety in Construction Planning*

Additionally, the bill requires a district school board or governing board to allow the law enforcement agency or agencies that are designated as first responders to the school's or districts' campus tour such campuses once every 3 years and to document any recommended changes to school safety and emergency issues by the law enforcement agency based on a campus tour.

*District School Safety Specialist*

The bill requires a district school board to designate or appoint a district school safety specialist to serve at the direction of the superintendent as the district's primary point of public contact regarding the district's coordination, communication, and implementation of policies, procedures, responsibilities, and reporting related to district and public school safety functions. The bill specifies that the school safety specialist must:

- Coordinate with the Office of Safe Schools.
- Facilitate the collection and dissemination of information among and between the school district, school personnel, students and their families, state and local law enforcement agencies, community health entities, and other state and community partners.
- Maintain records and reports and facilitate the implementation of policies regarding the respective duties and responsibilities of the school districts, superintendents, and principals and reporting regarding student discipline and school safety requirements.
- Oversee and coordinate threat assessment teams and provide a coordinated approach to evaluating and responding to students who pose, or appear to pose, a credible potential threat of violence or harm to themselves or others.
- Perform other responsibilities assigned by the superintendent and requested by the Office of Safe Schools to facilitate and coordinate the effective implementation of student discipline and school safety requirements.

*Threat Assessment Team*

The bill requires each school district to designate a threat assessment team, in accordance with guidelines established by the Office of Safe Schools, at each school in the district. The threat assessment team must operate under the direction of the district school safety specialist.

*Florida Sheriff's Marshal Program*

The bill establishes the Florida Sheriff's Marshal Program (Marshal program) within the DOE's Office of Safe Schools as a voluntary program to assist school districts and public schools in enhancing the safety and security of students, faculty, staff, and visitors to Florida's public schools and campuses.

The bill specifies that the purpose of the Marshal program is to provide comprehensive firearm safety and proficiency training for selected faculty and staff to provide security on campus during an active assailant incident.<sup>133</sup> Additionally, the bill provides that public school faculty and staff who voluntarily participate in and complete the program, as recommended by the

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<sup>133</sup> The bill defines an "active assailant incident" as a situation in which an armed assailant is posing an immediate deadly threat to persons on the premises or campus of a public school.

school district, are designated as special deputy sheriffs with all rights, responsibilities, and obligations<sup>134</sup> in carrying concealed firearms on campus.

The bill establishes program eligibility and participation requirements, which must, at a minimum, include that:

- A school district may sponsor and recommend to the sheriff public school faculty and staff members as candidates for voluntary participation in the program. The sheriff must establish timelines and requirements for participation through a partnership agreement with the sponsoring school district superintendent. To be eligible for consideration and recommendation for the Marshal program, a candidate must be licensed to carry a concealed weapon or firearm in accordance with law.<sup>135</sup>
- The sheriff may approve a candidate to participate in the program as a sheriff's marshal after screening, which includes performing criminal background checks, drug testing, and a psychological evaluation.
- Upon successful completion of the program, a sheriff's marshal may be appointed by the sheriff as a special deputy sheriff<sup>136</sup> for the limited purpose of responding to an active assailant incident on a campus<sup>137</sup> of his or her school district during an active assailant incident.

The bill requires that a partnership agreement<sup>138</sup> must provide that a special deputy sheriff:

- Must participate in and complete the program's professional training requirements as a precondition to meeting the legal requirements of chapter 30 of the Florida Statutes to be eligible to carry a concealed firearm on a campus of his or her sponsoring school district.
- May not act in any law enforcement capacity outside of an active assailant incident on a school district campus and does not have any authority in a law enforcement capacity off campus in any way, except as otherwise expressly authorized by law.
- May carry concealed, approved firearms on campus. The firearms must be specifically purchased and issued for the sole purpose of the program. Only concealed carry safety holsters and firearms approved by the sheriff may be used under the program.
- Must successfully complete training with the sheriff's office before his or her appointment as a special deputy sheriff, including meeting the requirements of this section.

However, the bill specifies that the appointment of a person as a special deputy sheriff does not entitle the person to the special risk category that applies to law enforcement officers established under law.<sup>139</sup>

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<sup>134</sup> Qualifications of sheriff deputies and special deputies are established in s. 30.09, F.S.

<sup>135</sup> Section 790.06, F.S.

<sup>136</sup> The bill specifies that a "special deputy sheriff" means a program participant who has successfully completed the program and who is appointed as a law enforcement officer in the same manner as a deputy sheriff as provided in s. 30.072(2), F.S. and certified under ch. 943, F.S.

<sup>137</sup> The bill defines a campus as a school, as defined in s. 1003.01(2), F.S., and facilities and school plants operated and controlled by a public school district in accordance with s. 1003.02, F.S..

<sup>138</sup> The bill specifies that a "Partnership agreement" means a jointly-approved contract between the sheriff operating the program and the superintendent of a participating school district sponsor.

<sup>139</sup> Special risk membership is established for the purposes of the Florida Retirement System. Section 121.0515, F.S.

The bill requires that all training must be conducted by Criminal Justice Standards Training Commission (CJSTC)-certified instructors, with ongoing and annual proficiency retraining conducted by the sheriff, as specified in the agreement.

The required instruction must include 132 total hours of comprehensive firearm safety and proficiency training in the following topics:

- Firearms: An 80-hour block of instruction based on the CJSTC Law Enforcement Academy training model and must be enhanced to include 10 percent to 20 percent more rounds fired by each program participant beyond the minimum average of approximately 1,000 training rounds associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.
- Firearms precision pistol: A 16-hour block of instruction.
- Firearms discretionary shooting: A 4-hour block of instruction using state-of-the-art simulator exercises.
- Active shooter or assailant: An 8-hour block of instruction.
- Defensive tactics: A 4-hour block of instruction.
- Legal or high liability: A 20-hour block of instruction.
- An optional 16-hour precision pistol course as additional training.

The bill specifies that the sheriff or the district superintendent may deny or terminate a sheriff's marshal or special deputy sheriff's participation in the program for any reason, including, but not limited to, any of the following circumstances:

- An arrest or filing of criminal charges against a program participant by a law enforcement agency.
- The service of process on the program participant as the respondent of an injunction for protection.
- The involuntarily placement of the program participant in a treatment facility for a mental health examination under The Baker Act.
- A violation of sheriff office policies, orders, or requirements by the program participant.
- A violation of the school district's code of conduct or employee handbook or policy by the program participant.

To implement the Marshal program, the bill requires that:

- The sheriff must maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each program participant.
- Each program participant must be distinctly and visually identifiable to responding law enforcement officers, faculty, staff, and students, in the case of any active assailant incident on a sponsoring school district's campus.
- Each sheriff's marshal must execute a volunteer agreement with the sheriff's office outlining duties and responsibilities.
- A sponsoring school district must conduct awareness training about the program for all school district faculty and staff members.
- Specific implementation requirements, responsibilities, and other aspects of implementation must be specified in a partnership agreement.

The bill specifies that costs of participation in the Marshal program must be established in the partnership agreement. Funding may be provided by the Legislature to support school district and sheriff office administration, sponsorship, participation, and implementation of the marshal program.

### ***Florida Safe Schools Assessment Tool***

The bill requires the DOE to contract with a security consulting firm that specializes in the development of risk assessment software solutions and has experience in conducting security assessments of public facilities to develop, update, and implement a risk assessment tool, which will be established as the Florida Safe Schools Assessment Tool (FSSAT). The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise, pursuant to the security risk assessment required in law.<sup>140</sup>

The bill requires school officials at each school district and public school site in the state to use the FSSAT to conduct security assessments for use by school officials at each school district and public school site in the state.

The bill requires the FSSAT to address, at a minimum, all of the following components:

- School emergency and crisis preparedness planning;
- Security, crime, and violence prevention policies and procedures;
- Physical security measures;
- Professional development training needs;
- An examination of support service roles in school safety, security, and emergency planning;
- School security and school police staffing, operational practices, and related services;
- School and community collaboration on school safety; and
- A return on investment analysis of the recommended physical security controls.

The bill specifies that the DOE must require by contract that the security consulting firm:

- Generate written automated reports on assessment findings for review by the department and school and district officials;
- Provide training to the department and school officials in the use of the FSSAT and other areas of importance identified by the department; and
- Advise in the development and implementation of templates, formats, guidance, and other resources necessary to facilitate the implementation of this section at state, district, school, and local levels.

The bill requires that, by December 1, 2018, and annually by that date, the DOE must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of implementation across school districts and schools. The bill specifies that the report must include a summary the positive school safety measures in place at the time of the assessment and any recommendations for policy changes or funding needed to facilitate continued school safety planning, improvement, and response at the state, district, or school levels.

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<sup>140</sup> Section 1006.07(6), F.S.



Additionally, the bill requires that data and information related to security risk assessments and the security information contained in the required annual report are confidential and exempt from public records requirements.

### ***Safe Schools Allocation***

The bill modifies the safe schools allocation to expand the school district's authorized uses of the funds to incorporate newly created programs, including the Public School Emergency Response Learning System Program, Florida Sheriff's Marshal Program, and the Florida Safe Schools Assessment Tool, in addition to other school safety requirements in law, with priority given to satisfying the requirement of establishing or assigning at least one safe-school officer at each school facility within the district.

## **Coordination and System Improvements**

### **Present Situation**

#### ***Educational Multiagency Services for Student with Severe Emotional Disturbance***

Florida law provides that an intensive integrated educational program; a continuum of mental health treatment services; and, when needed, residential services are necessary to enable students with severe emotional disturbance to develop appropriate behaviors and demonstrate academic and career education skills.<sup>141</sup> District school boards should provide educational programs, and state departments and agencies administering children's mental health funds should provide mental health treatment and residential services when needed, forming a multiagency network to provide support for students with severe emotional disturbance.<sup>142</sup>

#### ***School Resource Officers and School Safety Officers***

District school boards may establish school resource officer programs, through a cooperative agreement with law enforcement agencies or in accordance with law, by which personnel are employed by either the school district or a law enforcement agency.<sup>143</sup>

School resource officers are certified law enforcement officers<sup>144</sup> who are employed by a law enforcement agency.<sup>145</sup> School resource officers must abide by district school board policies and must consult with and coordinate activities through the school principal, but are responsible to

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<sup>141</sup> Section 1006.04(1)(a), F.S.

<sup>142</sup> *Id.*

<sup>143</sup> Section 1006.12(1), F.S.

<sup>144</sup> "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

<sup>145</sup> In this section, a "law enforcement agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. *Id.* at (4).

the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency.<sup>146</sup>

School safety officers are certified law enforcement officers and employed by either a law enforcement agency or by the district school board.<sup>147</sup> If the officer is employed by the district school board, the district school board is the employing agency and must comply with the provisions in law regarding law enforcement.<sup>148</sup> A district school board may commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district.<sup>149</sup> Additionally, a school safety officer has the power to make arrests for violations of law on district school board property and to arrest persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests.<sup>150</sup> A school safety officer has the authority to carry weapons when performing his or her official duties.<sup>151</sup>

Florida law authorizes a district school board to enter into mutual aid agreements with one or more law enforcement agencies.<sup>152</sup> A school safety officer's salary may be paid jointly by the district school board and the law enforcement agency, as mutually agreed to.<sup>153</sup>

### ***Student Crime Watch Program***

A district school board, must by resolution of the board, implement a student crime watch program to promote responsibility among students and to assist in the control of criminal behavior within the schools.<sup>154</sup>

### **Effect of Proposed Changes**

#### ***Multiagency Services Network for Students with Severe Emotional Disturbances***

The bill codifies the Multiagency Services Network for Students with Severe Emotional Disturbances (SEDNET) as a function of the DOE in partnership with other state, regional, and local partners as a statewide network of regional projects comprised of major child-serving agencies, community-based service providers, and students and their families. The bill provides that the fundamental goal of SEDNET and its partners is to facilitate the process of cross system collaboration and inclusion of families as full partners. The bill requires, at a minimum, that SEDNET must:

- Focus on developing interagency collaboration and sustaining partnerships among professionals and families in the education, mental health, substance abuse, child welfare, and juvenile justice systems serving children and youth with, and at risk of, emotional and behavioral disabilities.

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<sup>146</sup> Section 1006.12(1)(b), F.S.

<sup>147</sup> *Id.* at (2)(a), F.S.

<sup>148</sup> *Id.* Chapter 943 governs the Florida Department of Law Enforcement.

<sup>149</sup> Section 1006.12(2)(b).

<sup>150</sup> *Id.* at (2)(c), F.S.

<sup>151</sup> *Id.*

<sup>152</sup> Section 1006.12(2)(d), F.S.

<sup>153</sup> *Id.*

<sup>154</sup> Section 1006.07(3), F.S.

- Provide technical assistance and support in building service capacity within regional areas and collaborate in related state level activities impacting systems of care.
- Serve as a collaborative resource for school districts, agencies, and families working to promote positive educational and community-based outcomes for children.

The bill specifies that the Legislature may provide funding for the DOE to award grants to district school boards for statewide planning and development of SEDNET. The bill also authorizes state departments and agencies to use appropriate funds for SEDNET.

#### *Safe-School Officer*

For the protection and safety of school personnel, property, students, and visitors, the bill requires each district school board and school district superintendent to cooperate with law enforcement to establish or assign one or more safe-school officers at each school facility within the district. The bill provides that the school district may implement a school resource officer, school safety officer, the Florida Sheriff's Marshal Program, or a combination of these options to fulfill this obligation.

The bill modifies the requirements for school resource or safety officers to require such officers to undergo criminal background checks, drug testing, and a psychological evaluation.

#### *School Safety Awareness Program*

The bill requires the Florida Department of Law Enforcement (FDLE) to competitively procure a mobile suspicious activity reporting tool (reporting tool) that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities or the threat of such activities to appropriate public safety agencies and school officials. The bill requires that, at a minimum, the FDLE must receive reports electronically through the reporting tool that is available on widely used mobile operating systems.

The bill requires that the reporting tool must notify the reporting party of the following information:

- That the reporting party may provide his or her report anonymously.
- That if the reporting party chooses to disclose his or her identity, such information shall be shared with the appropriate law enforcement agency and school officials; however, the law enforcement agency and school officials shall be required to maintain such information as confidential.

The bill specifies that information received by the tool must be promptly forwarded to the appropriate law enforcement agency or school official.

The bill requires that law enforcement dispatch centers, school districts, schools, and other entities identified by the FDLE shall be made aware of the mobile suspicious activity reporting tool. Additionally, the bill requires the FDLE, in collaboration with the Office of Safe Schools within the Florida Department of Education (DOE), to develop and provide a comprehensive training and awareness program on the use of the reporting tool.

***Public School Emergency Response Learning System Program***

The bill establishes the Public School Emergency Response Learning System Program (program) within the DOE's Office of Safe Schools to assist school personnel in preparing for and responding to active emergency situations and to implement local notification systems for all Florida public schools. The program requires local law enforcement agencies to partner with participating public preschools, public child care providers, or public school districts and schools.

The bill requires that training, notifications, and resources be available for school personnel and students and families, which must, at a minimum, include:

- Activities and direct training to mitigate risk and save lives in emergency situations, such as lockdown, bomb threat, active shooter, and other emergency situations.
- Vital local notification systems implemented to alert schools of imminent danger.
- Other resources provided in conjunction with the training including, but not limited to, an emergency plan flip chart, communication cards, instructional resources, activity books for children and teachers, and certificates of training and completion.

The bill requires that a school district must include in its emergency notification procedures established in law<sup>155</sup> any program participant who notifies the district of his or her desire to participate.

Additionally, the bill requires each program participant to develop a preemptive plan of action that includes multiple options for addressing various situations based on the form of danger present and the unique needs and circumstances of each school and its faculty, staff, students, and visitors.

The bill may provide for enhanced collaboration and communication between public schools and local law enforcement entities to appropriately address emergency situations.

The bill authorizes the Legislature to provide funding to implement the Public School Emergency Alert Response Learning System Program.

**Mental Health****Present Situation*****Mental Health Services in Schools***

The Department of Education (DOE), through the Bureau of Exceptional Education and Student Services and the Office of Safe Schools, promotes a system of support, policies, and practices that focus on prevention and early intervention to improve student mental health and school safety. Florida law requires instructional staff members of the public schools to teach comprehensive health education that addresses concepts of mental and emotional health as well as substance use and abuse.<sup>156</sup> Student services personnel, which includes school psychologists, school social workers, and school counselors, are classified as instructional personnel

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<sup>155</sup> Section 1006.07, F.S.

<sup>156</sup> Section 1003.42(2)(n), F.S.

responsible for advising students with regard to their personal and social adjustments, and provide direct and indirect services at the district and school level.<sup>157</sup>

#### Effect of Proposed Changes

##### ***The Mental Health Services Allocation***

The purpose of the mental health assistance allocation is to provide supplemental funding to assist school districts and charter schools in establishing or expanding comprehensive school-based mental health programs that:

- Increase awareness of mental health issues among children and school-age youth;
- Train educators and other school staff in detecting and responding to mental health issues; and
- Connect children, youth, and families who may experience behavioral or mental health issues with appropriate services.

The mental health assistance allocation must be allocated in the annual general appropriations act (GAA) to each eligible school district and developmental research school based on each entity's proportionate share of FEEP base funding. The district funding allocation must include a minimum amount as specified in the GAA. Charter schools are eligible for a proportionate share of district funding for this program upon the submission and approval of a plan that includes specified elements. The mental health assistance funds may not supplant funds that are provided for this purpose from other operating funds and may not be used to increase salaries or provide bonuses, except for personnel hired to implement the required mental health assistance allocation plans.

Prior to the distribution of the allocation, a school district is required to annually develop and submit a detailed plan outlining the local program and planned expenditures to the district school board for approval. Similarly, a charter school must annually develop and submit a detailed plan outlining the local program and planned expenditures of the funds in the plan to its governing body for approval in order to receive the allocation. After the charter school's governing board approves the plan, it must be provided to the school district for submission to the Commissioner of Education. School districts must submit approved plans to the commissioner by August 1 of each fiscal year.

The required mental health assistance allocation plan must include, at a minimum, each of the following elements:

- A contract or memorandum of understanding with at least one local nationally accredited community behavioral health provider or a provider of Community Action Team services to provide a behavioral health presence and services at district schools. Services may include, but are not limited to:
  - Mental health screenings and assessments;
  - Individual, family, and group counseling;
  - Psychiatric or psychological services;
  - Trauma-informed care;
  - Mobile crisis services; and

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<sup>157</sup> Section 1012.01(2)(b), F.S.

- Behavior modification.
- Training opportunities in Mental Health First Aid or other similar nationally recognized evidence-based training for all school personnel who have contact with students. Training topics should include depression and mood disorders, anxiety disorders, trauma, psychosis, substance use disorders, and suicide prevention. The training must cover:
  - Risk factors and warning signs for mental health and addiction concerns;
  - Strategies for providing assistance to individuals in both crisis and non-crisis situations; and
  - The use of referral mechanisms that effectively link individuals to appropriate treatment and intervention services in the school and in the community.
- A mental health crisis intervention strategy that provides for prompt resolution of identified, immediate threats within district schools, including Baker Act referrals and notification of law enforcement personnel, as appropriate.

School districts and charter schools are *strongly encouraged* to include in the required mental health assistance allocation plan each of the following elements:

- Programs to assist students in dealing with anxiety, depression, bullying, trauma, and violence;
- Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems; suicidal tendencies; or substance use disorders; and
- Strategies to improve the early identification of social, emotional, or behavioral problems or substance use disorders and to improve the provision of early intervention services.

Beginning September 30, 2019, and annually thereafter, each entity that receives a mental health assistance allocation must submit a final report to the commissioner, in a format prescribed by the Florida Department of Education (DOE), on its program outcomes and expenditures for each element of the program. At a minimum, the report must include the number of each of the following:

- Students who receive screenings or assessments.
- Students who are referred for services or assistance.
- Students who receive services or assistance.
- Parents or guardians notified.
- School personnel who are trained to engage in the services, techniques, strategies, or programs identified in the required mental health assistance allocation plan.

The establishment of the mental health assistance allocation program may assist school districts in providing comprehensive school-based mental health programs that increase awareness of mental health issues among children and school-age youth. This may improve student mental health and school safety.

## **Public Records Exemptions**

### Present Situation

Florida law provides that education records of students, as defined in the federal Family Educational Rights and Privacy Act (FERPA), and the federal regulations issued pursuant thereto, are confidential and exempt from state public records laws.<sup>158</sup>

### Effect of Proposed Changes

The bill clarifies that Florida law does not limit the application of exemptions from public records requirements for security system plans and public security systems, including security footage, or other information that would relate to or reveal the location or capabilities of such systems.

The bill takes effect October 1, 2018, except as otherwise provided by the act.

## **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:**

Although local law enforcement agencies may incur some additional expense resulting from the law enforcement officer's participation in the newly-created risk protection order process and related administration of the firearms and ammunition seizure, storage and release and will likely have an insignificant fiscal impact.

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<sup>158</sup> Sections 1002.221 and 1002.225, F.S.

The school safety provisions in SB 7026 may have a significant fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 20.15, 394.463, 790.065, 790.0655, 1002.221, 1002.225, 1006.04, 1006.07, 1006.12, and 1011.62.

This bill creates the following sections of the Florida Statutes: 16.63, 397.6760, 790.064, 790.335, 790.34, 790.401, 943.687, 1000.051, 1001.217, 1006.05, 1006.149, 1006.1491, and 1006.1493.

This bill reenacts the following sections of the Florida Statutes: 397.6760 and 790.335.

This bill creates six undesignated sections of Florida Law.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.





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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/26/2018	.	
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The Committee on Rules (Galvano and Benacquisto) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as the "Marjory Stoneman  
Douglas High School Public Safety Act."

Section 2. The Legislature finds there is a need to  
comprehensively address the crisis of gun violence, including  
but not limited to, gun violence on school campuses. The  
Legislature intends to address this crisis by providing law



345360

enforcement and the courts with the tools to enhance public safety by temporarily restricting firearm possession by a person who is undergoing a mental health crisis and when there is evidence of a threat of violence, and by promoting school safety and enhanced coordination between education and law enforcement entities at the state and local level.

Section 3. Paragraph (j) is added to subsection (3) of section 20.15, Florida Statutes, to read:

20.15 Department of Education.—There is created a Department of Education.

(3) DIVISIONS.—The following divisions of the Department of Education are established:

(j) The Office of Safe Schools.

Section 4. Paragraphs (c) and (d) of subsection (2) of section 394.463, Florida Statutes, are amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may:

1. Serve and execute such order on any day of the week, at any time of the day or night; and

2. Use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and take custody of the person who is the subject of the ex parte order.

(d) A law enforcement officer taking custody of a person under this subsection may seize and hold a firearm or any ammunition the person possesses at the time of taking him or her into custody if the person poses a potential danger to himself



345360

or herself or others and has made a credible threat of violence against another person.

1. If a law enforcement officer seizes a firearm or any ammunition, the law enforcement officer's agency must hold the seized firearm or ammunition for at least a 72-hour period or until the person goes to the law enforcement agency to retrieve the seized firearm or ammunition. Law enforcement agencies must develop policies and procedures relating to the seizure, storage, and return of such seized firearms or ammunition.

2. If the person has a firearm or any ammunition that was not seized when he or she was taken into custody, a law enforcement officer may petition the appropriate court for a risk protection order against the person pursuant to s. 790.401.  
~~A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.~~

Section 5. Section 790.064, Florida Statutes, is created to read:

790.064 Firearm possession and firearm ownership disability.—

(1) A person who has been adjudicated mentally defective or who has been committed to a mental institution, as those terms are defined in s. 790.065(2), may not own a firearm or possess a firearm until relief from the firearm possession and firearm ownership disability is obtained.

(2) The firearm possession and firearm ownership disability



345360

runs concurrently with the firearm purchase disability provided in s. 790.065(2).

(3) A person may petition the court that made the adjudication or commitment, or that ordered that the record be submitted to the Department of Law Enforcement pursuant to s. 790.065(2), for relief from the firearm possession and firearm ownership disability.

(4) The person seeking relief must follow the procedures set forth in s. 790.065(2) for obtaining relief from the firearm purchase disability in seeking relief from the firearm possession and firearm ownership disability.

(5) The person may seek relief from the firearm possession and firearm ownership disability simultaneously with the relief being sought from the firearm purchase disability, if such relief is sought, pursuant to the procedure set forth in s. 790.065(2).

Section 6. Present subsection (13) of section 790.065, Florida Statutes, is redesignated as subsection (14), a new subsection (13) is added to that section, and subsection (1) is amended, to read:

790.065 Sale and delivery of firearms.—

(1)(a)1. A licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person~~7~~ other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who is under 21 years of age, except that a licensed importer, licensed manufacturer, or licensed dealer may sell or deliver a rifle or shotgun to a person who is 18 years of age or older and is a law enforcement



345360

officer or correctional officer as defined in s. 943.10 or on active duty in the Armed Forces of the United States or full-time duty in the National Guard.

2. For a person 21 years of age or older, or 18 years of age or older and meeting an exception under this paragraph, a licensed importer, licensed manufacturer, or licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector until she or he has:

a.1. Obtained a completed form from the potential buyer or transferee, which form shall have been adopted ~~promulgated~~ by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

b.2. Collected a fee from the potential buyer for processing the criminal history check of the potential buyer. The fee shall be established by the Department of Law Enforcement and may not exceed \$8 per transaction. The Department of Law Enforcement may reduce, or suspend collection of, the fee to reflect payment received from the Federal Government applied to the cost of maintaining the criminal history check system established by this section as a means of facilitating or supplementing the National Instant Criminal Background Check System. The Department of Law Enforcement



345360

shall, by rule, establish procedures for the fees to be transmitted by the licensee to the Department of Law Enforcement. All such fees shall be deposited into the Department of Law Enforcement Operating Trust Fund, but shall be segregated from all other funds deposited into such trust fund and must be accounted for separately. Such segregated funds must not be used for any purpose other than the operation of the criminal history checks required by this section. The Department of Law Enforcement, each year prior to February 1, shall make a full accounting of all receipts and expenditures of such funds to the President of the Senate, the Speaker of the House of Representatives, the majority and minority leaders of each house of the Legislature, and the chairs of the appropriations committees of each house of the Legislature. In the event that the cumulative amount of funds collected exceeds the cumulative amount of expenditures by more than \$2.5 million, excess funds may be used for the purpose of purchasing soft body armor for law enforcement officers.

c.3. Requested, by means of a toll-free telephone call, the Department of Law Enforcement to conduct a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems as of the date of the request.

d.4. Received a unique approval number for that inquiry from the Department of Law Enforcement, and recorded the date and such number on the consent form.

(13) A person younger than 21 years of age may not purchase a firearm. The sale or transfer of a firearm to a person younger than 21 years of age may not be made or facilitated by a



345360

licensed importer, licensed manufacturer, or licensed dealer. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The prohibitions of this subsection do not apply to the purchase of a rifle or shotgun by a law enforcement officer or a correctional officer, as those terms are defined in s. 943.10, or to a person on active duty in the Armed Forces of the United States or full-time duty in the National Guard.

Section 7. Section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of firearms ~~handguns~~; mandatory waiting period; exceptions; penalties.—

(1)(a) ~~There shall be~~ A mandatory ~~3-day~~ waiting period is imposed between the purchase and delivery of a firearm. The mandatory waiting period is, which shall be 3 days, excluding weekends and legal holidays, or expires upon the completion of the records checks required under s. 790.065, whichever occurs later between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. ~~"Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver.~~ "Retailer" means and includes a licensed importer, licensed manufacturer, or licensed dealer ~~every person~~ engaged in the business of making firearm sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).

(b) Records of firearm ~~handgun~~ sales must be available for inspection by any law enforcement agency, as defined in s. 934.02, during normal business hours.



345360

(2) The ~~3-day~~ waiting period does ~~shall~~ not apply in the following circumstances:

(a) When a firearm handgun is being purchased by a holder of a concealed weapons permit as defined in s. 790.06.

(b) To a trade-in of another firearm handgun.

(c) Upon successfully completing a hunter safety course, which must be a minimum of 16 hours of instruction, and possessing a hunter safety certification card issued under s. 379.3581. A person who is exempt from the hunter safety course requirement under s. 379.3581 and continuously holds a valid Florida hunting license without a lapse as of March 1, 2018, is exempt from the 3-day waiting period under this section, unless that person is purchasing a handgun.

(d) When a rifle or shotgun is being purchased by a law enforcement officer or correctional officer, as defined in s. 943.10, or a person on active duty in the Armed Forces of the United States or full-time duty in the National Guard.

(3) It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) For any retailer, or any employee or agent of a retailer, to deliver a firearm handgun before the expiration of the ~~3-day~~ waiting period, subject to the exceptions provided in subsection (2).

(b) For a purchaser to obtain delivery of a firearm handgun by fraud, false pretense, or false representation.

Section 8. Section 790.34, Florida Statutes, is created to read:

790.34 Prohibited device for firearm.—

(1) DEFINITION.—As used in this section, the term "bump-





345360

214 fire stock" means a gun conversion kit, a tool, an accessory, or  
215 a device used to alter the rate of fire of a firearm to mimic  
216 automatic weapon fire or which is used to increase the rate of  
217 fire of a semiautomatic firearm to a faster rate than is  
218 possible for a person to fire such semiautomatic firearm  
219 unassisted by a kit, a tool, an accessory, or a device.

220 (2) SALE OR TRANSFER.—A person may not import into this  
221 state or, within this state, transfer, distribute, transport,  
222 sell, keep for sale, offer or expose for sale, or give a bump-  
223 fire stock to another person. A person who violates this  
224 subsection commits a felony of the third degree, punishable as  
225 provided in s. 775.082, s. 775.083, or s. 775.084.

226 Section 9. (1) Section 790.401, Florida Statutes, is  
227 intended to temporarily prevent individuals who are at high risk  
228 of harming themselves or others from accessing firearms or  
229 ammunition by allowing law enforcement officers to obtain a  
230 court order when there is demonstrated evidence that a person  
231 poses a significant danger to himself or herself or others,  
232 including significant danger as a result of a mental health  
233 crisis or violent behavior.

234 (2) The purpose and intent of s. 790.401, Florida Statutes,  
235 is to reduce deaths and injuries as a result of certain  
236 individuals' use of firearms while respecting constitutional  
237 rights by providing a judicial procedure for law enforcement  
238 officers to obtain a court order temporarily restricting a  
239 person's access to firearms and ammunition. The process  
240 established by s. 790.401, Florida Statutes, is intended to  
241 apply only to situations in which the person poses a significant  
242 danger of harming himself or herself or others by possessing a



345360

firearm or ammunition and to include standards and safeguards to  
protect the rights of respondents and due process of law.

Section 10. Section 790.401, Florida Statutes, may be cited  
as "The Risk Protection Order Act."

Section 11. Section 790.401, Florida Statutes, is created  
to read:

790.401 Risk protection orders.—

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

(a) "Petitioner" means a law enforcement officer or a law  
enforcement agency that petitions a court for a risk protection  
order under this section.

(b) "Respondent" means the individual who is identified as  
the respondent in a petition filed under this section.

(c) "Risk protection order" means a temporary ex parte  
order or a final order granted under this section.

(2) PETITION FOR A RISK PROTECTION ORDER.—There is created  
an action known as a petition for a risk protection order.

(a) A petition for a risk protection order may be filed by  
a law enforcement officer or law enforcement agency.

(b) An action under this section must be filed in the  
county where the petitioner's law enforcement office is located  
or the county where the respondent resides.

(c) Such petition for a risk protection order does not  
require either party to be represented by an attorney.

(d) Notwithstanding any other law, attorney fees may not be  
awarded in any proceeding under this section.

(e) A petition must:

1. Allege that the respondent poses a significant danger of  
causing personal injury to himself or herself or others by



345360

having a firearm or any ammunition in his or her custody or control or by purchasing, possessing, or receiving a firearm or any ammunition, and must be accompanied by an affidavit made under oath stating the specific statements, actions, or facts that give rise to a reasonable fear of significant dangerous acts by the respondent;

2. Identify the quantities, types, and locations of all firearms and ammunition the petitioner believes to be in the respondent's current ownership, possession, custody, or control; and

3. Identify whether there is a known existing protection order governing the respondent under s. 741.30, s. 784.046, or s. 784.0485 or under any other applicable statute.

(f) The petitioner must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice.

(g) The petitioner must list the address of record on the petition as being where the appropriate law enforcement agency is located.

(h) A court or a public agency may not charge fees for filing or for service of process to a petitioner seeking relief under this section and must provide the necessary number of certified copies, forms, and instructional brochures free of



345360

charge.

(i) A person is not required to post a bond to obtain relief in any proceeding under this section.

(j) The circuit courts of this state have jurisdiction over proceedings under this section.

(3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

(a) Upon receipt of a petition, the court must order a hearing to be held no later than 14 days after the date of the order and must issue a notice of hearing to the respondent for the same.

1. The clerk of the court shall cause a copy of the notice of hearing and petition to be forwarded on or before the next business day to the appropriate law enforcement agency for service upon the respondent as provided in subsection (5).

2. The court may, as provided in subsection (4), issue a temporary ex parte risk protection order pending the hearing ordered under this subsection. Such temporary ex parte order must be served concurrently with the notice of hearing and petition as provided in subsection (5).

3. The court may conduct a hearing by telephone pursuant to a local court rule to reasonably accommodate a disability or exceptional circumstances. The court must receive assurances of the petitioner's identity before conducting a telephonic hearing.

(b) Upon notice and a hearing on the matter, if the court finds by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm or any



345360

ammunition, the court must issue a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months.

(c) In determining whether grounds for a risk protection order exist, the court may consider any relevant evidence, including, but not limited to, any of the following:

1. A recent act or threat of violence by the respondent against himself or herself or others, whether or not such violence or threat of violence involves a firearm.

2. An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others.

3. Evidence of the respondent being seriously mentally ill or having recurring mental health issues.

4. A violation by the respondent of a risk protection order or a no contact order issued under s. 741.30, s. 784.046, or s. 784.0485.

5. A previous or existing risk protection order issued against the respondent.

6. A violation of a previous or existing risk protection order issued against the respondent.

7. Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28.

8. The respondent's ownership of, access to, or intent to possess firearms or ammunition.

9. The unlawful or reckless use, display, or brandishing of



345360

a firearm by the respondent.

10. The recurring use of, or threat to use, physical force by the respondent against another person or the respondent stalking another person.

11. Whether the respondent, in this state or any other state, has been arrested for, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence.

12. Corroborated evidence of the abuse of controlled substances or alcohol by the respondent.

13. Evidence of recent acquisition of firearms or ammunition by the respondent.

14. Any relevant information from family and household members concerning the respondent.

(d) A person, including an officer of the court, who offers evidence or recommendations relating to the cause of action either must present the evidence or recommendations in writing to the court with copies to each party and his or her attorney, if one is retained, or must present the evidence under oath at a hearing at which all parties are present.

(e) In a hearing under this section, the rules of evidence apply to the same extent as in a domestic violence injunction proceeding under s. 741.30.

(f) During the hearing, the court must consider whether a mental health evaluation or chemical dependency evaluation is appropriate and, if such determination is made, may order such evaluations, if appropriate.

(g) A risk protection order must include all of the following:



345360

1. A statement of the grounds supporting the issuance of the order;

2. The date the order was issued;

3. The date the order ends;

4. Whether a mental health evaluation or chemical dependency evaluation of the respondent is required;

5. The address of the court in which any responsive pleading should be filed;

6. A description of the requirements for the surrender of firearms and ammunition under subsection (7); and

7. The following statement:

"To the subject of this protection order: This order will last until the date noted above. If you have not done so already, you must surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You have the right to request one hearing to vacate this order, starting after the date of the issuance of this order, and to request another hearing after every extension of the order, if any. You may seek the advice of an attorney as to any matter connected with this order."

(h) If the court issues a risk protection order, the court must inform the respondent that he or she is entitled to request



345360

a hearing to vacate the order in the manner provided by  
subsection (6). The court shall provide the respondent with a  
form to request a hearing to vacate.

(i) If the court denies the petitioner's request for a risk  
protection order, the court must state the particular reasons  
for the denial.

(4) TEMPORARY EX PARTE RISK PROTECTION ORDERS.—

(a) A petitioner may request that a temporary ex parte risk  
protection order be issued before a hearing for a risk  
protection order, without notice to the respondent, by including  
in the petition detailed allegations based on personal knowledge  
that the respondent poses a significant danger of causing  
personal injury to himself or herself or others in the near  
future by having in his or her custody or control, or by  
purchasing, possessing, or receiving, a firearm or ammunition.

(b) In considering whether to issue a temporary ex parte  
risk protection order under this section, the court shall  
consider all relevant evidence, including the evidence described  
in paragraph (3) (c).

(c) If a court finds there is reasonable cause to believe  
that the respondent poses a significant danger of causing  
personal injury to himself or herself or others in the near  
future by having in his or her custody or control, or by  
purchasing, possessing, or receiving, a firearm or ammunition,  
the court must issue a temporary ex parte risk protection order.

(d) The court must hold a temporary ex parte risk  
protection order hearing in person or by telephone on the day  
the petition is filed or on the business day immediately  
following the day the petition is filed.





345360

(e) A temporary ex parte risk protection order must include all of the following:

1. A statement of the grounds asserted for the order;
2. The date the order was issued;
3. The address of the court in which any responsive pleading may be filed;
4. The date and time of the scheduled hearing;
5. A description of the requirements for surrender of firearms and ammunition under subsection (7); and
6. The following statement:

"To the subject of this protection order: This order is valid until the date noted above. You are required to surrender all firearms and ammunition in your custody, control, or possession. You may not have in your custody or control, or purchase, possess, receive, or attempt to purchase or receive, a firearm or ammunition while this order is in effect. You must surrender immediately to the (insert name of local law enforcement agency) all firearms and ammunition in your custody, control, or possession and any license to carry a concealed weapon or firearm issued to you under s. 790.06, Florida Statutes. A hearing will be held on the date and at the time noted above to determine if a risk protection order should be issued. Failure to appear at that hearing may result in a court issuing an order against you which is valid for 1 year. You may seek the advice of an attorney as to any matter connected with this order."

(f) A temporary ex parte risk protection order ends upon the hearing on the risk protection order.



345360

(g) A temporary ex parte risk protection order must be served by a law enforcement officer in the same manner as provided for in subsection (5) for service of the notice of hearing and petition and must be served concurrently with the notice of hearing and petition.

(h) If the court denies the petitioner's request for a temporary ex parte risk protection order, the court must state the particular reasons for the denial.

(5) SERVICE.—

(a) The clerk of the court shall furnish a copy of the notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, as applicable, to the sheriff of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. When requested by the sheriff, the clerk of the court may transmit a facsimile copy of a temporary ex parte risk protection order or a risk protection order that has been certified by the clerk of the court, and this facsimile copy may be served in the same manner as a certified copy. Upon receiving a facsimile copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. The clerk of the court shall be responsible for furnishing to the sheriff information on the respondent's physical description and location. Notwithstanding any other provision of law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency effecting service pursuant to this section shall use



345360

service and verification procedures consistent with those of the  
sheriff. Service under this section takes precedence over the  
service of other documents, unless the other documents are of a  
similar emergency nature.

(b) All orders issued, changed, continued, extended, or  
vacated after the original service of documents specified in  
paragraph (a) must be certified by the clerk of the court and  
delivered to the parties at the time of the entry of the order.  
The parties may acknowledge receipt of such order in writing on  
the face of the original order. If a party fails or refuses to  
acknowledge the receipt of a certified copy of an order, the  
clerk shall note on the original order that service was  
effected. If delivery at the hearing is not possible, the clerk  
shall mail certified copies of the order to the parties at the  
last known address of each party. Service by mail is complete  
upon mailing. When an order is served pursuant to this  
subsection, the clerk shall prepare a written certification to  
be placed in the court file specifying the time, date, and  
method of service and shall notify the sheriff.

(6) TERMINATION AND EXTENSION OF ORDERS.—

(a) The respondent may submit one written request for a  
hearing to vacate a risk protection order issued under this  
section, starting after the date of the issuance of the order,  
and may request another hearing after every extension of the  
order, if any.

1. Upon receipt of the request for a hearing to vacate a  
risk protection order, the court shall set a date for a hearing.  
Notice of the request must be served on the petitioner in  
accordance with subsection (5). The hearing must occur no sooner



345360

than 14 days and no later than 30 days after the date of service of the request upon the petitioner.

2. The respondent shall have the burden of proving by clear and convincing evidence that the respondent does not pose a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, purchasing, possessing, or receiving a firearm or ammunition. The court may consider any relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

3. If the court finds after the hearing that the respondent has met his or her burden of proof, the court must vacate the order.

4. The law enforcement agency holding any firearm or ammunition or license to carry a concealed weapon or firearm that has been surrendered pursuant to this section shall be notified of the court order to vacate the risk protection order.

(b) The court must notify the petitioner of the impending end of a risk protection order. Notice must be received by the petitioner at least 30 days before the date the order ends.

(c) The petitioner may, by motion, request an extension of a risk protection order at any time within 30 days before the end of the order.

1. Upon receipt of the motion to extend, the court shall order that a hearing be held no later than 14 days after the date the order is issued and shall schedule such hearing.

a. The court may schedule a hearing by telephone in the manner provided by subparagraph (3)(a)3.

b. The respondent must be personally served in the same manner provided by subsection (5).



345360

2. In determining whether to extend a risk protection order issued under this section, the court may consider all relevant evidence, including evidence of the considerations listed in paragraph (3)(c).

3. If the court finds by clear and convincing evidence that the requirements for issuance of a risk protection order as provided in subsection (3) continue to be met, the court must extend the order. However, if, after notice, the motion for extension is uncontested and no modification of the order is sought, the order may be extended on the basis of a motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension.

4. The court may extend a risk protection order for a period that it deems appropriate, up to and including but not exceeding 12 months, subject to an order to vacate as provided in paragraph (a) or to another extension order by the court.

(7) SURRENDER OF FIREARMS AND AMMUNITION.—

(a) Upon issuance of a risk protection order under this section, including a temporary ex parte risk protection order, the court shall order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession except as provided in subsection (9), and any license to carry a concealed weapon or firearm issued under s. 790.06.

(b) The law enforcement officer serving a risk protection order under this section, including a temporary ex parte risk protection order, shall request that the respondent immediately surrender all firearms and ammunition in his or her custody,



345360

control, or possession and any license to carry a concealed  
weapon or firearm issued under s. 790.06, and shall conduct a  
search authorized by law for such firearms and ammunition. The  
law enforcement officer shall take possession of all firearms  
and ammunition belonging to the respondent which are  
surrendered, in plain sight, or discovered pursuant to a lawful  
search. Alternatively, if personal service by a law enforcement  
officer is not possible or is not required because the  
respondent was present at the risk protection order hearing, the  
respondent shall surrender the firearms and ammunition in a safe  
manner to the control of the local law enforcement agency  
immediately after being served with the order by service or  
immediately after the hearing at which the respondent was  
present.

(c) At the time of surrender, a law enforcement officer  
taking possession of a firearm, any ammunition, or a license to  
carry a concealed weapon or firearm shall issue a receipt  
identifying all firearms and the quantity and type of ammunition  
that have been surrendered and shall provide a copy of the  
receipt to the respondent. Within 72 hours after service of the  
order, the law enforcement officer serving the order shall file  
the original receipt with the court and shall ensure that his or  
her law enforcement agency retains a copy of the receipt.

(d) Notwithstanding ss. 933.02 and 933.18, upon the sworn  
statement or testimony of any person alleging that the  
respondent has failed to comply with the surrender of firearms  
or ammunition as required by an order issued under this section,  
the court shall determine whether probable cause exists to  
believe that the respondent has failed to surrender all firearms



345360

or ammunition in his or her custody, control, or possession. If the court finds that probable cause exists, the court must issue a warrant describing the firearms or ammunition and authorizing a search of the locations where the firearms or ammunition are reasonably believed to be found and the seizure of any firearms or ammunition discovered pursuant to such search.

(e) If a person other than the respondent claims title to any firearms or ammunition surrendered pursuant to this section and he or she is determined by the law enforcement agency to be the lawful owner of the firearm or ammunition, the firearm or ammunition shall be returned to him or her, if:

1. The lawful owner agrees to store the firearm or ammunition in a manner such that the respondent does not have access to or control of the firearm or ammunition.

2. The firearm or ammunition is not otherwise unlawfully possessed by the owner.

(f) Upon the issuance of a risk protection order, the court shall order a new hearing date and require the respondent to appear no later than 3 business days after the issuance of the order. The court shall require proof that the respondent has surrendered any firearms or ammunition in his or her custody, control, or possession. The court may cancel the hearing upon a satisfactory showing that the respondent is in compliance with the order.

(g) All law enforcement agencies must develop policies and procedures by January 1, 2019, regarding the acceptance, storage, and return of firearms, ammunition, or licenses required to be surrendered under this section.

(8) RETURN AND DISPOSAL OF FIREARMS AND AMMUNITION.—



345360

(a) If a risk protection order is vacated or ends without extension, a law enforcement agency holding a firearm or any ammunition that has been surrendered or seized pursuant to this section must return such surrendered firearm or ammunition requested by a respondent only after confirming through a background check that the respondent is currently eligible to own or possess firearms and ammunition under federal and state law and after confirming with the court that the risk protection order has been vacated or has ended without extension.

(b) If a risk protection order is vacated or ends without extension, the Department of Agriculture and Consumer Services, if it has suspended a license to carry a concealed weapon or firearm pursuant to this section, must reinstate such license only after confirming that the respondent is currently eligible to have a license to carry a concealed weapon or firearm pursuant to s. 790.06.

(c) A law enforcement agency must provide notice to any family or household members of the respondent before the return of any surrendered firearm and ammunition.

(d) Any firearm and ammunition surrendered by a respondent pursuant to subsection (7) which remains unclaimed by the lawful owner after an order to vacate the risk protection order shall be disposed of in accordance with the law enforcement agency's policies and procedures for the disposal of firearms in police custody.

(9) TRANSFER OF FIREARMS AND AMMUNITION.—A respondent may elect to transfer all firearms and ammunition that have been surrendered to or seized by a local law enforcement agency pursuant to subsection (7) to another person who is willing to





345360

receive the respondent's firearms and ammunition. The law enforcement agency may allow such a transfer only if it is determined that the chosen recipient:

(a) Currently is eligible to own or possess a firearm and ammunition under federal and state law after confirmation through a background check;

(b) Attests to storing the firearms and ammunition in a manner such that the respondent does not have access to or control of the firearms and ammunition until the risk protection order against the respondent is vacated or ends without extension; and

(c) Attests not to transfer the firearms or ammunition back to the respondent until the risk protection order against the respondent is vacated or ends without extension.

(10) REPORTING OF ORDERS.—

(a) Within 24 hours after issuance, the clerk of the court shall enter any risk protection order or temporary ex parte risk protection order issued under this section into the uniform case reporting system.

(b) Within 24 hours after issuance, the clerk of the court shall forward a copy of an order issued under this section to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order into the National Instant Criminal Background Check System, any other federal or state computer-based systems used by law enforcement agencies or others to identify prohibited purchasers of firearms or ammunition, and into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list



345360

outstanding warrants. The order must remain in each system for the period stated in the order, and the law enforcement agency shall only remove orders from the systems that have ended or been vacated. Entry into the Florida Crime Information Center and National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in this state.

(c) The issuing court shall, within 3 business days after issuance of a risk protection order or temporary ex parte risk protection order, forward all available identifying information concerning the respondent, along with the date of order issuance, to the Department of Agriculture and Consumer Services. Upon receipt of the information, the department shall determine if the respondent has a license to carry a concealed weapon or firearm. If the respondent does have a license to carry a concealed weapon or firearm, the department must immediately suspend the license.

(d) If a risk protection order is vacated before its end date, the clerk of the court shall, on the day of the order to vacate, forward a copy of the order to the Department of Agriculture and Consumer Services and the appropriate law enforcement agency specified in the order to vacate. Upon receipt of the order, the law enforcement agency shall promptly remove the order from any computer-based system in which it was entered pursuant to paragraph (b).

(11) PENALTIES.—

(a) A person who files a petition under this section knowing the information in such petition is materially false, or files with the intent to harass the respondent, commits a



345360

misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who has in his or her custody or control a firearm or any ammunition or who purchases, possesses, or receives a firearm or any ammunition with knowledge that he or she is prohibited from doing so by an order issued under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) LAW ENFORCEMENT RETAINS OTHER AUTHORITY.—This section does not affect the ability of a law enforcement officer to remove a firearm or ammunition or license to carry a concealed weapon or concealed firearm from any person or to conduct any search and seizure for firearms or ammunition pursuant to other lawful authority.

(13) LIABILITY.—Except as provided in subsection (10) or subsection (11), this section does not impose criminal or civil liability on any person or entity for acts or omissions related to obtaining a risk protection order or temporary ex parte risk protection order, including, but not limited to, providing notice to the petitioner, a family or household member of the respondent, and any known third party who may be at risk of violence or failure to provide such notice, or reporting, declining to report, investigating, declining to investigate, filing, or declining to file, a petition under this section.

(14) INSTRUCTIONAL AND INFORMATIONAL MATERIAL.—

(a) The Office of the State Courts Administrator shall develop and prepare instructions and informational brochures, standard petitions and risk protection order forms, and a court staff handbook on the risk protection order process. The



345360

standard petition and order forms must be used after January 1, 2019, for all petitions filed and orders issued pursuant to this section. The office shall determine the significant non-English-speaking or limited English-speaking populations in the state and prepare the instructions and informational brochures and standard petitions and risk protection order forms in such languages. The instructions, brochures, forms, and handbook must be prepared in consultation with interested persons, including representatives of gun violence prevention groups, judges, and law enforcement personnel. Materials must be based on best practices and must be available online to the public.

1. The instructions must be designed to assist petitioners in completing the petition and must include a sample of a standard petition and order for protection forms.

2. The instructions and standard petition must include a means for the petitioner to identify, with only layman's knowledge, the firearms or ammunition the respondent may own, possess, receive, or have in his or her custody or control. The instructions must provide pictures of types of firearms and ammunition that the petitioner may choose from to identify the relevant firearms or ammunition, or must provide an equivalent means to allow petitioners to identify firearms or ammunition without requiring specific or technical knowledge regarding the firearms or ammunition.

3. The informational brochure must describe the use of and the process for obtaining, extending, and vacating a risk protection order under this section and must provide relevant forms.

4. The risk protection order form must include, in a



345360

conspicuous location, notice of criminal penalties resulting from violation of the order and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court can change the order and only upon written request."

5. The court staff handbook must allow for the addition of a community resource list by the clerk of the court.

(b) Any clerk of court may create a community resource list of crisis intervention, mental health, substance abuse, interpreter, counseling, and other relevant resources serving the county in which the court is located. The court may make the community resource list available as part of or in addition to the informational brochures described in paragraph (a).

(c) The Office of the State Courts Administrator shall distribute a master copy of the petition and order forms, instructions, and informational brochures to the clerks of court. Distribution of all documents shall, at a minimum, be in an electronic format or formats accessible to all courts and clerks of court in the state.

(d) Within 90 days after receipt of the master copy from the Office of the State Courts Administrator, the clerk of the court shall make available the standardized forms, instructions, and informational brochures required by this subsection.

(e) The Office of the State Courts Administrator shall update the instructions, brochures, standard petition and risk protection order forms, and court staff handbook as necessary, including when changes in the law make an update necessary.

Section 12. Section 943.082, Florida Statutes, is created to read:



345360

943.082 School Safety Awareness Program.—

(1) The department shall competitively procure a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities or the threat of such activities to appropriate public safety agencies and school officials. At a minimum, the department must receive reports electronically through a mobile suspicious activity reporting tool that is available on widely used mobile operating systems.

(2) The tool shall notify the reporting party of the following information:

(a) That the reporting party may provide his or her report anonymously.

(b) That if the reporting party chooses to disclose his or her identity, such information shall be shared with the appropriate law enforcement agency and school officials; however, the law enforcement agency and school officials shall be required to maintain such information as confidential.

(3) Information received by the tool must be promptly forwarded to the appropriate law enforcement agency or school official.

(4) Law enforcement dispatch centers, school districts, schools, and other entities identified by the department shall be made aware of the mobile suspicious activity reporting tool.

(5) The department, in collaboration with the Office of Safe Schools within the Department of Education, shall develop and provide a comprehensive training and awareness program on the use of the mobile suspicious activity reporting tool.



345360

Section 13. Section 943.687, Florida Statutes, is created to read:

943.687 Marjory Stoneman Douglas High School Public Safety Commission.—

(1) There is created within the Florida Department of Law Enforcement the Marjory Stoneman Douglas High School Public Safety Commission, a commission as defined in s. 20.03.

(2) (a) The commission shall convene no later than June 1, 2018, and shall be composed of 15 members. Five members shall be appointed by the President of the Senate, five members shall be appointed by the Speaker of the House of Representatives, and five members shall be appointed by the Governor. Appointments must be made by April 30, 2018. The Secretary of Children and Families, the Secretary of Juvenile Justice, the Secretary of Health Care Administration, the Commissioner of Education, and the executive director shall serve as ex officio, nonvoting members of the commission. Members shall serve at the pleasure of the officer who appointed the member. A vacancy on the task force shall be filled in the same manner as the original appointment.

(b) The Commissioner of the Florida Department of Law Enforcement shall chair the commission.

(c) The General Counsel of the Florida Department of Law Enforcement shall serve as the general counsel for the commission.

(d) The Florida Department of Law Enforcement staff, as assigned by the chair, shall assist the commission in performing its duties.

(e) The commission shall meet as necessary to conduct its



345360

work at the call of the chair and at the time designated by him  
or her at locations throughout the state. The commission may  
conduct its meetings through teleconferences or other similar  
means.

(f) Members of the task force are entitled to receive  
reimbursement for per diem and travel expenses pursuant to s.  
112.061.

(3) The commission shall investigate system failures in the  
Marjory Stoneman Douglas High School shooting and prior mass  
violence incidents in this state and develop recommendations for  
system improvements. At a minimum, the commission shall analyze  
information and evidence from the Marjory Stoneman Douglas High  
School shooting and other mass violence incidents in this state.  
At a minimum the commission shall:

(a) Develop a timeline of the incident, incident response,  
and all relevant events preceding the incident, with particular  
attention to all perpetrator contacts with local, state and  
national government agencies and entities and any contract  
providers of such agencies and entities.

(b) Investigate any failures in incident responses by local  
law enforcement agencies and school resource officers.

1. Identify existing policies and procedures for active  
assailant incidents on school premises and evaluate the  
compliance with such policies and procedures in the execution of  
incident responses.

2. Evaluate existing policies and procedures for active  
assailant incidents on school premises in comparison with  
national best practices.

3. Evaluate the extent to which any failures in policy,





345360

procedure, or execution contributed to an inability to prevent deaths and injuries.

4. Make specific recommendations for improving law enforcement and school resource officer incident response in the future.

(c) Investigate any failures in interactions with perpetrators preceding mass violence incidents.

1. Identify the history of interactions between perpetrators and government entities such as schools, law enforcement agencies, courts and social service agencies, and identify any failures to adequately communicate or coordinate regarding indicators of risk or possible threats.

2. Evaluate the extent to which any such failures contributed to an inability to prevent deaths and injuries.

3. Make specific recommendations for improving communication and coordination among entities with knowledge of indicators of risk or possible threats of mass violence in the future.

4. Identify available state and local tools and resources for enhancing communication and coordination regarding indicators of risk or possible threats, including but not limited to, the Department of Law Enforcement Fusion Center or Judicial Inquiry System, and make specific recommendations for using such tools and resources more effectively in the future.

(4) The commission has the power to investigate. The commission may delegate to its investigators the authority to administer oaths and affirmations.

(5) The commission has standing to petition the court for a subpoena to compel the attendance of witnesses to testify before



345360

the commission. The commission has standing to petition the court to compel the production of any books, papers, records, documentary evidence, and other items, including confidential information, relevant to the performance of the duties of the commission or to the exercise of its powers. The commission must specify in the petition to the court for a subpoena the relevancy of such information to the performance of the commission duties or to the exercise of its powers. The chair or any other member of the commission may administer all oaths and affirmations in the manner prescribed by law to witnesses who appear before the commission for the purpose of testifying in any matter that concerning which the commission desires evidence. In the case of a refusal to obey a subpoena issued by the court to any person, the commission may make application to any circuit court of this state which shall have jurisdiction to order the witness to appear before the commission and to produce evidence, if so ordered, or to give testimony touching on the matter in question. Failure to obey the order may be punished by the court as contempt.

(6) The commission may call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, and such agencies shall provide such assistance in a timely manner.

(7) Notwithstanding any other law, the commission may request and shall be provided with access to any information or records, including confidential or exempt information or records, that pertain to the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida being reviewed by the commission and that are necessary for the



345360

commission to carry out its duties. Information or records  
obtained by the commission that are otherwise confidential or  
exempt shall retain such confidential or exempt status and the  
commission may not disclose any such information or records.

(8) The commission shall submit an initial report on its  
findings and recommendations to the Governor, President of the  
Senate, and Speaker of the House of Representatives by January  
1, 2019, and may issue reports annually thereafter. The  
commission shall sunset July 1, 2023, and this section is  
repealed on that date.

Section 14. Section 1000.051, Florida Statutes, is created  
to read:

1000.051 School safety and security.—

(1) Pursuant to the authority granted under s. 1000.01, the  
Legislature intends that the provisions of the Florida K-20  
Education Code be liberally construed by the State Board of  
Education, the Commissioner of Education, district school  
boards, district superintendents, and law enforcement agencies  
to the end that student discipline and school safety policy  
objectives may be effective.

(2) It is the intent of the Legislature, notwithstanding  
any other provision of the Florida K-20 Education Code and rules  
adopted pursuant thereto, with the exception of applicable  
public records exemption provisions authorized by law pertaining  
to exempt, or confidential and exempt, information, that school  
district and law enforcement personnel be authorized to take  
necessary actions to ensure the fundamental protection and  
safety of public school students, personnel, and visitors.

Section 15. Section 1001.217, Florida Statutes, is created



345360

to read:

1001.217 Office of Safe Schools.—There is created within the Department of Education the Office of Safe Schools, as required under s. 20.15, which shall be administered by an executive director.

(1) The office shall be fully accountable to the Commissioner of Education, but must cooperate and coordinate with the Board of Governors of the State University System, public and nonpublic postsecondary institutions, school districts, public and nonpublic schools, state and local agencies, community organizations, and other organizations and persons, as directed by the commissioner.

(2) The purpose of the office is to serve as the state education agency's primary coordinating division assigned to promote and support safe learning environments by addressing issues of student safety and academic success at the state, district, and school levels. In performing these functions, the office shall, at a minimum:

(a) Function as the state's primary contact for the coordination of activities, information, and reporting related to the implementation of the student discipline and school safety requirements of subpart I.C. of chapter 1006 pertaining to public K-12 education support for learning and student services, as well as other requirements of law pertaining to school safety partnerships and responsibilities, as assigned by the commissioner.

(b) Function as the state contact and state education agency coordination office for school district safety specialists, as assigned pursuant to s. 1006.12, and primary



345360

emergency operations contact staff assigned by Florida College  
System institutions, state universities, and other entities  
identified by the commissioner.

(c) Coordinate with state and local agencies, school  
district personnel, and safety and security experts to establish  
safe school and security standards, review school safety and  
security plans, establish guidelines regarding school district  
appointments to and functions of public school threat assessment  
teams and district school safety specialists, and update risk  
assessment procedures, as appropriate.

(d) Develop and implement a training program for district  
school safety specialists designated or appointed by a district  
school board pursuant to s. 1006.07(8). Training program  
elements must include, but need not be limited to, school safety  
specialist participation in active shooter situation training  
conducted pursuant to s. 1006.07(4)(b), campus tours performed  
pursuant to s. 1006.07(7), program activities of the Public  
School Emergency Response Learning System Program established  
pursuant to s. 1006.149, and training associated with the  
Florida Safe Schools Assessment Tool provided pursuant to s.  
1006.1493.

Section 16. Subsection (3) is added to section 1002.221,  
Florida Statutes, to read:

1002.221 K-12 education records; public records exemption.—

(3) This section does not limit the application of  
exemptions from public records requirements for security system  
plans and public security systems, including security footage,  
or other information that would relate to or reveal the location  
or capabilities of such systems, provided under ss.



345360

119.071(3) (a) and 281.301.

Section 17. Subsection (4) is added to section 1002.225, Florida Statutes, to read:

1002.225 Education records of students in public postsecondary educational institutions; penalty.—

(4) This section does not limit the application of exemptions from public records requirements for security system plans and public security systems, including security footage, or other information that would relate to or reveal the location or capabilities of such systems, provided under ss.

119.071(3) (a) and 281.301.

Section 18. Section 1006.04, Florida Statutes, is amended to read:

1006.04 Educational multiagency services for students with severe emotional disturbance.—

(1) (a) The Legislature recognizes that an intensive, integrated educational program, + a continuum of mental health treatment services, + and, when needed, residential services are necessary to enable students with severe emotional disturbance to develop appropriate behaviors and demonstrate academic and career education skills. The small incidence of severe emotional disturbance in the total school population requires multiagency programs to provide access to appropriate services for all students with severe emotional disturbance. District school boards should provide educational programs, and state departments and agencies administering children's mental health funds should provide mental health treatment and residential services when needed, forming a multiagency network to provide support for students with severe emotional disturbance. To



345360

facilitate solutions to these issues, the Multiagency Service Network for Students with Severe Emotional Disturbance (SEDNET) is established as a function of the department in partnership with other state, regional, and local partners as a statewide network of regional projects comprised of major child-serving agencies, community-based service providers, and students and their families.

(2) Under the leadership and guidance of the department, the fundamental goal of SEDNET and its partners shall be to facilitate the process of cross system collaboration and inclusion of families as full partners. At a minimum, SEDNET shall:

(a) Focus on developing interagency collaboration and sustaining partnerships among professionals and families in the education, mental health, substance abuse, child welfare, and juvenile justice systems serving children and youth with, and at risk of, emotional and behavioral disabilities.

(b) Provide technical assistance and support in building service capacity within regional areas and collaborate in related state level activities impacting system of care.

(c) Serve as a collaborative resource for school districts, agencies, and families working to promote positive educational and community-based outcomes for children.

(3) ~~(b)~~ The program goals for each component of SEDNET ~~the multiagency network~~ are to enable students with severe emotional disturbance to learn appropriate behaviors, reduce dependency, and fully participate in all aspects of school and community living; to develop individual programs for students with severe emotional disturbance, including necessary educational,



345360

residential, and mental health treatment services; to provide programs and services as close as possible to the student's home in the least restrictive manner consistent with the student's needs; and to integrate a wide range of services necessary to support students with severe emotional disturbance and their families.

(4)-(2) The Legislature may provide funding for the department ~~to may~~ award grants to district school boards for statewide planning and development of SEDNET ~~the multiagency network~~ for students with severe emotional disturbance. The educational services shall be provided in a manner consistent with the requirements of ss. 402.22 and 1003.57.

(5)-(3) State departments and agencies may use appropriate funds for SEDNET ~~the multiagency network~~ for students with severe emotional disturbance.

Section 19. Section 1006.05, Florida Statutes, is created to read:

1006.05 Mental health assistance allocation  
specifications.—Pursuant to s. 1011.62(17), the mental health assistance allocation is created to provide supplemental funding to assist school districts and charter schools in establishing or expanding comprehensive mental health programs that increase awareness of mental health issues among children and school-age youth; to train educators and other school staff in detecting and responding to mental health issues; and to connect children, youth, and families who may experience behavioral or mental health issues with appropriate services.

(1) Funding provided pursuant to s. 1011.62(16) shall be allocated in accordance with the following:





345360

(a) Before the distribution of the allocation:

1. The district must annually develop and submit a detailed plan outlining the local program and planned expenditures to the district school board for approval.

2. A charter school must annually develop and submit a detailed plan outlining the local program and planned expenditures of the funds in the plan to its governing body for approval. After the plan is approved by the governing body, it must be provided to its school district for submission to the commissioner.

(b) The plans required under paragraph (a) must include, at a minimum, the elements in subparagraphs 1., 2., and 3., and the districts and charter schools are strongly encouraged to include in their respective plans the elements specified in subparagraphs 4., 5., and 6., as follows:

1. A contract or a memorandum of understanding with at least one local nationally accredited community behavioral health provider or a provider of Community Action Team services to provide a behavioral health staff presence and services at district schools. Services may include, but are not limited to, mental health screenings and assessments, individual counseling, family counseling, group counseling, psychiatric or psychological services, trauma-informed care, mobile crisis services, and behavior modification. These behavioral health services may be provided on or off the school campus and may be supplemented by telehealth;

2. Training opportunities in Mental Health First Aid or other similar nationally recognized evidence-based training programs for all school personnel who have contact with



345360

students. The training must cover risk factors and warning signs for mental health and addiction concerns, strategies for providing assistance to individuals in both crisis and non-crisis situations, and the use of referral mechanisms that effectively link individuals to appropriate treatment and intervention services in the school and in the community. Topics covered should include depression and mood disorders, anxiety disorders, trauma, psychosis, substance use disorders, and suicide prevention;

3. A mental health crisis intervention strategy that provides for prompt resolution of identified, immediate threats within district schools, including Baker Act referrals and notification of law enforcement personnel, as appropriate;

4. Programs to assist students in dealing with anxiety, depression, bullying, trauma, and violence;

5. Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems; suicidal tendencies; or substance use disorders; and

6. Strategies to improve the early identification of social, emotional, or behavioral problems or substance use disorders and to improve the provision of early intervention services.

(c) The districts shall submit approved plans to the commissioner by August 1 of each year.

(2) Beginning September 30, 2019, and by each September 30 thereafter, each entity that receives an allocation under this section and s. 1011.62(16) shall submit to the commissioner, in a format prescribed by the department, a final report on its program outcomes and its expenditures for each element of the



345360

program. At a minimum, the report must include the number of each of the following:

(a) Students who receive screenings or assessments.

(b) Students who are referred for services or assistance.

(c) Students who receive services or assistance.

(d) Parents or guardians notified.

(e) School personnel who are trained to engage in the services, techniques, strategies, or programs identified in the plan required under this section.

Section 20. Subsections (4) and (6) of section 1006.07, Florida Statutes, are amended, and subsections (7) and (8) are added to that section, to read:

1006.07 District school board duties relating to student discipline and school safety.—The district school board shall provide for the proper accounting for all students, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students, including:

(4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

(a) Formulate and prescribe policies and procedures for emergency drills and for actual emergencies, including, but not limited to, fires, natural disasters, hostage and active shooter situations, and bomb threats, for all the public schools of the district which comprise grades K-12. District school board policies shall include commonly used alarm system responses for specific types of emergencies and verification by each school that drills have been provided as required by law and fire protection codes. The emergency response agency that is responsible for notifying the school district for each type of



345360

emergency must be listed in the district's emergency response policy.

(b) Establish model emergency management and emergency preparedness procedures, including emergency notification procedures pursuant to paragraph (a), for the following life-threatening emergencies:

1. Weapon-use, and hostage, and active shooter situations. The active shooter situation training for each school must engage the participation of the district school safety specialist, threat assessment team members, faculty, staff, and students and must be conducted by the law enforcement agency or agencies that are designated as first responders to the school's campus.

2. Hazardous materials or toxic chemical spills.

3. Weather emergencies, including hurricanes, tornadoes, and severe storms.

4. Exposure as a result of a manmade emergency.

(6) SAFETY AND SECURITY BEST PRACTICES.—Each school district shall: Use the Safety and Security Best Practices developed by the Office of Program Policy Analysis and Government Accountability to

(a) Designate a threat assessment team, in accordance with guidelines established by the Office of Safe Schools, at each school in the district. The threat assessment team shall operate under the direction of the district school safety specialist.

(b) Conduct security risk assessments in accordance with s. 1006.1493 at each public school and conduct a self-assessment of the school district's districts' current safety and security practices using a format prescribed by the department. Based on



345360

these ~~self-assessment~~ findings, the district school superintendent shall provide recommendations to the district school board which identify strategies and activities that the district school board should implement in order to improve school safety and security. Annually each district school board must receive such findings and the superintendent's recommendations ~~the self-assessment results~~ at a publicly noticed district school board meeting to provide the public an opportunity to hear the district school board members discuss and take action on the ~~report~~ findings and recommendations. Each district school superintendent shall report such findings ~~the self-assessment results~~ and school board action to the commissioner within 30 days after the district school board meeting.

(c) Develop a plan, in a format prescribed by the department, which includes a secure, single point of entry onto school grounds.

(7) SAFETY IN CONSTRUCTION PLANNING.—A district school board must allow the law enforcement agency or agencies that are designated as first responders to the district's campus and school's campuses to tour such campuses once every 3 years. Any changes related to school safety and emergency issues recommended by a law enforcement agency based on a campus tour must be documented by the district school board.

(8) DISTRICT SCHOOL SAFETY SPECIALIST.—A district school board shall designate or appoint a district school safety specialist to serve at the direction of the superintendent as the district's primary point of public contact regarding the district's coordination, communication, and implementation of



345360

policies, procedures, responsibilities, and reporting related to district and public school safety functions. The school safety specialist shall do all of the following:

(a) Coordinate with the Office of Safe Schools created pursuant to s. 1001.217.

(b) Facilitate the collection and dissemination of information among and between the school district, school personnel, students and their families, state and local law enforcement agencies, community health entities, and other state and community partners.

(c) Maintain records and reports and facilitate the implementation of policies regarding the respective duties and responsibilities of the school districts, superintendents, and principals and reporting regarding student discipline and school safety requirements.

(d) Oversee and coordinate threat assessment teams and provide a coordinated approach to evaluating and responding to students who pose, or appear to pose, a credible potential threat of violence or harm to themselves or others.

(e) Perform other responsibilities assigned by the superintendent and requested by the Office of Safe Schools to facilitate and coordinate the effective implementation of student discipline and school safety requirements.

Section 21. Section 1006.12, Florida Statutes, is amended to read:

1006.12 ~~Safe-school resource~~ officers at each public school and school safety officers. For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall



345360

cooperate with law enforcement agencies to establish or assign one or more safe-school officers at each school facility within the district, by implementing any combination of the following options:

~~(1) District school boards may~~ Establish school resource officer programs, through a cooperative agreement with law enforcement agencies ~~or in accordance with subsection (2).~~

(a) School resource officers shall undergo criminal background checks, drug testing, and a psychological evaluation and be certified law enforcement officers, as defined in s. 943.10(1), who are employed by a law enforcement agency as defined in s. 943.10(4). The powers and duties of a law enforcement officer shall continue throughout the employee's tenure as a school resource officer.

(b) School resource officers shall abide by district school board policies and shall consult with and coordinate activities through the school principal, but shall be responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency. Activities conducted by the school resource officer which are part of the regular instructional program of the school shall be under the direction of the school principal.

(2) Commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.

~~(2)(a)~~ School safety officers shall undergo criminal background checks, drug testing, and a psychological evaluation



345360

and be law enforcement officers, as defined in s. 943.10(1), certified under the provisions of chapter 943 and employed by either a law enforcement agency or by the district school board. If the officer is employed by the district school board, the district school board is the employing agency for purposes of chapter 943, and must comply with the provisions of that chapter.

~~(b) A district school board may commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend and the district school board may appoint one or more school safety officers.~~

(b)(e) A school safety officer has and shall exercise the power to make arrests for violations of law on district school board property and to arrest persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests. A school safety officer has the authority to carry weapons when performing his or her official duties.

(c)(d) A district school board may enter into mutual aid agreements with one or more law enforcement agencies as provided in chapter 23. A school safety officer's salary may be paid jointly by the district school board and the law enforcement agency, as mutually agreed to.

(3) Participate in the Florida Sheriff's Marshal Program, established pursuant to s. 1006.1491. Upon a participant's completion of the program, the district school board shall designate a special deputy sheriff, as appointed by the sheriff





345360

as a law enforcement officer certified under chapter 943,  
pursuant to s. 30.072(2).

Section 22. Section 1006.149, Florida Statutes, is created  
to read:

1006.149 Public School Emergency Response Learning System  
Program.—

(1) The Public School Emergency Response Learning System  
Program is established to assist school personnel in preparing  
for and responding to active emergency situations and to  
implement local notification systems for all Florida public  
schools, with the ultimate goal of preventing tragedy and the  
loss of life through proactive strategies.

(2) The program is created within the department and shall  
be administered by the Office of Safe Schools, created pursuant  
to s. 1001.217. Through the program, local law enforcement  
agencies shall partner with participating public preschools,  
public child care providers, or public school districts and  
schools. Training, notifications, and resources must be  
available for school personnel and students and their families  
through, at minimum, the following mechanisms:

(a) Activities and direct training to mitigate risk and  
save lives in emergency situations, such as lockdown, bomb  
threat, active shooter, and other emergency situations.

(b) Vital local notification systems implemented to alert  
schools of imminent danger.

(c) Other resources provided in conjunction with the  
training, including, but not limited to, an emergency plan flip  
chart, communication cards, instructional resources, activity  
books for children and teachers, and certificates of training



345360

and completion.

(3) Each program participant must develop a preemptive plan of action that includes multiple options for addressing various situations based on the form of danger present and the unique needs and circumstances of each school and its faculty, staff, students, and visitors.

(4) A school district must include in its emergency notification procedures established pursuant to s. 1006.07 any program participant who notifies the district of his or her desire to participate.

(5) Funding for program activities may be provided by the Legislature to implement this section.

Section 23. Section 1006.1491, Florida Statutes, is created to read:

1006.1491 Florida Sheriff's Marshal Program.—The Florida Sheriff's Marshal Program is created within the department as a voluntary program to assist school districts and public schools in enhancing the safety and security of students, faculty, staff, and visitors to Florida's public schools and campuses. The program is administered by the Office of Safe Schools, created pursuant to s. 1001.217.

(1) PURPOSE.—The purpose of the program is to provide comprehensive firearm safety and proficiency training for selected faculty and staff strategically focused on providing security on campus during an active assailant incident. Public school faculty and staff who voluntarily participate in and complete the program, as recommended by the school district, are designated as special deputy sheriffs with all rights, responsibilities, and obligations in carrying concealed firearms



345360

on campus, as authorized pursuant to s. 30.09.

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

(a) "Active assailant incident" means a situation in which an armed assailant is posing an immediate deadly threat to persons on the premises or campus of a public school.

(b) "Campus" means a school, as defined in s. 1003.01(2), and facilities and school plants operated and controlled by a public school district in accordance with s. 1003.02.

(c) "Partnership agreement" means a jointly approved contract between the sheriff operating the program and the superintendent of a participating school district sponsor.

(d) "Program" means a Florida Sheriff's Marshal Program as established and administered by a sheriff in accordance with this section.

(e) "Sheriff" means the county sheriff constitutional officer elected or appointed in accordance with chapter 30.

(f) "Sheriff's marshal" means a faculty or staff member who is recommended and sponsored by a school district and has been successfully screened and approved by the sheriff to participate in a program.

(g) "Special deputy sheriff" means a program participant who has successfully completed the program and who is appointed as a law enforcement officer in the same manner as a deputy sheriff as provided in s. 30.072(2) and certified under chapter 943.

(3) PROGRAM ELIGIBILITY.—At a minimum, program eligibility and participation requirements must include:

(a) A school district may sponsor and recommend to the sheriff public school faculty and staff members as candidates



345360

for voluntary participation in the program. The sheriff shall establish timelines and requirements for participation through a partnership agreement with the sponsoring school district superintendent. To be eligible for consideration and recommendation, a candidate must be licensed in accordance with s. 790.06.

(b) After screening a candidate, including performing criminal background checks, drug testing, and a psychological evaluation, the sheriff may approve a candidate to participate in the program as a sheriff's marshal.

(c) Upon successful completion of the program, a sheriff's marshal may be appointed by the sheriff as a special deputy sheriff for the limited purpose of responding to an active assailant incident on a campus of his or her school district during an active assailant incident.

(4) SPECIAL DEPUTY SHERIFF.—

(a) At a minimum, the partnership agreement must provide that a special deputy sheriff:

1. Must participate in and complete the program's professional training requirements as a precondition to meeting the legal requirements of chapter 30 to be eligible to carry a concealed firearm on a campus of his or her sponsoring school district.

2. May not act in any law enforcement capacity outside of an active assailant incident on a school district campus and does not have any authority in a law enforcement capacity off campus in any way, except as otherwise expressly authorized by law.

3. May carry concealed, approved firearms on campus. The



345360

firearms must be specifically purchased and issued for the sole purpose of the program. Only concealed carry safety holsters and firearms approved by the sheriff may be used under the program.

4. Must successfully complete training with the sheriff's office before his or her appointment as a special deputy sheriff, including meeting the requirements of this section.

(b) The appointment of a person as a special deputy sheriff does not entitle the person to the special risk category that applies to law enforcement officers pursuant to s. 121.0515.

(5) TRAINING AND INSTRUCTION.—All training must be conducted by Criminal Justice Standards Training Commission (CJSTC)-certified instructors.

(a) Required instruction must include 132 total hours of comprehensive firearm safety and proficiency training in the following topics:

1. Firearms: 80-hour block of instruction. The firearms instruction must be based on the CJSTC Law Enforcement Academy training model and must be enhanced to include 10 percent to 20 percent more rounds fired by each program participant beyond the minimum average of approximately 1,000 training rounds associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.

2. Firearms precision pistol: 16-hour block of instruction.

3. Firearms discretionary shooting: 4-hour block of instruction using state-of-the-art simulator exercises.

4. Active shooter or assailant: 8-hour block of instruction.

5. Defensive tactics: 4-hour block of instruction.

6. Legal or high liability: 20-hour block of instruction.



345360

(b) Program participants may complete an optional, 16-hour precision pistol course as additional training.

(c) Ongoing and annual proficiency retraining must be conducted by the sheriff, as specified in the agreement.

(6) PARTICIPATION DENIAL OR TERMINATION.—The sheriff or the district superintendent may deny or terminate a sheriff's marshal or special deputy sheriff's participation in the program for any reason, including, but not limited to, any of the following circumstances:

(a) An arrest or filing of criminal charges against a program participant by a law enforcement agency.

(b) The service of process on the program participant as the respondent of an injunction for protection.

(c) The involuntary placement of the program participant in a treatment facility for a mental health examination under The Baker Act.

(d) A violation of sheriff office policies, orders, or requirements by the program participant.

(e) A violation of the school district's code of conduct or employee handbook or policy by the program participant.

(7) IMPLEMENTATION.—

(a) The sheriff shall maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each program participant.

(b) Each program participant must be distinctly and visually identifiable to responding law enforcement officers, faculty, staff, and students, in the case of any active assailant incident on a sponsoring school district's campus.



345360

(c) Each sheriff's marshal must execute a volunteer agreement with the sheriff's office outlining duties and responsibilities.

(d) A sponsoring school district must conduct awareness training about the program for all school district faculty and staff members.

(e) Specific implementation requirements, responsibilities, and other aspects of implementation must be specified in a partnership agreement.

(8) FUNDING.—The costs of program participation must be established in the partnership agreement. Funding may be provided by the Legislature to support school district and sheriff office administration, sponsorship, participation, and implementation of this section.

Section 24. Section 1006.1493, Florida Statutes, is created to read:

1006.1493 Florida Safe Schools Assessment Tool.—

(1) The department shall contract with a security consulting firm that specializes in the development of risk assessment software solutions and has experience in conducting security assessments of public facilities to develop, update, and implement a risk assessment tool, which shall be known as the Florida Safe Schools Assessment Tool (FSSAT). The FSSAT must be used by school officials at each school district and public school site in the state in conducting security assessments for use by school officials at each school district and public school site in the state.

(2) The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools



345360

that they supervise, pursuant to the security risk assessment requirements of s. 1006.07(6).

(a) At a minimum, the FSSAT must address all of the following components:

1. School emergency and crisis preparedness planning;
2. Security, crime, and violence prevention policies and procedures;
3. Physical security measures;
4. Professional development training needs;
5. An examination of support service roles in school safety, security, and emergency planning;
6. School security and school police staffing, operational practices, and related services;
7. School and community collaboration on school safety; and
8. A return on investment analysis of the recommended physical security controls.

(b) The department shall require by contract that the security consulting firm:

1. Generate written automated reports on assessment findings for review by the department and school and district officials;
2. Provide training to the department and school officials in the use of the FSSAT and other areas of importance identified by the department; and
3. Advise in the development and implementation of templates, formats, guidance, and other resources necessary to facilitate the implementation of this section at state, district, school, and local levels.

(3) By December 1, 2018, and annually by that date





345360

thereafter, the department must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of implementation across school districts and schools. The report must include a summary of the positive school safety measures in place at the time of the assessment and any recommendations for policy changes or funding needed to facilitate continued school safety planning, improvement, and response at the state, district, or school levels.

(4) In accordance with ss. 119.071(3)(a) and 281.301, data and information related to security risk assessments administered pursuant to this section and s. 1006.07(6) and the security information contained in the annual report required pursuant to subsection (3) are confidential and exempt from public records requirements.

Section 25. Present subsections (16) and (17) of section 1011.62, Florida Statutes, are redesignated as subsections (17) and (18), respectively, subsections (14) and (15) of that section are amended, and a new subsection (16) is added to that section, to read:

1011.62 Funds for operation of schools.—If the annual allocation from the Florida Education Finance Program to each district for operation of schools is not determined in the annual appropriations act or the substantive bill implementing the annual appropriations act, it shall be determined as follows:

(14) QUALITY ASSURANCE GUARANTEE.—The Legislature may annually in the General Appropriations Act determine a percentage increase in funds per K-12 unweighted FTE as a



345360

minimum guarantee to each school district. The guarantee shall be calculated from prior year base funding per unweighted FTE student which shall include the adjusted FTE dollars as provided in subsection (17) ~~(16)~~, quality guarantee funds, and actual nonvoted discretionary local effort from taxes. From the base funding per unweighted FTE, the increase shall be calculated for the current year. The current year funds from which the guarantee shall be determined shall include the adjusted FTE dollars as provided in subsection (17) ~~(16)~~ and potential nonvoted discretionary local effort from taxes. A comparison of current year funds per unweighted FTE to prior year funds per unweighted FTE shall be computed. For those school districts which have less than the legislatively assigned percentage increase, funds shall be provided to guarantee the assigned percentage increase in funds per unweighted FTE student. Should appropriated funds be less than the sum of this calculated amount for all districts, the commissioner shall prorate each district's allocation. This provision shall be implemented to the extent specifically funded.

(15) SAFE SCHOOLS ALLOCATION.—A safe schools allocation is created to provide funding to assist school districts in their compliance with subpart I.C. of chapter 1006 ~~ss. 1006.07–1006.148~~, with priority given to satisfying the requirement of establishing or assigning at least one safe-school officer at each school facility within the district ~~a school resource officer program~~ pursuant to s. 1006.12. Each school district shall receive a minimum safe schools allocation in an amount provided in the General Appropriations Act. Of the remaining balance of the safe schools allocation, two-thirds shall be



345360

allocated to school districts based on the most recent official Florida Crime Index provided by the Department of Law Enforcement and one-third shall be allocated based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.

(16) MENTAL HEALTH ASSISTANCE ALLOCATION.—The mental health assistance allocation is created to provide funding to assist school districts and charter schools in their compliance with the requirements and specifications established in s. 1006.05. These funds must be allocated annually in the General Appropriations Act to each eligible school district and developmental research school based on each entity's proportionate share of Florida Education Finance Program base funding, in accordance with s. 1006.05. The district funding allocation must include a minimum amount, as provided in the General Appropriations Act. Eligible charter schools are entitled to a proportionate share of district funding for the program. The allocated funds may not supplant funds that are provided for this purpose from other operating funds and may not be used to increase salaries or provide bonuses, except for personnel hired to implement the plans required by s. 1006.05. School districts and schools must maximize third-party funding from Medicaid and private insurance when appropriate.

Section 26. For the purpose of incorporating the amendment made by this act to section 790.065, Florida Statutes, in a reference thereto, subsection (2) of section 397.6760, Florida Statutes, is reenacted to read:

397.6760 Court records; confidentiality.—

(2) This section does not preclude the clerk of the court



345360

from submitting the information required by s. 790.065 to the  
Department of Law Enforcement.

Section 27. For the purpose of incorporating the amendment  
made by this act to section 790.065, Florida Statutes, in a  
reference thereto, paragraph (e) of subsection (3) of section  
790.335, Florida Statutes, is reenacted to read:

790.335 Prohibition of registration of firearms; electronic  
records.—

(3) EXCEPTIONS.—The provisions of this section shall not  
apply to:

(e)1. Records kept pursuant to the recordkeeping provisions  
of s. 790.065; however, nothing in this section shall be  
construed to authorize the public release or inspection of  
records that are made confidential and exempt from the  
provisions of s. 119.07(1) by s. 790.065(4)(a).

2. Nothing in this paragraph shall be construed to allow  
the maintaining of records containing the names of purchasers or  
transferees who receive unique approval numbers or the  
maintaining of records of firearm transactions.

Section 28. This act shall take effect upon becoming a law.

===== 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 public safety; providing a short  
title; amending s. 20.15, F.S.; establishing the  
Office of Safe Schools within the Department of



345360

1722 Education; amending s. 394.463, F.S.; authorizing a  
1723 law enforcement officer to seize and hold firearms and  
1724 ammunition if taking custody of a person who poses a  
1725 potential danger to himself or herself or others and  
1726 who has made a credible threat against another person;  
1727 requiring the law enforcement officer's agency to hold  
1728 seized firearms and ammunition under certain  
1729 circumstances; requiring law enforcement agencies to  
1730 develop certain policies and procedures; authorizing a  
1731 law enforcement officer to petition a court for a risk  
1732 protection order under certain circumstances; creating  
1733 s. 790.064, F.S.; prohibiting a person who has been  
1734 adjudicated mentally defective or been committed to a  
1735 mental institution from owning or possessing a firearm  
1736 until certain relief is obtained; specifying that the  
1737 firearm possession and ownership disability runs  
1738 concurrently with the firearm purchase disability  
1739 under certain provisions; authorizing a person to  
1740 petition for relief from the firearm possession and  
1741 ownership disability; requiring that petitions for  
1742 relief follow certain procedures; authorizing such  
1743 person to petition for simultaneous relief; amending  
1744 s. 790.065, F.S.; prohibiting a licensed importer,  
1745 manufacturer, or dealer from selling or delivering a  
1746 firearm to a person who is under 21 years of age;  
1747 providing exceptions; prohibiting a person younger  
1748 than a certain age from purchasing a firearm;  
1749 prohibiting the sale or transfer, or facilitation of a  
1750 sale or transfer, of a firearm to a person younger



345360

1751        than a certain age by a licensed importer, licensed  
1752        manufacturer, or licensed dealer; providing criminal  
1753        penalties; providing exceptions; amending s. 790.0655,  
1754        F.S.; revising the mandatory waiting period to the  
1755        later of either 3 days, excluding weekends and legal  
1756        holidays, or upon the completion of certain records  
1757        checks; revising and redefining terms; requiring that  
1758        records of firearm sales be available for inspection  
1759        by any law enforcement agency during normal business  
1760        hours; revising applicability of the waiting period;  
1761        conforming provisions to changes made by the act;  
1762        creating s. 790.34, F.S.; defining the term "bump-fire  
1763        stock"; prohibiting the importation, transfer,  
1764        distribution, transport, sale, or giving of a bump-  
1765        fire stock in this state; providing criminal  
1766        penalties; providing legislative intent; providing a  
1767        short title; creating s. 790.401, F.S.; defining  
1768        terms; creating an action known as a petition for a  
1769        risk protection order to prevent persons who are at  
1770        high risk of harming themselves or others from  
1771        accessing firearms or ammunition; providing  
1772        requirements for petitions for such orders; providing  
1773        duties for courts and clerks of court; prohibiting  
1774        fees for the filing of or service of process of such  
1775        petitions; providing for jurisdiction for such  
1776        petitions; requiring hearings on petitions within a  
1777        specified period; providing service requirements;  
1778        providing grounds that may be considered in  
1779        determining whether to grant such a petition;



345360

1780 providing requirements for proceedings; providing  
1781 requirements for risk protection orders; requiring the  
1782 court to inform a respondent of his or her right to  
1783 request a certain hearing; authorizing temporary ex  
1784 parte orders under certain circumstances; providing  
1785 requirements for petitions for such ex parte orders;  
1786 providing for service of orders; providing for the  
1787 termination or extension of an order; providing for  
1788 the surrender and storage of firearms and ammunition  
1789 after issuance of a risk protection order; requiring  
1790 law enforcement agencies to develop certain policies  
1791 and procedures by a certain date; providing for return  
1792 of firearms and ammunition upon the vacating or end  
1793 without the extension of an order under certain  
1794 circumstances; authorizing a respondent to elect to  
1795 transfer all firearms and ammunition surrendered or  
1796 seized by a law enforcement agency to another person  
1797 under certain circumstances; requiring an issuing  
1798 court to forward specified information concerning a  
1799 respondent to the Department of Agriculture and  
1800 Consumer Services; requiring the department to suspend  
1801 a license to carry a concealed weapon or firearm which  
1802 is held by a person subject to such an order;  
1803 prohibiting a person from knowingly filing a petition  
1804 for such an order which contains materially false or  
1805 misleading information; providing criminal penalties;  
1806 prohibiting violations of such an order; providing  
1807 criminal penalties; providing construction; providing  
1808 that the risk protection order provisions do not



345360

1809 create liability for certain acts or omissions;  
1810 requiring the Office of the State Courts Administrator  
1811 to develop and distribute certain instructional and  
1812 informational material; creating s. 943.082, F.S.;  
1813 requiring the Department of Law Enforcement to  
1814 competitively procure a mobile suspicious activity  
1815 reporting tool; requiring the system to notify certain  
1816 parties of specified information; requiring  
1817 information received by the system to be reported to  
1818 the appropriate agencies and school officials;  
1819 requiring certain entities to be made aware of the  
1820 system; requiring certain materials be provided to  
1821 participating schools and school districts; creating  
1822 s. 943.687, F.S.; creating the Marjory Stoneman  
1823 Douglas High School Public Safety Commission within  
1824 the Florida Department of Law Enforcement; requiring  
1825 the commission to convene by a certain date;  
1826 specifying the composition of the commission;  
1827 specifying meeting requirements; requiring Florida  
1828 Department of Law Enforcement staff to assist the  
1829 commission; authorizing reimbursement for per diem and  
1830 travel expenses; providing the duties and authority of  
1831 the commission; requiring the commission to submit an  
1832 initial report to the Governor and the Legislature  
1833 within a specified time; providing for the expiration  
1834 of the commission; creating s. 1000.051, F.S.;  
1835 providing legislative intent regarding school safety  
1836 and security; creating s. 1001.217, F.S.; creating the  
1837 Office of Safe Schools; providing the purpose and





345360

1838 duties of the office; amending ss. 1002.221 and  
1839 1002.225, F.S.; providing for construction regarding  
1840 the applicability of public records exemptions for  
1841 security system plans and security systems; amending  
1842 s. 1006.04, F.S.; establishing the Multiagency Service  
1843 Network for Students with Severe Emotional  
1844 Disturbance; specifying the goals and duties of the  
1845 program; authorizing the Legislature to provide  
1846 funding to the department to award grants; creating s.  
1847 1006.05, F.S.; providing a purpose of the mental  
1848 health assistance allocation; requiring that school  
1849 districts and charter schools annually develop and  
1850 submit certain detailed plans; requiring that approved  
1851 charter school plans be provided to the district for  
1852 submission to the Commissioner of Education; providing  
1853 that required plans must include certain elements;  
1854 requiring school districts to annually submit approved  
1855 plans to the commissioner by a specified date;  
1856 requiring that entities receiving such allocations  
1857 annually submit a final report on program outcomes and  
1858 specific expenditures to the commissioner by a  
1859 specified date; amending s. 1006.07, F.S.; requiring  
1860 district school boards to formulate and prescribe  
1861 policies and procedures for active shooter situations;  
1862 requiring that active shooter situation training for  
1863 each school be conducted by the law enforcement agency  
1864 or agencies that are designated as first responders to  
1865 the school's campus; requiring each school district to  
1866 designate a threat assessment team; requiring each



345360

1867 school district to conduct certain assessments in a  
1868 specified format; requiring a district school  
1869 superintendent to provide specified entities with  
1870 certain findings and certain strategy and activity  
1871 recommendations to improve school safety and security;  
1872 requiring that district school boards allow campus  
1873 tours by such law enforcement agency or agencies at  
1874 specified times and for specified purposes; requiring  
1875 that certain recommendations be documented by such  
1876 board or principal; requiring each district school  
1877 board to designate or appoint a district school safety  
1878 specialist; providing duties of the school safety  
1879 specialist; amending s. 1006.12, F.S.; requiring  
1880 district school boards to establish or assign safe-  
1881 school officers at each district school facility  
1882 within the district; requiring school resource  
1883 officers and school safety officers to undergo  
1884 specified evaluations; specifying that participation  
1885 in the Florida Sheriff's Marshal Program meets the  
1886 requirement; creating s. 1006.149, F.S.; establishing  
1887 the Public School Emergency Response Learning System  
1888 Program within the department; establishing the  
1889 program as a partnership between local law enforcement  
1890 agencies and public education entities; specifying  
1891 activities, training, notification systems, and  
1892 resources provided through the program; specifying the  
1893 creation of a preemptive plan of action; authorizing  
1894 funding provided by the Legislature to implement the  
1895 program; creating s. 1006.1491, F.S.; creating the



345360

1896 Florida Sheriff's Marshal Program within the  
1897 department; specifying a purpose; defining terms;  
1898 establishing program eligibility requirements;  
1899 authorizing special deputy sheriffs to perform certain  
1900 duties, under specified circumstances; specifying  
1901 training and instructional requirements; specifying  
1902 grounds for termination and denial of participants;  
1903 specifying implementation requirements; authorizing  
1904 funding as provided by the Legislature; creating s.  
1905 1006.1493, F.S.; requiring the department to contract  
1906 with a security consulting firm to develop, update,  
1907 and implement a risk assessment tool; providing  
1908 requirements for the Florida Safe Schools Assessment  
1909 Tool; requiring reports, training, and advice in the  
1910 security consulting firm contract; requiring a  
1911 specified annual report to the Governor and  
1912 Legislature by a specified date; providing for  
1913 construction regarding the applicability of public  
1914 records exemptions for certain security data and  
1915 information; amending s. 1011.62, F.S.; expanding the  
1916 safe schools allocation to provide funding for  
1917 specified school safety provisions; creating the  
1918 mental health assistance allocation; providing the  
1919 purpose of the allocation; requiring that funds be  
1920 allocated annually in the General Appropriations Act;  
1921 providing for the annual allocation of such funds on a  
1922 specified basis; providing that eligible charter  
1923 schools are entitled to a proportionate share;  
1924 prohibiting the use of allocated funds to supplant



345360

1925 funds provided from other operating funds, to increase  
1926 salaries, or to provide bonuses, except in certain  
1927 circumstances; requiring that school districts and  
1928 schools maximize certain third-party funding;  
1929 reenacting ss. 397.6760(2) and 790.335(3)(e), F.S.,  
1930 relating to the confidentiality of court records and  
1931 exceptions to the prohibition of registration of  
1932 firearms, respectively, to incorporate the amendment  
1933 made to s. 790.065, F.S., in references thereto;  
1934 providing an effective date.



579360

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/26/2018	.	
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The Committee on Rules (Braynon and Book) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Delete lines 1370 - 1561  
and insert:

Section 22. Section 1006.149, Florida Statutes, is created to read:

1006.149 Public School Emergency Response Learning System Program.—

(1) The Public School Emergency Response Learning System



579360

Program is established to assist school personnel in preparing for and responding to active emergency situations and to implement local notification systems for all Florida public schools, with the ultimate goal of preventing tragedy and the loss of life through proactive strategies.

(2) The program is created within the department and shall be administered by the Office of Safe Schools, established pursuant to s. 1001.217. Through the program, local law enforcement agencies shall partner with participating public preschools, public child care providers, or public school districts and schools. Training, notifications, and resources must be available for school personnel and students and their families through, at minimum, the following mechanisms:

(a) Activities and direct training to mitigate risk and save lives in emergency situations, such as lockdown, bomb threat, active shooter, and other emergency situations.

(b) Vital local notification systems implemented to alert schools of imminent danger.

(c) Other resources provided in conjunction with the training including, but not limited to, an emergency plan flip chart, communication cards, instructional resources, activity books for children and teachers, and certificates of training and completion.

(3) Each program participant must develop a preemptive plan of action that includes multiple options for addressing various situations based on the form of danger present and the unique needs and circumstances of each school and its faculty, staff, students, and visitors.

(4) A school district must include in its emergency



579360

notification procedures established pursuant to s. 1006.07 any  
program participant who notifies the district of his or her  
desire to participate.

(5) Funding for program activities may be provided by the  
Legislature to implement this section.

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

And the title is amended as follows:

Delete lines 1884 - 1904  
and insert:

specified evaluations; creating s. 1006.149, F.S.;  
establishing the Public School Emergency Response  
Learning System Program within the department;  
establishing the program as a partnership between  
local law enforcement agencies and public education  
entities; specifying activities, training,  
notification systems, and resources provided through  
the program; specifying the creation of a preemptive  
plan of action; authorizing funding provided by the  
Legislature to implement the program; creating s.



957372

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/26/2018	.	
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The Committee on Rules (Braynon) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Between lines 1711 and 1712  
insert:

Section 28. Section 16.63, Florida Statutes, is created to  
read:

16.63 Medical Reimbursement Program for Victims of Mass  
Shootings.—The Medical Reimbursement Program for Victims of Mass  
Shootings is established in the Department of Legal Affairs to  
reimburse trauma centers verified or designated pursuant to s.





957372

395.4025 for the medical costs of treating victims for injuries associated with a mass shooting. As used in this section, the term "mass shooting" means an incident in which four or more people are killed or injured by firearms in one or more locations in close proximity. The Department of Legal Affairs must reimburse such trauma centers based on a department-approved fee schedule for the documented medical costs of treating victims for injuries associated with a mass shooting. A trauma center that requests a reimbursement through the program must accept the reimbursement as payment in full and may not bill the victim of a mass shooting or his or her family.

Section 29. The sum of \$10 million in recurring funds from the General Revenue Fund is appropriated to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

Section 30. Each January 1, the Department of Agriculture and Consumer Services shall transfer 10 percent of the fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to reimburse verified or designated trauma centers for documented medical costs of treating victims of mass shootings through its Medical Reimbursement Program for Victims of Mass Shootings.

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

And the title is amended as follows:

Between lines 1933 and 1934



957372

insert:

creating s. 16.63, F.S.; establishing the Medical Reimbursement Program for Victims of Mass Shootings in the Department of Legal Affairs; defining the term "mass shooting"; requiring the department to reimburse verified or designated trauma centers for certain costs associated with treating victims for injuries associated with a mass shooting; requiring a verified or designated trauma center that requests a reimbursement to accept it as payment in full; providing an appropriation; requiring the Department of Agriculture and Consumer Services to transfer, annually and by a specified date, a percentage of the fees collected for new and renewal concealed weapon or firearm licenses from the Division of Licensing Trust Fund to the Department of Legal Affairs to reimburse the trauma centers;



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/26/2018	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Between lines 225 and 226  
insert:

(3) POSSESSION.—A person may not, within this state, possess a bump-fire stock. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) RELINQUISHMENT AND DESTRUCTION.—A person who owns or is in possession of a bump-fire stock may arrange in advance to



374978

relinquish the device to a law enforcement agency, as defined in  
s. 934.02, or the Department of Law Enforcement or, if the bump-  
fire stock is not relinquished, the person must destroy the  
device. The law enforcement agency or the department must  
destroy any relinquished or acquired bump-fire stock within a  
reasonable time.

(5) APPLICABILITY.—This section does not apply to a law  
enforcement agency or the Department of Law Enforcement after  
taking possession of a bump-fire stock through relinquishment or  
other lawful means or while preparing to destroy the device.

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

Delete lines 1764 - 1766  
and insert:

distribution, transport, sale, giving, or possession  
of a bump-fire stock in this state; providing criminal  
penalties; authorizing a person to relinquish a bump-  
fire stock to a law enforcement agency or the  
Department of Law Enforcement; requiring a person who  
does not relinquish a bump-fire stock to destroy the  
device; requiring the law enforcement agency or the  
department to destroy relinquished or acquired bump-  
fire stocks; providing applicability; providing  
legislative intent; providing a



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/26/2018	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Between lines 209 and 210

insert:

Section 8. Section 790.30, Florida Statutes, is created to read:

790.30 Assault weapons.—

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

(a) "Assault weapon" means:

1. A selective-fire firearm capable of fully automatic,



831648

semiautomatic, or burst fire at the option of the user or any of  
the following specified semiautomatic firearms:

a. Algimec AGM1.

b. All AK series, including, but not limited to, the  
following: AK, AK-47, AK-74, AKM, AKS, ARM, MAK90, MISR, NHM90,  
NHM91, Rock River Arms LAR-47, SA 85, SA 93, Vector Arms AK-47,  
VEPR, WASR-10, and WUM.

c. All AR series, including, but not limited to, the  
following: AR-10, AR-15, Armalite AR-180, Armalite M-15, AR-70,  
Bushmaster XM15, Colt AR-15, DoubleStar AR rifles, DPMS tactical  
rifles, Olympic Arms, Rock River Arms LAR-15, and Smith & Wesson  
M&P15 rifles.

d. Barrett 82A1 and REC7.

e. Beretta AR-70 and Beretta Storm.

f. Bushmaster automatic rifle.

g. Calico Liberty series rifles.

h. Chartered Industries of Singapore SR-88.

i. Colt Sporter.

j. Daewoo K-1, K-2, Max-1, and Max-2.

k. FAMAS MAS .223.

l. Federal XC-900 and SC-450.

m. FN FAL (or FN LAR) and FN FNC.

n. FN FS2000, FN PS90, and FN SCAR.

o. Galil and UZI Sporter, Galil sniper rifle (Galatz),  
Galil Sporter, UZI, or Vector Arms UZI.

p. Goncz High-Tech carbine.

q. Hi-Point carbine.

r. HK-91, HK-93, HK-94, HK-PSG-1, and SP-89.

s. Kel-Tec RFB, Sub-2000, and SU series.



831648

- t. M1 carbine.
- u. M2HB and TNW M230.
- v. Ruger Mini-14 with folding stock.
- w. SAR-8, SAR-4800, and SR9.
- x. SIG 57 AMT and 500 Series.
- y. Sig Sauer MCX rifle.
- z. SKS capable of accepting a detachable magazine.
- aa. SLG 95.
- bb. SLR 95 and 96.
- cc. Spectre automatic carbine.
- dd. Springfield Armory BM59, G-3, and SAR-48.
- ee. Sterling MK-6 and MK-7.
- ff. Steyr AUG.
- gg. Thompson series, including Thompson T5.
- hh. Weaver Arms Nighthawk.
- 2. All of the following handguns, copies, duplicates, or  
altered facsimiles with the capability of any such weapon  
thereof:
  - a. AK-47 pistol and Mini AK-47 pistol.
  - b. AR-15 pistol.
  - c. Australian Automatic Arms SAP pistol.
  - d. Bushmaster automatic pistol.
  - e. Calico Liberty series pistols.
  - f. Chiappa Firearms Mfour-22.
  - g. Colefire Magnum.
  - h. DSA SA58 PKP FAL.
  - i. Encom MK-IV, MP-9, and MP-45.
  - j. Feather AT-9 and Mini-AT.
  - k. German Sport 522 PK.



831648

70       l. Goncz High-Tech Long pistol.  
71       m. Holmes MP-83.  
72       n. Intratec AB-10, TEC-9, TEC-22 Scorpion, and TEC-DC9.  
73       o. I.O. Inc. PPS-43C.  
74       p. Iver Johnson Enforcer.  
75       q. Kel-Tec PLR-16 pistol.  
76       r. MAC-10, MAC-11, Masterpiece Arms MPA pistol series, and  
77 Velocity Arms VMA series.  
78       s. Scarab Skorpion.  
79       t. Sig Sauer P556 pistol.  
80       u. Spectre automatic pistol.  
81       v. Thompson TA5 series pistols.  
82       w. UZI pistol and Micro-UZI pistol.  
83       x. Wilkinson "Linda" pistol.  
84       3. All of the following shotguns, copies, duplicates, or  
85 altered facsimiles with the capability of any such weapon  
86 thereof:  
87       a. Armscor 30 BG.  
88       b. Franchi LAW-12 and SPAS-12.  
89       c. Kel-Tec KSG.  
90       d. Remington TAC-2 and TACB3 FS.  
91       e. Saiga.  
92       f. Streetsweeper.  
93       g. Striker 12.  
94       h. USAS-12.  
95       4. A part or combination of parts that convert a firearm  
96 into an assault weapon, or any combination of parts from which  
97 an assault weapon may be assembled if those parts are in the  
98 possession or under the control of the same person.





831648

99           5. A semiautomatic firearm not listed in this paragraph  
100 which meets the criteria of one of the following sub-  
101 subparagraphs:

102           a. A semiautomatic rifle that has an ability to accept a  
103 detachable magazine and that has one or more of the following:

104           (I) A folding or telescoping stock.

105           (II) A pistol grip that protrudes conspicuously beneath the  
106 action of the weapon or any feature functioning as a protruding  
107 grip that can be held by the nontrigger hand or a thumbhole  
108 stock.

109           (III) A bayonet mount.

110           (IV) A flash suppressor or threaded barrel designed to  
111 accommodate a flash suppressor.

112           (V) A grenade launcher.

113           (VI) A shroud that is attached to the barrel, or that  
114 partially or completely encircles the barrel and allows the  
115 bearer to hold the firearm with the nontrigger hand without  
116 being burned, but excluding a slide that encloses the barrel.

117           b. A semiautomatic pistol that has an ability to accept a  
118 detachable magazine and that has one or more of the following:

119           (I) The capacity to accept an ammunition magazine that  
120 attaches to the pistol at any location outside the pistol grip.

121           (II) A threaded barrel capable of accepting a barrel  
122 extender, flash suppressor, forward handgrip, or silencer.

123           (III) A slide that encloses the barrel and that allows the  
124 shooter to hold the firearm with the nontrigger hand without  
125 being burned.

126           (IV) A manufactured weight of 50 ounces or more when the  
127 pistol is unloaded.



831648

(V) A semiautomatic version of an automatic firearm.

(VI) Any feature capable of functioning as a protruding grip that can be held by the nontrigger hand.

(VII) A folding, telescoping, or thumbhole stock.

c. A semiautomatic shotgun that has one or more of the following:

(I) A folding or telescoping stock.

(II) A pistol grip that protrudes conspicuously beneath the action of the weapon.

(III) A thumbhole stock.

(IV) A fixed-magazine capacity in excess of 5 rounds.

(V) An ability to accept a detachable magazine.

d. A semiautomatic pistol or a semiautomatic, centerfire, or rimfire rifle with a fixed magazine that has the capacity to accept more than 10 rounds of ammunition.

e. A part or combination of parts designed or intended to convert a firearm into an assault weapon, or any combination of parts from which an assault weapon may be assembled if those parts are in the possession or under the control of the same person.

(b) "Detachable magazine" means an ammunition feeding device that can be removed from a firearm without disassembly of the firearm action.

(c) "Fixed magazine" means an ammunition feeding device contained in, or permanently attached to, a firearm in such a manner that the device cannot be removed without disassembly of the firearm action.

(d) "Large-capacity magazine" means any ammunition feeding device with the capacity to accept more than 7 rounds, or any



831648

conversion kit, part, or combination of parts from which such a device can be assembled if those parts are in the possession or under the control of the same person, but does not include any of the following:

1. A feeding device that has been permanently altered so that it cannot accommodate more than 7 rounds;

2. A .22 caliber tube ammunition feeding device; or

3. A tubular magazine that is contained in a lever-action firearm.

(e) "Licensed gun dealer" means a person who has a federal firearms license.

(2) SALE OR TRANSFER.—

(a) A person may not import into the state or, within this state, distribute, transport, sell, keep for sale, offer or expose for sale, or give an assault weapon or large-capacity magazine. Except as provided in paragraph (b), any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 2 years.

(b) A person may not transfer, sell, or give an assault weapon or large-capacity magazine to a person under 18 years of age. Any person who violates this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 6 years.

(c) Paragraph (a) does not apply to:

1. The sale of assault weapons or large-capacity magazines to the Department of Law Enforcement, to a law enforcement agency, as defined in s. 934.02, to the Department of



831648

Corrections, or to the military, air, or naval forces of this state or the United States for use in the discharge of their official duties.

2. A person who is the executor or administrator of an estate that includes an assault weapon or large-capacity magazine for which a certificate of possession has been issued under subsection (4) which is disposed of as authorized by the probate court, if the disposition is otherwise authorized under this section.

3. The transfer by bequest or intestate succession of an assault weapon or large-capacity magazine for which a certificate of possession has been issued under subsection (4).

(3) POSSESSION.—

(a) Except as provided in subsection (5) or otherwise provided in this section or authorized by any other law, a person may not, within this state, possess an assault weapon or large-capacity magazine. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, with a mandatory minimum term of imprisonment of 1 year.

(b) Paragraph (a) does not apply to the possession of an assault weapon or large-capacity magazine by a member or employee of the Department of Law Enforcement, a law enforcement agency, as defined in s. 934.02, the Department of Corrections, or the military, air, or naval forces of this state or of the United States for use in the discharge of his or her official duties; nor does this section prohibit the possession or use of an assault weapon or large-capacity magazine by a sworn member of one of these agencies when on duty and when the use is within



831648

the scope of his or her duties.

(c) Paragraph (a) does not apply to the possession of an assault weapon or large-capacity magazine by any person before July 1, 2019, if all of the following are applicable:

1. The person is eligible to apply for a certificate of possession for the assault weapon or large-capacity magazine by July 1, 2019;

2. The person lawfully possessed the assault weapon or large-capacity magazine before October 1, 2018; and

3. The person is otherwise in compliance with this section and the applicable requirements of this chapter for possession of a firearm.

(d) Paragraph (a) does not apply to a person who is the executor or administrator of an estate that includes an assault weapon or large-capacity magazine for which a certificate of possession has been issued under subsection (4), if the assault weapon or large-capacity magazine is possessed at a place set forth in subparagraph (4)(c)1. or as authorized by the probate court.

(4) CERTIFICATE OF POSSESSION.—

(a) Any person who lawfully possesses an assault weapon or large-capacity magazine before October 1, 2018, shall apply by October 1, 2019, or, if such person is a member of the military or naval forces of this state or of the United States and cannot apply by October 1, 2019, because he or she is or was on official duty outside this state, shall apply within 90 days after returning to the state, to the Department of Law Enforcement for a certificate of possession with respect to such assault weapon or large-capacity magazine. The certificate must



831648

contain a description of the assault weapon or large-capacity magazine which identifies the assault weapon or large-capacity magazine uniquely, including all identification marks; the full name, address, date of birth, and thumbprint of the owner; and any other information as the department may deem appropriate.

The department shall adopt rules no later than January 1, 2019, to establish procedures with respect to the application for, and issuance of, certificates of possession under this section.

(b)1. An assault weapon or large-capacity magazine lawfully possessed in accordance with this section may not be sold or transferred on or after January 1, 2019, to any person within this state other than to a licensed gun dealer, as provided in subsection (5); or by a bequest or intestate succession.

2. A person who obtains title to an assault weapon or large-capacity magazine for which a certificate of possession has been issued under this subsection shall, within 90 days after obtaining title, apply to the Department of Law Enforcement for a certificate of possession, render the assault weapon or large-capacity magazine permanently inoperable, sell the assault weapon or large-capacity magazine to a licensed gun dealer, or remove the assault weapon or large-capacity magazine from the state.

3. A person who moves into the state and who is in lawful possession of an assault weapon or large-capacity magazine, shall, within 90 days, either render the assault weapon or large-capacity magazine permanently inoperable, sell the assault weapon or large-capacity magazine to a licensed gun dealer, or remove the assault weapon or large-capacity magazine from this state, unless the person is a member of the military, air, or



831648

naval forces of this state or of the United States, is in lawful possession of an assault weapon or large-capacity magazine, and has been transferred into the state after October 1, 2019.

(c) A person who has been issued a certificate of possession for an assault weapon or large-capacity magazine under this subsection may possess it only if the person is:

1. At the residence, the place of business, or any other property owned by that person, or on a property owned by another person with the owner's express permission;

2. On the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets;

3. On a target range that holds a regulatory or business license for the purpose of practicing shooting at that target range;

4. On the premises of a licensed shooting club;

5. Attending an exhibition, display, or educational project on firearms which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a nationally or state-recognized entity that fosters proficiency in, or promotes education about, firearms; or

6. Transporting the assault weapon or large-capacity magazine between any of the places mentioned in this paragraph, or from or to any licensed gun dealer for servicing or repair pursuant to paragraph (7) (b), provided the assault weapon or large-capacity magazine is transported as required by subsection (7).

(5) CERTIFICATE OF TRANSFER.—If an owner of an assault weapon or large-capacity magazine sells or transfers the weapon



831648

or magazine to a licensed gun dealer, he or she must, at the time of delivery of the weapon, execute a certificate of transfer and cause the certificate to be mailed or delivered to the Department of Law Enforcement. The certificate must contain:

(a) The date of sale or transfer.

(b) The name and address of the seller or transferor and the licensed gun dealer and their social security numbers or driver license numbers.

(c) The licensed gun dealer's federal firearms license number.

(d) A description of the weapon, including the caliber of the weapon and its make, model, and serial number.

(e) Any other information the Department of Law Enforcement prescribes.

The licensed gun dealer shall present his or her driver license or social security card and federal firearms license to the seller or transferor for inspection at the time of purchase or transfer. The Department of Law Enforcement shall maintain a file on all certificates of transfer at its headquarters.

(6) RELINQUISHMENT.—An individual may arrange in advance to relinquish an assault weapon or large-capacity magazine to a law enforcement agency, as defined in s. 934.02, or the Department of Law Enforcement. The assault weapon or large-capacity magazine must be transported in accordance with subsection (7).

(7) TRANSPORTATION.—

(a) A licensed gun dealer who lawfully purchases for resale an assault weapon or large-capacity magazine pursuant to subsection (2) may transport the assault weapon or large-





831648

capacity magazine between licensed gun dealers or out of this state, but no person shall carry a loaded assault weapon concealed from public view, or knowingly have in any motor vehicle owned, operated, or occupied by him or her a loaded or unloaded assault weapon, unless such weapon is kept in the trunk of such vehicle or in a case or other container that is inaccessible to the operator of or any passenger in such vehicle. Any person who violates this paragraph commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any licensed gun dealer may display the assault weapon or large-capacity magazine at any gun show or sell it to a resident outside this state.

(b) Any licensed gun dealer may transfer possession of any assault weapon or large-capacity magazine received pursuant to paragraph (a) to a gunsmith for purposes of accomplishing service or repair of the same. Transfers are permissible only to a gunsmith who is:

1. In the licensed gun dealer's employ; or  
2. Contracted by the licensed gun dealer for gunsmithing services, provided the gunsmith holds a dealer's license issued pursuant to chapter 44 of Title 18 the United States Code, 18 U.S.C. ss. 921 et seq., and the regulations issued pursuant thereto.

(8) CIRCUMSTANCES IN WHICH MANUFACTURE OR TRANSPORTATION NOT PROHIBITED.—This section does not prohibit any person, firm, or corporation engaged in the business of manufacturing assault weapons or large-capacity magazines in this state from manufacturing or transporting assault weapons or large-capacity magazines in this state for sale within this state in accordance



831648

with subparagraph (2)(c)1. or for sale outside this state.

(9) EXCEPTION.—This section does not apply to any firearm modified to render it permanently inoperable.

Section 9. Paragraph (a) of subsection (3) of section 775.087, Florida Statutes, is amended to read:

775.087 Possession or use of weapon; aggravated battery; felony reclassification; minimum sentence.—

(3)(a)1. Any person who is convicted of a felony or an attempt to commit a felony, regardless of whether the use of a firearm is an element of the felony, and the conviction was for:

- a. Murder;
- b. Sexual battery;
- c. Robbery;
- d. Burglary;
- e. Arson;
- f. Aggravated battery;
- g. Kidnapping;
- h. Escape;
- i. Sale, manufacture, delivery, or intent to sell, manufacture, or deliver any controlled substance;
- j. Aircraft piracy;
- k. Aggravated child abuse;
- l. Aggravated abuse of an elderly person or disabled adult;
- m. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- n. Carjacking;
- o. Home-invasion robbery;
- p. Aggravated stalking; or
- q. Trafficking in cannabis, trafficking in cocaine, capital



831648

importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1);

and during the commission of the offense, such person possessed a semiautomatic firearm and its high-capacity detachable box magazine, an assault weapon and its large-capacity magazine as defined in s. 790.30, or a machine gun as defined in s. 790.001, shall be sentenced to a minimum term of imprisonment of 15 years.

2. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box magazine, an assault weapon and its large-capacity magazine as defined in s. 790.30, or a "machine gun" as defined in s. 790.001 shall be sentenced to a minimum term of imprisonment of 20 years.

3. Any person who is convicted of a felony or an attempt to commit a felony listed in subparagraph (a)1., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a semiautomatic firearm and its high-capacity box



831648

magazine, an assault weapon and its large-capacity magazine as defined in s. 790.30, or a "machine gun" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.

Section 10. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, section 27.366, Florida Statutes, is reenacted to read:

27.366 Legislative intent and policy in cases meeting criteria of s. 775.087(2) and (3).—It is the intent of the Legislature that convicted criminal offenders who meet the criteria in s. 775.087(2) and (3) be sentenced to the minimum mandatory prison terms provided therein. It is the intent of the Legislature to establish zero tolerance of criminals who use, threaten to use, or avail themselves of firearms in order to commit crimes and thereby demonstrate their lack of value for human life. It is also the intent of the Legislature that prosecutors should appropriately exercise their discretion in those cases in which the offenders' possession of the firearm is incidental to the commission of a crime and not used in furtherance of the crime, used in order to commit the crime, or used in preparation to commit the crime. For every case in which the offender meets the criteria in this act and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.



831648

Section 11. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is reenacted to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of



831648

felony probation or community control where:

I. The violation does not include a new felony conviction;  
and

II. The community sanction violation is not based solely on  
the probationer or offender's failure to pay costs or fines or  
make restitution payments.

b. Twenty-four (24) community sanction violation points are  
assessed for the violation and for each successive violation of  
felony probation or community control where the violation  
includes a new felony conviction.

Multiple counts of community sanction violations before the  
sentencing court shall not be a basis for multiplying the  
assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary  
offense or any additional offense ranked in level 8, level 9, or  
level 10, and one or more prior serious felonies, a single  
assessment of thirty (30) points shall be added. For purposes of  
this section, a prior serious felony is an offense in the  
offender's prior record that is ranked in level 8, level 9, or  
level 10 under s. 921.0022 or s. 921.0023 and for which the  
offender is serving a sentence of confinement, supervision, or  
other sanction or for which the offender's date of release from  
confinement, supervision, or other sanction, whichever is later,  
is within 3 years before the date the primary offense or any  
additional offense was committed.

Prior capital felony points: If the offender has one or more



831648

prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing



831648

court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or of the Law Enforcement Protection Act under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.





831648

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Adult-on-minor sex offense: If the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s. 800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Section 12. For the purpose of incorporating the amendment made by this act to section 775.087, Florida Statutes, in a reference thereto, paragraph (b) of subsection (3) of section 947.146, Florida Statutes, is reenacted to read:



831648

947.146 Control Release Authority.—

(3) Within 120 days prior to the date the state correctional system is projected pursuant to s. 216.136 to exceed 99 percent of total capacity, the authority shall determine eligibility for and establish a control release date for an appropriate number of parole ineligible inmates committed to the department and incarcerated within the state who have been determined by the authority to be eligible for discretionary early release pursuant to this section. In establishing control release dates, it is the intent of the Legislature that the authority prioritize consideration of eligible inmates closest to their tentative release date. The authority shall rely upon commitment data on the offender information system maintained by the department to initially identify inmates who are to be reviewed for control release consideration. The authority may use a method of objective risk assessment in determining if an eligible inmate should be released. Such assessment shall be a part of the department's management information system. However, the authority shall have sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the release of a sufficient number of inmates to maintain the inmate population between 99 percent and 100 percent of total capacity. Inmates who are ineligible for control release are inmates who are parole eligible or inmates who:

(b) Are serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

In making control release eligibility determinations under this



831648

subsection, the authority may rely on any document leading to or generated during the course of the criminal proceedings, including, but not limited to, any presentence or postsentence investigation or any information contained in arrest reports relating to circumstances of the offense.

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

And the title is amended as follows:

Between lines 1761 and 1762

insert:

creating s. 790.30, F.S.; defining terms; prohibiting the sale or transfer of an assault weapon or large-capacity magazine; providing criminal penalties; providing exceptions to the prohibition; prohibiting possession of an assault weapon or large-capacity magazine; providing criminal penalties; providing exceptions to the prohibition; requiring that a person who lawfully possessed such a weapon or magazine before a specified date obtain a certificate of possession; providing requirements for the certificate; requiring the Department of Law Enforcement to adopt rules by a certain date; limiting transfers of assault weapons or large-capacity magazines represented by such certificates as of a specified date; providing conditions for continued possession of such weapons or magazines; requiring certificates of transfer for the sale or transfer of such weapons or magazines; requiring that the department maintain records of such sales or



831648

transfers; providing for relinquishment of assault weapons or large-capacity magazines to law enforcement agencies or the department; providing requirements for transportation of assault weapons or large-capacity magazines; providing criminal penalties for violations; specifying circumstances in which the manufacture or transportation of assault weapons or large-capacity magazines is not prohibited; exempting permanently inoperable firearms from all such provisions; amending s. 775.087, F.S.; providing enhanced criminal penalties for certain offenses when a person committed them with an assault weapon and large-capacity magazine; reenacting ss. 27.366, 921.0024(1)(b), and 947.146(3)(b), F.S., relating to legislative intent and policy in certain cases, the Criminal Punishment Code worksheet key, and the Control Release Authority, respectively, to incorporate the amendment made to s. 775.087, F.S., in references thereto;



355256

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/26/2018	.	
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The Committee on Rules (Thurston) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Delete lines 85 - 209

and insert:

Section 6. Present subsection (13) of section 790.065, F.S., is redesignated as subsection (12), subsections (1), (3), and (10) of that section are amended, and a new subsection (11) is added to that section, to read:

790.065 Sale and delivery of firearms.—

(1)(a) A licensed importer, licensed manufacturer, or



355256

licensed dealer may not sell or deliver from her or his inventory at her or his licensed premises any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, until she or he has:

1. Obtained a completed form from the potential buyer or transferee, which form shall have been adopted ~~promulgated~~ by the Department of Law Enforcement and provided by the licensed importer, licensed manufacturer, or licensed dealer, which shall include the name, date of birth, gender, race, and social security number or other identification number of such potential buyer or transferee and has inspected proper identification including an identification containing a photograph of the potential buyer or transferee.

2. Collected a fee from the potential buyer for processing the criminal history check of the potential buyer. The fee shall be established by the Department of Law Enforcement and may not exceed \$8 per transaction. The Department of Law Enforcement may reduce, or suspend collection of, the fee to reflect payment received from the Federal Government applied to the cost of maintaining the criminal history check system established by this section as a means of facilitating or supplementing the National Instant Criminal Background Check System. The Department of Law Enforcement shall, by rule, establish procedures for the fees to be transmitted by the licensee to the Department of Law Enforcement. All such fees shall be deposited into the Department of Law Enforcement Operating Trust Fund, but shall be segregated from all other funds deposited into such trust fund and must be accounted for separately. Such segregated funds must not be used for any purpose other than the operation



355256

41 of the criminal history checks required by this section. The  
42 Department of Law Enforcement, each year before ~~prior to~~  
43 February 1, shall make a full accounting of all receipts and  
44 expenditures of such funds to the President of the Senate, the  
45 Speaker of the House of Representatives, the majority and  
46 minority leaders of each house of the Legislature, and the  
47 chairs of the appropriations committees of each house of the  
48 Legislature. In the event that the cumulative amount of funds  
49 collected exceeds the cumulative amount of expenditures by more  
50 than \$2.5 million, excess funds may be used for the purpose of  
51 purchasing soft body armor for law enforcement officers.

52 3. Requested, by means of a toll-free telephone call, the  
53 Department of Law Enforcement to conduct a check of the  
54 information as reported and reflected in the Florida Crime  
55 Information Center and National Crime Information Center systems  
56 as of the date of the request.

57 4. Received a unique approval number for that inquiry from  
58 the Department of Law Enforcement, and recorded the date and  
59 such number on the consent form.

60 (b) However, if the person purchasing, or receiving  
61 delivery of, the firearm is a holder of a valid concealed  
62 weapons or firearms license pursuant to ~~the provisions of s.~~  
63 790.06 or holds an active certification from the Criminal  
64 Justice Standards and Training Commission as a "law enforcement  
65 officer," a "correctional officer," or a "correctional probation  
66 officer" as defined in s. 943.10(1), (2), (3), (6), (7), (8), or  
67 (9), this subsection does not apply.

68 (c) This subsection does not apply to the purchase, trade,  
69 or transfer of a rifle or shotgun by a resident of this state



355256

when the resident makes such purchase, trade, or transfer from a licensed importer, licensed manufacturer, or licensed dealer in another state.

(d)1. If neither party to a prospective firearms sale, lease, or transfer is a licensed dealer, the parties to the transaction must complete the sale, lease, or transfer through a licensed dealer as follows:

a. The seller, lessor, or transferor must deliver the firearm to a licensed dealer, who shall process the sale, lease, or transfer as if she or he were the seller, lessor, or transferor, except that the seller, lessor, or transferor who is not a licensed dealer may remove the firearm from the business premises of the licensed dealer while the background check is being conducted and while the waiting period requirement set forth in s. 790.0655 is being met. Other than allowing the unlicensed seller or transferor to remove the firearm from the licensed dealer's business premises, the licensed dealer shall comply with all requirements of federal and state law which would apply if she or he were the seller, lessor, or transferor of the firearm;

b. The licensed dealer shall conduct a background check on the buyer or other transferee as provided in this section and, unless the transaction is prohibited, and after all other legal requirements are met, including those set forth in s. 790.0655, the licensed dealer shall either:

(I) Deliver the firearm to the seller, lessor, or transferor, who shall complete the transaction and deliver the firearm to the buyer; or

(II) If the seller, lessor, or transferor has removed the





355256

firearm from the licensed dealer's business premises, contact the seller, lessor, or transferor to let her or him know that he or she may complete the transaction and deliver the firearm to the buyer.

c. If the licensed dealer cannot legally complete the transaction, the dealer must:

(I) Return the firearm to the seller, lessor, or transferor; or

(II) If the seller, lessor, or transferor has removed the firearm from the licensed dealer's business premises, contact the seller, lessor, or transferor to let her or him know that the transaction is prohibited, and that the seller, lessor, or transferor may not deliver the firearm to the buyer; and

d. The licensed dealer may require the buyer or other transferee to pay a fee covering the administrative costs incurred by the licensed dealer for facilitating the transfer of the firearm, plus applicable fees pursuant to federal and state law.

2. This paragraph does not apply to:

a. The activities of the United States Marshals Service, members of the United States Armed Forces or the National Guard, or federal officials required to carry firearms while engaged in performing their official duties; or

b. The following activities, unless the lawful owner knows or has reasonable cause to believe that federal, state, or local law prohibits the transferee from purchasing or possessing firearms, or that the transferee is likely to use the firearm for unlawful purposes:

(I) The delivery of a firearm to a gunsmith for service or



355256

repair, or the return of the firearm to its owner by the  
gunsmith;

(II) The transfer of a firearm to a carrier, warehouseman,  
or other person engaged in the business of transportation or  
storage, to the extent that the receipt, possession, or having  
on or about the person any firearm is in the ordinary course of  
business and in conformity with federal, state, and local laws,  
and not for the personal use of any such person;

(III) The loan of a firearm solely for the purpose of  
shooting at targets, if the loan occurs on the premises of a  
properly licensed target facility and if the firearm is at all  
times kept within the premises of the target facility;

(IV) The loan of a firearm to a person who is under 18  
years of age for lawful hunting, sporting, or educational  
purposes while under the direct supervision and control of a  
responsible adult;

(V) The loan of a firearm to a person who is 18 years of  
age or older if the firearm remains in the person's possession  
only while the person is accompanying the lawful owner and using  
the firearm for lawful hunting, sporting, or recreational  
purposes; or

(VI) The loan of a firearm to an adult family member of the  
lawful owner of the firearm if the lawful owner resides with the  
family member but is not present in the residence, provided that  
the family member does not maintain control over the firearm for  
more than 10 consecutive days.

~~(3) In the event of scheduled computer downtime, electronic  
failure, or similar emergency beyond the control of the  
Department of Law Enforcement, the department shall immediately~~



355256

~~notify the licensee of the reason for, and estimated length of, such delay. After such notification, the department shall forthwith, and in no event later than the end of the next business day of the licensee, either inform the requesting licensee if its records demonstrate that the buyer or transferee is prohibited from receipt or possession of a firearm pursuant to Florida and Federal law or provide the licensee with a unique approval number. Unless notified by the end of said next business day that the buyer or transferee is so prohibited, and without regard to whether she or he has received a unique approval number, the licensee may complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.~~

~~(10) A licensed importer, licensed manufacturer, or licensed dealer is not required to comply with the requirements of this section in the event of:~~

~~(a) Unavailability of telephone service at the licensed premises due to the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises of the licensee due to the location of said premises; or the interruption of telephone service by reason of hurricane, tornado, flood, natural disaster, or other act of God, war, invasion, insurrection, riot, or other bona fide emergency, or other reason beyond the control of the licensee; or~~

~~(b) Failure of the Department of Law Enforcement to comply with the requirements of subsections (2) and (3).~~

(11) A person younger than 21 years of age may not purchase



355256

a firearm. The sale or transfer of a firearm to a person younger than 21 years of age may not be made or facilitated by a licensed importer, licensed manufacturer, or licensed dealer. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The prohibition on the purchase of a firearm by a person younger than 21 years of age or the sale or transfer by a licensed importer, licensed manufacturer, or licensed dealer to a person younger than 21 years of age does not apply to a member of the military or naval forces of this state or of the United States or to a law enforcement officer or a correctional officer, as those terms are defined in s. 943.10.

Section 7. Section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of firearms ~~handguns~~; mandatory waiting period; exceptions; penalties.—

(1)(a) ~~There shall be~~ A mandatory ~~3-day~~ waiting period is imposed between the purchase and delivery of a firearm. The mandatory waiting period is, which shall be 3 days, excluding weekends and legal holidays, or expires upon the completion of the records checks required under s. 790.065, whichever occurs later. The mandatory waiting period applies to the delivery of a firearm through a private sale facilitated through a licensed dealer under s. 790.065(1)(d) between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. ~~"Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver.~~ "Retailer" means and includes a licensed importer, licensed manufacturer, or licensed



355256

215 dealer ~~every person~~ engaged in the business of making firearm  
216 sales at retail or for distribution, or use, or consumption, or  
217 storage to be used or consumed in this state, as defined in s.  
218 212.02(13).

219 (b) Records of firearm handgun sales must be available for  
220 inspection by any law enforcement agency, as defined in s.  
221 934.02, during normal business hours.

222 (2) The ~~3-day~~ waiting period does ~~shall~~ not apply in the  
223 following circumstances:

224 (a) When a firearm handgun is being purchased by a holder  
225 of a concealed weapons permit as defined in s. 790.06.

226 (b) To a trade-in of another firearm handgun.

227 (c) To a person who completes a 16-hour hunter education or  
228 hunter safety course approved by the Fish and Wildlife  
229 Conservation Commission or similar agency of another state,  
230 unless that person is purchasing a handgun.

231 (3) It is a felony of the third degree, punishable as  
232 provided in s. 775.082, s. 775.083, or s. 775.084:

233 (a) For any retailer, or any employee or agent of a  
234 retailer, to deliver a firearm handgun before the expiration of  
235 the ~~3-day~~ waiting period, subject to the exceptions provided in  
236 subsection (2).

237 (b) For a purchaser to obtain delivery of a firearm handgun  
238 by fraud, false pretense, or false representation.

239 Section 8. Paragraph (e) of subsection (3) of section  
240 790.335, Florida Statutes, is amended to read:

241 790.335 Prohibition of registration of firearms; electronic  
242 records.—

243 (3) EXCEPTIONS.—The provisions of this section shall not



355256

apply to:

(e)1. Records kept pursuant to the recordkeeping provisions of s. 790.065; however, nothing in this section shall be construed to authorize the public release or inspection of records that are made confidential and exempt from the provisions of s. 119.07(1) by s. 790.065(3)(a) ~~s. 790.065(4)(a)~~.

2. Nothing in this paragraph shall be construed to allow the maintaining of records containing the names of purchasers or transferees who receive unique approval numbers or the maintaining of records of firearm transactions.

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

Delete lines 1744 - 1761  
and insert:

s. 790.065, F.S.; requiring that, if neither party to a prospective firearms sale, lease, or transfer is a licensed dealer, the parties complete the sale, lease, or transfer through a licensed dealer; specifying procedures and requirements for a licensed dealer, a seller, lessor, or transferor, and a buyer, lessee, or transferee, including a required background check; authorizing a licensed dealer to charge a buyer or transferee specified fees; providing applicability; deleting provisions authorizing a licensee to complete the sale or transfer of a firearm to a person without receiving notification from the Department of Law Enforcement informing the licensee as to whether such person is prohibited from receipt or possession of a



355256

firearm or providing a unique approval number under certain circumstances; deleting provisions exempting a licensed importer, licensed manufacturer, or licensed dealer from the sale and delivery requirements, under certain circumstances; prohibiting a person younger than a certain age from purchasing a firearm; prohibiting the sale or transfer, or facilitation of a sale or transfer, of a firearm to a person younger than a certain age by a licensed importer, licensed manufacturer, or licensed dealer; providing criminal penalties; providing an exception; amending s. 790.0655, F.S.; revising the mandatory waiting period to the later of either 3 days, excluding weekends and legal holidays, or upon the completion of certain records checks; applying the mandatory 3-day waiting period to private sales of firearms facilitated through a licensed dealer; revising and redefining terms; requiring that records of firearm sales be available for inspection by any law enforcement agency during normal business hours; revising applicability of the waiting period; conforming provisions to changes made by the act; amending s. 790.335, F.S.; conforming a cross-reference;



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/26/2018	.	
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The Committee on Rules (Rodriguez) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Between lines 209 and 210

insert:

Section 8. Section 790.174, Florida Statutes, is amended to read:

790.174 Safe storage of firearms required.—

(1) As used in this section, the term "minor" means a person younger than 18 years of age.

(2)~~(1)~~ A person who stores or leaves, on a premise under





335906

12 his or her control, a loaded firearm, as defined in s. 790.001,  
13 and who knows or reasonably should know that a minor is likely  
14 to gain access to the firearm without the lawful permission of  
15 the minor's parent or the person having charge of the minor, or  
16 without the supervision required by law, shall keep the firearm  
17 in a securely locked box or container ~~or in a location which a~~  
18 ~~reasonable person would believe to be secure~~ or shall secure it  
19 with a trigger lock, ~~except when the person is carrying the~~  
20 ~~firearm on his or her body or within such close proximity~~  
21 ~~thereto that he or she can retrieve and use it as easily and~~  
22 ~~quickly as if he or she carried it on his or her body.~~

23 (3)(2) It is A person who violates subsection (2) commits a  
24 misdemeanor of the second degree, punishable as provided in s.  
25 775.082 or s. 775.083, ~~if a person violates subsection (1) by~~  
26 ~~failing to store or leave a firearm in the required manner and~~  
27 ~~as a result thereof a minor gains access to the firearm, without~~  
28 ~~the lawful permission of the minor's parent or the person having~~  
29 ~~charge of the minor, and possesses or exhibits it, without the~~  
30 ~~supervision required by law.~~

31 ~~(a) In a public place; or~~

32 ~~(b) In a rude, careless, angry, or threatening manner in~~  
33 ~~violation of s. 790.10.~~

34  
35 ~~This subsection does not apply if the minor obtains the firearm~~  
36 ~~as a result of an unlawful entry by any person.~~

37 ~~(3) As used in this act, the term "minor" means any person~~  
38 ~~under the age of 16.~~

39 Section 9. For the purpose of incorporating the amendment  
40 made by this act to section 790.174, Florida Statutes, in a



335906

reference thereto, paragraph (f) of subsection (5) of section 409.175, Florida Statutes, is reenacted to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(5)

(f) The department's rules shall include adoption of a form to be used by child-placing agencies during an adoption home study that requires all prospective adoptive applicants to acknowledge in writing the receipt of a document containing solely and exclusively the language provided for in s. 790.174 verbatim.

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

And the title is amended as follows:

Between lines 1761 and 1762  
insert:

amending s. 790.174, F.S.; redefining the term "minor"; requiring that, in specified circumstances, a loaded firearm be kept in a securely locked box or container or be secured with a trigger lock; deleting conditions that pertain to the crime of failing to safely store, leave, or secure a loaded firearm in a specified manner; reenacting s. 409.175(5)(f), F.S., relating to certain rules of the Department of Children and Families, to incorporate the amendment made to s. 790.174, F.S., in a reference thereto;



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/26/2018	.	
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The Committee on Rules (Thurston) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Between lines 209 and 210

insert:

Section 8. Section 790.335, Florida Statutes, is amended to read:

~~790.335 Prohibition of registration of firearms; electronic records.—~~

~~(1) LEGISLATIVE FINDINGS AND INTENT.—~~

~~(a) The Legislature finds and declares that:~~



403738

~~1. The right of individuals to keep and bear arms is guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.~~

~~2. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a law enforcement tool and can become an instrument for profiling, harassing, or abusing law-abiding citizens based on their choice to own a firearm and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution. Further, such a list, record, or registry has the potential to fall into the wrong hands and become a shopping list for thieves.~~

~~3. A list, record, or registry of legally owned firearms or law-abiding firearm owners is not a tool for fighting terrorism, but rather is an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution.~~

~~4. Law-abiding firearm owners whose names have been illegally recorded in a list, record, or registry are entitled to redress.~~

~~(b) The Legislature intends through the provisions of this section to:~~

~~1. Protect the right of individuals to keep and bear arms as guaranteed under both the Second Amendment to the United States Constitution and s. 8, Art. I of the State Constitution.~~

~~2. Protect the privacy rights of law-abiding firearm owners.~~

~~(2) PROHIBITIONS. No state governmental agency or local~~



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~~government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned firearms or any list, record, or registry of the owners of those firearms.~~

~~(3) EXCEPTIONS. The provisions of this section shall not apply to:~~

~~(a) Records of firearms that have been used in committing any crime.~~

~~(b) Records relating to any person who has been convicted of a crime.~~

~~(c) Records of firearms that have been reported stolen that are retained for a period not in excess of 10 days after such firearms are recovered. Official documentation recording the theft of a recovered weapon may be maintained no longer than the balance of the year entered, plus 2 years.~~

~~(d) Firearm records that must be retained by firearm dealers under federal law, including copies of such records transmitted to law enforcement agencies. However, no state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, private or public, shall accumulate, compile, computerize, or otherwise collect or convert such written records into any form of list, registry, or database for any purpose.~~

~~(e) 1. Records kept pursuant to the recordkeeping provisions of s. 790.065; however, nothing in this section shall be construed to authorize the public release or inspection of~~



403738

~~records that are made confidential and exempt from the provisions of s. 119.07(1) by s. 790.065(4)(a).~~

~~2. Nothing in this paragraph shall be construed to allow the maintaining of records containing the names of purchasers or transferees who receive unique approval numbers or the maintaining of records of firearm transactions.~~

~~(f) Firearm records, including paper pawn transaction forms and contracts on firearm transactions, required by chapters 538 and 539.~~

~~1. Electronic firearm records held pursuant to chapter 538 may only be kept by a secondhand dealer for 30 days after the date of the purchase of the firearm by the secondhand dealer.~~

~~2. Electronic firearm records held pursuant to chapter 539 may only be kept by a pawnbroker for 30 days after the expiration of the loan that is secured by a firearm or 30 days after the date of purchase of a firearm, whichever is applicable.~~

~~3. Except as required by federal law, any firearm records kept pursuant to chapter 538 or chapter 539 shall not, at any time, be electronically transferred to any public or private entity, agency, business, or enterprise, nor shall any such records be copied or transferred for purposes of accumulation of such records into lists, registries, or databases.~~

~~4. Notwithstanding subparagraph 3., secondhand dealers and pawnbrokers may electronically submit firearm transaction records to the appropriate law enforcement agencies as required by chapters 538 and 539; however, the law enforcement agencies may not electronically submit such records to any other person or entity and must destroy such records within 60 days after~~



403738

~~receipt of such records.~~

~~5. Notwithstanding subparagraph 3., secondhand dealers and pawnbrokers may electronically submit limited firearms records consisting solely of the manufacturer, model, serial number, and caliber of pawned or purchased firearms to a third-party private provider that is exclusively incorporated, exclusively owned, and exclusively operated in the United States and that restricts access to such information to only appropriate law enforcement agencies for legitimate law enforcement purposes. Such records must be destroyed within 30 days by the third-party provider. As a condition of receipt of such records, the third-party provider must agree in writing to comply with the requirements of this section. Any pawnbroker or secondhand dealer who contracts with a third-party provider other than as provided in this act or electronically transmits any records of firearms transactions to any third-party provider other than the records specifically allowed by this paragraph commits a felony of the second degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(g) Records kept by the Department of Law Enforcement of NCIC transactions to the extent required by federal law and a log of dates of requests for criminal history record checks, unique approval and nonapproval numbers, license identification numbers, and transaction numbers corresponding to such dates.~~

~~(h) Records of an insurer that, as a condition to providing insurance against theft or loss of a firearm, identify such firearm. Such records may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity. The insurer may not keep a record of such firearm more than 60 days after the policy of insurance expires or after~~



403738

~~notification by the insured that the insured is no longer the owner of such firearm.~~

~~(i) Lists of customers of a firearm dealer retained by such dealer, provided that such lists do not disclose the particular firearms purchased. Such lists, or any parts thereof, may not be sold, commingled with records relating to other firearms, or transferred to any other person or entity.~~

~~(j) Sales receipts retained by the seller of firearms or by a person providing credit for such purchase, provided that such receipts shall not serve as or be used for the creation of a database for registration of firearms.~~

~~(k) Personal records of firearms maintained by the owner of such firearms.~~

~~(l) Records maintained by a business that stores or acts as the selling agent of firearms on behalf of the lawful owner of the firearms.~~

~~(m) Membership lists of organizations comprised of firearm owners.~~

~~(n) Records maintained by an employer or contracting entity of the firearms owned by its officers, employees, or agents, if such firearms are used in the course of business performed on behalf of the employer.~~

~~(o) Records maintained pursuant to s. 790.06 by the Department of Agriculture and Consumer Services of a person who was a licensee within the prior 2 years.~~

~~(p) Records of firearms involved in criminal investigations, criminal prosecutions, criminal appeals, and postconviction motions, civil proceedings relating to the surrender or seizure of firearms including protective~~





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~~injunctions, Baker Act commitments, and sheriff's levies pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm.~~

~~(q) Paper documents relating to firearms involved in criminal cases, criminal investigations, and criminal prosecutions, civil proceedings relating to the surrender or seizure of firearms including protective injunctions, Baker Act commitments, and sheriff's levies pursuant to court judgments, and voluntary surrender by the owner or custodian of the firearm.~~

~~(r) Noncriminal records relating to the receipt, storage or return of firearms, including, but not limited to, records relating to firearms impounded for storage or safekeeping, receipts proving that a firearm was returned to the rightful owner and supporting records of identification and proof of ownership, or records relating to firearms impounded pursuant to levies or court orders, provided, however, that such records shall not be compiled, sorted, or otherwise arranged into any lists, indexes, or registries of firearms or firearms owners.~~

~~(4) PENALTIES.—~~

~~(a) Any person who, or entity that, violates a provision of this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.~~

~~(b) Except as required by the provisions of s. 16, Art. I of the State Constitution or the Sixth Amendment to the United States Constitution, no public funds shall be used to defend the unlawful conduct of any person charged with a violation of this section, unless the charges against such person are dismissed or such person is determined to be not guilty at trial.~~



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~~Notwithstanding this paragraph, public funds may be expended to provide the services of the office of public defender or court-appointed conflict counsel as provided by law.~~

~~(c) The governmental entity, or the designee of such governmental entity, in whose service or employ a list, record, or registry was compiled in violation of this section may be assessed a fine of not more than \$5 million, if the court determines that the evidence shows that the list, record, or registry was compiled or maintained with the knowledge or complicity of the management of the governmental entity. The Attorney General may bring a civil cause of action to enforce the fines assessed under this paragraph.~~

~~(d) The state attorney in the appropriate jurisdiction shall investigate complaints of criminal violations of this section and, where evidence indicates a violation may have occurred, shall prosecute violators.~~

~~(5) ELECTRONIC RECORDS.—Secondhand dealers and pawnbrokers who electronically submit firearms transaction records to the appropriate law enforcement agencies as required by chapters 538 and 539 shall submit the name of the manufacturer and caliber information of each firearm in Florida Crime Information Center coding, and shall include the model and serial number of each firearm.~~

~~(6) CONSTRUCTION.—This section shall be construed to effectuate its remedial and deterrent purposes. This section may not be construed to grant any substantive, procedural privacy right or civil claim to any criminal defendant, and a violation of this section may not be grounds for the suppression of evidence in any criminal case.~~



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Section 9. Section 790.336, Florida Statutes, is amended to read:

~~790.336 Lists, records, or registries to be destroyed. Any list, record, or registry maintained or under construction on the effective date of this act shall be destroyed, unless prohibited by law, within 60 calendar days after this act becomes law. Thereafter, failure to destroy any such list, record, or registry may result in prosecution under this act.~~

Section 10. Paragraph (b) of subsection (5) and paragraph (b) of subsection (9) of section 409.175, Florida Statutes, are amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.—

(5)

(b) The requirements for the licensure and operation of a child-placing agency shall also include compliance with the requirements of s. 63.0422 ~~ss. 63.0422 and 790.335~~.

(9)

(b) Any of the following actions by a home or agency or its personnel is a ground for denial, suspension, or revocation of a license:

1. An intentional or negligent act materially affecting the health or safety of children in the home or agency.

2. A violation of the provisions of this section or of licensing rules promulgated pursuant to this section.

3. Noncompliance with the requirements for good moral character as specified in paragraph (5)(a).

4. Failure to dismiss personnel found in noncompliance with



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requirements for good moral character.

5. Failure to comply with the requirements of s. 63.0422  
~~ss. 63.0422 and 790.335.~~

Section 11. Paragraph (a) of subsection (6) of section  
790.0625, Florida Statutes, is amended to read:

790.0625 Appointment of tax collectors to accept  
applications for a concealed weapon or firearm license; fees;  
penalties.—

(6) (a) A tax collector appointed under this section may not  
maintain a list or record of persons who apply for or are  
granted a new or renewal license to carry a concealed weapon or  
firearm. A tax collector who violates this paragraph commits a  
felony of the third degree, punishable as provided in s. 775.082  
or s. 775.083 ~~violation of this paragraph is subject to s.~~  
~~790.335.~~

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

And the title is amended as follows:

Between lines 1761 and 1762

insert:

repealing s. 790.335, F.S., relating to the  
prohibition of registration of firearms and the  
treatment of electronic records; repealing s. 790.336,  
F.S., relating to lists, records, or registries  
required to be destroyed; amending ss. 409.175 and  
790.0625, F.S.; conforming provisions to changes made  
by the act;



260340

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/26/2018	.	
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The Committee on Rules (Galvano and Benacquisto) recommended the following:

**Senate Amendment to Amendment (345360) (with title amendment)**

Delete lines 85 - 201  
and insert:

Section 6. Present subsection (13) of section 790.065, Florida Statutes, is redesignated as subsection (14), and a new subsection (13) is added to that section, to read:

790.065 Sale and delivery of firearms.—

(13) A person younger than 21 years of age may not purchase



260340

a firearm. The sale or transfer of a firearm to a person younger than 21 years of age may not be made or facilitated by a licensed importer, licensed manufacturer, or licensed dealer. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The prohibitions of this subsection do not apply to the purchase of a rifle or shotgun by a law enforcement officer or a correctional officer, as those terms are defined in s. 943.10, or to a person on active duty in the Armed Forces of the United States or full-time duty in the National Guard.

Section 7. Section 790.0655, Florida Statutes, is amended to read:

790.0655 Purchase and delivery of firearms ~~handguns~~; mandatory waiting period; exceptions; penalties.—

(1)(a) ~~There shall be~~ A mandatory ~~3-day~~ waiting period is imposed between the purchase and delivery of a firearm. The mandatory waiting period is, which shall be 3 days, excluding weekends and legal holidays, or expires upon the completion of the records checks required under s. 790.065, whichever occurs later between the purchase and the delivery at retail of any handgun. "Purchase" means the transfer of money or other valuable consideration to the retailer. ~~"Handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver.~~ "Retailer" means and includes a licensed importer, licensed manufacturer, or licensed dealer ~~every person~~ engaged in the business of making firearm sales at retail or for distribution, or use, or consumption, or storage to be used or consumed in this state, as defined in s. 212.02(13).

(b) Records of firearm ~~handgun~~ sales must be available for



260340

inspection by any law enforcement agency, as defined in s.  
934.02, during normal business hours.

(2) The ~~3-day~~ waiting period does ~~shall~~ not apply in the  
following circumstances:

(a) When a firearm handgun is being purchased by a holder  
of a concealed weapons permit as defined in s. 790.06.

(b) To a trade-in of another firearm handgun.

(c) To a person who completes a minimum of a 16-hour hunter  
education or hunter safety course approved by the Fish and  
Wildlife Conservation Commission or similar agency of another  
state, unless that person is purchasing a handgun.

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

And the title is amended as follows:

Delete lines 1744 - 1747

and insert:

s. 790.065, F.S.; prohibiting a person younger



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/26/2018	.	
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	.	
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The Committee on Rules (Braynon and Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 568 - 759  
and insert:

Section 11. Section 1006.149, Florida Statutes, is created  
to read:

1006.149 Public School Emergency Response Learning System  
Program.—

(1) The Public School Emergency Response Learning System  
Program is established to assist school personnel in preparing





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for and responding to active emergency situations and to implement local notification systems for all Florida public schools, with the ultimate goal of preventing tragedy and the loss of life through proactive strategies.

(2) The program is created within the department and shall be administered by the Office of Safe Schools, established pursuant to s. 1001.217. Through the program, local law enforcement agencies shall partner with participating public preschools, public child care providers, or public school districts and schools. Training, notifications, and resources must be available for school personnel and students and their families through, at minimum, the following mechanisms:

(a) Activities and direct training to mitigate risk and save lives in emergency situations, such as lockdown, bomb threat, active shooter, and other emergency situations.

(b) Vital local notification systems implemented to alert schools of imminent danger.

(c) Other resources provided in conjunction with the training including, but not limited to, an emergency plan flip chart, communication cards, instructional resources, activity books for children and teachers, and certificates of training and completion.

(3) Each program participant must develop a preemptive plan of action that includes multiple options for addressing various situations based on the form of danger present and the unique needs and circumstances of each school and its faculty, staff, students, and visitors.

(4) A school district must include in its emergency notification procedures established pursuant to s. 1006.07 any



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40 program participant who notifies the district of his or her  
41 desire to participate.

42 (5) Funding for program activities may be provided by the  
43 Legislature to implement this section.

44  
45 ===== T I T L E A M E N D M E N T =====

46 And the title is amended as follows:

47 Delete lines 64 - 84

48 and insert:

49 specified evaluations; creating s. 1006.149, F.S.;  
50 establishing the Public School Emergency Response  
51 Learning System Program within the department;  
52 establishing the program as a partnership between  
53 local law enforcement and public education entities;  
54 specifying activities, training, notification systems,  
55 and resources provided through the program; specifying  
56 the creation of a preemptive plan of action;  
57 authorizing funding provided by the Legislature to  
58 implement the program; creating s. 1006.1493,

FOR CONSIDERATION By the Committee on Rules

595-03526-18

20187026pb

1 A bill to be entitled  
 2 An act relating to school safety; amending s. 20.15,  
 3 F.S.; establishing the Office of Safe Schools within  
 4 the Department of Education; creating s. 943.687,  
 5 F.S.; creating the Commission on School Safety and  
 6 Security within the Florida Department of Law  
 7 Enforcement; specifying the composition of the  
 8 commission; specifying meeting requirements;  
 9 authorizing reimbursement for per diem and travel  
 10 expenses; providing the duties of the commission;  
 11 requiring Florida Department of Law Enforcement staff  
 12 to assist the commission; requiring a report to the  
 13 Governor, the Cabinet, and the Legislature within a  
 14 specified time; creating s. 1000.051, F.S.; providing  
 15 legislative intent regarding school safety and  
 16 security; creating s. 1001.217, F.S.; creating the  
 17 Office of Safe Schools; providing the purpose and  
 18 duties of the office; amending ss. 1002.221 and  
 19 1002.225, F.S.; providing for construction regarding  
 20 the applicability of public records exemptions for  
 21 security system plans and security systems; amending  
 22 s. 1006.04, F.S.; establishing the Multiagency Service  
 23 Network for Students with Severe Emotional  
 24 Disturbance; specifying the goals and duties of the  
 25 program; authorizing the Legislature to provide  
 26 funding to the department to award grants; creating s.  
 27 1006.05, F.S.; providing a purpose of the mental  
 28 health assistance allocation; requiring that school  
 29 districts and charter schools annually develop and

Page 1 of 31

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595-03526-18

20187026pb

30 submit certain detailed plans; requiring that approved  
 31 charter school plans be provided to the district for  
 32 submission to the Commissioner of Education; providing  
 33 that required plans must include certain elements;  
 34 requiring school districts to annually submit approved  
 35 plans to the commissioner by a specified date;  
 36 requiring that entities receiving such allocations  
 37 annually submit a final report on program outcomes and  
 38 specific expenditures to the commissioner by a  
 39 specified date; amending s. 1006.07, F.S.; requiring  
 40 district school boards to formulate and prescribe  
 41 policies and procedures for active shooter situations;  
 42 requiring that active shooter situation training for  
 43 each school be conducted by the law enforcement agency  
 44 or agencies that are designated as first responders to  
 45 the school's campus; requiring each school district to  
 46 designate a threat assessment team; requiring each  
 47 school district to conduct certain assessments in a  
 48 specified format; requiring a district school  
 49 superintendent to provide specified entities with  
 50 certain findings and certain strategy and activity  
 51 recommendations to improve school safety and security;  
 52 requiring that district school boards allow campus  
 53 tours by such law enforcement agency or agencies at  
 54 specified times and for specified purposes; requiring  
 55 that certain recommendations be documented by such  
 56 board or principal; requiring each district school  
 57 board to designate or appoint a district school safety  
 58 specialist; providing duties of the school safety

Page 2 of 31

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595-03526-18

20187026pb

59 specialist; amending s. 1006.12, F.S.; requiring  
60 district school boards to establish or assign safe-  
61 school officers at each district school facility  
62 within the district; requiring school resource  
63 officers and school safety officers to undergo  
64 specified evaluations; specifying that participation  
65 in the Florida Sheriff's Marshal Program meets the  
66 requirement; creating s. 1006.149, F.S.; establishing  
67 the Public School Emergency Response Learning System  
68 Program within the department; establishing the  
69 program as a partnership between local law enforcement  
70 and public education entities; specifying activities,  
71 training, notification systems, and resources provided  
72 through the program; specifying the creation of a  
73 preemptive plan of action; authorizing funding  
74 provided by the Legislature to implement the program;  
75 creating s. 1006.1491, F.S.; creating the Florida  
76 Sheriff's Marshal Program within the department;  
77 specifying a purpose; defining terms; establishing  
78 program eligibility requirements; authorizing special  
79 deputy sheriffs to perform certain duties, under  
80 specified circumstances; specifying training and  
81 instructional requirements; specifying grounds for  
82 termination and denial of participants; specifying  
83 implementation requirements; authorizing funding as  
84 provided by the Legislature; creating s. 1006.1493,  
85 F.S.; requiring the department to contract with a  
86 security consulting firm to develop, update, and  
87 implement a risk assessment tool; providing

Page 3 of 31

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595-03526-18

20187026pb

88 requirements for the Florida Safe Schools Assessment  
89 Tool; requiring reports, training, and advice in the  
90 security consulting firm contract; requiring a  
91 specified annual report to the Governor and  
92 Legislature by a specified date; providing for  
93 construction regarding the applicability of public  
94 records exemptions for certain security data and  
95 information; amending s. 1011.62, F.S.; expanding the  
96 safe schools allocation to provide funding for  
97 specified school safety provisions; creating the  
98 mental health assistance allocation; providing the  
99 purpose of the allocation; requiring that funds be  
100 allocated annually in the General Appropriations Act;  
101 providing for the annual allocation of such funds on a  
102 specified basis; providing that eligible charter  
103 schools are entitled to a proportionate share;  
104 prohibiting the use of allocated funds to supplant  
105 funds provided from other operating funds, to increase  
106 salaries, or to provide bonuses, except in certain  
107 circumstances; requiring that school districts and  
108 schools maximize certain third-party funding;  
109 providing an effective date.

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

112  
113 Section 1. Paragraph (j) is added to subsection (3) of  
114 section 20.15, Florida Statutes, to read:

115 20.15 Department of Education.—There is created a  
116 Department of Education.

Page 4 of 31

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595-03526-18

20187026pb

(3) DIVISIONS.—The following divisions of the Department of Education are established:

(j) The Office of Safe Schools.

Section 2. Section 943.687, Florida Statutes, is created to read:

943.687 Commission on School Safety and Security.—

(1) There is created within the Florida Department of Law Enforcement the Commission on School Safety and Security, a commission as defined in s. 20.03. The commission shall convene no later than June 1, 2018, and shall be composed of 15 members. Five members shall be appointed by the President of the Senate, five members shall be appointed by the Speaker of the House of Representatives, and five members shall be appointed by the Governor. Each appointing authority shall appoint one member representing law enforcement, one representing schools, one member representing social service agencies, one member representing the judiciary, and one member who is a survivor or the relative of a victim of a mass shooting or a mass violence incident. Members shall serve at the pleasure of the officer who appointed the member. A vacancy on the task force shall be filled in the same manner as the original appointment. The terms of the members shall be for 1 year.

(2) The Commissioner of the Florida Department of Law Enforcement shall chair the commission.

(3) The commission shall meet as necessary to conduct its work at the call of the chair and at the time designated by him or her at locations throughout the state. The commission may conduct its meetings through teleconferences or other similar means.

595-03526-18

20187026pb

(4) Members of the task force are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(5) The commission shall investigate system failures in the Parkland shooting and prior mass violence incidents and develop recommendations for system improvements. At a minimum, the commission shall analyze evidence from the Parkland shooting and other mass violence incidents in this state and other states to:

(a) Determine the extent to which failures in communications or coordination contributed to an inability to prevent deaths and injuries;

(b) Identify available state and local tools and resources, such as the Florida Department of Law Enforcement Fusion Center or the Judicial Inquiry System, or other state or local systems and recommend ways such resources may be used more effectively to identify risks and threats; and

(c) Recommend changes in procedures or policies necessary to enhance communication among schools, law enforcement, and social service agencies.

(6) Florida Department of Law Enforcement staff, as assigned by the chair, shall assist the commission in performing its duties. The commission shall consider reports issued by other governmental and nongovernmental entities, to the extent such reports are available, in developing its recommendations.

(7) The commission shall complete its work within 1 year after the date it convenes and submit its recommendations to the Governor, the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. The commission may submit all or part of its recommendations at any time during the

595-03526-18

20187026pb

year, but a final report summarizing its recommendations must be submitted at the completion of its work.

Section 3. Section 1000.051, Florida Statutes, is created to read:

1000.051 School safety and security.-

(1) Pursuant to the authority granted pursuant to s. 1000.01, the Legislature intends that the provisions of the Florida K-20 Education Code be liberally construed by the State Board of Education, the Commissioner of Education, district school boards, district superintendents, and law enforcement agencies to the end that student discipline and school safety policy objectives may be effective.

(2) It is the intent of the Legislature, notwithstanding any other provision of the Florida K-20 Education Code and rules adopted pursuant thereto, with the exception of applicable public records exemption provisions authorized by law pertaining to exempt, or confidential and exempt, information, that school district and law enforcement personnel be authorized to take necessary actions to ensure the fundamental protection and safety of public school students, personnel, and visitors.

Section 4. Section 1001.217, Florida Statutes, is created to read:

1001.217 Office of Safe Schools.-There is created within the Department of Education the Office of Safe Schools, as required under s. 20.15, which shall be administered by an executive director.

(1) The office shall be fully accountable to the Commissioner of Education, but must cooperate and coordinate with the Board of Governors of the State University System,

595-03526-18

20187026pb

public and nonpublic postsecondary institutions, school districts, public and nonpublic schools, state and local agencies, community organizations, and other organizations and persons, as directed by the commissioner.

(2) The purpose of the office is to serve as the state education agency's primary coordinating division assigned to promote and support safe-learning environments by addressing issues of student safety and academic success at the state, district, and school levels. In performing these functions, the office shall, at a minimum:

(a) Function as the state's primary contact for the coordination of activities, information, and reporting related to the implementation of the student discipline and school safety requirements of subpart I.C of chapter 1006 pertaining to public K-12 education support for learning and student services, as well as other requirements of law pertaining to school safety partnerships and responsibilities, as assigned by the commissioner.

(b) Function as the state contact and state education agency coordination office for school district safety specialists, as assigned pursuant to s. 1006.12, and primary emergency operations contact staff assigned by Florida College System institutions, state universities, and other entities identified by the commissioner.

(c) Coordinate with state and local agencies, school district personnel, and safety and security experts to establish safe school and security standards, review school safety and security plans, establish guidelines regarding school district appointments to and functions of public school threat assessment

595-03526-18 20187026pb

233 teams and district school safety specialists, and to update risk  
234 assessment procedures, as appropriate.

235 (d) Develop and implement a training program for district  
236 school safety specialists designated or appointed by a district  
237 school board pursuant to s. 1006.07(8). Training program  
238 elements must include, but need not be limited to, school safety  
239 specialist participation in active shooter situation training  
240 conducted pursuant to s. 1006.07(4)(b), campus tours performed  
241 pursuant to s. 1006.07(7), program activities of the Public  
242 School Emergency Response Learning System Program established  
243 pursuant to s. 1006.149, and training associated with the  
244 Florida Safe Schools Assessment Tool provided pursuant to s.  
245 1006.1493.

246 Section 5. Subsection (3) is added to section 1002.221,  
247 Florida Statutes, to read:

248 1002.221 K-12 education records; public records exemption.-

249 (3) This section does not limit the application of  
250 exemptions from public records requirements for security system  
251 plans and public security systems, including security footage,  
252 or other information that would relate to or reveal the location  
253 or capabilities of such systems, provided under ss.  
254 119.071(3)(a) and 281.301.

255 Section 6. Subsection (4) is added to section 1002.225,  
256 Florida Statutes, to read:

257 1002.225 Education records of students in public  
258 postsecondary educational institutions; penalty.-

259 (4) This section does not limit the application of  
260 exemptions from public records requirements for security system  
261 plans and public security systems, including security footage,

595-03526-18 20187026pb

262 or other information that would relate to or reveal the location  
263 or capabilities of such systems, provided under ss.  
264 119.071(3)(a) and 281.301.

265 Section 7. Section 1006.04, Florida Statutes, is amended to  
266 read:

267 1006.04 Educational multiagency services for students with  
268 severe emotional disturbance.-

269 (1)(a) The Legislature recognizes that an intensive,  
270 integrated educational program, ~~+~~ a continuum of mental health  
271 treatment services, ~~+~~ and, when needed, residential services are  
272 necessary to enable students with severe emotional disturbance  
273 to develop appropriate behaviors and demonstrate academic and  
274 career education skills. The small incidence of severe emotional  
275 disturbance in the total school population requires multiagency  
276 programs to provide access to appropriate services for all  
277 students with severe emotional disturbance. District school  
278 boards should provide educational programs, and state  
279 departments and agencies administering children's mental health  
280 funds should provide mental health treatment and residential  
281 services when needed, forming a multiagency network to provide  
282 support for students with severe emotional disturbance. To  
283 facilitate solutions to these issues, the Multiagency Service  
284 Network for Students with Severe Emotional Disturbance (SEDNET)  
285 is established as a function of the department in partnership  
286 with other state, regional, and local partners as a statewide  
287 network of regional projects comprised of major child-serving  
288 agencies, community-based service providers, and students and  
289 their families.

290 (2) Under the leadership and guidance of the department,

595-03526-18

20187026pb

291 the fundamental goal of SEDNET and its partners shall be to  
 292 facilitate the process of cross system collaboration and  
 293 inclusion of families as full partners. At a minimum, SEDNET  
 294 shall:

295 (a) Focus on developing interagency collaboration and  
 296 sustaining partnerships among professionals and families in the  
 297 education, mental health, substance abuse, child welfare, and  
 298 juvenile justice systems serving children and youth with, and at  
 299 risk of, emotional and behavioral disabilities.

300 (b) Provide technical assistance and support in building  
 301 service capacity within regional areas and collaborate in  
 302 related state level activities impacting system of care.

303 (c) Serve as a collaborative resource for school districts,  
 304 agencies, and families working to promote positive educational  
 305 and community-based outcomes for children.

306 (3)(b) The program goals for each component of SEDNET the  
 307 multiagency network are to enable students with severe emotional  
 308 disturbance to learn appropriate behaviors, reduce dependency,  
 309 and fully participate in all aspects of school and community  
 310 living; to develop individual programs for students with severe  
 311 emotional disturbance, including necessary educational,  
 312 residential, and mental health treatment services; to provide  
 313 programs and services as close as possible to the student's home  
 314 in the least restrictive manner consistent with the student's  
 315 needs; and to integrate a wide range of services necessary to  
 316 support students with severe emotional disturbance and their  
 317 families.

318 (4)(2) The Legislature may provide funding for the  
 319 department to may award grants to district school boards for

595-03526-18

20187026pb

320 statewide planning and development of ~~SEDNET the multiagency~~  
 321 ~~network~~ for students with severe emotional disturbance. The  
 322 educational services shall be provided in a manner consistent  
 323 with the requirements of ss. 402.22 and 1003.57.

324 (5)(2) State departments and agencies may use appropriate  
 325 funds for SEDNET the multiagency network for students with  
 326 severe emotional disturbance.

327 Section 8. Section 1006.05, Florida Statutes, is created to  
 328 read:

329 1006.05 Mental health assistance allocation  
 330 specifications.—Pursuant to s. 1011.62(17), the mental health  
 331 assistance allocation is created to provide supplemental funding  
 332 to assist school districts and charter schools in establishing  
 333 or expanding comprehensive mental health programs that increase  
 334 awareness of mental health issues among children and school-age  
 335 youth; to train educators and other school staff in detecting  
 336 and responding to mental health issues; and to connect children,  
 337 youth, and families who may experience behavioral or mental  
 338 health issues with appropriate services.

339 (1) Funding provided pursuant to s. 1011.62(16) shall be  
 340 allocated in accordance with the following:

341 (a) Before the distribution of the allocation:

342 1. The district must annually develop and submit a detailed  
 343 plan outlining the local program and planned expenditures to the  
 344 district school board for approval.

345 2. A charter school must annually develop and submit a  
 346 detailed plan outlining the local program and planned  
 347 expenditures of the funds in the plan to its governing body for  
 348 approval. After the plan is approved by the governing body, it



595-03526-18

20187026pb

must be provided to its school district for submission to the commissioner.

(b) The plans required under paragraph (a) must include, at a minimum, the elements in subparagraphs 1., 2., and 3., and the districts and charter schools are strongly encouraged to include in their respective plans the elements specified in subparagraphs 4., 5., and 6., as follows:

1. A contract or a memorandum of understanding with at least one local nationally accredited community behavioral health provider or a provider of Community Action Team services to provide a behavioral health staff presence and services at district schools. Services may include, but are not limited to, mental health screenings and assessments, individual counseling, family counseling, group counseling, psychiatric or psychological services, trauma-informed care, mobile crisis services, and behavior modification. These behavioral health services may be provided on or off the school campus and may be supplemented by telehealth;

2. Training opportunities in Mental Health First Aid or other similar nationally recognized evidence-based training programs for all school personnel who have contact with students. The training must cover risk factors and warning signs for mental health and addiction concerns, strategies for providing assistance to individuals in both crisis and non-crisis situations, and the use of referral mechanisms that effectively link individuals to appropriate treatment and intervention services in the school and in the community. Topics covered should include depression and mood disorders, anxiety disorders, trauma, psychosis, substance use disorders, and

595-03526-18

20187026pb

suicide prevention;

3. A mental health crisis intervention strategy that provides for prompt resolution of identified, immediate threats within district schools, including Baker Act referrals and notification of law enforcement personnel, as appropriate;

4. Programs to assist students in dealing with anxiety, depression, bullying, trauma, and violence;

5. Strategies or programs to reduce the likelihood of at-risk students developing social, emotional, or behavioral health problems; suicidal tendencies; or substance use disorders; and

6. Strategies to improve the early identification of social, emotional, or behavioral problems or substance use disorders and to improve the provision of early intervention services.

(c) The districts shall submit approved plans to the commissioner by August 1 of each year.

(2) Beginning September 30, 2019, and by each September 30 thereafter, each entity that receives an allocation under this section and s. 1011.62(16) shall submit to the commissioner, in a format prescribed by the department, a final report on its program outcomes and its expenditures for each element of the program. At a minimum, the report must include the number of each of the following:

(a) Students who receive screenings or assessments.

(b) Students who are referred for services or assistance.

(c) Students who receive services or assistance.

(d) Parents or guardians notified.

(e) School personnel who are trained to engage in the services, techniques, strategies, or programs identified in the

595-03526-18

20187026pb

407 plan required under this section.

408 Section 9. Subsections (4) and (6) of section 1006.07,  
409 Florida Statutes, are amended, and subsections (7) and (8) are  
410 added to that section, to read:

411 1006.07 District school board duties relating to student  
412 discipline and school safety.—The district school board shall  
413 provide for the proper accounting for all students, for the  
414 attendance and control of students at school, and for proper  
415 attention to health, safety, and other matters relating to the  
416 welfare of students, including:

417 (4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

418 (a) Formulate and prescribe policies and procedures for  
419 emergency drills and for actual emergencies, including, but not  
420 limited to, fires, natural disasters, hostage and active shooter  
421 situations, and bomb threats, for all the public schools of the  
422 district which comprise grades K-12. District school board  
423 policies shall include commonly used alarm system responses for  
424 specific types of emergencies and verification by each school  
425 that drills have been provided as required by law and fire  
426 protection codes. The emergency response agency that is  
427 responsible for notifying the school district for each type of  
428 emergency must be listed in the district's emergency response  
429 policy.

430 (b) Establish model emergency management and emergency  
431 preparedness procedures, including emergency notification  
432 procedures pursuant to paragraph (a), for the following life-  
433 threatening emergencies:

434 1. Weapon-use, and hostage, and active shooter situations.

435 The active shooter situation training for each school must

Page 15 of 31

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595-03526-18

20187026pb

436 engage the participation of the district school safety  
437 specialist, threat assessment team members, faculty, staff, and  
438 students and must be conducted by the law enforcement agency or  
439 agencies that are designated as first responders to the school's  
440 campus.

441 2. Hazardous materials or toxic chemical spills.

442 3. Weather emergencies, including hurricanes, tornadoes,  
443 and severe storms.

444 4. Exposure as a result of a manmade emergency.

445 (6) SAFETY AND SECURITY BEST PRACTICES.—Each school  
446 district shall: Use the Safety and Security Best Practices  
447 developed by the Office of Program Policy Analysis and  
448 Government Accountability to

449 (a) Designate a threat assessment team, in accordance with  
450 guidelines established by the Office of Safe Schools, at each  
451 school in the district. The threat assessment team shall operate  
452 under the direction of the district school safety specialist.

453 (b) Conduct security risk assessments in accordance with s.  
454 1006.1493 at each public school and conduct a self-assessment of  
455 the school districts' current safety and security practices  
456 using a format prescribed by the department. Based on these  
457 self-assessment findings, the district school superintendent  
458 shall provide recommendations to the district school board which  
459 identify strategies and activities that the district school  
460 board should implement in order to improve school safety and  
461 security. Annually each district school board must receive such  
462 findings and the superintendent's recommendations the self-  
463 assessment results at a publicly noticed district school board  
464 meeting to provide the public an opportunity to hear the

Page 16 of 31

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595-03526-18

20187026pb

district school board members discuss and take action on the ~~report~~ findings and recommendations. Each district school superintendent shall report such findings ~~the self-assessment results~~ and school board action to the commissioner within 30 days after the district school board meeting.

(c) Develop a plan, in a format prescribed by the department, which includes a secure, single point of entry onto school grounds.

(7) SAFETY IN CONSTRUCTION PLANNING.—A district school board must allow the law enforcement agency or agencies that are designated as first responders to the district's campus and school's campuses to tour such campuses once every 3 years. Any changes related to school safety and emergency issues recommended by a law enforcement agency based on a campus tour must be documented by the district school board.

(8) DISTRICT SCHOOL SAFETY SPECIALIST.—A district school board shall designate or appoint a district school safety specialist to serve at the direction of the superintendent as the district's primary point of public contact regarding the district's coordination, communication, and implementation of policies, procedures, responsibilities, and reporting related to district and public school safety functions. The school safety specialist shall do all of the following:

(a) Coordinate with the Office of Safe Schools, established pursuant to s. 1001.217.

(b) Facilitate the collection and dissemination of information among and between the school district, school personnel, students and their families, state and local law enforcement agencies, community health entities, and other state

595-03526-18

20187026pb

and community partners.

(c) Maintain records and reports and facilitate the implementation of policies regarding the respective duties and responsibilities of the school districts, superintendents, and principals and reporting regarding student discipline and school safety requirements.

(d) Oversee and coordinate threat assessment teams and provide a coordinated approach to evaluating and responding to students who pose, or appear to pose, a credible potential threat of violence or harm to themselves or others.

(e) Perform other responsibilities assigned by the superintendent and requested by the Office of Safe Schools to facilitate and coordinate the effective implementation of student discipline and school safety requirements.

Section 10. Section 1006.12, Florida Statutes, is amended to read:

1006.12 Safe-school resource officers at each public school and school safety officers.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall cooperate with law enforcement agencies to establish or assign one or more safe-school officers at each school facility within the district, by implementing any combination of the following options:

(1) District school boards may Establish school resource officer programs, through a cooperative agreement with law enforcement agencies or in accordance with subsection (2).

(a) School resource officers shall undergo criminal background checks, drug testing, and a psychological evaluation

595-03526-18

20187026pb

and be certified law enforcement officers, as defined in s. 943.10(1), who are employed by a law enforcement agency as defined in s. 943.10(4). The powers and duties of a law enforcement officer shall continue throughout the employee's tenure as a school resource officer.

(b) School resource officers shall abide by district school board policies and shall consult with and coordinate activities through the school principal, but shall be responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a district school board and a law enforcement agency. Activities conducted by the school resource officer which are part of the regular instructional program of the school shall be under the direction of the school principal.

(2) Commission one or more school safety officers for the protection and safety of school personnel, property, and students within the school district. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.

~~(2)~~ (a) School safety officers shall undergo criminal background checks, drug testing, and a psychological evaluation and be law enforcement officers, as defined in s. 943.10(1), certified under the provisions of chapter 943 and employed by either a law enforcement agency or by the district school board. If the officer is employed by the district school board, the district school board is the employing agency for purposes of chapter 943, and must comply with the provisions of that chapter.

~~(b) A district school board may commission one or more school safety officers for the protection and safety of school~~

595-03526-18

20187026pb

~~personnel, property, and students within the school district. The district school superintendent may recommend and the district school board may appoint one or more school safety officers.~~

(b) (c) A school safety officer has and shall exercise the power to make arrests for violations of law on district school board property and to arrest persons, whether on or off such property, who violate any law on such property under the same conditions that deputy sheriffs are authorized to make arrests. A school safety officer has the authority to carry weapons when performing his or her official duties.

(c) (d) A district school board may enter into mutual aid agreements with one or more law enforcement agencies as provided in chapter 23. A school safety officer's salary may be paid jointly by the district school board and the law enforcement agency, as mutually agreed to.

(3) Participate in the Florida Sheriff's Marshal Program, established pursuant to s. 1006.1491. Upon a participant's completion of the program, the district school board shall designate a special deputy sheriff, as appointed by the sheriff as a law enforcement officer certified under chapter 943, pursuant to s. 30.072(2).

Section 11. Section 1006.149, Florida Statutes, is created to read:

1006.149 Public School Emergency Response Learning System Program.—

(1) The Public School Emergency Response Learning System Program is established to assist school personnel in preparing for and responding to active emergency situations and to

595-03526-18

20187026pb

581 implement local notification systems for all Florida public  
 582 schools, with the ultimate goal of preventing tragedy and the  
 583 loss of life through proactive strategies.

584 (2) The program is created within the department and shall  
 585 be administered by the Office of Safe Schools, established  
 586 pursuant to s. 1001.217. Through the program, local law  
 587 enforcement agencies shall partner with participating public  
 588 preschools, public child care providers, or public school  
 589 districts and schools. Training, notifications, and resources  
 590 must be available for school personnel and students and their  
 591 families through, at minimum, the following mechanisms:

592 (a) Activities and direct training to mitigate risk and  
 593 save lives in emergency situations, such as lockdown, bomb  
 594 threat, active shooter, and other emergency situations.

595 (b) Vital local notification systems implemented to alert  
 596 schools of imminent danger.

597 (c) Other resources provided in conjunction with the  
 598 training including, but not limited to, an emergency plan flip  
 599 chart, communication cards, instructional resources, activity  
 600 books for children and teachers, and certificates of training  
 601 and completion.

602 (3) Each program participant must develop a preemptive plan  
 603 of action that includes multiple options for addressing various  
 604 situations based on the form of danger present and the unique  
 605 needs and circumstances of each school and its faculty, staff,  
 606 students, and visitors.

607 (4) A school district must include in its emergency  
 608 notification procedures established pursuant to s. 1006.07 any  
 609 program participant who notifies the district of his or her

595-03526-18

20187026pb

610 desire to participate.

611 (5) Funding for program activities may be provided by the  
 612 Legislature to implement this section.

613 Section 12. Section 1006.1491, Florida Statutes, is created  
 614 to read:

615 1006.1491 Florida Sheriff's Marshal Program.—The Florida  
 616 Sheriff's Marshal Program is created within the department as a  
 617 voluntary program to assist school districts and public schools  
 618 in enhancing the safety and security of students, faculty,  
 619 staff, and visitors to Florida's public schools and campuses.  
 620 The program is administered by the Office of Safe Schools,  
 621 established pursuant to s. 1001.217.

622 (1) PURPOSE.—The purpose of the program is to provide  
 623 comprehensive firearm safety and proficiency training for  
 624 selected faculty and staff strategically focused on providing  
 625 security on campus during an active assailant incident. Public  
 626 school faculty and staff who voluntarily participate in and  
 627 complete the program, as recommended by the school district, are  
 628 designated as special deputy sheriffs with all rights,  
 629 responsibilities, and obligations in carrying concealed firearms  
 630 on campus, as authorized pursuant to s. 30.09.

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

632 (a) "Active assailant incident" means a situation in which  
 633 an armed assailant is posing an immediate deadly threat to  
 634 persons on the premises or campus of a public school.

635 (b) "Campus" means a school, as defined in s. 1003.01(2),  
 636 and facilities and school plants operated and controlled by a  
 637 public school district in accordance with s. 1003.02.

638 (c) "Partnership agreement" means a jointly-approved

595-03526-18

20187026pb

contract between the sheriff operating the program and the superintendent of a participating school district sponsor.

(d) "Program" means a Florida Sheriff's Marshal Program as established and administered by a sheriff in accordance with this section.

(e) "Sheriff" means the county sheriff constitutional officer elected or appointed in accordance with chapter 30.

(f) "Sheriff's marshal" means a faculty or staff member who is recommended and sponsored by a school district and has been successfully screened and approved by the sheriff to participate in a program.

(g) "Special deputy sheriff" means a program participant who has successfully completed the program and who is appointed as a law enforcement officer in the same manner as a deputy sheriff as provided in s. 30.072(2) and certified under chapter 943.

(3) PROGRAM ELIGIBILITY.—At a minimum, program eligibility and participation requirements must include:

(a) A school district may sponsor and recommend to the sheriff public school faculty and staff members as candidates for voluntary participation in the program. The sheriff shall establish timelines and requirements for participation through a partnership agreement with the sponsoring school district superintendent. To be eligible for consideration and recommendation, a candidate must be licensed in accordance with s. 790.06.

(b) After screening a candidate, including performing criminal background checks, drug testing, and a psychological evaluation, the sheriff may approve a candidate to participate

595-03526-18

20187026pb

in the program as a sheriff's marshal.

(c) Upon successful completion of the program, a sheriff's marshal may be appointed by the sheriff as a special deputy sheriff for the limited purpose of responding to an active assailant incident on a campus of his or her school district during an active assailant incident.

(4) SPECIAL DEPUTY SHERIFF.—

(a) At a minimum, the partnership agreement must provide that a special deputy sheriff:

1. Must participate in and complete the program's professional training requirements as a precondition to meeting the legal requirements of chapter 30 to be eligible to carry a concealed firearm on a campus of his or her sponsoring school district.

2. May not act in any law enforcement capacity outside of an active assailant incident on a school district campus and does not have any authority in a law enforcement capacity off campus in any way, except as otherwise expressly authorized by law.

3. May carry concealed, approved firearms on campus. The firearms must be specifically purchased and issued for the sole purpose of the program. Only concealed carry safety holsters and firearms approved by the sheriff may be used under the program.

4. Must successfully complete training with the sheriff's office before his or her appointment as a special deputy sheriff, including meeting the requirements of this section.

(b) The appointment of a person as a special deputy sheriff does not entitle the person to the special risk category that applies to law enforcement officers pursuant to s. 121.0515.

595-03526-18

20187026pb

697 (5) TRAINING AND INSTRUCTION.—All training must be  
 698 conducted by Criminal Justice Standards Training Commission-  
 699 certified instructors.

700 (a) Required instruction must include 132 total hours of  
 701 comprehensive firearm safety and proficiency training in the  
 702 following topics:

703 1. Firearms: 80-hour block of instruction. The firearms  
 704 instruction must be based on the CJSTC Law Enforcement Academy  
 705 training model and must be enhanced to include 10 percent to 20  
 706 percent more rounds fired by each program participant beyond the  
 707 minimum average of approximately 1,000 training rounds  
 708 associated with academy training. Program participants must  
 709 achieve an 85 percent pass rate on the firearms training.

710 2. Firearms precision pistol: 16-hour block of instruction.  
 711 3. Firearms discretionary shooting: 4-hour block of  
 712 instruction using state-of-the-art simulator exercises.

713 4. Active shooter or assailant: 8-hour block of  
 714 instruction.

715 5. Defensive tactics: 4-hour block of instruction.  
 716 6. Legal or high liability: 20-hour block of instruction.

717 (b) Program participants may complete an optional, 16-hour  
 718 precision pistol course as additional training.

719 (c) Ongoing and annual proficiency retraining must be  
 720 conducted by the sheriff, as specified in the agreement.

721 (6) PARTICIPATION DENIAL OR TERMINATION.—The sheriff or the  
 722 district superintendent may deny or terminate a sheriff's  
 723 marshal or special deputy sheriff's participation in the program  
 724 for any reason, including, but not limited to, any of the  
 725 following circumstances:

Page 25 of 31

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595-03526-18

20187026pb

726 (a) An arrest or filing of criminal charges against a  
 727 program participant by a law enforcement agency.

728 (b) The service of process on the program participant as  
 729 the respondent of an injunction for protection.

730 (c) The involuntarily placement of the program participant  
 731 in a treatment facility for a mental health examination under  
 732 The Baker Act.

733 (d) A violation of sheriff PCSO General Orders by the  
 734 program participant.

735 (e) A violation of the school district's code of conduct or  
 736 employee handbook or policy by the program participant.

737 (7) IMPLEMENTATION.—

738 (a) The sheriff shall maintain documentation of weapon and  
 739 equipment inspections, as well as the training, certification,  
 740 inspection, and qualification records of each program  
 741 participant.

742 (b) Each program participant must be distinctly and  
 743 visually identifiable to responding law enforcement officers,  
 744 faculty, staff, and students, in the case of any active  
 745 assailant incident on a sponsoring school district's campus.

746 (c) Each sheriff's marshal must execute a volunteer  
 747 agreement with the sheriff's office outlining duties and  
 748 responsibilities.

749 (d) A sponsoring school district must conduct awareness  
 750 training about the program for all school district faculty and  
 751 staff members.

752 (e) Specific implementation requirements, responsibilities,  
 753 and other aspects of implementation must be specified in a  
 754 partnership agreement.

Page 26 of 31

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595-03526-18

20187026pb

(8) FUNDING.—The costs of program participation must be established in the partnership agreement. Funding may be provided by the Legislature to support school district and sheriff office administration, sponsorship, participation, and implementation of this section.

Section 13. Section 1006.1493, Florida Statutes, is created to read:

1006.1493 Florida Safe Schools Assessment Tool.—

(1) The department shall contract with a security consulting firm that specializes in the development of risk assessment software solutions and has experience in conducting security assessments of public facilities to develop, update, and implement a risk assessment tool, which shall be known as the Florida Safe Schools Assessment Tool (FSSAT). The FSSAT must be used by school officials at each school district and public school site in the state in conducting security assessments for use by school officials at each school district and public school site in the state.

(2) The FSSAT must help school officials identify threats, vulnerabilities, and appropriate safety controls for the schools that they supervise, pursuant to the security risk assessment requirements of s. 1006.07(6).

(a) At minimum, the FSSAT must address all of the following components:

1. School emergency and crisis preparedness planning;

2. Security, crime, and violence prevention policies and procedures;

3. Physical security measures;

4. Professional development training needs;

595-03526-18

20187026pb

5. An examination of support service roles in school safety, security, and emergency planning;

6. School security and school police staffing, operational practices, and related services;

7. School and community collaboration on school safety; and

8. A return on investment analysis of the recommended physical security controls.

(b) The department shall require by contract that the security consulting firm:

1. Generate written automated reports on assessment findings for review by the department and school and district officials;

2. Provide training to the department and school officials in the use of the FSSAT and other areas of importance identified by the department; and

3. Advise in the development and implementation of templates, formats, guidance, and other resources necessary to facilitate the implementation of this section at state, district, school, and local levels.

(3) By December 1, 2018, and annually by that date thereafter, the department must report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of implementation across school districts and schools. The report must include a summary the positive school safety measures in place at the time of the assessment and any recommendations for policy changes or funding needed to facilitate continued school safety planning, improvement, and response at the state, district, or school levels.



595-03526-18

20187026pb

813 (4) In accordance with ss. 119.071(3)(a) and 281.301, data  
 814 and information related to security risk assessments  
 815 administered pursuant to this section and s. 1006.07(6) and the  
 816 security information contained in the annual report required  
 817 pursuant to subsection (3) are confidential and exempt from  
 818 public records requirements.

819 Section 14. Subsections (16) and (17) of section 1011.62,  
 820 Florida Statutes, are redesignated as subsections (17) and (18),  
 821 respectively, subsections (14) and (15) are amended, and a new  
 822 subsection (16) is added to that section, to read:

823 1011.62 Funds for operation of schools.—If the annual  
 824 allocation from the Florida Education Finance Program to each  
 825 district for operation of schools is not determined in the  
 826 annual appropriations act or the substantive bill implementing  
 827 the annual appropriations act, it shall be determined as  
 828 follows:

829 (14) QUALITY ASSURANCE GUARANTEE.—The Legislature may  
 830 annually in the General Appropriations Act determine a  
 831 percentage increase in funds per K-12 unweighted FTE as a  
 832 minimum guarantee to each school district. The guarantee shall  
 833 be calculated from prior year base funding per unweighted FTE  
 834 student which shall include the adjusted FTE dollars as provided  
 835 in subsection (17) (16), quality guarantee funds, and actual  
 836 nonvoted discretionary local effort from taxes. From the base  
 837 funding per unweighted FTE, the increase shall be calculated for  
 838 the current year. The current year funds from which the  
 839 guarantee shall be determined shall include the adjusted FTE  
 840 dollars as provided in subsection (17) (16) and potential  
 841 nonvoted discretionary local effort from taxes. A comparison of

595-03526-18

20187026pb

842 current year funds per unweighted FTE to prior year funds per  
 843 unweighted FTE shall be computed. For those school districts  
 844 which have less than the legislatively assigned percentage  
 845 increase, funds shall be provided to guarantee the assigned  
 846 percentage increase in funds per unweighted FTE student. Should  
 847 appropriated funds be less than the sum of this calculated  
 848 amount for all districts, the commissioner shall prorate each  
 849 district's allocation. This provision shall be implemented to  
 850 the extent specifically funded.

851 (15) SAFE SCHOOLS ALLOCATION.—A safe schools allocation is  
 852 created to provide funding to assist school districts in their  
 853 compliance with subpart I.C of chapter 1006 ss. 1006.07  
 854 1006.148, with priority given to satisfying the requirement of  
 855 establishing or assigning at least one safe-school officer at  
 856 each school facility within the district a school resource  
 857 officer program pursuant to s. 1006.12. Each school district  
 858 shall receive a minimum safe schools allocation in an amount  
 859 provided in the General Appropriations Act. Of the remaining  
 860 balance of the safe schools allocation, two-thirds shall be  
 861 allocated to school districts based on the most recent official  
 862 Florida Crime Index provided by the Department of Law  
 863 Enforcement and one-third shall be allocated based on each  
 864 school district's proportionate share of the state's total  
 865 unweighted full-time equivalent student enrollment.

866 (16) MENTAL HEALTH ASSISTANCE ALLOCATION.—The mental health  
 867 assistance allocation is created to provide funding to assist  
 868 school districts and charter schools in their compliance with  
 869 the requirements and specifications established in s. 1006.05.  
 870 These funds must be allocated annually in the General

595-03526-18

20187026pb

871 Appropriations Act to each eligible school district and  
872 developmental research school based on each entity's  
873 proportionate share of Florida Education Finance Program base  
874 funding, in accordance with s. 1006.05. The district funding  
875 allocation must include a minimum amount, as provided in the  
876 General Appropriations Act. Eligible charter schools are  
877 entitled to a proportionate share of district funding for the  
878 program. The allocated funds may not supplant funds that are  
879 provided for this purpose from other operating funds and may not  
880 be used to increase salaries or provide bonuses, except for  
881 personnel hired to implement the plans required by s. 1006.05.  
882 School districts and schools must maximize third-party funding  
883 from Medicaid and private insurance when appropriate.  
884       Section 15. 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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

579360

Amendment Barcode (if applicable)

Topic School Safety

Name Nancy Lawther

Job Title \_\_\_\_\_

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Zip

Email legislative@floridapta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

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)

2/26/18  
Meeting Date

7026  
Bill Number (if applicable)

374978  
Amendment Barcode (if applicable)

Topic School Safety

Name Nancy Lawther

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Phone 4078557604

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

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)

**APPEARANCE RECORD**

2.26.18

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

7026

Bill Number (if applicable)

Meeting Date

374978

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Stephanie A. OwensJob Title LEGISLATIVE ADVOCATEAddress \_\_\_\_\_  
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City

State

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Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing LEAGUE of Women Voters FLAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic School Safety

Name Nancy Lawther

Job Title \_\_\_\_\_

Address 1747 Orlando Central Parkway

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City

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Zip

Phone 407 855 7604

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

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)

# APPEARANCE RECORD

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

2-26-18

Meeting Date

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Gun Control

Name Eric Friday

Job Title General Counsel

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Zip

Phone 704-722-3333

Email efriday@ericfriday.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Carry

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)

2/24/18  
Meeting Date

7024  
Bill Number (if applicable)

831648  
Amendment Barcode (if applicable)

Topic Ban AR amendment

Name JUAN CUBA

Job Title \_\_\_\_\_

Address 105 ponce de Leon Blvd  
Street

Phone \_\_\_\_\_

coral Gables FL 33134  
City State Zip

Email \_\_\_\_\_

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  
**APPEARANCE RECORD**

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

Assault  
weapon

Amendment

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

831648

Amendment Barcode (if applicable) \_\_\_\_\_

Topic Assault weapon ban

Name Andy Oliver

Job Title Pastor

Address 1363 42nd Ave N

Street

City

St. Petersburg FL

State

Zip

Phone 863 397 0678

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/20/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Assault weapons Ban

Name Angela Nichols

Job Title Asst. Prof

Address 4040 NW 7th St

Street

Boca Raton FL 33431

City

State

Zip

Phone 940 393 1525

Email angiedelon@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

831648

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Assault rifle ban

Name Katherine Guerra

Job Title Student

Address 10690 NW 66<sup>th</sup> CT

Street

Parkland

City

FL

State

33076

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

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

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S-001 (10/14/14)

**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Bill Number (if applicable) 7026Amendment Barcode (if applicable) 831648

Topic \_\_\_\_\_

Name Crista FultonJob Title RetiredAddress 548 22nd Ave

Street

Phone \_\_\_\_\_

City SSPState FLZip 33702

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Bill Number (if applicable) 7026Topic Gun LegislationAmendment Barcode (if applicable) B 81648Name Kaylee Bradley

Job Title \_\_\_\_\_

Address 10582 SW 45th CtPhone 352-437-9759

Street

OrlandoFlorida

City

State

Zip

Email Bradley.kaylee@icloud.comSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

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

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

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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)

2/26/18

Meeting Date

931698

Bill Number (if applicable)

Topic Assault Rifles

Amendment Barcode (if applicable)

Name Yosef Elias

Job Title Student

Address 621 Mockingbird Ln

Phone 845-300-7638

Street

Plantation

City

FL

State

33324

Zip

Email yobrunner1@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Student

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)

<u>Meeting Date</u>		<u>7028</u> Bill Number (if applicable)
Topic	<u>Merged Bill School Safety</u>	<u>831648</u> Amendment Barcode (if applicable)
Name	<u>Christine Florcz</u>	
Job Title	<u>Resident Miami Beach</u>	
Address	<u>800 West Ave #241</u>	Phone <u>305.240.4455</u>
	<u>MB</u> <u>FL</u> <u>33139</u>	Email <u>cgfe*</u>
	City State Zip	
Speaking:	<input checked="" type="checkbox"/> For <input type="checkbox"/> Against <input type="checkbox"/> Information	Waive Speaking: <input type="checkbox"/> In Support <input type="checkbox"/> 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)

02/26/18

Meeting Date

7026

Bill Number (if applicable)

831658

Amendment Barcode (if applicable)

Topic Gun Reform

Name Guadalupe Perez

Job Title Student

Address 8329 Byron Ave 7

Street

Miami Beach FL

City

State

33141

Zip

Phone 786 882 9115

Email Lupelulen Perezaida

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Students

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)



# APPEARANCE RECORD

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

2/26/18

Meeting Date

831648

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Cindy Polo

Job Title \_\_\_\_\_

Address 12650 SW 54 ST

Street

Miramar

City

State

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

7026  
Bill Number (if applicable)

Topic School Safety

831648  
Amendment Barcode (if applicable)

Name Jermaine Miller

Job Title Pastor

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic

High Standards Like Australia

831648

Amendment Barcode (if applicable)

Name

Brenda Leguina

Job Title

Address

2660 NE 21~~st~~ TER

Phone

786-262-5480

Street

Miami

FL

3315

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☒

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

SPB7022

Bill Number (if applicable)

Topic AR & weapons

831648

Amendment Barcode (if applicable)

Name Bela Urbina

Job Title Student

Address 5699 NW 120<sup>th</sup> terrace

Phone 786 436 8070

Street

Coral Springs

City

FL

State

33076

Zip

Email Bela.Urbina@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Mary Steneman Douglas high school

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/26/18

Meeting Date

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

831648

Bill Number (if applicable)

Topic Assault Rifle

Amendment Barcode (if applicable)

Name Jacqueline Hatch

Job Title Student

Address 3350 NE 192<sup>nd</sup> St. apt. 3P

Phone 3055280008

Street

Aventura

FL

33186

City

State

Zip

Email jackihatch@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26

Meeting Date

7024

Bill Number (if applicable)

Topic Paola Batic

831648

Amendment Barcode (if applicable)

Name

Job Title

Address 8893 NW 184 ST

Street

Phone

Miami

City

FL

State

33018

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Current

831648 ~~2076~~  
Bill Number (if applicable)

Meeting Date

Topic Assault weapons Ban

Amendment Barcode (if applicable)

Name Robert Strauss

Job Title Physician

Address 4400 Townsend Ave

Phone 305-434-1335

Street

Miami

FL

33138

City

State

Zip

Email rsStraussmde@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Billy W Tally, FCAP, NCJW

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

831646

Amendment Barcode (if applicable)

Topic gun reform

Name Sam SHARF

Job Title STUDENT

Address 1112 S DUBOIS AVE

Street

Tampa

FL

33629

City

State

Zip

Phone 813-816-4821

Email SAM.SHARF@ICLOUD.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/2018  
Meeting Date

7026  
Bill Number (if applicable)  
831-648  
Amendment Barcode (if applicable)

Topic "Assault Rifles"

Name Zach Detweiler

Job Title Project Manager

Address \_\_\_\_\_

Street

Orlando  
City

FL  
State

32803  
Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Libertarian Party of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

# APPEARANCE RECORD

Already SBP

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Assault & semi assault weapons

Name Colleen Thorburn

Job Title

Address 6251 Seabiscuit Trail

Phone 850-894-2327

Street

Tallahassee

FL

32309

City

State

Zip

Email c.thorburn@converge.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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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)

2/26/18

Meeting Date

831648

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Assault rifle ban

Name Jenny Carbon

Job Title Mother

Address

Street

Phone

City

State

Zip

Email

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

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

Representing

Appearing at request of Chair:

☒

Yes

☐

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date \_\_\_\_\_

7026 <sup>Strike</sup> Amos  
Bill Number (if applicable)

Topic Ban Assault Weapon

831648  
Amendment Barcode (if applicable)

Name Dr. Joe Guido La Tortue

Job Title Professor

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

831 648

Amendment Barcode (if applicable)

Topic Gun Reform

Name Maxwell Wendler

Job Title Student

Address 1032 SW 80th Dr

Street

Gainesville

City

FL

State

32607

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

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)

# APPEARANCE RECORD

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

Feb 26, 2018  
Meeting Date

SB 7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Luis Valdes

Job Title Private Citizen

Address 3450 Woodhill Dr  
Street

Phone 305-206-9681

Tallahassee FL 32303  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

831648

Bill Number (if applicable)

Topic Assault Rifle Ban

Amendment Barcode (if applicable)

Name Javier Guerrero

Job Title Student

Address 11257 NW 50th Terrace  
Street

Phone 786-219-9809

Doral  
City

FL  
State

33178  
Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Miami-Dade 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.

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S-001 (10/14/14)

# APPEARANCE RECORD

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Guan Reform

Name Rehanna Johnson

Job Title Student

Address 1021 Needmont way

Street

lamarac

City

FL

State

33321

Zip

Phone 954-512-0689

Email @rehanna.j19@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing J.P Taravella High

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)

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Meeting Date \_\_\_\_\_

Topic \_\_\_\_\_

Name **JESS McCARTY**

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Street

MIAMI

City

FL

State

33128

Zip

Phone 305-979-7110

Email JMM2@MIAMIDADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(add this information into the record.)

Representing **MIAMI-DADE COUNTY**

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/26/18

Meeting Date

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

Topic Gun reform

Name Jennifer Kamm

Job Title Manager

Address 275 17th Ave N.

Street

Jax Beach

City

FL

State

32550

Zip

Phone 703 297 7343

Email

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

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)

# APPEARANCE RECORD

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

2/26/18

Meeting Date

7026  
~~831648~~

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Gun Reform

Name Liliava Agron

Job Title \_\_\_\_\_

Address 6545 SW 133 Drive

Phone 305-785-7823

Street

Pincrest

FL

33156

City

State

Zip

Email lili.agron@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

26 Feb 2018

Meeting Date

7026

Bill Number (if applicable)

Topic

assault weapon ban

Name

Renita Presler

Job Title

Address

15400 SW Palm Drive

Street

Indiantown

City

FL

State

34956

Zip

Phone

(772) 260-7902

Email

renitapresler@yahoo.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)

## APPEARANCE RECORD

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

2/26/2018

Meeting Date

7026

Bill Number (if applicable)

Topic Arming teachers with firearmsAssault rifle ban

Amendment Barcode (if applicable)

Name Jimmy MoralesJob Title StudentAddress 9904 NW 70th Street

Street

Phone 954-512-4195Tamarac

City

FL

State

33321

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing J.P. Taravella Highschool - Broward CountyAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/2018

Meeting Date

Bill Number (if applicable)

Topic Banning the AR-15 from schools & teacher usage Amendment Barcode (if applicable)

Name Jessica L. Walton

Job Title <sup>Legal</sup> Secretarial Assitant

Address 226 Spruce St.

Street

Jacksonville

City

FL

State

32210

Zip

Phone (904) 469-4954

Email JessicaWalton.business@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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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)

831648

Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Lolita Miller

Job Title \_\_\_\_\_

Address Pembroke Pines, FL  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

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

02/26/18

Meeting Date

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

B.11 7026

Bill Number (if applicable)

Topic

GUN Reform

Name

Alexandra Robertson

Job Title

Student

Address

533 NE 3rd Ave

Street

Gt Lauderdale FL

City

State

Zip

Phone

954 536-5095

Email

alkey.saura@gmail.com

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

Students

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic

Name IRENE TOROUELLA-GARCIA

Job Title

Address 1705 NW 91ST COURT

Street

MIDWATER

City

FL

State

33018

Zip

Phone 305-498-2888

Email

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)

Meeting Date \_\_\_\_\_

7026  
Bill Number (if applicable)

Topic WENE TOROUELLA

831048  
Amendment Barcode (if applicable)

Name \_\_\_\_\_

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

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)

Meeting Date

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Assault Weapons

Name Ira Friedman

Job Title retire teacher, police officer

Address 17989 SE 89th Natchez Ave

Street

The Villages

City

FL

State

32162

Zip

Phone (352) 753 5377

Email iafriedman@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

7026  
Bill Number (if applicable)

831648  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Stephanie A. Owens

Job Title Legislative Advocate

Address \_\_\_\_\_  
Street

Phone 271.639.1243

Email \_\_\_\_\_

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing League of Women Voters FL

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Assault Weapons Ban

Name Jon Harris Maurer

Job Title Government Affairs Manager

Address 201 E Park Avenue  
Street

Phone \_\_\_\_\_

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☒ Against ☐ Information

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

Representing Equality Florida

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)

2/26/18  
Meeting Date

7026

Bill Number (if applicable)

831678

Amendment Barcode (if applicable)

Topic Assault Rifle RestrictionsName Rachael MendezJob Title Law StudentAddress 111 N Pompano Beach Blvd #1713

Street

Pompano Beach

City

State

FL33062

Zip

Phone 913-972-7961Email kmendez13@yahoo.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

2/26/14

Meeting Date

7026

Bill Number (if applicable)

931648

Amendment Barcode (if applicable)

Topic GunsName Greg Powell

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr Long Flt

Street

Phone \_\_\_\_\_

hargo

City

Fl.

State

33778

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☒ InformationWaive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)Representing Saving Families 7@ Gmail.comAppearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

02/28/18  
Meeting Date7026  
Bill Number (if applicable)831648  
Amendment Barcode (if applicable)Topic Gen rightsName Sydney VillacortabauerJob Title studentAddress 4307 Heaven Trees  
Street

Phone \_\_\_\_\_

Jacksonville FL 32207  
City State Zip

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

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

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

7026  
~~8316~~  
 Bill Number (if applicable)

831648  
 Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Gary Dolgin

Job Title Attorney

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

City

Tampa

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Assault and semi-assault ban

Name Colleen Thorburn

Job Title Retired

Address 6851 Seabiscuit Trail

Street

Tallahassee

City

FL

State

32309

Zip

Phone <sup>850-</sup>894-2327

Email c.thorburn@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

## THE FLORIDA SENATE

**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

7026  
Bill Number (if applicable)

831648

Amendment Barcode (if applicable)

Topic Amendment toName Ron Reid

Job Title \_\_\_\_\_

Address 1022 Pape PL

Street

Phone (352) 617-0171

City

The Villages FL

State

Zip

32163

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

2-26-18

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

7026

Bill Number (if applicable)

8 31648

Amendment Barcode (if applicable)

Topic Gun ReformName Shannon KalmbachJob Title StudentAddress 12000 4th St N

Street

St. Pete

FL

33716

City

State

Zip

Phone 927 221-1133Email Shannon.KalmbachSpeaking: ☒ For ☐ Against ☐ InformationPlan on Assault WeaponsWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

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

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

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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)

2/26/15

Meeting Date

231648  
83642

Bill Number (if applicable)

Topic

GUN Control

Amendment Barcode (if applicable)

Name

SARAH RESNICK CARSWELL

Job Title

Retired

Address

Street

3229 SW 129 Ter

Phone

352-214-5736

City

ARCHER

State

Zip

32618

Email

SARAH@CARSWELLWS

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

Self

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

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

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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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

355256

Amendment Barcode (if applicable)

Topic School Safety

Name Nancy Lawther

Job Title \_\_\_\_\_

Address 1747 Orlando Central Parkway Phone 407 855 7604  
Street

Orlando FL 32809 Email legislator@florida  
City State Zip PTA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

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)

2/26/18  
Meeting Date

7026  
Bill Number (if applicable)

355256  
Amendment Barcode (if applicable)

Topic School Safety

Name Nancy Hawthes

Job Title \_\_\_\_\_

Address 1747 Orlando Central Parkway Phone 407 855 7604  
Street

Orlando FL 32809 Email legislation@florida  
City State Zip PTA.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

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)

2-26-18

Meeting Date

7026

Bill Number (if applicable)

355258

Amendment Barcode (if applicable)

Topic Gun Control

Name Eric Friday

Job Title General Counsel

Address 118 W Adams St

Street

Jax

City

FL

State

32202

Zip

Phone 904-722-3333

Email efriday@ericfriday.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Carry

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)

Feb 26, 2018  
Meeting Date

SB 7026  
Bill Number (if applicable)

335906  
Amendment Barcode (if applicable)

Topic A

Name Luis Valdes

Job Title Citizen Privile

Address 3480 Woodhill Dr  
Street

Phone 305-206-9681

Tallahassee FL 32303  
City State Zip

Email \_\_\_\_\_

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)

**APPEARANCE RECORD**

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

2-26-18

Meeting Date

7026

Bill Number (if applicable)

335906

Amendment Barcode (if applicable)

Topic Gun ControlName Eric FridayJob Title GCAddress 118 W Adams St

Street

Phone \_\_\_\_\_

Tax

City

FL

State

32202

Zip

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

## APPEARANCE RECORD

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

2-26-18

Meeting Date

7026

Bill Number (if applicable)

403738

Amendment Barcode (if applicable)

Topic Gun ControlName Eric FridayJob Title GCAddress 118 W Adams St

Street

Phone \_\_\_\_\_

Tax

City

FL

State

32202

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida CurryAppearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

Feb 26, 2018

Meeting Date

SB 7026

Bill Number (if applicable)

260340

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Luis Valdes

Job Title Private Citizen

Address 3450 Woodhill Dr

Street

Tallahassee FL 32303

City

State

Zip

Phone 305-206-9681

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

S-001 (10/14/14)

Martin Amend

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/18  
Meeting Date

7026  
Bill Number (if applicable)

Topic ~~Disarm~~ School Safety

345360  
Amendment Barcode (if applicable)

Name Nancy Lawther

Job Title

Address 1747 Orlando Central Parkway  
Street  
City Orlando State FL Zip 32809

Phone 407 855 7609

Email legislation@florida  
pta.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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THE FLORIDA SENATE

APPEARANCE RECORD

2.26.18

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

7026

Bill Number (if applicable)

345360

Amendment Barcode (if applicable)

Topic

Name Stephanie A. OWENS

Job Title LEGISLATIVE ADVOCATE

Address

Street

Phone 727 639 1243

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing LEAGUE of Women Voters FL

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**

main Amend

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

2/26/2018

Meeting Date

7026

Bill Number (if applicable)

345360

Amendment Barcode (if applicable)

Topic School Safety

Name Lawrence J. Leon

Job Title Chief of Palm Beach School District Police

Address 3330 FOREST HILL BLVD B-127

Street

Phone 561-434-8435

W.P.B.

City

FL

State

33406

Zip

Email lawrence.leon@palmbeachschools.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Palm Beach School District

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)

## APPEARANCE RECORD

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

2-26-18

Meeting Date

7026

Bill Number (if applicable)

345360

Amendment Barcode (if applicable)

Topic Gun controlName Eric FridayJob Title General CounselAddress 818 W Adams

Street

Jax

City

FL

State

32202

Zip

Phone 904-722-3333Email efriday@ericfriday.comSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida CarryAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)



## APPEARANCE RECORD

Main An

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

345360

Amendment Barcode (if applicable)

Topic School SafetyName Chief Gary Hester (ret.)

Job Title \_\_\_\_\_

Address PO Box 14038

Street

Phone 850-219-3631Tallahassee

City

FL

State

32317

Zip

Email kbriscoe@fpca.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing The Florida Police Chiefs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

Feb 26, 2018

Meeting Date

SB 7026

Bill Number (if applicable)

Topic SB 7026

Amendment Barcode (if applicable)

Name Luis Valdes

Job Title Private Citizen

Address 3450 Woodhill Dr

Street

Phone 305-206-9681

Tallahassee FL

City

State

32303

Zip

Email \_\_\_\_\_

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)

2/26

Meeting Date

7026

Bill Number (if applicable)

Topic

Gun Reform

Amendment Barcode (if applicable)

Name

Paola Batic

Job Title

Address

8893 NW 184 ST

Phone

Street

Miami

FL

33018

Email

City

State

Zip

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**

2/26/2018  
Meeting Date

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

7026  
Bill Number (if applicable)

Topic School Action Plan

Amendment Barcode (if applicable)

Name David Bonilla

Job Title English Teacher

Address 10710 Masters Dr.  
Street

Phone 270-519-5153

Clermont FL 34711  
City State Zip

Email davidbonilla28@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/18

Meeting Date

SB 7026

Bill Number (if applicable)

Topic Gun - Arming Teachers

Amendment Barcode (if applicable)

Name Kate Kile

Job Title Volunteer

Address 1564 Lee Ave

Phone (850) 284-5511

Street Tallahassee FL 32303

Email kskile@yahoo.com

City State Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Moms Demand Action for Gun Sense in America

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)

2-26-18

Meeting Date

7026

Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E. Brevard St

Phone 251-4280

Street  
City Tallahassee State FL Zip 32308

Email barbara.devane1@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

2-26-18

Meeting Date

SB 7026

Bill Number (if applicable)

Topic

Gun legislation

Amendment Barcode (if applicable)

Name

Carol Burton

Job Title

Retired / Precinct DEC Okaloosa

Address

1899 Turnberry Ct

Phone

(850) 797-2294

Street

Ft Walton Beach

State

FL

Zip

32547

Email

carol.burton@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

Rally in Tally

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

Feb 26, 2018  
Meeting Date

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

7026  
SPB ~~7022~~  
Bill Number (if applicable)

Topic CYUW REFORM

Amendment Barcode (if applicable)

Name Elizabeth CAROL Dorsey

Job Title Retired Special Educator

Address 312 Bay Ave

Phone 850-225-8530

Street

DE FUNIAK SPRINGS

FL

32435

City

State

Zip

Email SONGOFJOYOK@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing RALLY in TALLY

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)

2/26/2017

Meeting Date

SPB 7026

Bill Number (if applicable)

Topic SPB 7026 - Gun Safety / Teachers

Amendment Barcode (if applicable)

Name Zach Detwiler

Job Title Project Manager

Address 2911 E Washington St

Street

Orlando

City

FL

State

32803

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Libertarian Party of Orange County

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

02/26/18  
Meeting Date

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

7028  
Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Alexandra Robertson

Job Title Student

Address 533 NE 2nd Avenue Apt 225 Phone 954-536-5095

Street City Fort Lauderdale FL 33301 Email Alexandra.robertson954@gmail.com

Speaking: ☐ For ☒ Against ☒ Information

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

Representing The People!

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/26/18  
Meeting Date

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

7026  
Bill Number (if applicable)

Topic Gun Control

Amendment Barcode (if applicable)

Name Kayla Grant

Job Title None

Address 13413 Kent Bradley St  
Street

Phone 813-966-9004

Dade City  
City State Zip

Email KGrant602@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Students

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)

2/26/18  
Meeting Date

707648  
Bill Number (if applicable)

Topic Gun Control

Amendment Barcode (if applicable)

Name Hyanka Danger

Job Title \_\_\_\_\_

Address 3013 E Comanch  
Street

Phone \_\_\_\_\_

City

State

Zip

Email hydanger@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing the future students of America

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)

02/26  
Meeting Date

7026  
Bill Number (if applicable)

Teachers Cam  
Amendment Barcode (if applicable)

Topic Arming teachers

Name Aliyah Carter

Job Title Student

Address 2500 NW 38th Terr

Street

Fort Lauderdale FL

City

State

33311

Zip

Phone 954-446-5563

Email Aliyah.Carter@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic Gun Reform

Amendment Barcode (if applicable) \_\_\_\_\_

Name Maliyah Perry & Kayla Blaine

Job Title \_\_\_\_\_

Address 210517 Shoregrass dr.  
Street

Phone (813) 957-7502

Wesley Chapel FL 33544  
City State Zip

Email maliyahcharisse@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Students

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)

2/26/17  
Meeting Date

4026  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Gay Valiment

Job Title Moms Demand Action

Address 1683 Woodlawn Way  
Street

Phone 678-860-7071

Gulf Breeze Ga. 32463  
City State Zip

Email gvaliment@gmail

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Moms Demand Action

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2-26-18

Meeting Date

7026

Bill Number (if applicable)

Topic Travis Marshall in schools

Amendment Barcode (if applicable)

Name R. HERS

Job Title Retiring

Address 639 NE 10th Ave  
Street

Phone 352-514-0570

Gorvett FL 32609  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Womens March  
Rally to 1/4

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

2/24/18

Meeting Date

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

Bill Number (if applicable)

Topic Firearm Safety / School Safety

Amendment Barcode (if applicable)

Name Christine Hunschofsky

Job Title Mayor City of Parkland

Address 9976 NW 64 CT

Phone \_\_\_\_\_

Street

Parkland

State

TX

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Myself

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)

## APPEARANCE RECORD

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name Jon Harris MaurerJob Title Government Affairs ManagerAddress 201 E Park Ave.  
Street

Phone \_\_\_\_\_

Tallahassee, FL  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)Representing Equality FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Sch. Safety

Amendment Barcode (if applicable)

Name Greg Pound

Job Title \_\_\_\_\_

Address 9166 Sunrise Dr.

Phone \_\_\_\_\_

Street

Largo

City

Fl.

State

33773

Zip

Email \_\_\_\_\_

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)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name Sheriff Grady Judd

Job Title Sheriff

Address 1891 Jim Keene Blvd  
Street

Phone 863 298-6351

Winter Haven FL 33880  
City State Zip

Email gjudd@polksheriff.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Polk County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/18

Meeting Date

SPB70210

Bill Number (if applicable)

Topic GUN Reform

Amendment Barcode (if applicable)

Name Sam SharfJob Title Student: High SchoolAddress 107 S Bungalow ter

Street

Tampa

City

FL

State

33606

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Scholars 2-TampaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/18  
Meeting Date

SPB 7026  
Bill Number (if applicable)

Topic Small Safety

Amendment Barcode (if applicable)

Name NATALIE ~~KELLY~~ KELLY

Job Title CEO

Address 122 S CALHOUN

Phone 850 570-5747

TALLAHASSEE FL 32301  
City State Zip

Email NATALIE@FLMANAGEMENT.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL ASSC OF MANAGING ENTITIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

02/26/2018  
Meeting Date

SPB 7076  
Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Joshua Evans

Job Title Student

Address 1838 SW 30th St  
Street

Phone 754-204-1776

Ft Lauderdale Florida 33315  
City State Zip

Email joshuaevans2014@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Students

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name Alisa LaBolt

Job Title Executive Director

Address Po Box 961

Phone 671-4445

Street

Tallahassee

FL

32302

City

State

Zip

Email alisa@namiflorida.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing National Alliance on Mental Illness

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)

1/26/2018

7026

*Meeting Date*

*Bill Number (if applicable)*

Topic School Safety

*Amendment Barcode (if applicable)*

Name Melanie Brown- Woofter

Job Title President and CEO

Address 316 East Park Ave

Phone 850-224-6048

*Street*

Tallahassee

FL

32301

Email melanie@fccmh.org

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Council for Behavioral Healthcare

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

# APPEARANCE RECORD

2-27-18

Meeting Date

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

7026

Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name MARK FONTAINE

Job Title CEO

Address 2868 MAHAN DRIVE

Phone 878-2196

Street

Tallahassee FL 32308

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA BEHAVIORAL HEALTH Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

# APPEARANCE RECORD

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

2-26-18

Meeting Date

7026

Bill Number (if applicable)

Topic SCHOOL SAFETY

Amendment Barcode (if applicable)

Name JIM AKIN

Job Title EXECUTIVE DIRECTOR

Address 1931 DELWOOD DRIVE  
Street

Phone 850-224-2400

TALLAHASSEE, FL  
City State

32303  
Zip

Email JIM@NASWFL.ORG

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

Representing NATIONAL ASSOCIATION OF SOCIAL WORKERS - FLORIDA

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

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2/26/18  
Meeting Date

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

7026  
Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name Michael Sheedy

Job Title Exec. Director

Address 201 W. Park Ave.

Phone 850-205-6824

Tallahassee FL 32301  
City State Zip

Email msheedy@flacfb.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL Conference of Catholic Bishops

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)

Feb 26, 2017

Meeting Date

7026

Bill Number (if applicable)

Topic Green Reform

Amendment Barcode (if applicable)

Name Shannon Kalmbach

Job Title Student

Address 12006 4th St N

Phone 727-221-1133

Street

St Pete FL

33716

City

State

Zip

Email Shannon.Kalmbach@gmail.com

Speaking: ☒ For ☒ Against ☐ Information

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

Ban on Assault weapons

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)

2/26/14  
Meeting Date

7026 amend  
Bill Number (if applicable)

Topic AR Ban

Amendment Barcode (if applicable)

Name JUSTIN CRUMANN

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

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)

7026

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic \_\_\_\_\_  
Name **JESS McCARTY**

Amendment Barcode (if applicable) \_\_\_\_\_

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810  
Street  
MIAMI FL 33128  
City State Zip

Phone 305-979-7110

Email JMM2@MIAMIDADE.GOV

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(add this information into the record.)

Representing **MIAMI-DADE COUNTY**

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)

2/26/18

Meeting Date

7026 Amend

Bill Number (if applicable)

Topic AR ban amendment

Amendment Barcode (if applicable)

Name Sydney Villacorta BuerJob Title StudentAddress \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

2/26/18

Meeting Date

SPB 7028 <sup>unw</sup>

Bill Number (if applicable)

Topic Assault Weapon Ban amendment

Amendment Barcode (if applicable)

Name Javier Guerrero

Job Title Student

Address 11257 NW 50<sup>th</sup> Terrace

Street

Phone 786-219-9809

Port St

City

FL

State

Zip

Email jguerrero.vicente18

@bolenschools.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Bolton Jesuit Prep School

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-26-18

Meeting Date

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

7026 amere

Bill Number (if applicable)

Topic Safety ARZ ban amendment

Amendment Barcode (if applicable)

Name Cassandre Joseph

Job Title Miss Haiti

Address 1070 SW 46th Ave Apt 307

Street

Phone 954 854 0082

Pompano Beach FL

City

State

33069

Zip

Email CassandreJoseph12@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18  
Meeting Date

7026  
Bill Number (if applicable)

Topic Gun Control

Amendment Barcode (if applicable)

Name Jovanna Luzzo

Job Title High School Student

Address 1314 SE Wagshott Rd.  
Street

Phone (352) 318-8414

Micanopy FL 32667  
City State Zip

Email jovannaluzzo@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

## APPEARANCE RECORD

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

Feb 26 2018

Meeting Date

7026

Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name Krystaleigh S

Job Title

Address 6005 NW 66th Ave

Street

Phone 954 955 0234

Marsate

City

FL

State

33063

Zip

Email @Krystaleigh11225@icloud.com

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

Representing

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

February 26, 2018  
Meeting Date

7020  
Bill Number (if applicable)

Topic School Safety

Amendment Barcode (if applicable)

Name Cecilio Bartholomew

Job Title

Address 3280 Spanish Moss Terrace  
Street  
Ft. Lauderdale  
City  
FL  
State  
33319  
Zip

Phone 954-245-8130

Email cecilio.bartholomew@fla.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming teachers

Amendment Barcode (if applicable)

Name Alexis Sones

Job Title 7606

Address ~~1737~~ NW 99th Terr

Phone 754-368-4128

Street

Tamrac

City

FL

State

33321

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/27/18  
Meeting Date

7026  
Bill Number (if applicable)

Topic arming teachers

Amendment Barcode (if applicable)

Name Mary Lynn McDavid

Job Title \_\_\_\_\_

Address 5789 CR 352  
Street

Phone 239-940-1988

Keystone Hts., FL 32656  
City State Zip

Email MaryLynnMcDavid@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Enough is enough gun reform rally

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)

2/26/2018  
Meeting Date

1026  
Bill Number (if applicable)

Topic Arming Teachers with Firearms

Amendment Barcode (if applicable)

Name Rehanna Johnson

Job Title Student

Address 1021 woodmont way  
Street

Phone 954-512-0689

Tamarac FL 33321  
City State Zip

Email rehanna.j19@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing J.P Taravella High School - 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.

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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)

02/26/2018  
Meeting Date

7026  
Bill Number (if applicable)

Topic Arming Teachers with Firearms

Amendment Barcode (if applicable)

Name Bailey Rothman

Job Title Student

Address 9868 NW 76<sup>th</sup> St  
Street

Phone 954-775-6124

Tamarac FL 33321  
City State Zip

Email baileyrothman@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SPT Taravella High School / 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.

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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)

2/26/2018

Meeting Date

7026

Bill Number (if applicable)

Topic Arming teachers with firearms

Amendment Barcode (if applicable)

Name Jimmy Morales

Job Title Student

Address 9904 NW 70th Street

Phone 954-512-4198

Tamarac  
City

FL  
State

33321  
Zip

Email jimmorales18@hotmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing J.P. Taravella Highschool - 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.

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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)

2/26/18  
Meeting Date

7026  
Bill Number (if applicable)

Topic Re: Concealed weapons  
S. Faculty and Staff Voluntary participating

~~S. 30.9~~  
Amendment Barcode (if applicable)

Name Tami Baker

Job Title Parent and Education Advocate

Address 6219 11th St.  
Street

Phone 813-956-7871

Zephyrhills FL 33542  
City State Zip

Email tik'tami5@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Students, Parents, Faculty & Staff Pasco County, FL

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**

**SB-7024**

2/26/2018

*Meeting Date*

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

SB-7022

*Bill Number (if applicable)*

Topic Gun Control

*Amendment Barcode (if applicable)*

Name Marion P. Hammer

Job Title \_\_\_\_\_

Address PO Box 1387

Phone 850-222-9518

*Street*

Tallahassee

FL

32302

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Rifle Association & Unified Sportsmen of Florida

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)

2/26/18

Meeting Date

SPB 7026

Bill Number (if applicable)

Topic School Safety Proposal

Amendment Barcode (if applicable)

Name Ronald Reid

Job Title LT USN (RET)

Address 1022 Pope PL  
Street

Phone (352) 617-0111

The Villages FL 32163  
City State Zip

Email ronreid2000@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Veterans For Sensible Gun Safety

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2-26-18

Meeting Date

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

SPB 70 26

Bill Number (if applicable)

Topic Proposal for School Safety

Amendment Barcode (if applicable)

Name Roger Sanderson

Job Title \_\_\_\_\_

Address 1215 E Henry Ave

Phone 813-237-8182

Tampa, FL 33604

City

State

Zip

Email Rsanderson@unimlab.org, 11.c.don

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2-26-18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Teacher Carrying Weapons Amendment Barcode (if applicable)

Name Robyn Harper

Job Title Angry Mother

Address 4400 Lincoln St

Street

Hollywood FL 33001

City

State

Zip

Phone 954-383-1115

Email harplisebell@outlook.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/18

Meeting Date

SPB 7026

Bill Number (if applicable)

Topic teachers carry firearms

Amendment Barcode (if applicable)

Name Sara Courtney Baigotti

Job Title concerned mom

Address 4504 Alhambra Circle

Street

Phone \_\_\_\_\_

Miam

City

FL

State

33146

Zip

Email SARITA@COURBAIGOTTI.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.

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic

Against Arming Teachers

Amendment Barcode (if applicable)

Name

Joyce Nunez Gary

Job Title

Program Administration

Address

5000 Madison St

Phone

305.469.9728

Street

Hollywood

State

Fl

Zip

33021

Email

RUNNERSRUNNERS.COM

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☒

In Support

☒

Against

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

Representing

Gun Reform Rally # Enough is Enough

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

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Teachers Carry

Amendment Barcode (if applicable)

Name Julie Anne McDowell

Job Title Mom

Address 7333 Vistalmar St.

Phone

Street

Coral Gables FL

City

State

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

02/26/2018

Meeting Date

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

SPB 7026

Bill Number (if applicable)

Topic GUN REFORM

Amendment Barcode (if applicable)

Name GUADALUPE PEREZ

Job Title N/A, STUDENT

Address 8329 BYRON AVE #7 DE 33141

Phone 786 872 4915

Street

Miami beach FL

33141

City

State

Zip

Email lupe.belenperez@icloud.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing STUDENTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Olivia Shrawsbury

Job Title student

Address 10323 SW 55<sup>th</sup> place

Phone 954-483-5809

Street

Gainesville

FL

32608

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

7526

Bill Number (if applicable)

Topic arming teachers

Amendment Barcode (if applicable)

Name Rayna Doreen

Job Title Student in high school

Address 8630 Viste del Doc Ar  
Street

Phone 561-944-5251

Dover Station FL 33433  
City State Zip

Email rdh0503@xbox.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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic arming teachers

Amendment Barcode (if applicable)

Name Carly Schwamm

Job Title student

Address 7698 Estrella Circle  
Street

Phone (561) 251-4544

Boca Raton  
City

FL  
State

33433  
Zip

Email carlyschwamm@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming teachers

Amendment Barcode (if applicable)

Name Sienna Krulis

Job Title Student

Address 1405 Point Ct  
Street

Phone (813) 297-1317

Lutz FL 33549  
City State Zip

Email sienna.krulis@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

***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)

2126118

Meeting Date

7026

Bill Number (if applicable)

Topic Arming teachers

Amendment Barcode (if applicable)

Name Brooke Sefton

Job Title Miss

Address 12955 Hyland Circle

Street

Boca Raton

City

FL

State

33428

Zip

Phone (561) 400-7891

Email brookesefton@aol.

com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing student

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)

8/26/18

Meeting Date

7076

Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Houston Barenholtz

Job Title Student

Address 5045 Pointe Emerald Lane

Phone 861-419-3239

Street

Boca Raton

FL

33486

City

State

Zip

Email happy4352@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

Feb. 26, 2018  
Meeting Date

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

7026  
Bill Number (if applicable)

Topic Better Guns Rules

Amendment Barcode (if applicable)

Name Alice Chattman

Job Title Retired

Address 172 NW 15th place  
Street

Phone 954-895-2363

Pompano Beach Fl. 33060  
City State Zip

Email amclchattman@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Stoneman Douglas High School

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

7026  
Bill Number (if applicable)

Topic Gun Reform (Arming teachers)

Amendment Barcode (if applicable)

Name Maria Kurlander

Job Title HR Executive

Address 831 Sunflower Circle

Phone 917-734-7374

Street

Weston.

FL

33327

City

State

Zip

Email jplcmommy@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Broward County Parents

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)

2-26-18  
Meeting Date

~~7024~~ 7026  
Bill Number (if applicable)

Topic Arming Teachers in School

Amendment Barcode (if applicable)

Name Lucie Wrench

Job Title \_\_\_\_\_

Address 2511 Dolly Day Dr  
Street  
Palm Harbor  
City State Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/2018  
Meeting Date

7026  
Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Judith Aronson Roth

Job Title Parent / Citizen

Address 1153 Croton Ct.  
Street

Phone (954) 736-6543

Weston, FL 33327  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Parents of 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2-26-18

Meeting Date

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

7026

Bill Number (if applicable)

Topic

Gun Reform

Amendment Barcode (if applicable)

Name

Linda Nelson

Job Title

Self Employed

Address

144 Davenport Ave. NE

Phone

(727) 455-5072

Street

St. Petersburg, FL

City

State

Zip

33702

Email

broxmom3@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name September Howat

Job Title \_\_\_\_\_

Address 5215 19<sup>th</sup> Ave. S.

Street

Phone \_\_\_\_\_

St. Pete

City

FL

State

33707

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic GUN REFORM

Amendment Barcode (if applicable)

Name BREN ROSS-GREENE

Job Title LIBRARIAN PINELLAS COUNTY SCHOOLS

Address 306 S. TESSLER DR  
Street

Phone (727) 238-1688

ST PETERS BEACH FL 33706  
City State Zip

Email Brenda.Lawrence@YAHOO

Speaking: ☐ For ☒ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

02/26/14  
Meeting Date

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

7026  
Bill Number (if applicable)

Topic Gun reform

Amendment Barcode (if applicable)

Name Emma Darnon

Job Title \_\_\_\_\_

Address Orange Wood Rd 5657  
Street  
Jacksonville FL 32207  
City State Zip

Phone 904-572-6704

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

02/20/18  
Meeting Date

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

7026  
Bill Number (if applicable)

Topic GUN REFORM

Amendment Barcode (if applicable)

Name Sydney Villacort Ables

Job Title \_\_\_\_\_

Address 14307 Heaven Trees  
Street

Phone \_\_\_\_\_

Jacksonville FL 32207  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

7/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Addison Sawyer

Job Title

Address 1416 Mount Orchard

Street

Phone

Jacksonville FL

City

State

Zip

Email

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform.

Amendment Barcode (if applicable)

Name PAOLA BATIC.

Job Title \_\_\_\_\_

Address 8893 NW 184 ST.

Phone \_\_\_\_\_

Street

Miami FL 33018

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2-25-18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name JEFFREY AGEON

Job Title \_\_\_\_\_

Address 6545 SW 133 DR.

Phone 305-616-7260

Street

Pinecrest FL 33156

City

State

Zip

Email JEFFREYAGEON@ME.COM

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic ARMING TEACHERS

Amendment Barcode (if applicable)

Name ~~XXXXXXXXXXXX~~ SERENA OSTROWSKY

Job Title SCHOOL COUNSELOR

Address 268 WOODED XIN CIR

Street

Phone 904-234-9857

S. AUGUSTINE FL 32084

City

State

Zip

Email \_\_\_\_\_

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)

Meeting Date \_\_\_\_\_

7026  
Bill Number (if applicable)

Topic ~~GUN REFORM~~ ARMING TEACHERS

Amendment Barcode (if applicable)

Name MARIA V. SKULLMAN

Job Title \_\_\_\_\_

Address 6989 MIDDLETON AVE  
Street

Phone 904-6154799

ST. AUG FL. 32080  
City State Zip

Email \_\_\_\_\_

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Loni PaigeJob Title CEOAddress 1688 West Ave 1006

Street

Phone 646 334 1171Miami Beach FL 33139

City

State

Zip

Email Lonipaige@icloud.comSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)Representing Loni PaigeAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

26 Feb 2018  
 Meeting Date

7026  
 Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Gae Weber

Job Title ret

Address 364 11<sup>th</sup> St  
 Street

Phone 904 242 2649

Atlantic Beach FL 32233  
 City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing ~~votes~~ ~~represent~~ myself

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)

2/24/18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Helene OleeskyJob Title RetiredAddress 3277 Elm Terr

Phone \_\_\_\_\_

Street

MelbourneFL32935

City

State

Zip

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

Feb 27 2018

Meeting Date

7026

Bill Number (if applicable)

Topic GUN REFORM

Amendment Barcode (if applicable)

Name BRIGITTE PITRAI

Job Title \_\_\_\_\_

Address 2077 BOHLE BRUSH DR. MELBOURNE

Street

Phone \_\_\_\_\_

MELBOURNE, FL 32935

City

State

Zip

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform - Teacher Carrying

Amendment Barcode (if applicable)

Name Benee Hunter-Frost

Job Title ~~Uncle~~ Aunt

Address 545 Jefferson Drive #108

Phone 954-224-0961

Deerfield Beach FL 33442

Email BhunterFrost@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/2018

Meeting Date

7036

Bill Number (if applicable)

Topic Arming teachers

Amendment Barcode (if applicable)

Name Aliyah cadet

Job Title Student

Address 2590 NW 38th terr Phone 954-446-5563

Street

Ft Lauderdale

City

FL

State

33311

Zip

Email Aliyahcadet@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/18  
Meeting Date

7026  
Bill Number (if applicable)

Topic Army teachers

Amendment Barcode (if applicable)

Name Lauren Tate

Job Title \_\_\_\_\_

Address 9937 Tradewinds terrace  
Street

Phone 954 809 4057

Dania beach FL 33312  
City State Zip

Email lauren.tate@fla.senate.gov

Speaking: ☐ For ☐ Against ☐ Information

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

Representing citizens of florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform - Arming Teachers

Amendment Barcode (if applicable)

Name Robyn Raymond

Job Title Concerned Citizen

Address 2713 Edgewater Ct.

Phone 954-383-6636

Street

City Weston State FL Zip 33332

Email che2robyn@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing This is the most dangerous bill to arm teachers.  
More innocent lives will be lost. There are so many  
dangerous issues with this idea.

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)

# SENATE APPEARANCE RECORD

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Guns for teachers

Amendment Barcode (if applicable)

Name Angela Huggins

Job Title Business Owner

Address 1852 Hickory Trace Dr.

Phone 904-709-8868

Street

Fleming Island FL 32003

City

State

Zip

Email angelahuggins@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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



# APPEARANCE RECORD

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Arming Teacher

Amendment Barcode (if applicable)

Name Cardyn Siegelman

Job Title Activist

Address 15731 NW 16 Ct

Phone 954-821-1347

Street

Plantation FL 33322

City

State

Zip

Email CSiegel@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing You Don't Pay Teachers Enough to Act Like the Police  
That isn't their Job!! Do Yours!

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)

2-26-18  
Meeting Date

7026  
Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Sharon Weissman

Job Title Teacher

Address 5424 SW 84<sup>th</sup> Drive

Phone 352-215-1563

Gainesville, FL 32608  
City State Zip

Email sharonw100@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The citizens and teachers of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb. 26, 2018  
Meeting Date

7026  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Margot Abramson

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email mabet88@hotmail.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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic

"School Safety"

Amendment Barcode (if applicable)

Name

Dari Smith

Job Title

Nurse Practitioner

Address

700 SW 16th Place

Phone

352 872 3577

Street

Gainesville FL 32601

Email

DARISMITH5@

City

State

Zip

gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

my 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

02/26/2018

Meeting Date

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

SPB 7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Alexandra Robertson

Job Title Student

Address 533 N 2 3rd Avenue Apt. 225

Phone 954-536-5095

Street

Fort Lauderdale FL

33301

City

State

Zip

Email alexandra.robertson954@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Students

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)

02/26/18  
Meeting Date

SPB7026  
Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Kristen Boxhorn

Job Title \_\_\_\_\_

Address 5030 Stagecoach Dr  
Street

Phone 7547791759

Coconut Creek FL 33073  
City State Zip

Email Kristenboxhorn@gmail.com

Speaking: ☒ For ☒ Against ☐ Information

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

Representing Students

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**

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Rebekah Umansky

Job Title Student

Address 1071 SW 156 Ave

Phone 954-648-6839

Street

Pembroke Pines

State

FL 33027

Zip

Email bekahumansky@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Arming teachers

Amendment Barcode (if applicable)

Name Jordan Singer

Job Title Student in Miami Dade

Address 1825 NE 197th Terr

Phone 305-725-3399

Street

Miami

FL

33179

City

State

Zip

Email jordangsinger@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Cindy Polo

Job Title Stay at home mother

Address 12650 SW 54 St

Phone 305-3361969

Street

Miramar

City

FL

State

33027

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/26/18  
Meeting Date

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

7028  
Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Jacqueline Hatch

Job Title Student in Miami, FL

Address 3350 NE 192<sup>nd</sup> St. apt. 3P

Phone 305-528-0008

Street

Aventura

FL

33180

City

State

Zip

Email jackinhatch@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Jessica Shattuck

Job Title Teacher

Address 18916 Duquesne Dr  
Street

Phone 941 400 4413

City

State

Zip

Email JessK1013@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

0/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Kate Kverneland

Job Title Student in Gainesville, FL (Buchholz)

Address 1711 NW 66<sup>th</sup> terrace  
Street

Phone 352-339-5213

Gainesville  
City

FL  
State

32605  
Zip

Email KateKV@me.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic

ARMING TEACHERS

Amendment Barcode (if applicable)

Name

KEN EVANS

Job Title

SUMMER CAMP OWNER

Address

4624 SEA GATE DR

Phone

954.684.3690

Street

LAUDERDALE BL. THE SEA FL

33308

Email

KEVANS922@GMAIL.COM

City

State

Zip

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic ARMING TEACHERS

Amendment Barcode (if applicable)

Name SARAH RESNICK CARSWELL

Job Title \_\_\_\_\_

Address 3229 SW 129 Terr

Phone 352 214 5136

Street Archer FL City 32618 State Zip

Email \_\_\_\_\_

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)

2/26/18  
Meeting Date

70286  
Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Samantha Dorfman

Job Title Student in Miami

Address 12985 Coronado Lane  
Street

Phone 305-397-9383

North Miami FL 33181  
City State Zip

Email Samanthadorfman@gmail

Speaking: ☐ For ☒ Against ☒ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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)

2/26/18  
Meeting Date

7026  
Bill Number (if applicable)

Topic Armed Teachers

Amendment Barcode (if applicable)

Name Cari Casanova

Job Title Special Worker

Address 11090 SW 51st Terr

Phone 917-434-1675

Miami FL 33165  
City State Zip

Email CASANUS302@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing N/A

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**

02/26/2018  
Meeting Date

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

7026  
Bill Number (if applicable)

Topic Sun Control

Amendment Barcode (if applicable)

Name JUSTIN LOUWMAN

Job Title STUDENT IN BOCA RATON

Address 2558 NW 32nd St  
Street

Phone \_\_\_\_\_

Boca Raton Florida 33484  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Students

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming teachers

Amendment Barcode (if applicable)

Name Carrie FeitJob Title AttorneyAddress 13400 SW 66 Ave

Street

Pinecrest

City

State FLZip 33156Phone 305 761 7772Email CarrieFeit@gmail.comSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

<u>                    </u> Meeting Date		<u>7026</u> Bill Number (if applicable)	
Topic <u>Against Arming Teachers, For Banning Assault Weapons</u>		<u>                    </u> Amendment Barcode (if applicable)	
Name <u>Robin Struss Furlong ms</u>			
Job Title <u>Pediatrician</u>			
Address <u>4000 Taverne Dr</u>		Phone <u>                    </u>	
<u>                    </u> Street			
<u>Miami</u> City		Email <u>                    </u>	
<u>                    </u> State		<u>                    </u> Zip	
Speaking: <input type="checkbox"/> For <input checked="" type="checkbox"/> Against <input type="checkbox"/> Information		Waive Speaking: <input type="checkbox"/> In Support <input type="checkbox"/> Against (The Chair will read this information into the record.)	
Representing <u>Billyn Tally, FC AAP, Nat'l Council of Jewish Women</u>			
Appearing at request of Chair: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Lobbyist registered with Legislature: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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)

02/26/18

Meeting Date

1026

Bill Number (if applicable)

Topic Arming ~~legislators~~ teachers

Amendment Barcode (if applicable)

Name Joshua SimmonsJob Title TeacherAddress 3680 Terrapin Lane

Street

Coral Springs

City

FL

State

33067

Zip

Phone \_\_\_\_\_

Email JoshuaSimmons29@gmail.comSpeaking: ☒ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic GUN REFORM

Amendment Barcode (if applicable)

Name RENE TORRELLA-GARCIA

Job Title RENTOR / APPRAISER

Address 17675 NW 91ST COURT

Street

Phone 305-498-2888

HOUSTON  
City

FL  
State

33018  
Zip

Email IRENE@MYTOGA.NET

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

2/26/18  
(Meeting Date)

7026  
Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name JUAN CUBA

Job Title \_\_\_\_\_

Address 1605 Ponce de Leon Blvd  
Street

Phone 305 761 6050

Coral Gables FL 33134  
City State Zip

Email \_\_\_\_\_

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

## APPEARANCE RECORD

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

2/26/2018  
Meeting Date7026  
Bill Number (if applicable)Topic Arming Teachers

Amendment Barcode (if applicable)

Name Ari DolginJob Title StudentAddress 4807 Jono St  
Street

Phone \_\_\_\_\_

Tampa FL 33629  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing SelfAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2-26-18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming teachers w/ guns - NOT

Amendment Barcode (if applicable)

Name Laurie Swanson

Job Title retired teacher

Address 620 9th St

Phone 973-508-8741

Key Colony Bch FL 33051

Street

City

State

Zip

Email Swansonfj@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

7026  
Bill Number (if applicable)

Meeting Date

Topic Arming teachers / Banning AEs

Amendment Barcode (if applicable)

Name Jermaine Miller

Job Title Community Activist

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing \_\_\_\_\_

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)

2/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Control

Amendment Barcode (if applicable)

Name Caralyn TenneyJob Title WaitressAddress 140 Forest Trail

Street

Phone 407-619-3975Oviedo

City

FL

State

32705

Zip

Email caralyn10c@att.netSpeaking: ☐ For ☒ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☒ No

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

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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)

2-26-18

Meeting Date

7026

Bill Number (if applicable)

Topic Arming Teachers

Amendment Barcode (if applicable)

Name Susan Jenkins

Job Title Retired

Address 9920 Eagles Point Cir, #4

Street

Port Richey

City

State

Zip

Phone 608-797-6271

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Womens March, Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

## APPEARANCE RECORD

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

2-26-18

Meeting Date

7026

Bill Number (if applicable)

Topic GUN LAW REFORM

Amendment Barcode (if applicable)

Name BEVERLEY DRAGON

Job Title RETIRED

Address 3657 DORAL ST

Phone

Street

PALM HARBOR

FL

34685

City

State

Zip

Email badragon@mc.com

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

Representing Citizens of Florida

Appearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic

Arming Teachers

Amendment Barcode (if applicable)

Name

KATHLEEN GINESTRA

Job Title

retired

Address

1201 River Reach Dr. #404

Phone

954-829-3013

Street

H. Land FL 33315

City

State

Zip

Email

ginestra.k@gmail.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

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

Representing

Self

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☐

No

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

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

2/26/18

Meeting Date

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

7026

Bill Number (if applicable)

Topic Gun Control

Amendment Barcode (if applicable)

Name Emily HuddlestonJob Title BaristaAddress 3875 Safflower TerracePhone 704 701 2951

Street

Oviedo

City

FL

State

32766

Zip

Email \_\_\_\_\_

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

2-26-18

Meeting Date

~~7022~~  
or

7026

Bill Number (if applicable)

Topic Gun Control

Amendment Barcode (if applicable)

Name Eric Friday

Job Title General Counsel

Address 118 W Adams St

Street

Jax FL

City

State

32202

Zip

Phone 904434-1073

Email efriday@erikfriday.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Carry

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**

2-26-18

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

7026

~~7026~~

Meeting Date

Bill Number (if applicable)

Topic GUN REFORM

Amendment Barcode (if applicable)

Name DAVE REEDER

Job Title ~~DAVE REEDER~~

Address 4360 BEVERLY AVE

Phone 716 904 9448

Street

VA

Email OLSURFIRE@GMAIL

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SANE CITIZENS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/18

Meeting Date

7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Mary H. Warren

Job Title Retired citizen

Address 3661 Valencia Rd.  
Street

Phone 904-616-2286

Jacksonville FL 32204  
City State Zip

Email maryharveywarren@

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against <sup>adl.com</sup>  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

7026

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic GUN Reform

Amendment Barcode (if applicable) \_\_\_\_\_

Name MARIE REEDER

Job Title GOOD CITIZEN

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

City JAX State FL Zip 32210

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

2/26/2018

*Meeting Date*

7026

SB-7022

*Bill Number (if applicable)*

197998

*Amendment Barcode (if applicable)*

Topic Enabling Gun Registration

Name Marion P. Hammer

Job Title \_\_\_\_\_

Address PO Box 1387

*Street*

Tallahassee

*City*

FL

*State*

32302

*Zip*

Phone 850-222-9518

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing National Rifle Association & Unified Sportsmen of Florida

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)

2/26/2018

Meeting Date

7022 & 7026

Bill Number (if applicable)

Topic Gun Reform

Amendment Barcode (if applicable)

Name Sara Uppena

Job Title Proj. Mgr

Address 241 E. Kalmia Dr.

Phone 561-670-6875

Street

Lake Park FL 33403

City

State

Zip

Email suppena@uwaturni.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

S-001 (10/14/14)

2020

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Ken Detzner, Secretary of State,  
do hereby certify that

***Gary F. Clark***

is duly appointed a member of the

**Florida Public Service Commission**

for a term beginning on the Fifteenth day of September, A.D.,  
2017, until the First day of January, A.D., 2019 and is subject to  
be confirmed by the Senate during the next regular session of the  
Legislature.



*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Sixth day of November, A.D., 2017.*

*Ken Detzner*

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

If photocopied or chemically altered, the word "VOID" will appear.

"State of Florida" appears in small letters across the face of this 8 1/2 x 11" document.



**RICK SCOTT**  
GOVERNOR

RECEIVED  
17 SEP 20 AM 9:39  
DIVISION OF ELECTIONS  
SECRETARY OF STATE

September 15, 2017

Secretary Kenneth W. Detzner  
Secretary of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of  
Section 350.01, Florida Statutes:

Mr. Gary F. Clark  
1670 Peel Road  
Chipley, Florida 32428

as a member of the Florida Public Service Commission, filling a vacant seat, subject to  
confirmation by the Senate. This appointment is effective September 15, 2017, for a term  
ending January 1, 2019.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/kb

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

17 OCT 20 PM 1:43

County of Leon

DIVISION OF ELECTIONS  
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Florida Public Service Commissioner

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]

Signature

Sworn to and subscribed before me this 5<sup>th</sup> day of October, 2017.

Carlotta S Stauffer

Signature of Carlotta S. Stauffer of Notary Public



Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced \_\_\_\_\_

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

1670 Peel Rd

Street or Post Office Box

Chipley FL 32428

City, State, Zip Code

Gary F. Clark

Print Name

[Signature]

Signature

**The Florida Senate  
Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Gary F. Clark  
Florida Public Service Commission

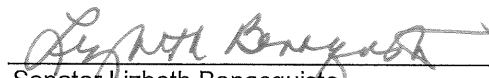
**NOTICE OF HEARING**

TO: Mr. Gary F. Clark

YOU ARE HEREBY NOTIFIED that the Committee on Rules of the Florida Senate will conduct a hearing on your executive appointment on Monday, February 26, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 21st day of February, 2018

Committee on Rules

  
\_\_\_\_\_  
Senator Lizbeth Benacquisto  
As Chair and by authority of the committee

cc: Members, Committee on Rules  
Office of the Sergeant at Arms



2020

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

I, Ken Detzner, Secretary of State,  
do hereby certify that

*Art Graham*

is duly appointed a member of the

**Florida Public Service Commission**

for a term beginning on the Second day of January, A.D., 2018,  
until the First day of January, A.D., 2022 and is subject to be  
confirmed by the Senate during the next regular session of the  
Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Nineteenth day of October, A.D., 2017.*



*Ken Detzner*

Secretary of State

DSDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.



**RICK SCOTT**  
GOVERNOR

RECEIVED  
17 SEP 20 AM 9:39  
DIVISION OF ELECTIONS  
SECRETARY OF STATE

September 15, 2017

Secretary Kenneth W. Detzner  
Secretary of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 350.01, Florida Statutes:

Mr. Arthur L. Graham  
602 Third Avenue North  
Jacksonville Beach, Florida 32250

as a member of the Florida Public Service Commission, subject to confirmation by the Senate. This appointment is effective January 2, 2018, for a term ending January 1, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/kb

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

RECEIVED  
DEPARTMENT OF STATE  
17 OCT 16 AM 9:27  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Florida Public Service Commissioner

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]

Signature

Sworn to and subscribed before me this 3rd day of October, 2017.

[Signature]

Signature of Officer Administering Oath or of Notary Public

Nancy A. Harrison

Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced n/c

## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

602 3rd Avenue North

Street or Post Office Box

Jacksonville Beach, FL 32250

City, State, Zip Code

Art Graham

Print Name

[Signature]

Signature

**The Florida Senate  
Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
  
Art Graham  
  
Florida Public Service Commission

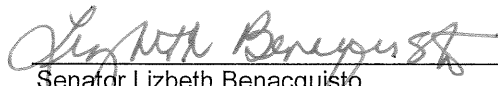
**NOTICE OF HEARING**

TO: Commissioner Art Graham

YOU ARE HEREBY NOTIFIED that the Committee on Rules of the Florida Senate will conduct a hearing on your executive appointment on Monday, February 26, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 21st day of February, 2018

Committee on Rules

  
\_\_\_\_\_  
Senator Lizbeth Benacquisto  
As Chair and by authority of the committee

cc: Members, Committee on Rules  
Office of the Sergeant at Arms

2020

STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections

I, Ken Detzner, Secretary of State,  
do hereby certify that

*Andrew Fay*

is duly appointed a member of the  
**Florida Public Service Commission**

for a term beginning on the Second day of February, A.D., 2018,  
until the First day of January, A.D., 2022 and is subject to be  
confirmed by the Senate during the next regular session of the  
Legislature.

Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Fifth day of February, A.D., 2018.

*Ken Detzner*

Secretary of State

State of Florida appears in small letters across the face of this 8 1/2 x 11" document.

If photocopied or chemically altered, the word "VOID" will appear.



**RICK SCOTT**  
GOVERNOR

RECEIVED  
DEPARTMENT OF STATE  
2018 FEB -5 AM 9:24  
DIVISION OF ELECTIONS  
TALLAHASSEE, FL

February 2, 2018

Secretary Kenneth W. Detzner  
Secretary of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment under the provisions of Section 350.01, Florida Statutes:

Mr. Andrew Giles Fay  
1125 Waverly Road  
Tallahassee, Florida 32312

as a member of the Florida Public Service Commission, filling a vacant seat, subject to confirmation by the Senate. This appointment is effective February 2, 2018, for a term ending January 1, 2022.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott", written over a large, stylized flourish.

Rick Scott  
Governor

RS/kb

# OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

18 FEB -5 PM 2:02

STATE OF FLORIDA

County of

Leon

DIVISION OF ELECTIONS  
SECRETARY OF STATE

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Public Service Commission

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Andrew Fay  
Signature

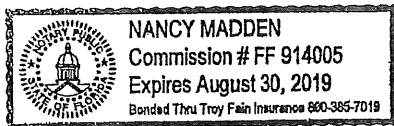
Sworn to and subscribed before me this 5 day of February, 2018.

Nancy Madden  
Signature of Officer Administering Oath or of Notary Public

Nancy Madden  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced



## ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☒ Home ☐ Office

1125 Waverly Rd  
Street or Post Office Box

Tallahassee, FL, 32312  
City, State, Zip Code

Andrew Fay  
Print Name

Andrew Fay  
Signature

**The Florida Senate**  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
  
Andrew Fay  
  
Florida Public Service Commission

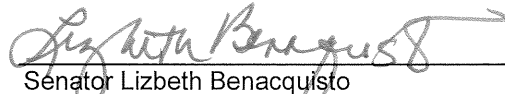
**NOTICE OF HEARING**

TO: Mr. Andrew Fay

YOU ARE HEREBY NOTIFIED that the Committee on Rules of the Florida Senate will conduct a hearing on your executive appointment on Monday, February 26, 2018, in the Toni Jennings Committee Room, 110 Senate Office Building, commencing at 2:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 21st day of February, 2018

Committee on Rules

  
\_\_\_\_\_  
Senator Lizbeth Benacquisto  
As Chair and by authority of the committee

cc: Members, Committee on Rules  
Office of the Sergeant at Arms



**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 266

INTRODUCER: Senator Passidomo

SUBJECT: Covenants and Restrictions

DATE: February 22, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cochran	Yeatman	CA	<b>Favorable</b>
2. Davis	Cibula	JU	<b>Favorable</b>
3. Cochran	Phelps	RC	<b>Pre-meeting</b>

## I. Summary:

SB 266 addresses the covenants and restrictions of property owners' associations and makes the following changes:

- Extends statutes authorizing the preservation and revival of covenants and restrictions to a broader range of associations, notably commercial property owners' associations;
- Allows a homeowners' association to file a form notice with the clerk of court which preserves the association's covenants and restrictions;
- Repeals language that requires a two-thirds vote of the members of the board of directors to preserve existing covenants and restrictions;
- Authorizes parcel owners who were subject to covenants and restrictions, but who do not have a homeowners' association, to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions; and
- Requires a homeowners' association to annually consider preservation of the covenants and restrictions and requires that the association file a summary preservation every 5 years.

## II. Present Situation:

### The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.<sup>1</sup> In general terms, MRTA provides that any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most claims or encumbrances against the land. In essence, MRTA serves as the ultimate land statute of limitations by eliminating older, unpreserved rights to an interest in real property.<sup>2</sup>

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<sup>1</sup> *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1227 (Fla. 2004).

<sup>2</sup> Gregory M. Cook, *The Marketable Record Title Act Made Easy*, The Florida Bar Journal, (Oct. 1992) available at <https://www.floridabar.org/news/tfb->

One unintended effect of MRTA, however, is that covenants and restrictions are extinguished 30 years after their creation. Therefore, homeowner associations' covenants and restrictions can expire and become unenforceable. In order to protect the covenants, MRTA has long provided a method for renewing the covenants. Even so, many homeowners' associations still fail to timely file a renewal of their covenants. In 2004, laws were enacted to provide a method for reviving the covenants and restrictions of a mandatory homeowners' association.<sup>3</sup> In 2007, nonmandatory homeowners' associations became eligible for revitalization.<sup>4</sup> Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.<sup>5</sup>

Two categories of property impacted by MRTA have not been included in the laws permitting renewal or revival of their covenants and restrictions: commercial land in office parks, industrial parks, and other commercial districts and neighborhoods having enforceable covenants but no formal homeowners' association. Owners of these properties, like the owners of property within a homeowners' association, enact and enforce covenants and restrictions regarding their property and that of their neighbors.

Due to the disparate issues in the bill, the present situation for each section is discussed in more detail below in conjunction with the Effect of Proposed Changes.

### **III. Effect of Proposed Changes:**

#### **Preservation of Existing Covenants**

##### *Present Situation*

Sections 712.05 and 712.06, F.S., provide that a homeowners' association may timely preserve its covenants by complying with the following conditions:

- The board must give written notice to every parcel owner of the impending preservation of the covenants;<sup>6</sup>
- The board must give written notice to every parcel owner of a meeting of the board of directors where the directors will decide whether to preserve the covenants;<sup>7</sup>
- The board of directors of the association must approve the renewal by a two-thirds vote;<sup>8</sup> and
- Notice of the renewal must be recorded in the official records of the county.<sup>9</sup>

**Sections 3 and 4** of the bill change this procedure to:

- Provide that compliance by a homeowners' association with newly created s. 720.3032, F.S. (see discussion below) may substitute for the requirements of ss. 712.05 and 712.06, F.S.;

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<sup>3</sup> Ch. 2004-345, s. 11, Laws of Fla.

<sup>4</sup> Ch. 2007-173, s. 1, Laws of Fla.

<sup>5</sup> Sections 720.403, 720.404, 720.405, 720.406, and 720.407, F.S.

<sup>6</sup> Section 712.06(1)(b), F.S.

<sup>7</sup> Section 712.05(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 712.06(2), F.S.

- Provide that an amendment to a covenant or restriction indexed under the legal name of the property owners' association may also substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Repeal the requirement that a decision to preserve covenants be approved a two-thirds vote of the board; and
- Repeal the requirement that affected property owners be furnished notice of the board meeting to vote on preservation.

### **Preservation and Revitalization of Covenants by a Commercial Property Owners' Association**

#### ***Present Situation***

Current law provides for the preservation and revitalization of covenants by a homeowners' association.

#### ***Effect of the Bill***

**Section 2** provides a definition for the term "community covenant or restriction" and substitutes the term "property owners' association" for "homeowners' association." A property owners' association includes a homeowners' association as defined in s. 720.301, F.S., a corporation or entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, as well as an association of parcel owners authorized to enforce a community covenant or restriction. The bill also makes conforming changes for these new terms.

The bill replaces all uses of the term "homeowners' association" found in chapter 712, F.S., with the term "property owners' association." The effect is to expand MRTA laws on preservation and revitalization of covenants or restrictions to cover commercial associations.

**Section 12** inserts language to provide that covenant revitalization, is intended to provide mechanisms for revitalization of covenants or restrictions by all types of communities and property associations, not just residential communities.

### **Revitalization by an Owner Not Subject to Homeowners' Association**

#### ***Present Situation***

Some residential communities have recorded covenants and restrictions similar to those found in a homeowners' association, but never created an association. Current law permits individual owners to file a notice of preservation of covenants before they expire,<sup>10</sup> but there are no means of revitalizing those covenants and restrictions.

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<sup>10</sup> See sections 712.05 and 712.06, F.S.

*Effect of the Bill*

**Section 6** provides for covenant or restriction revitalization by parcel owners of a community who are not subject to a homeowners' association.

Under this section, parcel owners may use the process available to a homeowners' association<sup>11</sup> to revive covenants or restrictions that have lapsed under MRTA. The parcel owners do not need to provide articles of incorporation or bylaws to revive the covenants or restrictions and only need the approval of a majority of the affected parcel owners in writing. The organizing committee of the community may execute the revived covenants or restrictions in the name of the community and the community name can be indexed as the grantee of the covenants with the parcel owners listed as grantors.

A parcel owner who has ceased to be subject to covenants or restrictions as of October 1, 2018, may commence an action by October 1, 2019, to determine if revitalization would unconstitutionally deprive the parcel owner of right or property. Revived covenants or restrictions do not affect the rights of a parcel owner that are recognized by a court order in an action commenced by October 1, 2019, and may not be subsequently altered without the consent of the affected parcel owner. Although a parcel owner has from October 1, 2018, to October 1, 2019, to file a legal action objecting to the revitalization of a covenant or restriction, the bill does not provide any mechanism to inform parcel owners of this right. Moreover, the bill allows parcel owners seeking to revitalize an extinguished covenant or restriction to proceed after October 1, 2019.

**Requirements on the Board of Directors of a Homeowners' Association***Present Situation*

While it is probably good practice for a homeowners' association to regularly consider the need for preservation of the covenants and restrictions of their neighborhood, there is no statutory requirement that a board of directors of a homeowners' association do so.

*Effect of the Bill*

**Section 7** amends s. 720.303(2), F.S., to require that the board of directors for a homeowners' association consider whether to file a notice to preserve the covenants and restrictions affecting the community from extinguishment pursuant to MRTA. This must be considered at the first board meeting after the annual meeting of the members.

**Section 8** creates s. 720.3032, F.S., which specifies procedures that any property owners' association may use to preserve its covenants from termination. Using these procedures, the association must file in the official records of the county in which it is located a notice detailing:

- The legal name of the association;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;

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<sup>11</sup> See sections 720.403- 720.407, F.S.

- The name, address, and telephone number for the current community association management company or manager, if any;
- An indication as to whether the association desires to preserve the covenants or restrictions affecting the community from extinguishment pursuant to MRTA;
- The name and recording information of those covenants or restrictions affecting the community which the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

The section creates a statutory form for the notice. The bill further provides that the filing of the completed form is considered a substitute for the notice required for preservation of the covenants pursuant to ss. 712.05 and 712.06, F.S. As such, every 5-year filing of the form will have the effect of starting the MRTA 30-year period anew.

A copy of this notice to preserve covenants or restrictions must be included as a part of the next notice of meeting or other mailing sent to all members of the association. The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

#### **Other Changes Made by the Bill**

**Section 1** provides a short title of the “Marketable Record Title Act” for chapter 712, F.S.

**Sections 5, 9, 10, 11, 13, 14, and 15** make changes to conform various statutory and definitional cross-references to the substantive changes made by the bill.

**Section 16** provides an effective date of October 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The State Constitution addresses the property rights of citizens in two pertinent provisions. Article 1, section 2 provides that all natural persons have the right to acquire, possess and protect property. Article 1, section 9 provides that “No person shall be deprived of life, liberty or property without due process of law . . . .” Additionally, the

State Constitution, in Article 1, section 10, also prohibits any law that impairs the obligation of contracts.

Because of these constitutional property rights protections, two issues arise from the bill. The first is whether the expiration of covenants and restrictions vests additional property rights in the owner of a property. A vested right is defined as “an immediate, fixed right of present or future enjoyment.”<sup>12</sup> For example, the expiration of covenants and restrictions might allow a property owner to build a nonconforming structure on the property or to use the property in a manner not allowed under the covenants and restrictions. The second issue is whether the bill, by allowing the reinstatement of expired covenants and restrictions, allows property rights to be taken in violation of the State Constitution.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

A person who believes that the revitalization of an expired covenant or restriction is a taking of a vested property right or other constitutional violation may be required to spend substantial funds to vindicate his or her rights in court.

Section 8 of the bill requires associations to prepare and record a notice every 5 years. The recording fee is nominal (\$10 for the first page, \$8.50 for additional pages). Because the form is in statute, associations may be able to complete the task without assistance, or a community association manager can assist an association with preparation and filing without reference to a licensed attorney.

Providing mechanisms to preserve and revitalize covenants and restrictions may have a positive impact on property values in affected areas or communities.

### **C. Government Sector Impact:**

The bill requires the recording of documents in the public records of the county. Recording is subject to a fee of \$10.00 for the first page and \$8.50 for every subsequent page, payable to the recording department (in most counties, the clerk of the court).<sup>13</sup> The net revenues to county recorders, after deductions for incremental costs of recording and indexing documents, are unknown.

## **VI. Technical Deficiencies:**

None.

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<sup>12</sup> *Coral Lakes Cmty. Ass’n v. Busey Bank, N.A.*, 30 So. 3d 579, 583 (Fla. 2nd DCA 2010) (quoting *Pearsall v. Great N. Ry. Co.*, 161 U.S. 646, 673, (1896)).

<sup>13</sup> Section 28.24(12), F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 712.01, 712.05, 712.06, 712.11, 720.303, 702.09, 702.10, 712.095, 720.403, 720.404, 720.405, and 720.407.

This bill creates the following sections of the Florida Statutes: 712.001, 712.12, and 720.3032.

**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.



313106

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
. .

House

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The Committee on Rules (Passidomo) recommended the following:

**Senate Amendment**

Delete line 131  
and insert:  
required under s. 720.3032(2); or an amendment to a community  
covenant or



By Senator Passidomo

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1 A bill to be entitled  
 2 An act relating to covenants and restrictions;  
 3 creating s. 712.001, F.S.; providing a short title;  
 4 amending s. 712.01, F.S.; defining and redefining  
 5 terms; amending s. 712.05, F.S.; revising the notice  
 6 filing requirements for a person claiming an interest  
 7 in land and other rights; authorizing a property  
 8 owners' association to preserve and protect certain  
 9 covenants or restrictions from extinguishment, subject  
 10 to specified requirements; providing that a failure in  
 11 indexing does not affect the validity of the notice;  
 12 extending the length of time certain covenants or  
 13 restrictions are preserved; deleting a provision  
 14 requiring a two-thirds vote by members of an  
 15 incorporated homeowners' association to file certain  
 16 notices; providing that a property owners' association  
 17 or clerk of the circuit court is not required to  
 18 provide certain additional notice for a specified  
 19 notice that is filed; conforming provisions to changes  
 20 made by the act; amending s. 712.06, F.S.; exempting a  
 21 specified summary notice and amendment from certain  
 22 notice content requirements; revising the contents  
 23 required to be specified by certain notices;  
 24 conforming provisions to changes made by the act;  
 25 amending s. 712.11, F.S.; conforming provisions to  
 26 changes made by the act; creating s. 712.12, F.S.;  
 27 defining terms; authorizing the parcel owners of a  
 28 community not subject to a homeowners' association to  
 29 use specified procedures to revive certain covenants

Page 1 of 24

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

28-00026A-18

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30 or restrictions, subject to certain exceptions and  
 31 requirements; authorizing a parcel owner to commence  
 32 an action by a specified date under certain  
 33 circumstances for a judicial determination that the  
 34 covenants or restrictions did not govern that parcel  
 35 as of a specified date and that any revitalization of  
 36 such covenants or restrictions as to that parcel would  
 37 unconstitutionally deprive the parcel owner of rights  
 38 or property; providing applicability; amending s.  
 39 720.303, F.S.; requiring a board to take up certain  
 40 provisions relating to notice filings at the first  
 41 board meeting; creating s. 720.3032, F.S.; requiring  
 42 any property owners' association desiring to preserve  
 43 covenants from potential termination after a specified  
 44 period by certain operation to record in the official  
 45 records of each county in which the community is  
 46 located a notice subject to certain requirements;  
 47 providing a document form for recording by an  
 48 association to preserve certain covenants or  
 49 restrictions; requiring a copy of the filed notice to  
 50 be sent to all members; requiring the original signed  
 51 notice to be recorded with the clerk of the circuit  
 52 court or other recorder; amending ss. 702.09 and  
 53 702.10, F.S.; conforming provisions to changes made by  
 54 the act; amending s. 712.095, F.S.; conforming a  
 55 cross-reference; amending ss. 720.403, 720.404,  
 56 720.405, and 720.407, F.S.; conforming provisions to  
 57 changes made by the act; providing an effective date.  
 58

Page 2 of 24

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

Section 1. Section 712.001, Florida Statutes, is created to read:

712.001 Short title.—This chapter may be cited as the “Marketable Record Title Act.”

Section 2. Section 712.01, Florida Statutes, is reordered and amended to read:

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

(1) “Community covenant or restriction” means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which:

(a) Subjects the parcel to any use restriction that may be enforced by a property owners’ association; or

(b) Authorizes a property owners’ association to impose a charge or assessment against the parcel or the parcel owner.

(4)(1) The term “Person” includes the as used herein denotes singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes and including any property owners’ homeowners’ association.

(6)(2) “Root of title” means any title transaction purporting to create or transfer the estate claimed by any person and which is the last title transaction to have been recorded at least 30 years before prior to the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

(7)(3) “Title transaction” means any recorded instrument or

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court proceeding ~~that which~~ affects title to any estate or interest in land and ~~that which~~ describes the land sufficiently to identify its location and boundaries.

(5)(4) “Property owners’ association” ~~The term “homeowners’ association”~~ means a homeowners’ association as defined in s. 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction use restrictions that is are imposed on the parcels.

(3)(5) The term “Parcel” means any real property that which is used for residential purposes that is subject to exclusive ownership and which is subject to any covenant or restriction of a property owners’ homeowners’ association.

(2)(6) The term “Covenant or restriction” means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which subjects the parcel to any use or other restriction or obligation which may be enforced by a homeowners’ association or which authorizes a homeowners’ association to impose a charge or assessment against the parcel or the owner of the parcel or which may be enforced by the Florida Department of Environmental Protection pursuant to chapter 376 or chapter 403.

Section 3. Section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A person claiming an interest in land or other right

28-00026A-18

2018266

subject to extinguishment under this chapter ~~a homeowners' association desiring to preserve a covenant or restriction~~ may preserve and protect such interest or right ~~the same~~ from extinguishment by the operation of this chapter ~~act~~ by filing for record, at any time during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with s. 712.06 ~~this chapter~~.

(2) A property owners' association may preserve and protect a community covenant or restriction from extinguishment by the operation of this chapter by filing for record, at any time during the 30-year period immediately following the effective date of the root of title:

(a) A written notice in accordance with s. 712.06; or

(b) A summary notice in substantial form and content as required under s. 720.3032(2); or an amendment to a covenant or restriction that is indexed under the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved. Failure of a summary notice or amendment to be indexed to the current owners of the affected property does not affect the validity of the notice or vitiate the effect of the filing of such notice.

(3) A ~~such~~ notice under subsection (1) or subsection (2) preserves an interest in land or other ~~such claim of right~~ subject to extinguishment under this chapter, or a ~~such~~ covenant or restriction or portion of such covenant or restriction, for not less than ~~up to~~ 30 years after filing the notice unless the notice is filed again as required in this chapter. A person's disability or lack of knowledge of any kind may not delay the commencement of or suspend the running of the 30-year period.

28-00026A-18

2018266

Such notice may be filed for record by the claimant or by any other person acting on behalf of a claimant who is:

(a) Under a disability;

(b) Unable to assert a claim on his or her behalf; or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

~~Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least 7 days before such meeting. The property owners' homeowners' association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3) for a notice filed under subsection (2). The preceding sentence is intended to clarify existing law.~~

(4)(2) It ~~is~~ shall not be necessary for the owner of the marketable record title, as described in s. 712.02 herein defined, to file a notice to protect his or her marketable record title.

Section 4. Subsections (1) and (3) of section 712.06, Florida Statutes, are amended to read:

712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice referred to in s. 712.05,

28-00026A-18

2018266\_\_

other than the summary notice and the amendment referred to in s. 712.05(2)(b), must ~~shall~~ contain:

(a) The name or description and mailing address of the claimant or the property owners' homeowners' association desiring to preserve any covenant or restriction ~~and the name and particular post office address of the person filing the claim or the homeowners' association.~~

(b) The name and mailing post office address of an owner, or the name and mailing post office address of the person in whose name the said property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for purpose of such notice, shall be deemed to be an owner; ~~provided,~~ however, if a property owners' homeowners' association is filing the notice, ~~then~~ the requirements of this paragraph may be satisfied by attaching to and recording with the notice an affidavit executed by the appropriate member of the board of directors of the property owners' homeowners' association affirming that the board of directors of the property owners' homeowners' association caused a statement in substantially the following form to be mailed or hand delivered to the members of that property owners' homeowners' association:

#### STATEMENT OF MARKETABLE TITLE ACTION

The [name of property owners' homeowners' association] (the "Association") has taken action to ensure that the [name of declaration, covenant, or restriction], recorded in Official Records Book . . . ., Page . . . ., of the public records of . . . . County, Florida, as may be amended from time to time, currently

Page 7 of 24

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28-00026A-18

2018266\_\_

burdening the property of each and every member of the Association, retains its status ~~as the source of marketable title with regard to the affected real property the transfer of a member's residence.~~ To this end, the Association shall cause the notice required by chapter 712, Florida Statutes, to be recorded in the public records of . . . . County, Florida. Copies of this notice and its attachments are available through the Association pursuant to the Association's governing documents regarding official records of the Association.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument or a covenant or a restriction, ~~then~~ the description in such notice may be the same as that contained in such recorded instrument or covenant or restriction, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description, and extent of such claim or other right subject to extinguishment under this chapter or, in the case of a covenant or restriction, a copy of the covenant or restriction or a reference to the book and page or instrument number in which the same is recorded, except that it ~~is shall~~ not be necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim or other right subject to extinguishment under this chapter is based upon an instrument of record or a recorded covenant or restriction, such instrument of record or recorded covenant or restriction shall be deemed sufficiently described to identify the same if the notice includes a

Page 8 of 24

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28-00026A-18

2018266

reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ...., mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...

of .... County, Florida,

By...(Deputy clerk)...

Page 9 of 24

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28-00026A-18

2018266

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

Section 5. Section 712.11, Florida Statutes, is amended to read:

712.11 Covenant revitalization.—A property owners' ~~homeowners'~~ association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 6. Section 712.12, Florida Statutes, is created to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

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

(a) "Community" means the real property that is subject to a covenant or restriction that is recorded in the county where the property is located.

(b) "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction

Page 10 of 24

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28-00026A-18

2018266\_\_

that may be enforced by a parcel owner.

(c) "Parcel" means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.

(d) "Parcel owner" means the record owner of legal title to a parcel.

(2) The parcel owners of a community not subject to a homeowners' association may use the procedures set forth in ss. 720.403-720.407 to revive covenants or restrictions that have lapsed under the terms of this chapter, except:

(a) A reference to a homeowners' association or articles of incorporation or bylaws of a homeowners' association under ss. 720.403-720.407 is not required to revive the covenants or restrictions.

(b) The approval required under s. 720.405(6) must be in writing, and not at a meeting.

(c) The requirements under s. 720.407(2) may be satisfied by having the organizing committee execute the revived covenants or restrictions in the name of the community.

(d) The indexing requirements under s. 720.407(3) may be satisfied by indexing the community name in the covenants or restrictions as the grantee and the parcel owners as the grantors.

(3) With respect to any parcel that has ceased to be governed by covenants or restrictions as of October 1, 2018, the parcel owner may commence an action by October 1, 2019, for a judicial determination that the covenants or restrictions did not govern that parcel as of October 1, 2018, and that any

28-00026A-18

2018266\_\_

revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property.

(4) Revived covenants or restrictions that are implemented pursuant to this section do not apply to or affect the rights of the parcel owner which are recognized by any court order or judgment in any action commenced by October 1, 2019, and any such rights so recognized may not be subsequently altered by revived covenants or restrictions implemented under this section without the consent of the affected parcel owner.

Section 7. Paragraph (e) is added to subsection (2) of section 720.303, Florida Statutes, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(e) At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.

Section 8. Section 720.3032, Florida Statutes, is created to read:

720.3032 Notice of association information; preservation from Marketable Record Title Act.—

(1) Any property owners' association desiring to preserve

28-00026A-18 2018266\_\_

349 covenants from potential termination after 30 years by operation  
 350 of chapter 712 may record in the official records of each county  
 351 in which the community is located a notice specifying:  
 352 (a) The legal name of the association.  
 353 (b) The mailing and physical addresses of the association.  
 354 (c) The names of the affected subdivision plats and  
 355 condominiums or, if not applicable, the common name of the  
 356 community.  
 357 (d) The name, address, and telephone number for the current  
 358 community association management company or community  
 359 association manager, if any.  
 360 (e) Indication as to whether the association desires to  
 361 preserve the covenants or restrictions affecting the community  
 362 or association from extinguishment under the Marketable Record  
 363 Title Act, chapter 712.  
 364 (f) A listing by name and recording information of those  
 365 covenants or restrictions affecting the community which the  
 366 association desires to be preserved from extinguishment.  
 367 (g) The legal description of the community affected by the  
 368 covenants or restrictions, which may be satisfied by a reference  
 369 to a recorded plat.  
 370 (h) The signature of a duly authorized officer of the  
 371 association, acknowledged in the same manner as deeds are  
 372 acknowledged for record.  
 373 (2) Recording a document in substantially the following  
 374 form satisfies the notice obligation and constitutes a summary  
 375 notice as specified in s. 712.05(2)(b) sufficient to preserve  
 376 and protect the referenced covenants and restrictions from  
 377 extinguishment under the Marketable Record Title Act, chapter

28-00026A-18 2018266\_\_

378 712.  
 379  
 380 Notice of ...(name of association)... under s. 720.3032, Florida  
 381 Statutes, and notice to preserve and protect covenants and  
 382 restrictions from extinguishment under the Marketable Record  
 383 Title Act, chapter 712, Florida Statutes.  
 384  
 385 Instructions to recorder: Please index both the legal name  
 386 of the association and the names shown in item 3.  
 387 1. Legal name of association: ....  
 388 2. Mailing and physical addresses of association: ....  
 389 3. Names of the subdivision plats, or, if none, common name  
 390 of community: ....  
 391 4. Name, address, and telephone number for management  
 392 company, if any: .....  
 393 5. This notice does .... does not .... constitute a notice  
 394 to preserve and protect covenants or restrictions from  
 395 extinguishment under the Marketable Record Title Act.  
 396 6. The following covenants or restrictions affecting the  
 397 community which the association desires to be preserved from  
 398 extinguishment:  
 399 ...(Name of instrument)...  
 400 ...(Official Records Book where recorded & page)...  
 401 ...(List of instruments)...  
 402 ...(List of recording information)...  
 403 7. The legal description of the community affected by the  
 404 listed covenants or restrictions is: ...(Legal description,  
 405 which may be satisfied by reference to a recorded plat)...  
 406 This notice is filed on behalf of ...(Name of

28-00026A-18

2018266\_\_

association)... as of ...(Date)....

...(Name of association)...

By: ....

...(Name of individual officer)...

...(Title of officer)...

...(Notary acknowledgment)...

(3) A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

(4) The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Section 9. Section 702.09, Florida Statutes, is amended to read:

702.09 Definitions.—For the purposes of ss. 702.07 and 702.08, the words “decree of foreclosure” shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word “mortgage” shall mean any written instrument securing the payment of money or advances and includes liens to secure payment of assessments arising under chapters 718 and 719 and liens created pursuant to the recorded covenants of a property owners’ ~~homeowners’~~ association as defined in s. 712.01; the word “debt” shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words “foreclosure proceedings” shall embrace every action in the

Page 15 of 24

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28-00026A-18

2018266\_\_

circuit or county courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word “property” shall mean and include both real and personal property.

Section 10. Subsection (1) of section 702.10, Florida Statutes, is amended to read:

702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.—

(1) A lienholder may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term “lienholder” includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or property owners’ ~~homeowners’~~ association, may file a lien against the real property subject to foreclosure. Upon filing, the court shall immediately review the request and the court file in chambers and without a hearing. If, upon examination of the court file, the court finds that the complaint is verified, complies with s. 702.015, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing to show cause. The date for the hearing may not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. When service is obtained by publication, the date for the hearing may not be set sooner than

Page 16 of 24

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28-00026A-18

2018266\_\_

30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint must be made upon the defendant.

3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers before the hearing to show cause that raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute cause for the court not to enter final judgment.

4. State that a defendant has the right to file affidavits or other papers before the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.

5. State that, if a defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing time will be used to hear and consider whether the defendant's motion, answer, affidavits, other papers, and other evidence and argument as may be presented by the defendant or the defendant's attorney raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure. The order shall also state that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

6. State that, if a defendant fails to appear at the hearing to show cause or fails to file defenses by a motion or by a verified or sworn answer or files an answer not contesting the foreclosure, such defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a

28-00026A-18

2018266\_\_

default against such defendant and, if appropriate, a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

7. State that if the mortgage provides for reasonable attorney fees and the requested attorney fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable.

8. Attach the form of the proposed final judgment of foreclosure which the movant requests the court to enter at the hearing on the order to show cause.

9. Require the party seeking final judgment to serve a copy of the order to show cause on the other parties in the following manner:

a. If a party has been served pursuant to chapter 48 with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant has not been served pursuant to chapter 48 with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the party in the same manner as provided by law for original process.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. This subsection does not preclude the entry of a deficiency judgment where otherwise allowed by law. The Legislature intends that this alternative procedure may run

28-00026A-18

2018266\_\_

simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. The defendant's failure to file defenses by a motion or by a sworn or verified answer, affidavits, or other papers or to appear personally or by way of an attorney at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard. If a defendant files defenses by a motion, a verified answer, affidavits, or other papers or presents evidence at or before the hearing which raise a genuine issue of material fact which would preclude entry of summary judgment or otherwise constitute a legal defense to foreclosure, such action constitutes cause and precludes the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a final judgment of foreclosure has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed on the note or mortgage at the time of filing, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

(d) If the court finds that all defendants have waived the right to be heard as provided in paragraph (b), the court shall promptly enter a final judgment of foreclosure without the need

28-00026A-18

2018266\_\_

for further hearing if the plaintiff has shown entitlement to a final judgment and upon the filing with the court of the original note, satisfaction of the conditions for establishment of a lost note, or upon a showing to the court that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that a defendant has not waived the right to be heard on the order to show cause, the court shall determine whether there is cause not to enter a final judgment of foreclosure. If the court finds that the defendant has not shown cause, the court shall promptly enter a judgment of foreclosure. If the time allotted for the hearing is insufficient, the court may announce at the hearing a date and time for the continued hearing. Only the parties who appear, individually or through an attorney, at the initial hearing must be notified of the date and time of the continued hearing.

Section 11. Section 712.095, Florida Statutes, is amended to read:

712.095 Notice required by July 1, 1983.—Any person whose interest in land is derived from an instrument or court proceeding recorded subsequent to the root of title, which instrument or proceeding did not contain a description of the land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose interest had not been extinguished prior to July 1, 1981, shall have until July 1, 1983, to file a notice in accordance with s. 712.06 to preserve the interest.

Section 12. Section 720.403, Florida Statutes, is amended to read:

720.403 Preservation of ~~residential~~ communities; revival of

28-00026A-18

2018266\_\_

581 declaration of covenants.-

582 (1) Consistent with required and optional elements of local  
 583 comprehensive plans and other applicable provisions of the  
 584 Community Planning Act, property owners homeowners are  
 585 encouraged to preserve existing residential and other  
 586 communities, promote available and affordable housing, protect  
 587 structural and aesthetic elements of their ~~residential~~  
 588 community, and, as applicable, maintain roads and streets,  
 589 easements, water and sewer systems, utilities, drainage  
 590 improvements, conservation and open areas, recreational  
 591 amenities, and other infrastructure and common areas that serve  
 592 and support the ~~residential~~ community by the revival of a  
 593 previous declaration of covenants and other governing documents  
 594 that may have ceased to govern some or all parcels in the  
 595 community.

596 (2) In order to preserve a ~~residential~~ community and the  
 597 associated infrastructure and common areas for the purposes  
 598 described in this section, the parcel owners in a community that  
 599 was previously subject to a declaration of covenants that has  
 600 ceased to govern one or more parcels in the community may revive  
 601 the declaration and the ~~homeowners'~~ association for the  
 602 community upon approval by the parcel owners to be governed  
 603 thereby as provided in this act, and upon approval of the  
 604 declaration and the other governing documents for the  
 605 association by the Department of Economic Opportunity in a  
 606 manner consistent with this act.

607 (3) Part III of this chapter is intended to provide  
 608 mechanisms for the revitalization of covenants or restrictions  
 609 for all types of communities and property associations and is

28-00026A-18

2018266\_\_

610 not limited to residential communities.

611 Section 13. Section 720.404, Florida Statutes, is amended  
 612 to read:

613 720.404 Eligible ~~residential~~ communities; requirements for  
 614 revival of declaration.-Parcel owners in a community are  
 615 eligible to seek approval from the Department of Economic  
 616 Opportunity to revive a declaration of covenants under this act  
 617 if all of the following requirements are met:

618 (1) All parcels to be governed by the revived declaration  
 619 must have been once governed by a previous declaration that has  
 620 ceased to govern some or all of the parcels in the community;

621 (2) The revived declaration must be approved in the manner  
 622 provided in s. 720.405(6); and

623 (3) The revived declaration may not contain covenants that  
 624 are more restrictive on the parcel owners than the covenants  
 625 contained in the previous declaration, except that the  
 626 declaration may:

627 (a) Have an effective term of longer duration than the term  
 628 of the previous declaration;

629 (b) Omit restrictions contained in the previous  
 630 declaration;

631 (c) Govern fewer than all of the parcels governed by the  
 632 previous declaration;

633 (d) Provide for amendments to the declaration and other  
 634 governing documents; and

635 (e) Contain provisions required by this chapter for new  
 636 declarations that were not contained in the previous  
 637 declaration.

638 Section 14. Subsections (1), (3), (5), and (6) of section

28-00026A-18

2018266

720.405, Florida Statutes, are amended to read:

720.405 Organizing committee; parcel owner approval.—

(1) The proposal to revive a declaration of covenants and ~~an a homeowners'~~ association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived ~~homeowners'~~ association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(5) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the ~~homeowners'~~ association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing

28-00026A-18

2018266

documents of the ~~homeowners'~~ association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in the state.

Section 15. Subsection (3) of section 720.407, Florida Statutes, is amended to read:

720.407 Recording; notice of recording; applicability and effective date.—

(3) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the ~~homeowners'~~ association, the letter of approval by the department, and the legal description of each affected parcel of property. For purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction and the parcel owners named in the revived declaration are deemed to be and shall be indexed as the grantors in the title transaction.

Section 16. This act shall take effect October 1, 2018.

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 582

INTRODUCER: Senator Rader

SUBJECT: Write-in Candidate Qualifying

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	<b>Favorable</b>
2.	Cochran	Yeatman	CA	<b>Favorable</b>
3.	Fox	Phelps	RC	<b>Pre-meeting</b>

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**I. Summary:**

SB 582 codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*, by repealing the statute that requires a write-in candidate to reside in the district that he or she seeks to represent *at the time of qualifying*.

**II. Present Situation:**

In November 1998, Florida voters passed Proposition 11,<sup>1</sup> a comprehensive elections amendment to the Florida Constitution proposed by the Constitutional Revision Commission (CRC). Part of Proposition 11 amended Article VI of the Constitution to provide for a “universal” or “open” primary — a contest in which all eligible voters could cast a ballot regardless of party affiliation — wherein the winner of the primary election would face no general election opposition.<sup>2</sup>

In practice, this situation arises when the only candidates qualifying for an office have the same major party affiliation.

The general election ballot contains a blank line for qualified write-in candidates.<sup>3</sup> Nonetheless, the 1998 CRC debates and discussions on Proposition 11 never addressed the issue of what impact the presence of a write-in candidate should have in a field otherwise composed entirely of candidates from one of the major parties.

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<sup>1</sup> The amendment passed with 64.1% favorable vote, almost 2-to-1. Florida Division of Elections web site, <https://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/3/1998&RACE=A11&PARTY=&DIST=&GRP=&DATAMODE=> (“Election Results” tab, General Election 1998, Constitutional Amendments) (last visited Feb. 15, 2018).

<sup>2</sup> Art. VI, s. 5(b), FLA. CONST.

<sup>3</sup> Section 101.151(2)(b), F.S.

In 2000, the Florida Division of Elections published an opinion stating that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field “closed” the primary to all voters other than those registered with that particular party.<sup>4</sup> (Multiple district and appellate courts have since confirmed the Division’s legal position.)<sup>5</sup>

In 2007, faced with write-ins having closed numerous legislative primaries since 2000, the Legislature enacted s. 99.0615, F.S. — which required write-in candidates to reside in the district they sought to represent *at the time of qualifying*.<sup>6</sup>

In February 2016, the Florida Supreme Court struck down the statute as unconstitutional. In *Brinkmann v. Francois*,<sup>7</sup> a Broward County voter challenged the qualifying status of a write-in candidate, Tyron Francois, for Broward County Commissioner, District 2. Francois did not live in the District at the time of qualifying as required by s. 99.0615, F.S., but he did say that he intended to move there if he won the general election. All of the other candidates that qualified to run for the seat were Democrats. The *Brinkmann* court found that the statute was facially unconstitutional because the timing of its residency requirement (at the time of qualifying) for write-in candidates conflicted with the timing of the residency requirement for county commission candidates in the Constitution (at the time of election).<sup>8</sup>

As a result, beginning with the 2016 election cycle, any registered voter can now qualify to run as a write-in candidate in any contest in the state and close a primary where the only other qualified candidates are from the same party, *regardless of his or her physical residence*.

### III. Effect of Proposed Changes:

The bill codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*. It repeals the statute requiring write-in candidates to reside in the district they seek to represent *at the time of qualifying*.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>4</sup> DOE Opinion 2000-06 (May 11, 2000).

<sup>5</sup> *Lacasa v. Townsley*, 883 F.Supp2d 1231 (S.D. Fla 2012); see also, *Telli v. Snipes*, 98 So.3d 1284 (4th Fla DCA 2012) (write-in candidates constitute general election opposition under the constitutional open primary provision).

<sup>6</sup> Ch. 2007-30, s. 56, LAWS OF FLA.

<sup>7</sup> 184 So. 3d 504 (Fla. 2016).

<sup>8</sup> Fla Const., Art. VIII, §1(e); see also, *Francois v. Brinkmann*, 147 So. 3d 613, 615 (Fla 4<sup>th</sup> DCA 2014), *affd.*, *Francois v. Brinkmann*, 184 S.3d 504 (Fla. 2016), citing, *State v. Grassi*, 532 So.2d 1055, 1056 (Fla. 1988) (constitutional provision regarding the residency requirement for county commissioners requires residency at the time of election).

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 repeals section 99.0615 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Rader

29-00350-18

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A bill to be entitled

An act relating to write-in candidate qualifying;  
repealing s. 99.0615, F.S., relating to write-in  
candidate residency requirements; repealing a  
requirement that all write-in candidates must reside  
within the district represented by the office sought  
at the time of qualification; providing an effective  
date.

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

Section 1. Section 99.0615, Florida Statutes, is repealed.

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



**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 662

INTRODUCER: Commerce and Tourism Committee and Senators Stargel and Taddeo

SUBJECT: Protection for Vulnerable Investors

DATE: February 22, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	<b>Favorable</b>
2. Little	McKay	CM	<b>Fav/CS</b>
3. Johnson	Phelps	RC	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 662 authorizes a dealer, investment adviser, or associated person to place a delay on a financial transaction or disbursement when there is a reasonable belief that exploitation of a vulnerable investor has occurred, is occurring, or has been attempted. Such delay expires after 15 business days. However, a dealer, investment adviser, or associated person may extend the delay for up to 10 additional business days if the facts and circumstances continue to support a reasonable belief of exploitation. A court of competent jurisdiction is also authorized to extend or shorten the length of the delay at any time.

Under the bill, dealers and investment advisers must:

- Report suspected abuse, neglect, or exploitation of vulnerable adults to the Department of Children and Families (DCF) through the Florida Abuse Hotline;
- Report specified information, on a quarterly basis, to the Office of Financial Regulation (OFR) regarding any delays placed and the outcome of such delays according;
- Provide written notice to all parties authorized to transact business on and trusted contacts on the account associated with a delay;
- Make all records relating to a delay or report available to the OFR upon request; and
- Develop and implement a training policy or program that educates associated persons on the recognition, reporting, and prevention of exploitation.

The bill also requires the OFR to annually report information related to delays placed by dealers and investment advisers.

## **II. Present Situation:**

### **Financial Exploitation of Seniors**

With the aging of the U.S. population, financial exploitation of seniors is a serious and growing problem. Senior financial abuse schemes are a \$2.9 billion industry.<sup>1</sup> Financial exploitation is a fast-growing form of abuse of seniors and adults with disabilities. Situations of financial exploitation commonly involve trusted persons in the life of the vulnerable adult. Recent research has found that elder financial exploitation is widespread and expensive, as noted:

- One in nine seniors reported being abused, neglected or exploited in the past 12 months; the rate of financial exploitation is extremely high, with 1 in 20 older adults indicating some form of perceived financial mistreatment occurring in the recent past.
- Elder abuse is vastly under-reported; only one in 44 cases of financial abuse is reported.
- Abused seniors are three times more likely to die and elder abuse victims are four times more likely to go into a nursing home.
- Ninety percent of abusers are family members or trusted others.
- Almost one in ten financial abuse victims will turn to Medicaid as a direct result of their own monies being stolen from them.
- Cognitive impairment and the need for help with activities of daily living make seniors more vulnerable to financial abuse.<sup>2</sup>

### **Adult Protective Services/Department of Children and Families**

The Adult Protective Services (APS) program, under the Department of Children and Families (DCF), is responsible for investigating allegations of abuse, neglect or exploitation, as provided in the Adult Protective Services Act.<sup>3</sup> Section 415.101, F.S., provides that the legislative intent of this act is to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations and to establish a program of protective services for all vulnerable adults in need of them. Further, it is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. In taking this action, the Legislature intends to place the fewest possible restrictions on personal liberty and the exercise of constitutional rights, consistent with due process and protection from abuse, neglect, and exploitation.

### ***Handling of Allegations of Abuse, Neglect, or Exploitation***

The Florida Abuse Hotline, within the DCF, screens allegations of adult abuse, neglect, and exploitation to determine whether the information meets the criteria of an abuse report. The DCF is required, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable adult, to initiate a protective investigation within 24 hours.<sup>4</sup> Section 415.102, F.S., defines a

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<sup>1</sup> National Conference of State Legislatures, *Financial Crimes against the Elderly*, available at <http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2016-legislation.aspx> (last visited Feb. 19, 2018).

<sup>2</sup> National Association of Adult Protective Services Association, *Elder Financial Exploitation*, available at <http://www.napsa-now.org/policy-advocacy/exploitation/> (last visited Feb. 19, 2018).

<sup>3</sup> Sections 415.101-415.113, F.S.

<sup>4</sup> Section 415.104(1), F.S.

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

For each report it receives, the APS must determine whether the person meets the definition of a vulnerable adult and, if so, whether:

- The person is in need of services;
- There is an indication of abuse, neglect, or exploitation; and
- Protective, treatment, or ameliorative services are necessary to safeguard and ensure the vulnerable adult’s wellbeing.<sup>5</sup>

If exploitation is determined to have occurred, the APS notifies the appropriate law enforcement agency and the state attorney’s office for a possible criminal investigation. The primary function of the APS is to safeguard the vulnerable adult<sup>6</sup> and law enforcement is responsible for criminal investigations. The APS may obtain a court order when a vulnerable adult lacks the capacity to consent or to refuse services in order to safeguard the vulnerable adult and their assets.

Currently, the APS cannot place a temporary hold on any financial transaction without a court order.<sup>7</sup>

### ***Mandatory Reporting and Immunity***

Section 415.1034, F.S., provides a mandatory requirement for any person to report to the central abuse hotline if they know, have suspicion, or have reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited. Section 415.106, F.S., provides that any person reporting or that participates in a judicial proceeding is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any civil or criminal liability that otherwise might be incurred or imposed.

### ***Access to Records***

Section 415.1045, F.S., provides a protective investigator with access to all relevant medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility, unless specifically prohibited by the vulnerable adult who has capacity to consent. The confidentiality of such documents does not constitute grounds for failure to:

- Report as required by s. 415.1034, F.S.;
- Cooperate with the department in its activities under ss. 415.101-415.113, F.S.;
- Give access to such records or documents; or
- Give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable adult.

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<sup>5</sup> Section 415.104(2), F.S.

<sup>6</sup> Department of Children and Families; Protecting Vulnerable Adults, available at <http://www.myflfamilies.com/service-programs/adult-protective-services/protecting-vulnerable-adults> (last visited Feb. 19, 2018).

<sup>7</sup> Department of Children and Families, *Analysis of SB 662* (Dec. 6, 2017) (on file with the Senate Banking and Insurance Committee).

If any person refuses to allow a law enforcement officer or the protective investigator to have access to relevant information, the DCF may petition the court for an order requiring the person to allow access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.<sup>8</sup>

### ***Release of Confidential Information***

In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation are confidential and exempt from public record provisions under s. 119.07(1), F.S. The records may not be disclosed, except as specifically authorized by ss. 415.101-415.113, F.S.,<sup>9</sup> which provides a few exceptions. Currently, the DCF may not share information concerning open cases or disposition of cases with any third parties other than law enforcement.<sup>10</sup>

Any person or organization, including the DCF, may petition the court to make public the records of the DCF pertaining to an investigation of alleged abuse, neglect, or exploitation of a vulnerable adult. The court determines whether good cause exists for public access by balancing the best interests of the vulnerable adult together with the privacy right of other persons identified in the reports against the public interest.<sup>11</sup>

### ***Criminal Penalties***

Section 415.111, F.S., provides that a person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, except as provided in ss. 415.101-415.113, F.S., commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

### **Federal Regulation of Securities**

The Securities and Exchange Commission (SEC), created by the federal Securities Act of 1934 ('34 Act), has broad authority over all aspects of the securities industry, including the power to register, regulate, and oversee broker-dealers, brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self-regulatory organizations (SROs).<sup>12</sup> The New York Stock Exchange, the NASDAQ Stock Market, the Chicago Board of Options, and the Financial Industry Regulatory Authority (FINRA) are forms of SROs.

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<sup>8</sup> Section 415.1045(5), F.S.

<sup>9</sup> Section 415.107, F.S.

<sup>10</sup> Department of Children and Families correspondence (Dec. 20, 2017) (on file with Senate Banking and Insurance Committee).

<sup>11</sup> Section 415.1071, F.S.

<sup>12</sup> 15 U.S.C. ss. 78c(4) and 78o; U.S. SECURITIES AND EXCHANGE COMMISSION, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm#II> (last visited Feb. 19, 2018).

Generally, any person acting as “broker” or “dealer,” as defined in the ’34 Act, must be registered with the SEC and must join an SRO, like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange. The ’34 Act broadly defined “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,” which the SEC has interpreted to persons involved in any of the key aspects of a securities transaction, such as solicitation, negotiation, and execution.<sup>13</sup> A “dealer” is defined as “any person engaged in the business of buying and selling securities... for such person’s own account through a broker or otherwise.”<sup>14</sup> Certain entities in the securities industry are referred to as “broker-dealers” because the institution is a “broker” when executing trades on behalf of a customer, but is a “dealer” when executing trades for its own account. In addition to being registered with the SEC, broker-dealers must comply with state registration requirements.

### ***FINRA Rules***

In April 2015, the FINRA launched its Securities Helpline for Seniors, which has highlighted some of the issues firms are facing relating to senior investors, including how firms respond when they suspect a senior customer is being exploited. Two years later, the helpline had fielded more than 8,600 calls and recovered over \$4.3 million in voluntary reimbursements from firms to customers.<sup>15</sup> In response to this issue, the FINRA proposed rules addressing financial exploitation of specified adults.

In February 2017, the SEC approved the adoption of a new FINRA Rule 2165<sup>16</sup> (Financial Exploitation of Specified Adults) to allow members to place temporary holds on disbursements of funds or securities from the accounts of specified customers where there is a reasonable belief of financial exploitation of these customers. The SEC also adopted amendments to FINRA Rule 4512 (Customer Account Information) to require members to make reasonable efforts to obtain the name of and contact information for a trusted contact person (trusted contact) for a customer’s account.<sup>17</sup> Rule 2165 and the amendments to Rule 4512 became effective February 5, 2018. Most broker-dealers in the United States are members of FINRA, and therefore subject to FINRA rules and examinations.

### **Key Provisions of the Rules**<sup>18</sup>

The rules provide protections for a specified adult, who is defined as a natural person age 65 or older, or a natural person age 18 or older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests. Rule 2165 provides a safe harbor for a member to place a temporary hold on a disbursement of funds

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<sup>13</sup> *Id.*

<sup>14</sup> 15 U.S.C. s. 78c(5).

<sup>15</sup> FINRA, *FINRA Receives SEC Approval on Rule Proposal Addressing Financial Exploitation of Seniors*, available at <http://www.finra.org/newsroom/2017/finra-receives-sec-approval-rule-proposal-addressing-financial-exploitation-seniors> (last visited Feb. 19, 2018).

<sup>16</sup> FINRA, [http://finra.complanet.com/en/display/display\\_main.html?rbid=2403&element\\_id=12784](http://finra.complanet.com/en/display/display_main.html?rbid=2403&element_id=12784) (last visited Feb. 19, 2018).

<sup>17</sup> See Securities Exchange Act Release No. 79964 (Feb. 3, 2017), 82 FR 10059 (Feb. 9, 2017) (Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of File No. SR-FINRA-2016-039).

<sup>18</sup> FINRA, *Frequently Asked Questions Regarding FINRA Rules Relating to Financial Exploitation of Seniors*, available at <http://www.finra.org/industry/frequently-asked-questions-regarding-finra-rules-relating-financial-exploitation-seniors> (last visited Feb. 19, 2018).

or securities from the account of a specified adult if the member reasonably believes that financial exploitation of the specified adult has occurred, is occurring, has been attempted or will be attempted. Rule 2165 does not apply to transactions in securities. For example, Rule 2165 would not apply to a customer's order to sell his shares of a stock. However, if a customer requested that the proceeds of a sale of shares of a stock be disbursed out of an account held at a member's business, then Rule 2165 could apply to the disbursement of the proceeds where the customer is a specified adult and there is reasonable belief of financial exploitation.

The FINRA has stated that, where a questionable disbursement involves less than all assets in an account, a member should not place a blanket hold on the entire account. Each disbursement should be analyzed separately. In addition, the FINRA noted that where a disbursement at issue involves all of the assets of the account (*e.g.*, a transfer request), the member must permit disbursements from the account where there is not a reasonable belief of financial exploitation regarding such disbursements (*e.g.*, regular bill payments). The FINRA notes that some members intend, for operational reasons, to place a temporary hold or restrictions on an entire account when they have a reasonable belief of financial exploitation regarding a disbursement or disbursements from the account, but also intend to permit legitimate disbursements from the account in these circumstances. The FINRA believes that placing a temporary hold or restrictions on an entire account but allowing legitimate disbursements from the account is consistent with Rule 2165 and members may proceed in such a manner as long as they have procedures reasonably designed to permit legitimate disbursements. The FINRA emphasizes that a member may not avail itself of the Rule 2165 safe harbor if it blocks disbursements where there is not a reasonable belief of financial exploitation regarding such disbursements.

### **Florida Regulation of Securities**

In addition to federal securities laws, "Blue Sky Laws" are state laws that protect the investing public through registration requirements for both broker-dealers and securities offerings, merit review of offerings, and various investor remedies for fraudulent sales practices and activities.<sup>19</sup>

In Florida, the Securities and Investor Protection Act, ch. 517, F.S. (act), regulates securities issued, offered, and sold in the state of Florida. The Florida Office of Financial Regulation (OFR) regulates and registers the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms in accordance with the act. There are 2,607 dealers, 5,984 investment advisers, 10,539 branches, and 319,941 stockbrokers registered in Florida.<sup>20</sup>

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<sup>19</sup> U.S. Securities and Exchange Commission, *Blue Sky Laws*, <http://www.sec.gov/answers/bluesky.htm> (last visited Feb. 19, 2018).

<sup>20</sup> Office of Financial Regulation, *Fast Facts*, available at <https://www.flofr.com/StaticPages/documents/FastFacts.pdf> (Dec. 2017) (last visited Feb. 19, 2018).

The act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state:<sup>21</sup>

- “Dealers,” which include:
  - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
  - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities, which are issued or are proposed to be issued by the issuer.<sup>22</sup>
- “Investment advisers,” which:
  - Include any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.<sup>23</sup>
  - Do not include a “federal covered adviser.”<sup>24</sup>
- “Associated persons,” which, with respect to a federal covered adviser, includes any person who is an investment adviser representative and who has a place of business in this state, and with respect to a dealer or investment adviser, includes any of the following:
  - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
  - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
  - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in s. 517.021, F.S.<sup>25</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 415.1034, F.S., to require dealers, investment advisers, and associated persons to report suspected abuse, neglect, or exploitation of vulnerable adults to the DCF through the Florida Abuse Hotline.

**Section 2** creates s. 517.34, F.S., relating to the protection of specified adults.

<sup>21</sup> Section 517.12(1), F.S.

<sup>22</sup> Section 517.021(6)(a), F.S. The term “dealer”, as defined under Florida law, encompasses the definitions of “broker” and “dealer” under federal law.

<sup>23</sup> Section 517.021(14)(a), F.S.

<sup>24</sup> Section 517.021(9) and (14)(b)9., F.S. A federal covered adviser must be registered under federal law and must provide a notice filing to the OFR. ss. 517.021 and 517.1201, F.S.

<sup>25</sup> Section 517.021(2), F.S.

### ***Definitions***

The bill defines the term “specified adult” as “a natural person who is 65 years of age or older or a vulnerable adult as defined in s. 415.102, F.S.”<sup>26</sup> The bill also creates definitions for the terms “exploitation,” “law enforcement agency,” and “trusted contact.”

### ***Delays***

A dealer, investment adviser, or associated person may place a delay on a transaction or disbursement related to an account of a specified adult if the dealer, investment adviser, or associated person reasonably believes that the specified adult is being or has been financially exploited. The dealer, investment adviser, or associated person (reporting party) is required to notify the DCF of the suspected exploitation through the agency’s abuse hotline.

Within 3 days of placing a delay, the reporting party must provide written notification to all parties authorized to transact business on the account and any trusted contact on the account, unless the parties are believed to be involved in the suspected exploitation. At minimum, this notification must include a description of the transaction or disbursement, a statement that a delay was placed, the basis for the reasonable belief of exploitation, and an explanation of the delay process.

A delay expires 15 business days after the date the delay is placed. However, the dealer, investment adviser, or associated person may extend the delay up to an additional 10 business days if a review of the available facts and circumstances continue to support the reasonable belief of exploitation. The length of the delay may also be shortened or extended by a court of competent jurisdiction.

### ***Reporting Requirements and Access to Records***

A dealer, investment adviser, or associated person must provide notification quarterly to the OFR regarding any delays placed and the outcome of such delays. Upon request, a dealer or investment adviser must also make additional information related to delays or reports available to the OFR.

The quarterly notification provided to the OFR should not contain information identifying the specified adult or other involved parties. The notification must include:

- The name of the firm and person placing the delay on the transaction or disbursement;
- A general description of the reason for placing the delay; and
- The length of the delay and whether the transaction or disbursement ultimately took place.

By October 1 of each year, the OFR is required to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must summarize the information from the quarterly reports of dealers, investment advisers, and associated persons during the previous fiscal year. The bill provides that this reporting requirement will expire on October 1, 2023.

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<sup>26</sup> Section 415.102, F.S., defines a “vulnerable adult” as “a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.”



Under the bill, a dealer, investment adviser, or associated person may provide access to, or copies of, any records that are relevant to the suspected exploitation to the DCF or a law enforcement agency. Notwithstanding any law to the contrary, the DCF may inform the reporting party on the status of its investigation or any final disposition.

### ***Immunity***

Absent clear and convincing evidence of a lack of reasonable belief, the bill provides civil and administrative immunity to a dealer, investment adviser, or associated person who acts in accordance with the provisions of the bill. The bill does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules. The bill does not limit the right of a dealer, investment adviser, or associated person to refuse or place a delay on a transaction under other laws or rules or under a customer agreement.

### ***Training***

Dealers and investment advisers who place delays according to the provisions of the bill, must develop and implement a training process to educate associated persons on the recognition, reporting, and prevention of exploitation. Associated persons are required to receive a minimum of 1 hour of training and dealers and investment advisers are required to maintain a written record of compliance with the training requirements.

Under the bill, associated persons must be initially trained by July 1, 2019, and newly hired associated persons must be trained within 3 months after beginning employment. The bill requires all associated persons to be subsequently trained every 2 years.

**Section 3** provides the bill takes effect on 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:**

Indeterminate. However, the bill will provide additional tools for dealers, investment advisers, and associated persons to protect their senior and other specified adult clients from alleged financial exploitation in a more effective and expedient manner.

**C. Government Sector Impact:**

**Office of Financial Regulation.** To implement the bill, the OFR expects to incur costs of approximately \$177,500 to update its existing technology system and to hire one FTE as a Financial Specialist.

**Department of Children and Families.** The DCF does not anticipate incurring additional costs associated with handling reports of suspected abuse, neglect, or exploitation to the Florida Abuse Hotline.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 415.1034 of the Florida Statutes.  
This bill creates section 517.34 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 Commerce and Tourism on February 20, 2018:**

The committee substitute:

- Provides definitions for the terms “exploitation” and “trusted contact” and removes the definition for the term “records;”
- Establishes that dealers, investment advisers, and associated persons have the authority to delay a transaction under a reasonable belief of exploitation, rather than a good faith belief;
- Requires dealers and investment advisers to:
  - Report suspected abuse, neglect, or exploitation of vulnerable adults to the DCF’s central abuse hotline;
  - Report specified information, on a quarterly basis, to the OFR regarding any delays placed and the outcome of such delays according;
  - Make all records relating to a delay or report available to the OFR upon request;
  - Provide written notice to all parties authorized to transact business an account associated with a delay; and

- Develop and implement a training process to educate associated persons on the recognition, reporting, and prevention of exploitation.
- Removes the provision allowing the DCF or other agencies of competent jurisdiction to shorten or extend the length of a delay on a transaction;
- Requires the OFR to annually report information related to delays placed by dealers and investment advisers to the Legislature; and
- Provides civil and administrative immunity for individuals who place a delay pursuant to the provisions in the bill, unless a lack of reasonable belief is shown by clear and convincing evidence.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senators Stargel and Taddeo

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1 A bill to be entitled  
 2 An act relating to protection for vulnerable  
 3 investors; amending s. 415.1034, F.S.; requiring  
 4 securities dealers, investment advisers, and  
 5 associated persons to immediately report knowledge or  
 6 suspicion of abuse, neglect, or exploitation of  
 7 vulnerable adults to the Department of Children and  
 8 Families' central abuse hotline; creating s. 517.34,  
 9 F.S.; defining terms; authorizing dealers, investment  
 10 advisers, and associated persons to delay certain  
 11 transactions or disbursements if such persons  
 12 reasonably believe certain exploitation of a specified  
 13 adult has occurred, is occurring, has been attempted,  
 14 or will be attempted; providing the basis for such  
 15 reasonable belief; requiring a dealer or investment  
 16 adviser to provide the Office of Financial Regulation  
 17 a specified notice at certain timeframes; requiring  
 18 the Financial Services Commission to adopt a form by  
 19 rule; requiring the office to submit an annual report  
 20 to the Governor and Legislature; providing for  
 21 expiration; specifying notification requirements for  
 22 dealers, investment advisers, and associated persons  
 23 placing delays on transactions or disbursements;  
 24 specifying the expiration of such delays; providing  
 25 that such delays may be extended for a certain  
 26 timeframe under certain circumstances; providing that  
 27 such delays may be shortened or extended by an agency  
 28 or court of competent jurisdiction; providing that  
 29 delays may be terminated by dealers, investment

Page 1 of 9

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577-03439-18

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30 advisers, or associated persons under certain  
 31 circumstances; specifying when certain records may or  
 32 must be shared with certain agencies; authorizing the  
 33 Department of Children and Families to inform  
 34 reporting parties on the status of an investigation;  
 35 providing immunity from civil and administrative  
 36 liability to dealers, investment advisers, and  
 37 associated persons for certain actions based on a  
 38 reasonable belief; specifying requirements for dealers  
 39 and investment advisers in training their associated  
 40 persons; providing construction; providing an  
 41 effective date.

42  
 43 Be It Enacted by the Legislature of the State of Florida:

44  
 45 Section 1. Paragraph (a) of subsection (1) of section  
 46 415.1034, Florida Statutes, is amended to read:  
 47 415.1034 Mandatory reporting of abuse, neglect, or  
 48 exploitation of vulnerable adults; mandatory reports of death.—  
 49 (1) MANDATORY REPORTING.—  
 50 (a) Any person, including, but not limited to, any:  
 51 1. Physician, osteopathic physician, medical examiner,  
 52 chiropractic physician, nurse, paramedic, emergency medical  
 53 technician, or hospital personnel engaged in the admission,  
 54 examination, care, or treatment of vulnerable adults;  
 55 2. Health professional or mental health professional other  
 56 than one listed in subparagraph 1.;  
 57 3. Practitioner who relies solely on spiritual means for  
 58 healing;

Page 2 of 9

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577-03439-18

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4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;

5. State, county, or municipal criminal justice employee or law enforcement officer;

6. Employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;

7. Florida advocacy council or Disability Rights Florida member or a representative of the State Long-Term Care Ombudsman Program; ~~or~~

8. Bank, savings and loan, or credit union officer, trustee, or employee; or

9. Dealer, investment adviser, or associated person under chapter 517,

who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

Section 2. Section 517.34, Florida Statutes, is created to read:

517.34 Protection of specified adults.—

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

(a)1. "Exploitation" means:

a. With respect to a person who stands in a position of trust and confidence with a specified adult, who knowingly, by deception or intimidation, obtains or uses, or endeavors to

577-03439-18

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obtain or use, the specified adult's funds, assets, or property with the intent to temporarily or permanently deprive the specified adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the specified adult; or

b. With respect to a person who knows or should know that a specified adult lacks the capacity to consent, who obtains or uses, or endeavors to obtain or use, the specified adult's funds, assets, or property with the intent to temporarily or permanently deprive the specified adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the specified adult.

2. "Exploitation" may include, but is not limited to:

a. A breach of a fiduciary relationship, such as the misuse of a power of attorney or the abuse of guardianship duties resulting in the unauthorized appropriation, sale, or transfer of property;

b. An unauthorized taking of personal assets;

c. Misappropriation, misuse, or transfer of moneys belonging to a specified adult from a personal or joint account; or

d. Intentional or negligent failure to effectively use a specified adult's income and assets for the necessities required for that person's support and maintenance.

(b) "Law enforcement agency" means an agency or political subdivision of this state or of the United States whose primary responsibility is the prevention and detection of crime or the enforcement of the penal laws of this state or the United States and whose agents and officers are empowered by law to conduct

577-03439-18

2018662c1

criminal investigations or to make arrests.

(c) "Specified adult" means a natural person 65 years of age or older or a vulnerable adult as defined in s. 415.102.

(d) "Trusted contact" means a natural person 18 years of age or older whom the account owner has expressly identified in writing as a person who may be contacted about the account.

(2) A dealer, investment adviser, or associated person may delay a transaction on, or a disbursement of funds or securities from, an account of a specified adult or an account for which a specified adult is a beneficiary or beneficial owner if the dealer, investment adviser, or associated person reasonably believes that exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted in connection with the transaction or disbursement.

(a) The dealer's, investment adviser's, or associated person's reasonable belief may be based on the facts and circumstances observed in such dealer's, investment adviser's, or associated person's business relationship with the specified adult.

(b)1. A dealer or investment adviser must notify the office, on a quarterly basis and on a form adopted by commission rule, of every delay he or she places and the outcome of such delay. The notice may not directly or indirectly identify the specified adult or the parties to the transaction or disbursement. The notice must include:

a. The name of the firm and dealer, investment adviser, or associated person placing the delay on the transaction or disbursement.

b. A general description of the reason why the dealer,

577-03439-18

2018662c1

investment adviser, or associated person placed the delay on the transaction or disbursement.

c. The length of the delay on the transaction or disbursement and whether or not the transaction or disbursement ultimately took place.

2. On or before October 1 of each year, the office must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the information provided to the office by dealers, investment advisers, and associated persons under subparagraph 1. during the prior fiscal year. This subparagraph expires October 1, 2023.

(c)1. Within 3 business days after the date on which the delay was first placed, the dealer, investment adviser, or associated person must notify in writing, which may be provided electronically, all parties authorized to transact business on the account and any trusted contact on the account, using the contact information provided for the account, unless the dealer, investment adviser, or associated person reasonably believes that any such party engaged or is engaging in the suspected exploitation of the specified adult.

2. The notice provided pursuant to this paragraph must include, at a minimum, a description of the transaction or disbursement, a statement that a delay was placed on such transaction or disbursement pursuant to this section, the basis for the reasonable belief regarding exploitation of the specified adult, and an explanation of the delay process.

(3) A delay on a transaction or disbursement under subsection (2) expires 15 business days after the date on which

577-03439-18

2018662c1

the delay was first placed. However, a dealer, investment adviser, or associated person may extend the delay for up to 10 additional business days if its review of the available facts and circumstances continues to support its reasonable belief that exploitation of the specified adult has occurred, is occurring, has been attempted, or will be attempted. The length of the delay may be shortened or extended at any time by an agency or court of competent jurisdiction. This subsection does not prevent a dealer, investment adviser, or associated person from terminating a delay after communication with the specified adult or trusted contact.

(4) A dealer, investment adviser, or associated person may provide access to or copies of any records that are relevant to the suspected exploitation of a specified adult to the Department of Children and Families or a law enforcement agency at their request. The records may include records of prior transactions or disbursements, in addition to the transactions or disbursements comprising the suspected exploitation. A dealer, investment adviser, or associated person subject to the jurisdiction of the office must make available to the office, upon request, all records relating to a delay or report made by the dealer, investment adviser, or associated person pursuant to this section.

(5) Notwithstanding any law to the contrary, the Department of Children and Families may inform the reporting party on the status of an investigation initiated under this section and any final disposition.

(6) A dealer, investment adviser, or associated person who delays a transaction or disbursement pursuant to this section,

577-03439-18

2018662c1

who provides records to an agency of competent jurisdiction pursuant to this section, or who participates in a judicial or arbitration proceeding resulting therefrom is presumed to be acting based upon a reasonable belief and is immune from any civil or administrative liability that otherwise might be incurred or imposed, unless lack of such reasonable belief is shown by clear and convincing evidence. This subsection does not supersede or diminish any immunity in chapter 415.

(7) A dealer or investment adviser relying on this section must develop training policies or programs designed to educate associated persons on issues pertaining to exploitation and must conduct training of all associated persons accordingly. The dealer or investment adviser must initially train all of its associated persons by July 1, 2019, must train any newly hired associated persons within 3 months after beginning employment, and must subsequently train all associated persons every 2 years thereafter. The training policies and programs must provide for the associated person to receive a minimum of 1 hour of such training, which must include recognition of indicators of exploitation, the manner in which suspected exploitation must be reported to supervisory personnel and to the appropriate regulatory and law enforcement agencies, and steps that may be taken to prevent exploitation. The dealer or investment adviser must maintain a written record of compliance with this subsection.

(8) This section does not create new rights or obligations of a dealer, investment adviser, or associated person under other applicable laws or rules. In addition, this section does not limit the right of a dealer, investment adviser, or

577-03439-18

2018662c1

233 associated person to otherwise refuse or place a delay on a  
234 transaction or disbursement under other applicable laws or rules  
235 or under an applicable customer agreement.

236 (9) This section does not alter a dealer's, investment  
237 adviser's, or associated person's obligation to comply with  
238 instructions from a client to close an account or transfer an  
239 account to another dealer, investment adviser, or associated  
240 person absent a reasonable belief of exploitation as provided in  
241 this section.

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



**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 756

INTRODUCER: Senator Grimsley

SUBJECT: Unfair Insurance Trade Practices

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	<b>Favorable</b>
2.	Little	McKay	CM	<b>Favorable</b>
3.	Knudson	Phelps	RC	<b>Pre-meeting</b>

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**I. Summary:**

SB 756 creates an exemption from the Unfair Insurance Trade Practices Act. Under the bill, an insurer is not prohibited from refusing to insure a person for failure to purchase motor vehicle services from a membership organization that has more than one million members in Florida and is affiliated with an admitted insurer.

**II. Present Situation:**

The Unfair Insurance Trade Practices Act<sup>1</sup> (Act) regulates trade practices relating to insurance by prohibiting all practices, which constitute unfair methods of competition, or unfair or deceptive acts or practices.<sup>2</sup> The prohibited practices are set forth primarily<sup>3</sup> in s. 626.9541, F.S., examples of which include false advertising, unfair discrimination in issuing coverage or calculating rates, unfair claim settlement practices, and unlawful inducement to purchase insurance by providing securities or unlawful rebates.

Current law prohibits an insurer from refusing to insure an individual or risk solely because the insured or applicant fails to purchase noninsurance services or commodities, including automobile services.<sup>4</sup> Motor vehicle services are described in s. 624.124, F.S., which allows any

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<sup>1</sup> Sections 626.951–626.99, F.S.

<sup>2</sup> Section 626.951, F.S.

<sup>3</sup> Examples of other practices prohibited by the Act include but are not limited to coercing a person to use a particular insurer as a condition of lending money or credit (s. 626.9551, F.S.), failing to allow Holocaust victims to make insurance claims irrespective of a statute of limitations under a reasonable standard of proof and failing to diligently and expeditiously investigate all such claims (s. 626.9543, F.S.), increasing motor vehicle insurance rates or refusing to issue such coverage because of certain minor traffic violations (s. 626.9702, F.S.), refusing to issue a life insurance or disability insurance policy or issuing such policy at a rate higher than permitted by statute because the policyholder has a severe disability or sickle-cell trait. (ss. 626.9705, 626.9706, and 626.9707, F.S.).

<sup>4</sup> Section 626.9541(1)(x)4., F.S.

person to sell the following motor vehicle related services without being deemed an insurer and without being subject to the Florida Insurance Code:

- Towing service.
- Procuring from an insurer group coverage for bail and arrest bonds or for accidental death and dismemberment.
- Emergency service.
- Procuring prepaid legal services, or providing reimbursement for legal services, except that this is not an exemption from the legal expense insurance requirements of ch. 642, F.S.
- Offering assistance in locating or recovering stolen or missing motor vehicles.
- Paying emergency living and transportation expenses of the owner of a damaged motor vehicle.

The Act is enforced by the Department of Financial Services (DFS) and Office of Insurance Regulation (OIR), which, within their respective regulatory jurisdictions, have authority to examine and investigate every person involved in the business of insurance to determine compliance.<sup>5</sup> Each non-willful violation of the act is subject to a fine of \$5,000, up to an aggregate of \$20,000. Each willful violation is subject to a fine of \$40,000, up to an aggregate of \$200,000.<sup>6</sup> Certain prohibited actions are subject to higher fines.<sup>7</sup>

The OIR and DFS each have authority to conduct a hearing in accordance with ch. 120, F.S., when there is reason to believe that a person has engaged, or is engaging in, an unfair or deceptive trade practice prohibited by s. 626.9541, F.S., or s. 626.9551, F.S., or is engaging in the business of insurance without a license.<sup>8</sup> Upon a final order that a person has engaged in an unfair or deceptive act, or that a person is unlawfully transacting insurance, the OIR or DFS must enter a cease and desist order.<sup>9</sup> The OIR and DFS may also suspend or revoke a certificate of authority, license, or eligibility for a certificate of authority or license if the violator knew, or reasonably should have known, he or she violated the Act.<sup>10</sup>

### **III. Effect of Proposed Changes:**

The bill creates an exemption from the Unfair Insurance Trade Practices Act that will allow an insurer to refuse to insure a person who fails to purchase motor vehicle services from a membership organization that, since January 1, 2018, has more than one million members in this state and is affiliated with an admitted insurer.

The bill takes effect on July 1, 2018.

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<sup>5</sup> Section 626.9561, F.S.

<sup>6</sup> Section 626.9521(2), F.S.

<sup>7</sup> See s. 626.9521(3), F.S.

<sup>8</sup> Section 626.9571, F.S.

<sup>9</sup> Section 626.9581, F.S.

<sup>10</sup> Section 626.9601, F.S.

**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 allows insurers to sell motor vehicle insurance only to persons who purchase motor vehicle services from a membership organization that, since January 1, 2018, has more than one million members in this state and is affiliated with an admitted insurer. This may result in more motor vehicle insurance companies that require policyholders to purchase motor vehicle services from an affiliated membership organization.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 626.9541 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

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339504

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Grimsley) recommended the following:

**Senate Amendment**

Delete lines 37 - 38  
and insert:  
as of January 1, 2018, is affiliated with an admitted property  
and casualty insurer;

By Senator Grimsley

26-00813A-18

2018756\_\_

A bill to be entitled

An act relating to unfair insurance trade practices; amending s. 626.9541, F.S.; authorizing insurers to refuse to insure or refuse to continue to insure an applicant or insured for failing to purchase certain noninsurance motor vehicle services; providing an effective date.

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

Section 1. Paragraph (x) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(x) *Refusal to insure*.—In addition to other provisions of this code, the refusal to insure, or continue to insure, any individual or risk solely because of:

1. Race, color, creed, marital status, sex, or national origin;

2. The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful occupation of the individual or the location of the risk and the coverage issued or to be issued;

3. The insured's or applicant's failure to agree to place collateral business with any insurer, unless the coverage

Page 1 of 2

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

26-00813A-18

2018756\_\_

applied for would provide liability coverage which is excess over that provided in policies maintained on property or motor vehicles;

4. The insured's or applicant's failure to purchase noninsurance services or commodities, including motor vehicle automobile services as defined in s. 624.124 except for motor vehicle services purchased from a membership organization that, since January 1, 2018, has more than 1 million members in this state and is affiliated with an admitted insurer;

5. The fact that the insured or applicant is a public official; or

6. The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to insure for this reason occurs with such frequency as to indicate a general business practice.

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

Page 2 of 2

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 776

INTRODUCER: Criminal Justice Committee and Senator Grimsley

SUBJECT: Theft

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<b>Favorable</b>
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

PLEASE MAKE SELECTION

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**I. Summary:**

CS/SB 776 amends s. 812.014(2)(c)7., F.S., to increase the fine in felony cases of theft of specified commercially farmed animals and registered bee colonies to \$10,000. Currently the fine is up to \$5,000.

Current law provides for a \$10,000 fine in cases of felony grand theft of aquaculture species raised at a certified aquaculture facility.

The bill is effective October 1, 2018.

**II. Present Situation:**

**Property Theft**

Section 812.014, F.S., defines and categorizes thefts into misdemeanor or felony criminal violations. Whether a theft is a misdemeanor or a felony generally depends upon the value of the property taken by the defendant, the defendant's history of theft convictions or, in some cases, the type of property taken.

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>1</sup>

Third degree grand theft, a third degree felony,<sup>2</sup> is theft of:

- Property valued at \$300 or more, but less than \$20,000.
- Specified property including:
  - A will, codicil, or testamentary instrument;
  - A firearm;
  - A motor vehicle;
  - Any commercial farmed animal including any animal of the equine,<sup>3</sup> bovine,<sup>4</sup> or swine<sup>5</sup> class, or other grazing animal;<sup>6</sup>
  - Any bee colony of a registered beekeeper;<sup>7</sup>
  - Any aquaculture species raised at a certified aquaculture facility;<sup>8</sup>
  - Any fire extinguisher;
  - Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit;
  - Property taken from a designated, posted construction site;
  - Any stop sign;
  - Anhydrous ammonia; and
  - Any amount of a controlled substance as defined in s. 893.02, F.S.<sup>9</sup>
- Property from a dwelling or its unenclosed curtilage if the property is valued at \$100 or more, but less than \$300.<sup>10</sup>

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<sup>1</sup> Section 812.014(1), F.S.

<sup>2</sup> A third degree felony is punishable by up to 5 years' incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>3</sup> "Equine" means a horse or other member of the horse family. The Oxford Dictionaries, available at <https://en.oxforddictionaries.com/definition/equine> (last visited February 12, 2018); See also s. 773.01, F.S.: "Equine" means a horse, pony, mule, or donkey.

<sup>4</sup> "Bovine" means an animal of the cattle group, which also includes buffaloes and bison. The Oxford Dictionaries, available at <https://en.oxforddictionaries.com/definition/bovine> (last visited February 12, 2018).

<sup>5</sup> "Swine" means pig. The Oxford Dictionaries, available at <https://en.oxforddictionaries.com/definition/swine> (last visited February 12, 2018).

<sup>6</sup> Grazing animals may include sheep and goats in addition to horses and cattle. *Save Our Magnificent Meadows*, available at [http://www.magnificentmeadows.org.uk/assets/pdfs/Types\\_of\\_Livestock.pdf](http://www.magnificentmeadows.org.uk/assets/pdfs/Types_of_Livestock.pdf) (last visited February 12, 2018). See also s. 585.01(13), F.S.: "Livestock" means grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas which are raised for private use or commercial purposes.

<sup>7</sup> Beekeepers are required by the Florida Department of Agriculture and Consumer Services to register and identify their hives. All honey bee hives must be permanently imprinted on the upper left-hand corner in letters at least ½ inch in height with the beekeeper's registration number issued by the department. Florida Department of Agriculture and Consumer Services, *Beekeeper Registration*, available at <https://www.freshfromflorida.com/Business-Services/Bees-Apiary/Beekeeper-Registration> (last visited February 12, 2018).

<sup>8</sup> The Florida Department of Agriculture and Consumer Services inspects and certifies aquaculture businesses. Aquaculture includes fish, mollusks, and aquatic plants. Florida Department of Agriculture and Consumer Services, *Aquaculture Certification Application Taxonomic Listing and Aquaculture Best Management Practices Manual, November 2016* available at <https://www.freshfromflorida.com/Business-Services/Aquaculture/Aquaculture-Certificate-of-Registration> (last visited February 12, 2018).

<sup>9</sup> Section 812.014(2)(c), F.S.

<sup>10</sup> Section 812.014(2)(d), F.S.



Currently, s. 812.014(2), F.S., requires that a fine of \$10,000 be imposed for theft of aquaculture species raised at a certified aquaculture facility.<sup>11</sup> The fine for theft of a commercially farmed animal or bee colony is a maximum amount of \$5,000, the general fine for a third degree felony offense.<sup>12</sup>

### **Thefts of Cattle and Beehives in Florida**

Theft of cattle has been more prevalent since beef prices have risen since 2012. Yearling cows weighing 600-700 pounds that once sold for around \$600 are now worth \$1,000 to \$1,200, according to Florida Cattlemen's Association Executive Vice President Jim Handley.<sup>13</sup>

A cattle rancher in Martin County was the victim of what the Martin County Sheriff called "the largest cattle rustling scheme in the county's history" in 2013.<sup>14</sup> The man accused of stealing the cattle, taking them to market, and keeping the proceeds was the manager of the ranch. The ranch manager sold 175 cows for a total of \$102,000. The total loss from the theft forced the cattle rancher to discontinue his cattle business.<sup>15</sup>

Beekeepers have been the target of theft as well with more than \$100,000 worth of hives stolen in Southwest Florida. One beekeeper who was hit by thieves explained that sometimes entire hives are taken, other times just the queen bee is taken so the thief can use her to begin a new hive.<sup>16</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 812.014(2)(c)7., F.S., to increase the fine from up to \$5,000 to \$10,000 in cases of felony theft of a commercially farmed animal, including an animal of the equine, avian,<sup>17</sup> bovine, or swine class or other grazing animal; or a bee colony of a registered beekeeper.

This fine increase puts these agriculture-related thefts on par with aquaculture species theft which currently requires a \$10,000 fine.<sup>18</sup>

**Section 2** reenacts s. 932.701(2)(a), F.S., to incorporate the amendment made to s. 812.014(2)(c), F.S., by the bill.

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<sup>11</sup> Section 812.014(2)(c)7, F.S.

<sup>12</sup> Section 812.014(2)(c), F.S.

<sup>13</sup> *Former Osceola deputy in jail after being charged with stealing cattle*, The Orlando Sentinel, November 11, 2015, available at <http://www.orlandosentinel.com/news/breaking-news/os-keith-collins-cattle-rustling-osceola-20151106-story.html> (last visited February 12, 2018).

<sup>14</sup> *Sheriff calls cattle theft largest in Martin County's history*, WPBF News, October 29, 2013, available at <http://www.wpbf.com/article/sheriff-calls-cattle-theft-largest-in-martin-county-s-history/1319401> (last visited February 12, 2018).

<sup>15</sup> *Id.*

<sup>16</sup> *Beehive theft cases on the rise in SWFL*, NBC-2 WBBH News, August 17, 2016, available at <http://www.nbc-2.com/story/32779137/10000-reward-offered-for> (last visited January 24, 2018); *See also Theft of hives hits southwest Florida bee farmers*, The Orlando Sentinel, August 28, 2016, available at <http://www.orlandosentinel.com/business/os-ap-theft-bee-hive-florida-20160828-story.html> (last visited February 12, 2018).

<sup>17</sup> "Avian" means relating to, or derived from birds. The Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/avian> (last visited February 12, 2018).

<sup>18</sup> Section 812.014(2)(c)7, F.S.

**Section 3** provides that this act shall take effect October 1, 2018.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may help farmers and ranchers recover a portion of the losses experienced from the thefts of their herds, birds, or bees.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 812.014 of the Florida Statutes.

This bill reenacts section 932.701 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 Criminal Justice on January 29, 2018:**

The committee substitute includes animals of the avian (bird) species among the commercially farmed animals to which the \$10,000 fine provided for in the bill would apply.

**B. Amendments:**

None.

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

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By the Committee on Criminal Justice; and Senator Grimsley

591-02576-18

2018776c1

A bill to be entitled

An act relating to theft; amending s. 812.014, F.S.; increasing the fine for the theft of a commercially farmed animal or a bee colony of a registered beekeeper; reenacting s. 932.701(2)(a), F.S., relating to the definition of the term "contraband article," to incorporate the amendment made to s. 812.014, F.S., in a reference thereto; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at \$300 or more, but less than \$5,000.
2. Valued at \$5,000 or more, but less than \$10,000.
3. Valued at \$10,000 or more, but less than \$20,000.
4. A will, codicil, or other testamentary instrument.
5. A firearm.
6. A motor vehicle, except as provided in paragraph (a).
7. Any commercially farmed animal, including any animal of

the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an

591-02576-18

2018776c1

animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility, ~~then~~ a \$10,000 fine shall be imposed.

8. Any fire extinguisher.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at \$5,000 or more, but less than \$10,000, as provided under subparagraph 2., or if the property is valued at

591-02576-18

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59 \$10,000 or more, but less than \$20,000, as provided under  
 60 subparagraph 3. As used in this paragraph, the term "conditions  
 61 arising from the emergency" means civil unrest, power outages,  
 62 curfews, voluntary or mandatory evacuations, or a reduction in  
 63 the presence of or the response time for first responders or  
 64 homeland security personnel. For purposes of sentencing under  
 65 chapter 921, a felony offense that is reclassified under this  
 66 paragraph is ranked one level above the ranking under s.  
 67 921.0022 or s. 921.0023 of the offense committed.

68 Section 2. For the purpose of incorporating the amendment  
 69 made by this act to section 812.014, Florida Statutes, in a  
 70 reference thereto, paragraph (a) of subsection (2) of section  
 71 932.701, Florida Statutes, is reenacted to read:

72 932.701 Short title; definitions.—

73 (2) As used in the Florida Contraband Forfeiture Act:

74 (a) "Contraband article" means:

75 1. Any controlled substance as defined in chapter 893 or  
 76 any substance, device, paraphernalia, or currency or other means  
 77 of exchange that was used, was attempted to be used, or was  
 78 intended to be used in violation of any provision of chapter  
 79 893, if the totality of the facts presented by the state is  
 80 clearly sufficient to meet the state's burden of establishing  
 81 probable cause to believe that a nexus exists between the  
 82 article seized and the narcotics activity, whether or not the  
 83 use of the contraband article can be traced to a specific  
 84 narcotics transaction.

85 2. Any gambling paraphernalia, lottery tickets, money,  
 86 currency, or other means of exchange which was used, was  
 87 attempted, or intended to be used in violation of the gambling

591-02576-18

2018776c1

88 laws of the state.

89 3. Any equipment, liquid or solid, which was being used, is  
 90 being used, was attempted to be used, or intended to be used in  
 91 violation of the beverage or tobacco laws of the state.

92 4. Any motor fuel upon which the motor fuel tax has not  
 93 been paid as required by law.

94 5. Any personal property, including, but not limited to,  
 95 any vessel, aircraft, item, object, tool, substance, device,  
 96 weapon, machine, vehicle of any kind, money, securities, books,  
 97 records, research, negotiable instruments, or currency, which  
 98 was used or was attempted to be used as an instrumentality in  
 99 the commission of, or in aiding or abetting in the commission  
 100 of, any felony, whether or not comprising an element of the  
 101 felony, or which is acquired by proceeds obtained as a result of  
 102 a violation of the Florida Contraband Forfeiture Act.

103 6. Any real property, including any right, title,  
 104 leasehold, or other interest in the whole of any lot or tract of  
 105 land, which was used, is being used, or was attempted to be used  
 106 as an instrumentality in the commission of, or in aiding or  
 107 abetting in the commission of, any felony, or which is acquired  
 108 by proceeds obtained as a result of a violation of the Florida  
 109 Contraband Forfeiture Act.

110 7. Any personal property, including, but not limited to,  
 111 equipment, money, securities, books, records, research,  
 112 negotiable instruments, currency, or any vessel, aircraft, item,  
 113 object, tool, substance, device, weapon, machine, or vehicle of  
 114 any kind in the possession of or belonging to any person who  
 115 takes aquaculture products in violation of s. 812.014(2)(c).

116 8. Any motor vehicle offered for sale in violation of s.

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320.28.

9. Any motor vehicle used during the course of committing an offense in violation of s. 322.34(9)(a).

10. Any photograph, film, or other recorded image, including an image recorded on videotape, a compact disc, digital tape, or fixed disk, that is recorded in violation of s. 810.145 and is possessed for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

11. Any real property, including any right, title, leasehold, or other interest in the whole of any lot or tract of land, which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201; any personal property, including, but not limited to, equipment, money, securities, books, records, research, negotiable instruments, or currency; or any vessel, aircraft, item, object, tool, substance, device, weapon, machine, or vehicle of any kind in the possession of or belonging to any person which is acquired by proceeds obtained as a result of Medicaid fraud under s. 409.920 or s. 409.9201.

12. Any personal property, including, but not limited to, any vehicle, item, object, tool, device, weapon, machine, money, security, book, or record, that is used or attempted to be used as an instrumentality in the commission of, or in aiding and abetting in the commission of, a person's third or subsequent violation of s. 509.144, whether or not comprising an element of the offense.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 762

INTRODUCER: Commerce and Tourism Committee; Banking and Insurance Committee; and Senator Mayfield

SUBJECT: Permissible Insurance Acts

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	<b>Fav/CS</b>
2.	Little	McKay	CM	<b>Fav/CS</b>
3.	Matiyow	Phelps	RC	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 762 amends the Unfair Insurance Trade Practices Act to allow insurers or their agents to give gifts, certain services, donations, or other items not exceeding \$100 in value per calendar year to insureds, prospective insureds, and others.

Current law limits the gifting of promotional merchandise to \$25 or less per gift to an insured, prospective insured, or any person, for the purpose of advertising. There is no limit on the frequency of giving or the aggregate value of advertising merchandise given over any period of time. The bill specifies that insurers or their agents are allowed to either give a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others. The gift or donation may not exceed a value of \$100 per calendar year, per insured or prospective insured.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a limit of \$25 per gift with no annual aggregate limitation.

The bill is effective July 1, 2018.

## II. Present Situation:

The Unfair Insurance Trade Practices Act<sup>1</sup> (Act) prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance. The Act prohibits certain inducements for the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to prospective insurance purchasers. However, the Act also provides exceptions to these provisions.

The Act allows a licensed insurer or its agent to provide a gift for the purpose of advertising to insureds, prospective insureds, and others in the form of any article of merchandise having a value of not more than \$25.<sup>2</sup> Such gifts are exceptions to the Act's prohibitions against issuing specified stock, benefit certificates, shares, securities, or contracts as an inducement to insurance;<sup>3</sup> engaging in specified acts of unfair discrimination;<sup>4</sup> and providing unlawful rebates. While the exception restricts the value of the advertising gift, it does not limit the frequency of giving or the aggregate value of gifts given over any period of time.

## III. Effect of Proposed Changes:

**Section 1** amends s. 626.9541(1)(m), F.S., regarding advertising gifts permitted under the Unfair Insurance Trade Practices Act. The bill allows insurers or their agents to either make a gift to or make a charitable contribution on behalf of insureds, prospective insureds, or others.

The bill expands the items that insurers or their agents may give to include goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items.

The bill provides that total value of gifts or charitable contributions may not exceed \$100 in a calendar year and prohibits the giving of both merchandise and charitable contributions to a policyholder or prospective policyholder in the same year.

The bill exempts such gifts and charitable contributions from the prohibitions in paragraphs (f), (g), and (h) of s. 626.9541(1), F.S. Generally, rebates are unlawful under the Act. For example, it is an unfair method of competition and unfair act or practice to pay any valuable consideration or inducement not specified in the insurance contract as an inducement to insurance under s. 626.9541(1)(h)1.b., F.S. The bill eliminates the requirement that gifts be for the purpose of advertising, thus converting the provision allowing advertising gifts to a provision allowing certain inducements to purchase insurance.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a limit of a \$25 value per gift with no annual aggregate limitation.

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

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<sup>1</sup> Section 626.9541, F.S.

<sup>2</sup> The \$25 limit has been in place since 1989. Chapter 89-360, Laws of Fla.; Section 626.9541(1)(m), F.S.

<sup>3</sup> Section 626.9541(1)(f), F.S.

<sup>4</sup> Section 626.9541(1)(g), F.S.



**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:**

Insurers and agents will be allowed to provide insureds, prospective insureds, and others with a limited amount of gifts, gift cards and services, or provide a charitable donation, as an appreciation for doing business.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 626.9541 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 by Commerce and Tourism on February 6, 2018:**

The committee substitute removes the provisions allowing group life and health insurers to offer policyholders funeral planning services and grief counseling provided by the proper license holders.

**CS by Banking and Insurance on January 23, 2018:**

The CS:

- Changes the term customer to insured.
- Clarifies that merchandise and a charitable contribution cannot both be provided to insureds or prospective insureds in the same year.
- Allows group life and health insurers to offer policyholders, at no additional cost, funeral planning services and grief counseling provided by the proper license holders. Such added benefits are not considered an advertisement, designation, direction, inducement or rebate under the Unfair Insurance Trade Practices Act.

- B. **Amendments:**

None.

By the Committees on Commerce and Tourism; and Banking and Insurance; and Senator Mayfield

577-02891-18

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A bill to be entitled

An act relating to permissible insurance acts; amending s. 626.9541, F.S.; revising the types, value, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing such insurers and agents to make specified charitable contributions on behalf of insureds or prospective insureds; providing that title insurance agents, title insurance agencies, or title insurers may give insureds, prospective insureds, or others advertising gifts up to a specified value; providing applicability; providing an effective date.

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

Section 1. Paragraph (m) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(m) Advertising and promotional gifts and charitable contributions permitted.—

~~1. No provision of~~ Paragraph (f), paragraph (g), or paragraph (h) ~~does not shall be deemed to~~ prohibit a licensed insurer or its agent from:

a. Giving to insureds, prospective insureds, or and others,

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~~for the purpose of advertising,~~ any article of merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items having a total value of \$100 or less per insured or prospective insured within 1 calendar year; ~~or having a value of not more than \$25.~~

b. Making charitable contributions, as defined in s. 170(c) of the Internal Revenue Code, on behalf of insureds or prospective insureds of up to \$100 per insured or prospective insured within 1 calendar year.

2. Paragraph (f), paragraph (g), or paragraph (h) does not prohibit a title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, from giving to insureds, prospective insureds, or others, for the purpose of advertising, any article of merchandise having a value of not more than \$25. A person or entity governed by this subparagraph is not subject to subparagraph 1.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 806

INTRODUCER: Senator Baxley

SUBJECT: Water Management District Surplus Lands

DATE: February 22, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Istler	Rogers	EP	<b>Favorable</b>
2. Caldwell	Caldwell	GO	<b>Favorable</b>
3. Istler	Phelps	RC	<b>Pre-meeting</b>

## I. Summary:

SB 806 makes the following changes to the procedures a water management district (WMD) must follow when selling surplus lands:

- Provides that the first publication of the required notice of intention to sell must occur at least 30 days, but not more than 360 days, before any sale is approved by a WMD. Current law only requires that the first publication of the required notice of intent to sell take place before any sale and the change is meant to provide clarity.
- Authorizes, rather than requires, the governing board of a WMD to sell surplus parcels of land valued at \$25,000 or less to adjacent property owners. Currently, the law requires WMDs to give adjacent property owners the first opportunity to purchase these lands.
- Authorizes a WMD to sell surplus parcels of land valued at \$25,000 or less at any time to the general public for the highest price obtainable, if the parcel is not sold to an adjacent property owner.
- Defines the term “adjacent property owners” to mean “those owners whose property abuts the parcel.”

## II. Present Situation:

There are five water management districts (WMDs) established within the state which are responsible for the administration of water resources at the regional level.<sup>1</sup> The four core mission areas of WMDs include water supply, water quality, flood protection and floodplain management, and natural systems. To accomplish these goals and responsibilities, WMDs are authorized to acquire fee or less than fee title to land.<sup>2</sup> Of the approximately 5.6 million acres of

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<sup>1</sup> Department of Environmental Protection (DEP), *Water Management Districts*, <https://floridadep.gov/water-policy/water-policy/content/water-management-districts> (last visited Jan. 17, 2018).

<sup>2</sup> *Id.*; s. 373.139, F.S.

land that the state owns, the WMDs collectively own 2.15 million acres of land.<sup>3</sup> The following is a breakdown of the land in acres owned by each WMD:

- Northwest Florida: 210,740.
- Suwannee River: 160,330.
- St. Johns River: 625,000.
- Southwest Florida: 337,810.
- South Florida: 818,840.<sup>4</sup>

Each WMD assesses its land inventory to ensure that the present and future uses of the lands it owns will be utilized in the most effective manner and support the WMD's core mission requirements. Lands determined to be surplus may be offered for public bid and sold pursuant to s. 373.089, F.S., conveyed by a WMD to another governmental entity pursuant to s. 373.056, F.S., or used in potential real estate exchange transactions. In most cases and depending on the source of funds that were initially used to purchase the lands, the proceeds from the disposition of lands revert to the fund from which the lands were acquired to be used for the purchase of acquiring additional lands.<sup>5</sup>

### **Sale of Surplus WMD Lands**

The governing board of a WMD may sell lands, or interests or rights in lands, to which the WMD has acquired title, if the governing board declares the lands surplus. To declare lands surplus, a governing board must determine:

- For lands designated as acquired for conservation purposes, that the lands are no longer needed for conservation purposes.<sup>6</sup>
- For all other lands, that the lands are no longer needed.<sup>7</sup>

Upon determining that the lands are surplus, the governing board may dispose of conservation lands by a two-thirds vote and all other lands by a majority vote.<sup>8</sup>

The governing board of a WMD must first offer any land that was acquired in whole or in part using Florida Forever funds to the Board of Trustees of the Internal Improvement Trust Fund (BOT), unless the disposition of the land is for the following purposes:

- Linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances.
- The disposition of the fee interest in the land where a conservation easement is retained by the WMD to fulfill the conservation objectives for which the land was acquired.
- An exchange of the land for other lands that meet or exceed the conservation objectives for which the original land was acquired.

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<sup>3</sup> DEP, *State of Florida Lands and Facilities Inventory Search*, State Lands Dashboard (01/07/2018), <http://prodenv.dep.state.fl.us/DslPi/stateLandDashboard.action> (last visited Jan. 17, 2018).

<sup>4</sup> *Id.*

<sup>5</sup> Section 373.139(6), F.S.

<sup>6</sup> FLA. CONST., art. x, s. 18.

<sup>7</sup> Section 373.089(6), F.S.

<sup>8</sup> *Id.*

- To be used by a governmental entity for a public purpose.
- The portion of an overall purchase deemed surplus at the time of the acquisition.<sup>9</sup>

Any surplus lands, including lands acquired with Florida Forever funds if the BOT declines to accept title, may be sold by the WMD at any time for the highest price obtainable; however, the selling price may not be less than the appraised value of the lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.<sup>10</sup>

Before selling surplus lands, a WMD must publish a notice of its intention to sell, which includes a description of the lands to be offered for sale, in a newspaper circulated in the county in which the lands are located once each week for three successive weeks. The first publication must occur at least 30 days, but no more than 360 days, before any sale.

***Expedited process for parcels valued at \$25,000 or less***

If the governing board of a WMD determines that a parcel of land is no longer essential or necessary for conservation purposes and the parcel is valued at \$25,000 or less as determined by a certified appraisal obtained within 360 days before the effective date of the contract for sale, the governing board may determine that the parcel of land is surplus.

The governing board must publish, one time only, a notice of intention to sell in a newspaper that is published within the county in which the parcel for sale is located at least 30 days, but not more than 360 days, before any sale.<sup>11</sup> The governing board is required to send the notice of intention to sell the parcel to adjacent property owners and post notice on its website. Fourteen days after publication of the notice, the WMD may sell the parcel to an adjacent property owner or, if there are two or more owners of adjacent property, accept sealed bids and sell the parcel to the highest bidder or reject all offers.<sup>12</sup> Thirty days after publication of the notice, the WMD must accept sealed bids and may sell the parcel to the highest bidder or reject all offers.<sup>13</sup>

### **III. Effect of Proposed Changes:**

SB 806 amends s. 373.089, F.S., to revise the procedures a WMD must follow when selling surplus lands.

Under current law, a WMD must publish a notice of intention to sell in a newspaper published in the county in which the land is located for three successive weeks. The first publication of the notice must occur at least 30 days, but not more than 360 days, before any sale. The bill specifies that the first publication of the required notice must occur at least 30 days, but not more than 360 days, before any sale is approved by a WMD.

The bill revises the expedited process for surplus properties valued at \$25,000 or less to authorize, rather than require, a WMD to sell the land to an adjacent property owner. The bill

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<sup>9</sup> Section 373.089(7), F.S.

<sup>10</sup> Section 373.089, F.S.

<sup>11</sup> Section 373.089(8), F.S.

<sup>12</sup> Section 373.089(8), F.S.

<sup>13</sup> *Id.*

removes the requirement that a WMD accept sealed bids and sell the property to the highest bidder or reject all offers 30 days after publication of the notice of intention to sell.

The bill authorizes a WMD to sell a surplus parcel valued at \$25,000 or less at any time to the general public for the highest price obtainable, if the WMD does not elect to sell the parcel to the adjacent property owner.

If, however, a WMD does choose to sell to an adjacent property owner, the WMD must publish, one time only, a notice of intention to sell in a newspaper published in the county in which the land is located at least 30 days, but not more than 360 days, before any sale is approved by the WMD. The WMD is required to wait 14 days after publication of the notice before selling the parcel to an adjacent property owner. The bill defines the term “adjacent property owners” to mean “those owners whose property abuts the parcel.”

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:

None.

C. Government Sector Impact:

The bill may have a positive, indeterminate fiscal impact on WMDs selling surplus lands valued at \$25,000 or less by authorizing the parcels to be sold more efficiently by removing the requirement that a WMD must offer the land to adjacent property owners first and wait 30 days from publication of its notice of intention to sell before accepting offers from individuals who are not adjacent property owners.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 373.089 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.





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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Baxley) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 21  
and insert:  
sell on its website and in a newspaper published in the county  
in which the land,

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

And the title is amended as follows:

Delete line 3  
and insert:



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12 lands; amending s. 373.089, F.S.; requiring a water  
13 management district to publish its notice of intention  
14 to sell surplus lands on its website; revising the

By Senator Baxley

12-00876-18

2018806\_\_

A bill to be entitled

An act relating to water management district surplus lands; amending s. 373.089, F.S.; revising the circumstances when a water management district must publish its intention to sell surplus lands; revising the process for selling certain lower valued surplus lands; defining the term "adjacent property owners"; providing an effective date.

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

Section 1. Subsections (3) and (8) of section 373.089, Florida Statutes, are amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(3) Before selling any surplus land, or interests or rights in land, the district shall publish a notice of intention to sell in a newspaper published in the county in which the land, or interests or rights in the land, is situated once each week for 3 successive weeks, three insertions being sufficient. The first publication of the required notice must occur at least 30 days, but not more than 360 days, before any sale is approved by the district and must include a description of lands, or interests or rights in lands, to be offered for sale.

(8)(a) If a parcel of land is no longer essential or necessary for conservation purposes and is valued at \$25,000 or

Page 1 of 3

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less as determined by a certified appraisal obtained within 360 days before the effective date of a contract for the sale, as specified in subsection (1), the governing board may determine that the parcel of land is surplus and may offer to sell it to the adjacent property owners. If the governing board elects to offer for sale the parcel to adjacent property owners pursuant to this subsection, the governing board must publish the notice of intention to sell ~~must be published~~ as required under subsection (3), one time only, and ~~the governing board must~~ ~~shall~~ send the notice of intention to sell the parcel to adjacent property owners by certified mail and publish the notice on its website. For the purpose of this subsection, the term "adjacent property owners" means those owners whose property abuts the parcel.

(b) Fourteen days after publication of such notice, the district may sell the parcel to an adjacent property owner or, if there are two or more owners of adjacent property, accept sealed bids and sell the parcel to the highest bidder or reject all offers.

(c) If the parcel is not sold to an adjacent property owner pursuant to paragraph (b), the district may sell the parcel at any time to the general public for the highest price obtainable ~~Thirty days after publication of such notice, the district shall accept sealed bids and may sell the parcel to the highest bidder or reject all offers.~~

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the

Page 2 of 3

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

12-00876-18

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59 provisions of this section.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 808

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Baxley

SUBJECT: Public Records/Surplus Lands

DATE: February 22, 2018      REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Istler	Rogers	EP	<b>Fav/CS</b>
2. Brown	Caldwell	GO	<b>Favorable</b>
3. Istler	Phelps	RC	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 808 provides a public records exemption for certain records related to the sale of surplus lands. Specifically, the bill designates the following information as confidential and exempt from disclosure requirements:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form, or which pertain to the valuation; and
- Written offers to purchase surplus lands.

The bill provides that the exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD.

Additionally, the bill authorizes a WMD to disclose the records before the exemption expires to potential purchasers to facilitate or expedite closure of the land sale:

- During the negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

In accordance with the Open Government Sunset Review Act, the exemption automatically repeals on October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill is linked to SB 806 that revises provisions on the sale of surplus lands in water management districts, and takes effect on the same date that SB 806 or similar legislation takes effect either in the same legislative session or an extension of the session.

## **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.<sup>1</sup> 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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.<sup>9</sup> 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.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>12</sup> 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.<sup>13</sup>

### **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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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:

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<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *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.

<sup>12</sup> 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).

<sup>13</sup> 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).

<sup>14</sup> 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.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>17</sup>
- 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;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

### ***Valuation of state lands for sale***

Pursuant to s. 253.0341(8)(a), F.S., a written valuation of land determined to be surplus by the Board of Trustees of the Internal Improvement Trust Fund (BOT) and related documents used to form the valuation or which pertain to the valuation are confidential and exempt from disclosure.<sup>23</sup> This exemption expires two weeks before the time that the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the BOT.<sup>24</sup>

Before expiration of the exemption, however, the Division of State Lands within the Department of Environmental Protection is authorized to disclose these appraisals, valuations, or valuation information regarding the surplus land:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of the effort or process;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.<sup>25</sup>

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.

<sup>23</sup> Section 253.0341(8)(a), F.S.

<sup>24</sup> Section 253.0341(8)(a)1., F.S.

<sup>25</sup> Section 253.0341(8)(a)2., F.S.



While a public records exemption exists for written valuations of land determined to be surplus by the BOT, a similar exemption does not exist for written valuations of land determined to be surplus by a WMD.

***Appraisals and written offers for lands the state is purchasing***

There are public records exemptions for appraisals and written offers when the state is seeking to purchase land. When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain, all appraisals, other reports relating to value, and written offers and counteroffers are exempt until the execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency.<sup>26</sup> If the parties do not execute a valid option contract or the agency does not conditionally accept a written offer to sell, then the exemption expires at the conclusion of the condemnation litigation of the subject property.<sup>27</sup>

Similarly, when a WMD is seeking to purchase land, all appraisal reports, offers, and counteroffers are exempt until an option contract is executed or if no option contract is executed, until 30 days before a contract of agreement for purchase is considered for approval by the governing board.<sup>28</sup>

**III. Effect of Proposed Changes:**

The bill designates the following information as confidential and exempt from the disclosure requirements under the Public Records Act and Art. I, s. 24(a) of the Florida Constitution:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form or which pertain to the valuation; and
- Written offers to purchase the surplus lands.

The bill provides that the exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD.

Additionally, the bill authorizes a WMD to disclose the records before the exemption expires to potential purchasers to facilitate or expedite closure of the land sale:

- During the negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

In accordance with the Open Government Sunset Review Act, the exemption shall stand repealed on October 2, 2023, unless the Legislature review and saves the exemption from repeal before that date.

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<sup>26</sup> Section 119.0711, F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Section 373.139(3)(a), F.S.

As required by the Florida Constitution, the bill provides a statement of public necessity.<sup>29</sup> As justification for the exemption:

- The exemption is necessary in order to facilitate successful or expedited closure of the sale of surplus lands; and
- The public availability of the valuations, related documents, and written offers can negatively impact the ability of WMDs to negotiate with potential purchasers and potentially places WMDs at a disadvantage in attempting to maximize the return on the sale of surplus land.

The bill is linked to SB 806 that revises provisions on the sale of surplus lands in water management districts. The bill takes effect on the same date that SB 806 or similar legislation takes effect, if adopted in the same legislative session or an extension of the session.

#### **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:**

###### **Voting Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. As the bill creates a new public record exemption, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill includes a public necessity statement and provides as justification for the exemption that without the exemption, the ability of water management districts to maximize the return on the sale of surplus lands could be compromised.

###### **Breadth of Exemption**

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill specifically exempts written valuations of land determined to be surplus, any related documents, and written offers and provides for the expiration of such exemption upon the contract or agreement being approved, at the conclusion of negotiations or marketing efforts, or the passage of a year. Thus, the bill appears to be no broader than necessary to accomplish the public necessity for this public record exemption.

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<sup>29</sup> FLA. CONST. art. I, s. 24(c).

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has a negative, indeterminate fiscal impact to the water management districts (WMDs) as they will incur costs related to staff training on the new public records exemption and in redacting the information prior to the release of the record. However, these costs likely can be absorbed as part of the day-to-day responsibilities of the WMD.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 373.089 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 Environmental Preservation and Conservation on February 5, 2018:**

The Committee Substitute:

- Revises the conditions upon when the exemption expires and when a WMD, at its discretion, is authorized to disclose the exempted information.
- Adds the automatic repeal of the exemption as required by the Open Government Sunset Review Act; and
- Makes conforming changes to the public necessity statement.

B. Amendments:

None.

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

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By the Committee on Environmental Preservation and Conservation;  
and Senator Baxley

592-02878A-18

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A bill to be entitled

An act relating to public records; amending s.

373.089, F.S.; providing an exemption for valuations, certain records, and sales offers for sales related to surplus lands; authorizing disclosure of such records under certain circumstances; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (1) of section 373.089, Florida Statutes, is amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands, or interests or rights in lands, determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, ~~in no case shall~~ the selling price may not be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.

(a) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1)

Page 1 of 3

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and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(b) Before expiration of the exemption established in paragraph (a), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;

2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;

3. When the passage of time has made the conclusions of value invalid; or

4. When negotiations or marketing efforts concerning the land are concluded.

(c) Paragraphs (a) and (b) are 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.

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 2. The Legislature finds that it is a public necessity that written valuation of land determined to be

Page 2 of 3

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592-02878A-18

2018808c1

59 surplus pursuant to s. 373.089, Florida Statutes, related  
60 documents used to form the valuation or which pertain to the  
61 valuation, and written offers to purchase surplus land, be made  
62 confidential and exempt from s. 119.07(1), Florida Statutes, and  
63 s. 24(a), Article I of the State Constitution until 2 weeks  
64 before the contract or agreement regarding the purchase,  
65 exchange, or disposal of the surplus land is first considered  
66 for approval by the district in order to facilitate successful  
67 or expedited closure of the sale of surplus lands. The public  
68 availability of such valuations, related documents, and written  
69 offers can negatively impact the ability of water management  
70 districts to negotiate with potential purchasers and potentially  
71 places water management districts at a disadvantage in  
72 attempting to maximize the return on the sale of surplus land.

73       Section 3. This act shall take effect on the same date that  
74 SB 806 or similar legislation takes effect, if such legislation  
75 is adopted in the same legislative session or an extension  
76 thereof and becomes a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1500

INTRODUCER: Senator Baxley

SUBJECT: Direct-support Organization of the Florida Commission on Community Service

DATE: February 23, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Peacock	Caldwell	GO	<b>Favorable</b>
2. Shettle	Hansen	AP	<b>Favorable</b>
3. Peacock	Phelps	RC	<b>Pre-Meeting</b>

## I. Summary:

SB 1500 removes the scheduled repeal date of October 1, 2018, for the Florida Commission on Community Service's direct support organization, the Volunteer Florida Foundation.

The bill has no impact on state revenues or expenditures.

The effective date of the bill is July 1, 2018.

## II. Present Situation:

### **Citizen Support Organizations and Direct-support Organizations**

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and, for most, by a written contract with the agency the CSO or DSO was created to support.

### ***CSO and DSO Transparency and Reporting Requirements***

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.<sup>1</sup> Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:<sup>2</sup>

- The name, mailing address, telephone number, and website address of the organization;

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<sup>1</sup> Chapter 2014-96, Laws of Fla.

<sup>2</sup> Section 20.058(1), F.S.

- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).<sup>3</sup>

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO or DSO maintains a website, the agency's website must provide a link to the website of the CSO or DSO.<sup>4</sup> Additionally, any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting and posting the information.<sup>5</sup> If a CSO or DSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO or DSO.<sup>6</sup>

By August 15 of each year, each agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and Office of Program Policy Analysis and Government Accountability the information provided by the CSO or DSO. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO or DSO.<sup>7</sup>

Lastly, a law creating or authorizing the creation of a CSO or DSO must state that the creation of or authorization for the CSO or DSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal through reenactment by the Legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed by the Legislature by July 1, 2019.<sup>8</sup>

### ***CSO and DSO Audit Requirements***

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.<sup>9</sup> The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the CSO or DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports.

Additionally, the Auditor General may conduct audits or other engagements of the accounts and records of the CSO or DSO, pursuant to his or her own authority, or at the direction of the

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<sup>3</sup> The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

<sup>4</sup> Section 20.058(2), F.S.

<sup>5</sup> Section 20.058(4), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 20.058(3), F.S.

<sup>8</sup> Section 20.058(5), F.S.

<sup>9</sup> The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.



Legislative Auditing Committee.<sup>10</sup> The Auditor General is authorized to require and receive any records from the CSO or DSO, or its independent auditor.<sup>11</sup>

### ***CSO and DSO Ethics Code Requirements***

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S. A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.<sup>12</sup>

### **Florida Volunteer and Community Service Act of 2001**

The Legislature passed HB 47 (2001), the Florida Volunteer and Community Service Act of 2001 (Act) “to promote the development of better communities by fostering greater civic responsibility through volunteerism and service to the community.”<sup>13</sup> The Act directed the Executive Office of the Governor to “establish policies and procedures which provide for the expenditure of funds to develop and facilitate initiatives by public agencies, scholastic institutions, private institutions, and individuals that establish and implement programs that encourage and reward volunteerism.”<sup>14</sup> The programs and initiatives developed pursuant to the Act must have the following purposes and objectives:

- To place increased priority on citizen participation and volunteerism as a means of addressing the increasingly complex problems facing Florida’s communities.
- To encourage local community leaders to implement strategies that expand civic participation.
- To promote the concept and practice of corporate citizenship.
- To build the enthusiasm, dedication, and combined expertise of individual citizens and public and private systems to find new and creative ways to effectively use volunteerism and community service.
- To foster the alignment of community volunteer resources with the goals of the state.
- To implement policy and administrative changes that encourage and enable individuals to participate in volunteer and community service activities.
- To encourage nonprofit agencies to interweave volunteers into the fabric of their service delivery as a means of increasing the effectiveness and efficiency of their services.
- To support and promote volunteer service to all citizens as an effective means to address community needs and foster a collective commitment to lifelong community service.
- To recognize National Volunteer Week as a time to encourage all citizens of Florida to participate in local service projects.
- To recognize the value of individual volunteers and volunteer and service organizations and programs and to honor and celebrate the success of volunteers.

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<sup>10</sup> Section 11.45(3)(d), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 112.3251, F.S.

<sup>13</sup> Chapter 2001-84, L.O.F. and s. 14.295(2), F.S.

<sup>14</sup> *Id.*

- To encourage volunteer and service efforts to point children in the right direction and to endow them with the character and competence they need to achieve success in life.<sup>15</sup>

### **The Florida Commission on Community Service**

The Florida Commission on Community Service (Commission),<sup>16</sup> administratively housed within the Executive Office of the Governor, serves as an advisory board to the Governor, the Cabinet,<sup>17</sup> the Legislature, and appropriate state agencies and entities on matters relating to volunteerism and community service.<sup>18</sup> The Commission is required to consist of no less than 15 and no more than 25 voting members,<sup>19</sup> which are appointed on a bipartisan basis by the Governor and confirmed by the Senate.<sup>20</sup> Voting members may represent one, or any combination of the following categories, so long as each of the respective categories is represented:

- A representative of a community-based agency or organization.
- The Commissioner of Education or designee thereof.
- A representative of local labor organizations.
- A representative of local government.
- A representative of business.
- An individual between the ages of 16 and 25, inclusive, who is a participant in or a supervisor of a service program for school-age youth, or of a campus-based or national service program.
- A representative of a national service program.
- An individual with expertise in the educational, training, and developmental needs of youth, particularly disadvantaged youth.
- An individual with experience in promoting service and volunteerism among older adults.<sup>21</sup>

Members of the Commission serve without compensation<sup>22</sup> for terms of 3 years<sup>23</sup> and meet at the call of its chair or at the request of a majority of its total voting membership, but shall meet at least biannually.<sup>24</sup> A majority of the total voting membership shall constitute a quorum, and the affirmative vote of a majority of a quorum is necessary to take official action.<sup>25</sup> The Commission is required to:

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<sup>15</sup> Section 14.295(3), F.S.

<sup>16</sup> The Commission is also known as Volunteer Florida. *See* About Us and History, VOLUNTEER FLORIDA, <https://www.volunteerflorida.org/about/> (last visited on Jan. 24, 2018).

<sup>17</sup> Section 20.03(1), F.S., defines the term “Cabinet” to mean collectively the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture, as specified in the s. 4, Art. IV of the State Constitution.

<sup>18</sup> Section 14.29(2), F.S. Any number of nonvoting members may be appointed by the Governor.

<sup>19</sup> Section 14.29(3)(a), F.S. Also, no more than 50 percent plus one of the voting members of the Commission may be aligned with the same political party. *See* Section 14.29(3)(b), F.S.

<sup>20</sup> Section 14.29(3)(a), F.S.

<sup>21</sup> *Id.* Other members may include educators, experts in the delivery of human educational, environmental, or public safety services, representatives of Indian tribes, out-of-school or at-risk youth, and representatives of programs that are administered by or receive assistance from the Domestic Volunteer Service Act of 1973, as amended.

<sup>22</sup> Section 14.29(6), F.S. Voting members may must be reimbursed for per diem and travel expenses in accordance with s. 112.061, F.S.

<sup>23</sup> Section 14.29(4), F.S.

<sup>24</sup> Section 14.29(5), F.S.

<sup>25</sup> *Id.*

- Annually elect a chair and a vice chair. To be eligible to serve as chair, an individual must be a voting member of the Commission.
- Employ an executive director, who shall be initially designated by the Governor, to carry out the provisions of this section. The executive director shall report directly to the Commission. The executive director shall be the chief administrative officer of the Commission.
- Prepare an annual report detailing its activities during the preceding year and, to the extent possible, compile and synthesize any reports that it accepted on behalf of the Governor. The Commission's report shall be presented to the Governor no later than January 15, with copies to the President of the Senate and the Speaker of the House of Representatives. The report shall also include specific recommendations for any necessary legislation, administrative, or regulatory reform, and the Commission's assessment of the state of volunteerism in Florida.<sup>26</sup>

The Commission is permitted, but not required, to perform the following actions:<sup>27</sup>

- Secure assistance from all state departments and agencies in order for the Commission to avail itself of expertise at minimal cost.
- Procure information and assistance from the state or any political subdivision, municipal corporation, public officer, or governmental department or agency thereof.
- Apply for and accept funds, grants, gifts, and services from local, state, or federal government, or from any of their agencies, or any other public or private source and is authorized to use funds derived from these sources to defray administrative costs, implement programs as may be necessary to carry out the Commission's charge, and assist agencies, institutions, and individuals in the implementation of programs pursuant to the Act. The Commission may also authorize Volunteer Florida Foundation, Inc., the Commission's nonprofit DSO, to assist in securing training, technical assistance, and other support needed to accomplish the intent and purposes of the Act.
- Contract for necessary goods and services.

The Commission administers \$31.7 million in federal, state and local funding for national service and volunteer programs across the state.”<sup>28</sup> The Commission administers national service programs like AmeriCorps, which offers Floridians the opportunity to engage in intensive service to their communities while increasing capacity for nonprofits and other service organizations. The Commission's grantees include schools, educational foundations, nonprofits, faith-based organizations, and other community organizations. The Commission is also the lead agency for coordinating volunteers and donations for the Florida Division of Emergency Management.<sup>29</sup>

### ***DSO for the Florida Commission on Community Service***

The Commission is authorized to create a DSO that is:

- A Florida corporation, not for profit, incorporated under the provisions of Chapter 617, F.S., and approved by the Secretary of State;
- Organized and operated exclusively to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of the program; and

<sup>26</sup> Section 14.29(7), F.S.

<sup>27</sup> Section 14.29(8), F.S.

<sup>28</sup> See About Us, VOLUNTEER FLORIDA, <https://www.volunteerflorida.org/about/> (last visited on Jan. 24, 2018).

<sup>29</sup> *Id.* See History, VOLUNTEER FLORIDA.

- An organization that the Commission, after review, has certified to be operating in a manner consistent with the goals of the program and in the best interests of the state.<sup>30</sup>

The DSO is required to operate under a written contract with the Commission. The contract must provide for:

- Approval of the articles of incorporation and bylaws of the DSO by the Commission.
- Submission of an annual budget for the approval of the Commission.
- Annual certification by the Commission that the DSO is complying with the terms of the contract and in a manner consistent with the goals and purposes of the Commission and in the best interest of the state.<sup>31</sup>
- The reversion to the Commission, or the state if the Commission ceases to exist, of moneys and property held in trust by the DSO if the DSO is no longer approved to operate.
- The fiscal year of the DSO, to begin July 1 of each year and end June 30 of the following year.
- The disclosure of material provisions of the contract and the distinction between the board of directors and the DSO to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.<sup>32</sup>

The members of the DSO's board of directors must include members of the Commission.<sup>33</sup> The Commission may authorize the DSO to use its personal services, facilities, and property, except money.<sup>34</sup> Additionally, the Commission is required to adopt rules prescribing the procedures by which the DSO is governed and any conditions with which it must comply to use property, facilities, or personal services of the Commission.<sup>35</sup>

Funds held by the DSO may be held in a separate depository account and subject to the provisions of the contract with the commission.<sup>36</sup> Such funds may include membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the DSO. The DSO must provide for an annual financial audit in accordance with s. 215.981, F.S.<sup>37</sup>

The statutory authority for the Commission's DSO is scheduled to repeal on October 1, 2018, unless reviewed and saved from repeal by the Legislature.<sup>38</sup>

### **Volunteer Florida Foundation, Inc.**

The Commission established a not-for-profit corporation, the Volunteer Florida Foundation, Inc. (VFF), in May 2010, to serve as its DSO. The VFF provides the mechanism for the state to secure private funding and to properly review organizations requesting funding. The VFF is

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<sup>30</sup> Section 14.29(9)(a), F.S.

<sup>31</sup> The certification must be reported in the official minutes of a Commission meeting. *See* s. 14.29(9)(b)3., F.S.

<sup>32</sup> Section 14.29(9)(b), F.S.

<sup>33</sup> Section 14.29(9)(c), F.S.

<sup>34</sup> Section 14.29(9)(d), F.S.

<sup>35</sup> Section 14.29(9)(e), F.S.

<sup>36</sup> Section 14.29(9)(f), F.S.

<sup>37</sup> Section 14.29(9)(g), F.S.

<sup>38</sup> Section 14.29(9)(h), F.S.

governed by a board of directors subject to approval by the Commission.<sup>39</sup> The board must consist of not less than nine members and not more than fifteen members, each serving a term of 3 years.<sup>40</sup> The VFF board is responsible for raising funds, approving distribution of funds, and providing oversight of the funding used to support the Commission's programs.<sup>41</sup>

Additionally, the VFF administers the Florida Disaster Fund, the State of Florida's official private fund to assist communities in times of disaster.<sup>42</sup> In 2017, the Florida Disaster Fund provided \$1,250,000 in grants to 59 non-profit partners to support four separate disaster events, including response following Hurricane Irma.

### **Senate Professional Staff Review of the Volunteer Florida Foundation**

Section 14.29(9), F.S., the statutory authority for the Commission's DSO, is scheduled to repeal on October 1, 2018, unless reviewed and saved from repeal by the Legislature. Professional staff of the Senate Committee on Governmental Oversight and Accountability reviewed the VFF to verify its compliance with applicable Florida Statutes.

Staff found that VFF is a DSO that supports the Commission in its mission to "deliver high-impact national service and volunteer programs across the state."<sup>43</sup> During the 2017 interim, staff met with representatives of VFF and the Commission to discuss the DSO's operations and structure and to receive documents to assist with the review. After reviewing the submitted documents and reviewing the other requirements to which VFF is subject, staff concluded that it appears VFF is in compliance with its enabling legislation, s. 14.29, F.S., as well as the DSO requirements in s. 20.058, F.S.

Senate professional staff reviewed relevant VFF records from Fiscal Years 2013-2014, 2014-2015, 2015-2016, and 2016-2017, and found that the VFF is an active DSO that supports the Commission.

Senate professional staff identified minor technical deficiencies in which the VFF was not in full compliance with the applicable Florida Statutes.<sup>44</sup> These deficiencies are largely administrative or procedural. The VFF will resolve each deficiency presented by Senate professional staff and intend to comply with the applicable Florida Statutes moving forward.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 14.29, F.S., to save from repeal the Commission's DSO, which is currently scheduled for repeal on October 1, 2018.

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<sup>39</sup> See About Us, Transparency, Governance, VOLUNTEER FLORIDA, <https://www.volunteerflorida.org/volunteer-florida-foundation/> (last visited on Jan. 24, 2018).

<sup>40</sup> Rule 27O-1.001(2)(c), F.A.C. See also VFF Bylaws (copy on file with the Senate Governmental and Accountability Committee).

<sup>41</sup> Email from Bonnie Hazleton, Chief Operating Officer, Volunteer Florida (Dec. 18, 2017) (copy on file with the Senate Governmental Oversight and Accountability Committee).

<sup>42</sup> Volunteer Florida Foundation Fact Sheet (copy on file with the Senate Governmental and Accountability Committee).

<sup>43</sup> *Id.*

<sup>44</sup> See Florida Senate Review of the Florida Commission on Community Service Direct-support Organization, Staff Findings and Recommendations (Jan. 26, 2018) (on file with the Senate Governmental Oversight and Accountability Committee).

**Section 2** 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:**

By saving the DSO from repeal, this bill sustains a source of financial and other assistance to Floridians affected by natural disasters and supports Governor's initiatives such as Florida's Black History Month and Hispanic Heritage Month celebrations.

**C. Government Sector Impact:**

The bill has no fiscal impact on state government. However, if the DSO is not saved from repeal, the Commission may need to find another source of funding for the Florida Disaster Fund and initiatives for the Governor's office.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 14.29 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Baxley

12-01456A-18

20181500\_\_

A bill to be entitled

An act relating to the direct-support organization of the Florida Commission on Community Service; amending s. 14.29, F.S.; removing the scheduled repeal of provisions governing the commission's direct-support organization; providing an effective date.

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

Section 1. Subsection (9) of section 14.29, Florida Statutes, is amended to read:

14.29 Florida Commission on Community Service.—

(9) (a) The commission may establish a direct-support organization which is:

1. A Florida corporation, not for profit, incorporated under the provisions of chapter 617 and approved by the Secretary of State.

2. Organized and operated exclusively to receive, hold, invest, and administer property and funds and to make expenditures to or for the benefit of the program.

3. An organization which the commission, after review, has certified to be operating in a manner consistent with the goals of the program and in the best interests of the state.

(b) The direct-support organization shall operate under written contract with the commission. The contract must provide for:

1. Approval of the articles of incorporation and bylaws of the direct-support organization by the commission.

2. Submission of an annual budget for the approval of the

Page 1 of 3

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

12-01456A-18

20181500\_\_

commission. The budget must comply with rules adopted by the commission.

3. Certification by the commission that the direct-support organization is complying with the terms of the contract and in a manner consistent with the goals and purposes of the commission and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the commission.

4. The reversion to the commission, or the state if the commission ceases to exist, of moneys and property held in trust by the direct-support organization if the direct-support organization is no longer approved to operate for the commission or the commission ceases to exist.

5. The fiscal year of the direct-support organization, to begin July 1 of each year and end June 30 of the following year.

6. The disclosure of material provisions of the contract and the distinction between the board of directors and the direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(c) The members of the direct-support organization's board of directors must include members of the commission.

(d) The commission may authorize a direct-support organization to use its personal services, facilities, and property, except money, subject to the provisions of this section. A direct-support organization that does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin may not use the property, facilities, or personal services of the

Page 2 of 3

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



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20181500\_\_

commission. For the purposes of this subsection, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(e) The commission shall adopt rules prescribing the procedures by which the direct-support organization is governed and any conditions with which the direct-support organization must comply to use property, facilities, or personal services of the commission.

(f) Moneys of the direct-support organization may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the commission. Such moneys may include membership fees, private donations, income derived from fundraising activities, and grants applied for and received by the direct-support organization.

(g) The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

~~(h) This subsection is repealed effective October 1, 2018, unless reviewed and saved from repeal by the Legislature.~~

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 820

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Powell

SUBJECT: Firesafety Inspectors

DATE: February 22, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Peacock	Caldwell	GO	<b>Fav/CS</b>
2. Erickson	Jones	CJ	<b>Favorable</b>
3. Peacock	Phelps	RC	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 820 creates s. 633.217, F.S., which prohibits certain actions to influence a firesafety inspector by coercion or compensation to violate the Florida Fire Prevention Code, any rules adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

The bill imposes criminal penalties for violation of the prohibited provisions. A first offense is a second degree misdemeanor. A second or subsequent offense is a first degree misdemeanor.

The bill takes effect on October 1, 2018.

**II. Present Situation:**

**Division of the State Fire Marshal**

State law on fire prevention and control is provided in ch. 633, F.S. Section 633.104(1), F.S., designates the Chief Financial Officer (CFO) as the State Fire Marshal, operating through the Division of the State Fire Marshal (Division).<sup>1</sup> Pursuant to this authority, the State Fire Marshal:

- Regulates, educates or trains, and certifies fire service personnel;<sup>2</sup>

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<sup>1</sup> The head of the Department of Financial Services (DFS) is the Chief Financial Officer. The Division of the State Fire Marshal is located within the DFS. *See* s. 20.121, F.S.

<sup>2</sup> Section 633.128(1), F.S. *See* Part IV, ch. 633, F.S. (Fire Standards and Training).

- Investigates the causes of fires;<sup>3</sup>
- Enforces arson laws;<sup>4</sup>
- Regulates the installation and maintenance of fire equipment;<sup>5</sup>
- Conducts firesafety inspections of state buildings;<sup>6</sup>
- Develops firesafety standards;<sup>7</sup>
- Provides testing facilities for testing firefighting equipment;<sup>8</sup> and
- Operates the Florida State Fire College.<sup>9</sup>

The Division consists of the two bureaus: the Bureau of Fire Standards and Training (BFST), and the Bureau of Fire Prevention.<sup>10</sup> The Florida Fire College, part of the BFST, trains over 6,000 students per year.<sup>11</sup> 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.<sup>12</sup>

### Florida Fire Prevention Code

The State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all firesafety laws and rules that pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such firesafety laws and rules.<sup>13</sup> The State Fire Marshal adopts a new edition of the FFPC every three years.<sup>14</sup> The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA),<sup>15</sup> including the NFPA's Fire Code (1), Life Safety Code (101), and Guide on Alternative Approaches to Life Safety (101A).<sup>16</sup>

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<sup>3</sup> Sections 633.104(2)(e) and 633.112, F.S.

<sup>4</sup> Section 633.104(2)(e), F.S.

<sup>5</sup> Section 633.104(2)(b), F.S. *See s. 633.104(2)(c), F.S., and part II, ch. 633, F.S. (Fire Protection and Suppression).*

<sup>6</sup> Section 633.218, F.S.

<sup>7</sup> Part II, ch. 633, F.S. (Fire Safety and Prevention).

<sup>8</sup> Section 633.432, F.S.

<sup>9</sup> Section 633.128(1)(h)–(q), F.S. *See ss. 633.428–633.434, F.S.*

<sup>10</sup> *See* State Fire Marshall, available at <https://www.myfloridacfo.com/Division/sfm/> (last visited on Jan. 29, 2018).

<sup>11</sup> Division of State Fire Marshal, *About the Florida State Fire Marshal*, available at <http://www.myfloridacfo.com/division/sfm/AbouttheStateFireMarshal.htm> (last visited on Jan. 29, 2018).

<sup>12</sup> *Id.*

<sup>13</sup> Section 633.202(1), F.S. *See* ch. 69A-60, F.A.C.

<sup>14</sup> *Id.*

<sup>15</sup> Section 633.202(2), F.S. Founded in 1896, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. *See* National Fire Protection Association, *About NFPA*, available at <http://www.nfpa.org/about-nfpa> (last visited on Jan. 29, 2018).

<sup>16</sup> The NFPA states that the Guide on Alternative Approaches to Life Safety “is intended to be used in conjunction with the NFPA 101: Life Safety Code, not as a substitute.” National Fire Protection Association, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, available at <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=101A> (last visited on Jan. 29, 2018).

## **Firesafety Enforcement by Local Governments**

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code, which operates uniformly among local governments and in conjunction with the Florida Building Code.<sup>17</sup> These local enforcing authorities may adopt more stringent firesafety standards, subject to certain requirements in s. 633.208, F.S.,<sup>18</sup> but may not enact firesafety ordinances which conflict with ch. 633, F.S., or any other state law.<sup>19</sup>

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and the rules prescribed by the State Fire Marshal within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.<sup>20</sup> Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a firesafety inspector (certified by the State Fire Marshal) to conduct all firesafety inspections required by law.<sup>21</sup>

## **Firesafety Inspectors**

Section 633.102(12), F.S., defines a firesafety inspector as an individual who holds a current and valid Fire Safety Inspector Certificate of Compliance issued by the Division under s. 633.216, F.S., who is officially assigned the duties of conducting firesafety inspections of buildings and facilities on a recurring or regular basis on behalf of the state or any county, municipality, or special district with fire safety responsibilities.<sup>22</sup> The BFST issues certifications for Firesafety Inspector I and Firesafety Inspector II.<sup>23</sup>

A person applying for certification as a Firesafety Inspector I 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, or a felony or 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; and
- Have a good moral character.<sup>24</sup>

A Firesafety Inspector I Certificate of Compliance will be issued by the Division to an individual who:

- Successfully completes a minimum of 200 hours of basic certification training for firesafety inspectors, or has received equivalent training in another state; and

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<sup>17</sup> Sections 633.108 and 633.208, F.S.

<sup>18</sup> See Rule 69A-60.002, F.A.C.

<sup>19</sup> Section 633.214(4), F.S. The State Fire Marshal maintains a list of local amendments to the FFPC. This information is available at <https://www.myfloridacfo.com/Division/SFM/bfp/LocalAmendments.htm> (last visited on Jan. 29, 2018).

<sup>20</sup> Section 633.118, F.S.

<sup>21</sup> Section 633.216(1), F.S.

<sup>22</sup> See s. 633.214(1)(a), F.S.

<sup>23</sup> Section 633.216(2), F.S., and ch. 69A-39, F.A.C. See Division of State Fire Marshal, BFST, *Certification and Testing* available at <https://www.myfloridacfo.com/Division/SFM/BFST/Standards/default.htm> (last visited on Jan. 29, 2018).

<sup>24</sup> Sections 633.216(2) and 633.412(1)-(4), F.S.

- Passes a state written examination.<sup>25</sup>

The Firesafety Inspector I Certificate of Compliance is valid for a period of 4 years from the date of issuance. Renewal of this certificate includes completion of at least 54 hours of continuing education during the preceding 4 year period.<sup>26</sup>

A Firesafety Inspector II Certificate of Compliance will be issued by the Division to an individual who:

- Is certified as a Firesafety Inspector I; and
- Successfully completes a minimum of 160 hours of certification training for Firesafety Inspector II, or has received equivalent training in another state.<sup>27</sup>

### **Criminal Penalties**

Section 633.122, F.S., prohibits a person from falsely assuming or pretending to be the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by identifying herself or himself as the State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or a firesafety inspector by wearing a uniform or presenting or displaying a badge as credentials that would cause a reasonable person to believe that she or he is a State Fire Marshal, an agent of the State Fire Marshal, a firefighter, a volunteer firefighter, or firesafety inspector. A violation of this section is a third degree felony.<sup>28</sup> However, it is a first degree felony<sup>29</sup> if the impersonation occurs during the commission of a separate felony by that person.

Section 468.629, F.S., prohibits a person from influencing a building code enforcement official<sup>30</sup> by coercion or compensation. Any person who violates any provision of Part XII of ch. 468, F.S.,<sup>31</sup> relating to building code administrators and inspectors, commits a first degree misdemeanor.<sup>32</sup> A person who violates any provision of Part XII of ch. 468, F.S., after a previous conviction for such violation commits a third degree felony.

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 633.217, F.S., which prohibits:

- Influencing a firesafety inspector by threatening, coercing, tricking, persuading, interfering with, or otherwise influencing; or attempting to threaten, coerce, trick, persuade, interfere with, or otherwise attempting to influence, the firesafety inspector into violating any

<sup>25</sup> *Supra*, n. 23.

<sup>26</sup> Section 633.216(4), F.S., and Rule 69A-39.009(1)(b), F.A.C.

<sup>27</sup> *See supra*, n. 24, and s. 633.216(8), F.S.

<sup>28</sup> A third degree felony is punishable by a term of imprisonment not to exceed 5 years, a fine not to exceed \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>29</sup> A first degree felony is generally punishable by a term of imprisonment not to exceed 30 years, a fine not to exceed \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>30</sup> Section 468.603(3), F.S., defines building code enforcement official or enforcement official as a licensed building code administrator, building code inspector, or plans examiner.

<sup>31</sup> Sections 468.601-468.633, F.S.

<sup>32</sup> A first degree misdemeanor is punishable by a jail term not to exceed one year, a fine not to exceed \$1,000, or both.

provision of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.; and

- Offering any compensation to the firesafety inspector to induce a violation of the Florida Fire Prevention Code, any rule adopted by the State Fire Marshal, or any provision of ch. 633, F.S.

A person who violates this section commits a second degree misdemeanor.<sup>33</sup> However, a person who commits a second or subsequent violation of this section commits a first degree misdemeanor.

**Section 2** provides an effective date of October 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill creates criminal offenses and penalties. Article VII, Section 18(d) of the Florida Constitution, provides that criminal laws are exempt from the requirements of this section relating to mandates on municipalities and counties.

##### **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:**

Indeterminate.

##### **C. Government Sector Impact:**

The bill does not create any felony penalties. Therefore, it does not have a prison bed impact. The bill may have a positive indeterminate jail impact.

#### **VI. Technical Deficiencies:**

None.

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<sup>33</sup> A second degree misdemeanor is punishable by a jail term not to exceed 60 days, a fine not to exceed \$500, or both. Sections 775.082 and 775.083, F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 633.217 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 Governmental Oversight and Accountability on January 23, 2018:**

The Committee Substitute:

- Revises criminal penalty for first offense from first degree misdemeanor to second degree misdemeanor; and
- Revises criminal penalty for second or subsequent offense from third degree felony to first degree misdemeanor.

**B. Amendments:**

None.

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

585-02376-18

2018820c1

A bill to be entitled

An act relating to firesafety inspectors; creating s.  
633.217, F.S.; prohibiting certain actions to  
influence a firesafety inspector to violate the  
Florida Fire Prevention Code, other rules of the State  
Fire Marshal, or ch. 633, F.S.; providing criminal  
penalties; providing an effective date.

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

Section 1. Section 633.217, Florida Statutes, is created to  
read:

633.217 Influencing a firesafety inspector; criminal  
penalties.-

(1) A person may not influence a firesafety inspector by:

(a) Threatening, coercing, tricking, persuading,  
interfering with, or otherwise influencing; or attempting to  
threaten, coerce, trick, persuade, interfere with, or otherwise  
attempting to influence, the firesafety inspector into violating  
any provision of the Florida Fire Prevention Code, any rule  
adopted by the State Fire Marshal, or any provision of this  
chapter.

(b) Offering any compensation to the firesafety inspector  
to induce a violation of the Florida Fire Prevention Code, any  
rule adopted by the State Fire Marshal, or any provision of this  
chapter.

(2) A person who violates subsection (1) commits a  
misdemeanor of the second degree, punishable as provided in s.  
775.082 or s. 775.083. A person who commits a second or

Page 1 of 2

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

585-02376-18

2018820c1

subsequent violation of subsection (1) commits a misdemeanor of  
the first degree, punishable as provided in s. 775.082 or s.  
775.083.

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

Page 2 of 2

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 822

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Hutson

SUBJECT: Beverage Law

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 822 amends the “tied house evil” law in s. 561.42, F.S., which prohibits an alcoholic beverage manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of an alcoholic beverage vendor, and also prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to the vendor.

The bill exempts from the “tied house evil” prohibitions a written agreement between a manufacturer or importer of malt beverages and an alcoholic beverage vendor for brand naming rights, including the right to advertise cooperatively. The agreement must be negotiated at arm’s length for no more than fair market value.

Such agreement must be with a vendor who operates a theme park complex; may not involve the sale or distribution of malt beverages; may not permit the vendor to give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer; may not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer or importer, or distributor; and must be registered with the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) within 10 days of its execution.

The bill defines a “theme park” as a complex comprising at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of

recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex.

The manufacturer or importer of malt beverages who is a party to a brand naming rights agreement is prohibited from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment it owes to the vendor pursuant to the naming rights agreement. The bill also prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

The bill imposes civil penalties for violations made during a 36 month period. The division has the authority to revoke or suspend beverages licenses after four or more violations within a 36 month period. For the first, second, and third violations within a 36 month period the division can impose a \$5,000 to \$100,000 penalty. The comparative value of the agreement in violation will be taken into account when assigning the civil penalties, as well as the number of violations within the previous 36 months.

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

## **II. Present Situation:**

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>1</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>2</sup> The division administers and enforces the Beverage Law.<sup>3</sup>

“Alcoholic beverages” are defined in s. 561.01, F.S., as “distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.” “Malt beverages” are brewed alcoholic beverages containing malt.<sup>4</sup>

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- “Manufacturers” are those “licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.”<sup>5</sup>
- “Distributors” are those “licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages.”<sup>6</sup>
- “Importers” are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state; provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.<sup>7</sup>

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<sup>1</sup> Section 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>3</sup> Section 561.02, F.S.

<sup>4</sup> Section 563.01, F.S.

<sup>5</sup> Section 561.14(1), F.S.

<sup>6</sup> Section 561.14(2), F.S.

<sup>7</sup> Section 561.01(5), F.S.

- “Vendors” are those “licensed to sell alcoholic beverages at retail only” and may not “purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law.”<sup>8</sup>

### **Three-Tier System**

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a “three-tier system.” The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.<sup>9</sup> A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.<sup>10</sup>

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.<sup>11</sup> Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.<sup>12</sup> Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.<sup>13</sup>

### **Tied House Evil Prohibitions**

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit “tied-house arrangements,” such legislation is referred to as “tied house” or “tied house evil” statutes.<sup>14</sup>

Section 561.42, F.S., Florida’s “tied house evil” statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans, property, or rebates.<sup>15</sup> The prohibitions also apply to an importer, primary American source of supply,<sup>16</sup> brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the

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<sup>8</sup> Section 561.14(3), F.S.

<sup>9</sup> Section 561.14, F.S.

<sup>10</sup> Section 561.22(1), F.S.

<sup>11</sup> Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.

<sup>12</sup> Section 561.22, F.S.

<sup>13</sup> Sections 563.022(14) and 561.14(1), F.S.

<sup>14</sup> 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).

<sup>15</sup> Section 561.42(1), F.S.

<sup>16</sup> See s. 564.045, F.S.

legitimate transportation of such beverages, to advertising materials, or to the extension of credit for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.<sup>17</sup>

Section 561.42, F.S., also prohibits licensed manufacturers and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;<sup>18</sup>
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;<sup>19</sup>
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of the licensed premises;<sup>20</sup> and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.<sup>21</sup>

### III. Effect of Proposed Changes:

CS/CS/SB 822 creates s. 561.42(16), F.S., to provide an exemption from the tied house evil prohibitions to permit a manufacturer or importer of malt beverages and vendor to enter into a written agreement for brand naming rights, including the right to advertise cooperatively. The agreement must be negotiated at arm's length for no more than fair market value. The bill defines "at arm's length" agreement for this section of law.<sup>22</sup>

Such written agreement:

- Must be with a vendor who operates a theme park complex;
- May not involve the sale or distribution of malt beverages;
- May not permit the vendor to give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer;
- May not limit, directly or indirectly, the sale of alcoholic beverages from another manufacturer, importer, or distributor; and
- Must be registered with the division within 10 days of its execution.

<sup>17</sup> Section 564.42(1). Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.

<sup>18</sup> Section 561.42(4), F.S.

<sup>19</sup> Section 561.42(10), F.S.

<sup>20</sup> Section 561.42(12), F.S.

<sup>21</sup> Section 561.42(14)(a), F.S.

<sup>22</sup> "Arm's length" is not defined by the bill. Black's Law Dictionary defines the term "arm's-length transaction" as a "transaction between two unrelated and unaffiliated parties", and as a "transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises". BLACKS LAW DICTIONARY (14<sup>th</sup> ed. 2014), when defining forms of the term "transaction".

"Arms length" or "arms-length" is used eight times in the Florida Statutes; where used, those terms are not defined. *See* s. 155.40(4)(b), F.S., (in defining "fair market value" in connection with the sale or lease of county, district, or municipal hospitals); s. 193.114(1)(n), F.S., (as to property tax assessment rolls); s. 212.14(4), F.S., (as to the security required for sales tax dealer registrations); s. 215.4401, F.S., (in connection with the real estate investment portfolio of the State Board of Administration); s. 287.055(2)(l), F.S., (in defining "negotiate" under the "Consultants' Competitive Negotiation Act"); s. 400.462(11), F.S., (in defining "fair market value" in connection with home health agency regulation); s. 456.053(3)(g), F.S., (in defining "fair market value" in connection with financial arrangements between health care providers); and s. 718.117, F.S., (in defining "fair market value" in connection with condominium terminations).

The bill defines a “theme park” as a complex comprising at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex.<sup>23</sup>

The bill imposes civil penalties for violations made during a 36 month period. The division has the authority to revoke or suspend beverages licenses after four or more violations within a 36 month period. For the first, second, and third violations within a 36 month period the division can impose a \$5,000 to \$100,000 penalty. The comparative value of the agreement in violation will be taken into account when assigning the civil penalties, as well as the number of violations within the previous 36 months.

The bill also prohibits a manufacturer or importer of malt beverages who is a party to a brand naming rights agreement from, directly or indirectly, soliciting or receiving from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to the naming rights agreement.

A brand naming rights agreement may not, directly or indirectly, obligate or place responsibility, financial or otherwise, upon a distributor.

This bill also clarifies tied house evil prohibitions on vendor assistance.

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.

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<sup>23</sup> This definition of “theme park” is similar to the definition of the term “theme park or entertainment complex” in s. 509.013(9), F.S., which relates to public lodging and public food services establishments. Comparable terms are also defined in the Beverage Law. Section 561.01(18), F.S., defines the term “entertainment/resort complex;” s. 565.02(6), F.S., defines the term “theme park complex;” and s. 565.02(7), F.S., defines the term “marine exhibition complex.” Each of these definitions also provide that the locations must be comprised of at least 25 contiguous acres owned and controlled by the same business entity, which contains permanent exhibitions and a variety of recreational activities and have a minimum of 1 million visitors annually. However, the definitions in ss. 561.01(18), 565.02(6), and 565.02(7), F.S., have additional requirements not included in s. 509.013(9), F.S., or in SB 822, including the requirement that the 1 million annual visitors pay admission fees.

**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 561.42 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 by Commerce and Tourism Committee on February 6, 2019:**

The committee substitute clarifies tied house evil prohibitions. The CS also adds penalties for manufacturers, vendors, and importers who violate provisions in the newly added subsection of 561.42(16). The civil penalties are issued for the first, second, third, and fourth violations within a three year period. The term “at-arms-length” agreement is defined for the purposes of this section.

**CS by Regulated Industries Committee on January 10, 2018:**

The committee substitute prohibits a brand naming rights agreement from, directly or indirectly, obligating or placing responsibility, financial or otherwise, upon a distributor.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Hutson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 201 - 220

and insert:

1. A civil penalty of not more than \$25,000, for a first violation.

2. A civil penalty of not more than \$100,000 for a second violation occurring within 36 months after the date of the first violation.

3. At the discretion of the division, in lieu of or in addition to a civil penalty imposed under subparagraph 2.,



646760

suspension or revocation of the alcoholic beverage license for a  
third or subsequent violation occurring within 36 months after  
the date of the first violation.

A violation occurring more than 36 months after a first  
violation is deemed a first violation under this paragraph. When  
imposing a civil penalty within the ranges provided in  
subparagraphs 1. and 2., the division may not impose a civil  
penalty in an amount greater than the financial value of the  
brand-naming rights agreement.

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

And the title is amended as follows:

Delete lines 26 - 29

and insert:

vendors; providing applicability; prohibiting the  
division from imposing certain civil penalties that  
are greater than the financial value of a brand-naming  
rights agreement; providing an effective



By the Committees on Commerce and Tourism; and Regulated Industries; and Senator Hutson

577-02900-18

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1 A bill to be entitled  
 2 An act relating to the Beverage Law; amending s.  
 3 561.42, F.S.; prohibiting certain entities and persons  
 4 from directly or indirectly assisting any vendor in  
 5 certain ways; prohibiting a licensed vendor from  
 6 accepting certain items and services; authorizing the  
 7 Division of Alcoholic Beverages and Tobacco to impose  
 8 administrative sanctions for a violation of certain  
 9 limitations established in the Beverage Law;  
 10 prohibiting a vendor from displaying certain signs in  
 11 the window or windows of his or her licensed premises;  
 12 authorizing certain entities and persons to give,  
 13 lend, furnish, or sell certain advertising material to  
 14 certain vendors; defining the term "decalcomania";  
 15 providing exemptions relating to tied house evil for  
 16 certain sales and purchases of merchandise; providing  
 17 conditions for the exemptions; defining the term  
 18 "merchandise"; prohibiting a manufacturer or importer  
 19 of malt beverages from soliciting or receiving any  
 20 portion of certain payments from its distributors;  
 21 defining the term "negotiated at arm's length";  
 22 specifying that a brand-naming rights agreement does  
 23 not obligate or place responsibility upon a  
 24 distributor; providing civil penalties for violations  
 25 by manufacturers or importers of malt beverages or  
 26 vendors; providing applicability; requiring the  
 27 division to consider the comparative financial value  
 28 of a brand-naming rights agreement when determining  
 29 the amount of a civil penalty; providing an effective

Page 1 of 8

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

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30 date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Present subsection (13) of section 561.42,  
 35 Florida Statutes, is redesignated as subsection (14),  
 36 subsections (1), (8), (11), and (12) and paragraph (b) of  
 37 present subsection (14) of that section are amended, and a new  
 38 subsection (13) and subsection (16) are added to that section,  
 39 to read:  
 40 561.42 Tied house evil; financial aid and assistance to  
 41 vendor by manufacturer, distributor, importer, primary American  
 42 source of supply, brand owner or registrant, or any broker,  
 43 sales agent, or sales person thereof, prohibited; procedure for  
 44 enforcement; exception.—  
 45 (1) A ~~No~~ manufacturer, distributor, importer, primary  
 46 American source of supply, or brand owner or registrant of any  
 47 of the beverages herein referred to, whether licensed or  
 48 operating in this state or out-of-state, nor any broker, sales  
 49 agent, or sales person thereof, may not ~~shall~~ have any financial  
 50 interest, directly or indirectly, in the establishment or  
 51 business of any vendor licensed under the Beverage Law; nor may  
 52 ~~shall~~ such manufacturer, distributor, importer, primary American  
 53 source of supply, brand owner or brand registrant, or any  
 54 broker, sales agent, or sales person thereof, directly or  
 55 indirectly assist any vendor by furnishing, supplying, selling,  
 56 renting, lending, buying for, or giving to any vendor any  
 57 vehicles, equipment, furniture, fixtures, signs, supplies,  
 58 credit, fees, slotting fees of any kind, advertising or

Page 2 of 8

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577-02900-18

2018822c2

59 cooperative advertising, services, any gifts or loans of money  
 60 or property of any description, or by the giving of any rebates  
 61 of any kind whatsoever. A No licensed vendor may not shall  
 62 accept, directly or indirectly, any vehicles, equipment,  
 63 furniture, fixtures, signs, supplies, credit, fees, slotting  
 64 fees of any kind, advertising or cooperative advertising,  
 65 services, gifts any gift or loans loan of money or property of  
 66 any description, or any rebates of any kind whatsoever from any  
 67 such manufacturer, distributor, importer, primary American  
 68 source of supply, brand owner or brand registrant, or any  
 69 broker, sales agent, or sales person thereof; provided, however,  
 70 that this does not apply to any bottles, barrels, or other  
 71 containers necessary for the legitimate transportation of such  
 72 beverages or to advertising materials and does not apply to the  
 73 extension of credit, for liquors sold, made strictly in  
 74 compliance with ~~the provisions of~~ this section. A brand owner is  
 75 a person who is not a manufacturer, distributor, importer,  
 76 primary American source of supply, brand registrant, or broker,  
 77 sales agent, or sales person thereof, but who directly or  
 78 indirectly owns or controls any brand, brand name, or label of  
 79 alcoholic beverage. Nothing in this section shall prohibit the  
 80 ownership by vendors of any brand, brand name, or label of  
 81 alcoholic beverage.

82 (8) The division may adopt rules and require reports to  
 83 enforce, and may impose administrative sanctions for any  
 84 violation of, the limitations established under the Beverage Law  
 85 on vehicles, equipment, furniture, fixtures, signs, supplies,  
 86 credit, fees, advertising or cooperative advertising, services,  
 87 gifts or loans of money or property in this section on credits,

577-02900-18

2018822c2

88 coupons, and other forms of assistance.

89 (11) A vendor may display in the interior of his or her  
 90 licensed premises, including the window or windows thereof,  
 91 neon, electric, or other signs, including window painting and  
 92 decalcomanias applied to the surface of the interior or exterior  
 93 of such windows; signs that require a power source; and  
 94 posters, placards, and other advertising material advertising  
 95 the brand or brands of alcoholic beverages sold by him or her,  
 96 whether visible or not from the outside of the licensed  
 97 premises, but a no vendor may not shall display in the window or  
 98 windows of his or her licensed premises more than one neon,  
 99 electric, or similar sign that requires a power source;  
 100 advertising the product of any one brand of alcoholic beverage  
 101 manufacturer.

102 (12) Any manufacturer, distributor, importer, primary  
 103 American source of supply, or brand owner or registrant, or any  
 104 broker, sales agent, or sales person thereof, may give, lend,  
 105 furnish, or sell to a vendor who sells the products of such  
 106 manufacturer, distributor, importer, primary American source of  
 107 supply, or brand owner or registrant any of the following: neon,  
 108 ~~or~~ electric, or similar signs requiring a power source; signs,  
 109 window painting and decalcomanias applied to the surface of the  
 110 interior or exterior of windows; or, posters, placards, and  
 111 other advertising material herein authorized to be used or  
 112 displayed by the vendor in the interior of his or her licensed  
 113 premises. As used in subsection (11) and this subsection, the  
 114 term "decalcomania" means a picture, design, print, engraving,  
 115 or label made to be transferred onto a glass surface.

116 (13) Any manufacturer, distributor, importer, primary

577-02900-18

2018822c2

American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases merchandise from such a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

(a) Such sale or purchase is not less than the fair market value of the merchandise;

(b) Such sale or purchase is not combined with any sale or purchase of alcoholic beverages;

(c) Such sale or purchase is separately itemized from the sale or purchase of alcoholic beverages; and

(d) Both the seller and purchaser maintain records of any such sale or purchase, including the price and any conditions associated with such sale or purchase of the merchandise.

For purposes of this subsection, the term "merchandise" means commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under chapter 320.

~~(15)-(14)~~ The division shall adopt reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any sales agent or sales person thereof; however:

577-02900-18

2018822c2

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, brand owner, or brand registrant of malt beverage, or any sales agent or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

(16)(a) Notwithstanding any other provision of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising, negotiated at arm's length for no more than fair market value if:

1. The vendor operates places of business where consumption on the premises is permitted, the premises are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity, and the complex contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit from the theme park complex;

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or the manufacturer's or importer's distributor, and a vendor;

3. The vendor, as a result of such agreement, does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered

577-02900-18

2018822c2

175 into such agreement;

176 4. Such agreement does not limit, either directly or  
 177 indirectly, the sale of alcoholic beverages of another  
 178 manufacturer or importer, or distributor; and

179 5. Within 10 days after execution of such agreement, the  
 180 vendor files with the division a description of the agreement  
 181 which includes the location, dates, and the name of the  
 182 manufacturer or importer that entered into the agreement.

183  
 184 As used in this paragraph, the term "negotiated at arm's length"  
 185 means the negotiation of a business transaction by independent  
 186 parties acting in each party's own individual self-interest and  
 187 conducted as if the parties were strangers, so that no conflict  
 188 of interest may arise.

189 (b) A manufacturer or importer of malt beverages which is a  
 190 party to a brand-naming rights agreement may not, either  
 191 directly or indirectly, solicit or receive from any of its  
 192 distributors any portion of the payment due from the  
 193 manufacturer or importer of malt beverages to the vendor  
 194 pursuant to such agreement. Such agreement exists solely between  
 195 the manufacturer and the vendor and does not, directly or  
 196 indirectly, in any way obligate or place responsibility,  
 197 financial or otherwise, upon a distributor.

198 (c) Notwithstanding s. 561.29(3) and (4), a manufacturer of  
 199 malt beverages, an importer of malt beverages, or a vendor who  
 200 violates this subsection is subject to:

201 1. A civil penalty of at least \$5,000, but not more than  
 202 \$25,000, for a first violation.

203 2. A civil penalty of at least \$25,000, but not more than

577-02900-18

2018822c2

204 \$50,000, for a second violation occurring within 36 months after  
 205 the date of the first violation.

206 3. A civil penalty of at least \$50,000, but not more than  
 207 \$100,000, for a third or subsequent violation occurring within  
 208 36 months after the date of the first violation.

209 4. At the discretion of the division, in lieu of or in  
 210 addition to a civil penalty imposed under subparagraph 3.,  
 211 suspension or revocation of the alcoholic beverage license for a  
 212 fourth or subsequent violation occurring within 36 months after  
 213 the date of the first violation.

214  
 215 A violation occurring more than 36 months after a first  
 216 violation is deemed a first violation under this paragraph. When  
 217 imposing a civil penalty within the ranges provided in  
 218 subparagraphs 1.-3., the division shall consider the comparative  
 219 financial value of the brand-naming rights agreement as a factor  
 220 in assigning the amount of the civil penalty.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 858

INTRODUCER: Commerce and Tourism Committee; Community Affairs Committee; and Senator Steube and others

SUBJECT: Time Observances

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Fav/CS</b>
2.	Harmsen	McKay	CM	<b>Fav/CS</b>
3.	Present	Phelps	RC	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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## **I. Summary:**

CS/CS/SB 858 creates the Sunshine Protection Act (the Act), which provides that the Legislature intends to adopt daylight saving time as the year-round standard time if the United States Congress amends 15 U.S.C. s. 260a, relating to Daylight Saving Time (DST).

## **II. Present Situation:**

### **History of Daylight Saving Time in the United States<sup>1</sup>**

Railroads in the United States and Canada instituted standard time in 1883, but standard time was not established in law until the Act of March 19, 1918, sometimes called the Standard Time Act or the Calder Act. The Standard Time Act also established DST. DST was repealed in 1919, but standard time in time zones remained in law. At that point, DST became a local matter. It was re-established nationally early in World War II, and was continuously observed from February 9, 1942 to September 30, 1945. After World War II, the use of DST varied among states and localities.

The Uniform Time Act of 1966 standardized the beginning and the end of daylight time in the U.S., but allowed for local exemptions from its observance. The Uniform Time Act provides that

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<sup>1</sup> United States Naval Observatory, *Daylight Time*, available at [http://aa.usno.navy.mil/faq/docs/daylight\\_time.php](http://aa.usno.navy.mil/faq/docs/daylight_time.php) (last visited Feb. 12, 2018).

DST begins on the last Sunday in April and ends on the last Sunday in October, with the changeover to occur at 2 a.m. local time. Specifically, clocks are moved forward from 2 a.m. to 3 a.m. in spring, and they are moved back from 2 a.m. to 1 a.m. in fall.

States are not required to observe DST, but if a state chooses to observe DST, it must begin and end on the federally mandated dates. Individual states may exempt themselves from DST and observe standard time<sup>2</sup> year-round by passing a state law if:

- The state lies entirely within a single time zone, and the exemption applies statewide; or
- The state is divided by a time zone boundary, and the exemptions applies either statewide or to the entire part of the state on one side of the time zone boundary.

Currently, Hawaii, most of Arizona,<sup>3</sup> several United States commonwealths and territories,<sup>4</sup> and various Native American nations<sup>5</sup> are exempt from DST.

The U.S. Department of Transportation states that DST saves energy, saves lives, prevents traffic injuries, and reduces crime.<sup>6</sup>

Currently, Florida law does not address DST. However, section 1.02, F.S., states that with regard to any act by an officer or department in Florida, “it shall be understood and intended that the...time shall be the United States standard time of the zone within which the act is to be performed...”

### **Benefits and Drawbacks of Daylight Savings Time**

An extension of DST by 4 weeks in 2007 allowed researchers to study the benefits of DST. One study found that robberies decreased during DST by seven percent, which researchers estimated translated into \$59 million per year in avoided social costs.<sup>7</sup> The effect of DST on energy use is more controversial. One study, based on Indiana’s residential utility use, found that DST resulted in a one percent overall increase in electricity demand.<sup>8</sup> Conversely, a U.S. Department of Energy (DOE) study found a 0.5 percent, per day decrease in electricity use during DST. The DOE study also found that “some southern portions of the United States exhibited slightly

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<sup>2</sup> Standard time is the official time in the United States, as determined by two federal agencies: the National Institute of Standards and Technology (NIST), an agency within the U.S. Department of Commerce; and its military counterpart, the United States Naval Observatory (USNO). The clocks run by these services are kept synchronized with each other as well as with those of other international timekeeping organizations. See <http://www.usno.navy.mil/USNO/time> and <https://www.nist.gov/pml/time-and-frequency-division> for more information (last visited Feb. 12, 2018).

<sup>3</sup> Native American nations within Arizona have the right to use or opt out of DST. The Navajo Nation, which includes land in Arizona, New Mexico, and Utah, has chosen to use DST.

<sup>4</sup> The commonwealths of the Northern Mariana Islands and Puerto Rico, and the territories of American Samoa, Guam, and the U.S. Virgin Islands do not observe DST.

<sup>5</sup> The Navajo Nation observes DST, but the Hopi Nation does not.

<sup>6</sup> U.S. Department of Transportation, *Purpose of Daylight Saving Time*, available at <https://www.transportation.gov/regulations/daylight-saving-time> (last visited Feb. 12, 2018).

<sup>7</sup> Jennifer Doleac and Nicholas Sanders, The Brookings Institution, *Fighting Crime With Daylight Savings Time* (Oct. 29, 2015), available at <https://www.brookings.edu/blog/brookings-now/2015/10/29/fighting-crime-with-daylight-saving-time/> (last visited Feb. 12, 2018).

<sup>8</sup> Matthew Kotchen and Laura Grant, National Bureau of Economic Research, *Does Daylight Saving Time Save Energy? Evidence From a Natural Experiment in Indiana* (Oct. 2008), available at <http://www.nber.org/papers/w14429.pdf> (last visited Feb. 12, 2018).

smaller impacts of extended DST on energy savings compared to the northern regions due to a small, offsetting increase in household air conditioning usage.”<sup>9</sup>

### **III. Effect of Proposed Changes:**

**Section 1** provides that the Legislature intends to adopt DST as the year-round standard time in the entire state of Florida and all of its political subdivisions if the United States Congress amends 15 U.S.C. s. 260a.

**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:**

There may be indeterminate costs to reprogram computers and other electronic devices to eliminate the automatic changing of the clocks. However, these costs are likely to be insignificant.

#### **C. Government Sector Impact:**

There may be indeterminate costs to reprogram computers and other electronic devices to eliminate the automatic changing of the clocks. However, these costs are likely to be insignificant.

### **VI. Technical Deficiencies:**

None.

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<sup>9</sup> U.S. Department of Energy, *Impact of Extended Daylight Saving Time on National Energy Consumption* (Oct. 2008), available at [https://energy.gov/sites/prod/files/2015/05/f22/epact\\_sec\\_110\\_edst\\_report\\_to\\_congress\\_2008.pdf](https://energy.gov/sites/prod/files/2015/05/f22/epact_sec_110_edst_report_to_congress_2008.pdf) (last visited Feb. 12, 2018).

**VII. Related Issues:**

The bill expresses a future intent, but does not require that Florida switch to DST year-round upon congressional amendment of 15 U.S.C. s. 260a. The Legislature cannot bind a future Legislature by effect of law.<sup>10</sup> Therefore, the bill is a nonbinding declaration of legislative intent.

**VIII. Statutes Affected:**

This bill creates one unnumbered section 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 by Commerce and Tourism Committee on February 12, 2018:**

- Removes the portion of the bill that requires the Florida Legislature to request to redesignate the portions of Florida that currently lie within the Central Time Zone to Eastern Time Zone.

**CS by Community Affairs Committee on January 23, 2018:**

- Provides that it is the intent of the Legislature to adopt DST as the year-round standard time in Florida if the United States Congress amends 15 U.S.C. s. 260a.
- Provides that the Florida Legislature shall submit a request to the Secretary of the United States Department of Transportation to initiate rulemaking to redesignate the portions of Florida that currently lie within the Central Time Zone to the Eastern Time Zone.

**B. Amendments:**

None.

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

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<sup>10</sup> *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821, 824 (Fla. 1985).



By the Committees on Commerce and Tourism; and Community Affairs; and Senators Steube, Mayfield, and Taddeo

577-03112-18

2018858c2

A bill to be entitled

An act relating to daylight saving time; providing a short title; providing legislative intent regarding the State of Florida and its political subdivisions observing daylight saving time year-round under certain conditions; providing an effective date.

WHEREAS, the State of Florida is known as the "Sunshine State," and

WHEREAS, as the "Sunshine State," Florida should be kept sunny year-round, NOW, THEREFORE,

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

Section 1. (1) This section may be cited as the "Sunshine Protection Act."

(2) If the United States Congress amends 15 U.S.C. s. 260a to authorize states to observe daylight saving time year-round, it is the intent of the Legislature that daylight saving time shall be the year-round standard time of the entire state and all of its political subdivisions.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 922

INTRODUCER: Senator Bean

SUBJECT: Sale of Alcoholic Beverages

DATE: February 22, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Oxamendi	McSwain	RI	<b>Favorable</b>
2. Price	Miller	TR	<b>Favorable</b>
3. Oxamendi	Phelps	RC	<b>Pre-meeting</b>

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## **I. Summary:**

SB 922 exempts liquor sold by an alcoholic beverage-licensed operator of *intrastate* railroads or sleeping cars from the limitation in current law that permits the licensee to only purchase and sell liquor in miniature bottles of not more than two ounces.

An alcoholic beverage license issued to an operator of railroads and sleeping cars is good throughout the state for the sale of beer, wine, liquor for consumption on any dining, club, parlor, buffet, or observation car of a passenger train operated by the licensee.

An operator of *interstate* railroads or sleeping cars remains subject to the limitation in current law that liquor may only be purchased and sold in miniature bottles of not more than two ounces.

The effective date of the bill is July 1, 2018.

## **II. Present Situation:**

### **Division of Alcoholic Beverages and Tobacco**

The Division of Alcoholic Beverages and Tobacco (division)<sup>1</sup> within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law,<sup>2</sup> which regulates the manufacture, distribution, and sale of wine, beer, and liquor.<sup>3</sup> The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

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<sup>1</sup> Section 561.02, F.S. Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>2</sup> See s. 561.14, F.S.

<sup>33</sup> Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean “that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

## **Quota Licenses**

The term “quota license” refers to the type of license authorized under s. 561.20, F.S., which limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. New quota licenses are created and issued when there is an increase in the population of a county, or when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

### ***Quota License Exceptions***

Section 561.20(2), F.S., provides several exceptions to the number of licenses that permit the sale of beer, wine, and distilled spirits. The exceptions include restaurants, caterers, hotels and motels, specialty centers built on government-owned land, bowling establishments, and airports. Quota license exceptions are known as “special licenses.”

### ***Alcoholic Beverage Licenses for Railroad Transit Stations***

The Beverage Law provides a limited exception to the quota license limitation to permit the division to issue an alcoholic beverage license (for the sale of beer, wine, and liquor) to an operator of railroads or sleeping cars and a vendor in railroad transit stations.

A “railroad transit station” is a platform or terminal facility where passenger trains operating on a guided rail system according to a fixed schedule between two or more cities regularly stop to load and unload passengers or goods. The term includes the passenger waiting lounge or dining, retail, entertainment, or recreational facilities within the premises owned or leased by the railroad operator or owner.<sup>4</sup>

Section 565.02(2), F.S., permits the division to issue a license for the sale of beer, wine, and liquor to:

- The operator of railroads or sleeping cars; and
- A vendor in a railroad transit station.<sup>5</sup>

The annual license tax for these licenses is \$2,500. These licenses are an exception to the quota license limitation. A municipality or county may not require an additional license or levy a tax for the privilege of selling alcoholic beverages for consumption in such cars.<sup>6</sup>

The license issued to the operator of railroads and sleeping cars is good throughout the state for the sale of beer, wine, liquor for consumption on any dining, club, parlor, buffet, or observation car of a passenger train operated by the licensee. Alcoholic beverages can be sold only on cars in which certified copies of the licenses are posted.<sup>7</sup>

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<sup>4</sup> See s. 561.01(22), F.S.

<sup>5</sup> Section 565.02(2), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 565.02(2)(a), F.S.

Operators of railroads and sleeping cars may only purchase and sell liquor in miniature bottles of not more than two ounces. However, alcoholic beverages sold within the licensed premises of a railroad transit station are not subject to the limitation on the size of the container.<sup>8</sup>

### **All Aboard Florida**

All Aboard Florida is the operator of “Brightline,” the under-construction, express passenger rail service between Miami and Orlando that uses the existing Florida East Coast Railway corridor between Miami and Cocoa. It is also building a new track along State Road 528 between Cocoa and Orlando. In 2018, the route is anticipated to open for service between Miami and West Palm Beach. A full-service route from Miami to Orlando will also open later that year. All Aboard Florida is constructing railroad stations in Miami, Fort Lauderdale, and West Palm Beach. The Orlando station is under construction at the Intermodal Transportation Center at Orlando International Airport.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 565.02(a), F.S., to exempt liquor sold by the operator of *intrastate* railroads or sleeping cars from the limitation that liquor may only be purchased and sold in miniature bottles of not more than two ounces.

An operator of *interstate* railroads or sleeping cars would remain subject to the limitation that liquor may only be purchased and sold in miniature bottles of not more than two ounces.

The effective date of the bill is 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.

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<sup>8</sup> *Id.*

<sup>9</sup> See All Aboard Florida at: <http://www.allaboardflorida.com/> (Last visited January 16, 2018).

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 565.02 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Bean

4-01073-18

2018922\_\_

1 A bill to be entitled  
 2 An act relating to the sale of alcoholic beverages;  
 3 amending s. 565.02, F.S.; providing an exception to  
 4 the miniature bottle requirement for operators of  
 5 intrastate railroads and sleeper cars; providing an  
 6 effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Paragraph (a) of subsection (2) of section  
 11 565.02, Florida Statutes, is amended to read:  
 12 565.02 License fees; vendors; clubs; caterers; and others.-  
 13 (2) An operator of railroads or sleeping cars, or a vendor  
 14 in a railroad transit station, in this state may obtain a  
 15 license to keep for sale and to sell the beverages mentioned in  
 16 the Beverage Law upon the payment of an annual license tax of  
 17 \$2,500 to the division. A municipality or county may not require  
 18 an additional license or levy a tax for the privilege of selling  
 19 such beverages.  
 20 (a) Operators of railroads or sleeping cars in this state  
 21 are authorized to keep for sale and to sell all beverages  
 22 mentioned in the Beverage Law for consumption upon any dining,  
 23 club, parlor, buffet, or observation car of a passenger train in  
 24 which certified copies of the licenses issued to the operators  
 25 are posted. Certified copies of such licenses shall be issued by  
 26 the division upon the payment of a \$10 fee. A license for the  
 27 sale of alcoholic beverages on a passenger train shall be good  
 28 throughout the state. Except for alcoholic beverages sold within  
 29 the licensed premises of a railroad transit station or by

Page 1 of 2

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

4-01073-18

2018922\_\_

30 operators of intrastate railroads or sleeping cars, it is  
 31 unlawful for such licensees to purchase or sell any liquor on a  
 32 passenger train except in miniature bottles of not more than 2  
 33 ounces.  
 34 Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7008

INTRODUCER: Communications, Energy, and Public Utilities Committee

SUBJECT: OGSR/Local Government Electric Utility

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Wiehle	Caldwell		<b>CU Submitted as Committee Bill</b>
1.	Caldwell	Caldwell	GO	<b>Favorable</b>
2.	Wiehle	Phelps	RC	<b>Pre-meeting</b>

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**I. Summary:**

SB 7008 removes the scheduled repeal of the public records exemption for proprietary confidential business information held by a local government electric utility, thus continuing the exemption from disclosure requirements under the public records laws. The bill takes effect on 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.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>9</sup> 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.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>12</sup> 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.<sup>13</sup>

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<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *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.

<sup>12</sup> 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).

<sup>13</sup> 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).



## 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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;<sup>17</sup>
- 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;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

<sup>14</sup> 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 section 119.15(2), F.S.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> 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?

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.

### **Section 119.0713(4), F.S. – Exemption of Proprietary Confidential Business Information Held by a Local Government Electric Utility**

In 2013, the Legislature created s. 119.0713(4), F.S., to exempt from the public record requirements proprietary confidential business information held by a local government electric utility in conjunction with a due diligence review of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. The term “proprietary confidential business information” means information, regardless of form or characteristics, which:

- is held by an electric utility that is subject to chapter 119, F.S.;
- is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations; and
- has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

The term “proprietary confidential business information” includes, but is not limited to:

- Trade secrets.
- Internal auditing controls and reports of internal auditors.
- Security measures, systems, or procedures.
- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

This public record exemption stands repealed on October 2, 2018, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act (section 119.15, F.S.).

### **Open Government Sunset Review of Exemption**

Accordingly, in the summer of 2017, Senate and House committee staff conducted a survey of Florida local government electric utilities relating to their use of the exemption. Six entities responded: JEA (previously Jacksonville Electric Authority), Orlando Utilities Commission (OUC), Kissimmee Utility Authority (KUA), Lakeland Electric (LE), City of Leesburg Electric Department (LED), and Florida Municipal Power Agency (FMPA).<sup>23, 24</sup>

<sup>23</sup> Responses are on file with the Senate Committee on Communications, Energy, and Public Utilities.

<sup>24</sup> While there are 34 municipal electric utilities, only 13 of these utilities generate electricity. Florida Public Service Commission, *2017 Facts and Figures of the Florida Utilities Industry*, page 11

<http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/March%202017.pdf>

Also, the projects that this public records exemption addresses involve the acquisition of large scale facilities, are very expensive, and don't happen often. Finally, the FMPA represents the collective interests of 13 municipal electric utilities, and its response is considered a response for all 13 utilities. Collectively, then, 19 municipal utilities responded. Amy Zubaly, email to Diana Caldwell (September 6, 2017).

The statute applies to a local government electric utility that holds proprietary confidential business information in conjunction with either a due diligence review<sup>25</sup> of an electric project or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources. An electric project includes:

- Any plant, works, system, facilities, and real property and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, which is located within or without the state and which is used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.
- Any interest in, or right to, the use, services, output, or capacity of any such plant, works, system, or facilities.
- Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determine the legality and financial and engineering feasibility of any project referred to above.<sup>26</sup>

Types of projects include construction, acquisition, maintenance, or upgrading of electricity generating facilities, transmission or distribution power lines, operating systems, or storage facilities. Projects may involve traditional fuels or new sources, such as solar; traditional forms of transmission, distribution, and metering equipment or new equipment, such as smart meters and components of a smart grid; and new storage technologies, such as Li-Ion batteries and Vanadium Flow battery systems. Project goals may include: producing and delivering electricity to meet increased demands; increasing efficiency and cutting costs; or improving technologies to obtain purely economic or socioeconomic advantages.

A business may provide project proposals and related information to a municipal utility either pursuant to a utility announcement of a project and issuance of a Request for Proposals, or through an unsolicited business proposal. These proposals may be made by other electric utilities or designers or manufacturers of equipment or systems. Typically proposals include:

- Technical specifications, data, plans, drawings, and design information about the equipment, technology, and systems being proposed; and
- Terms and conditions, including identification and quantification of benefits to be provided and pricing information.

Much of this information is either patented, proprietary, or confidential.

The Legislature enacted the exemption statute based on a finding that it was a public necessity that this information be made confidential and exempt from public records requirements because the disclosure of this information could injure the provider in the marketplace by giving its competitors detailed insight into its financial status and strategic plans, thereby putting the provider at a competitive disadvantage. Without this exemption, providers might be unwilling to enter into discussions with the electric utility regarding the feasibility of future contracting. This

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<sup>25</sup> A due diligence review is an investigation and review of the business seeking the contract and of their financial and technical resources to fulfill the contract, of the proposal itself, and of the costs associated with the proposal, including ratepayer impacts.

<sup>26</sup> Section 163.01(3)(d), F.S.

could, in turn, limit opportunities the electric utility might otherwise have for finding cost-effective or strategic solutions for providing electric service or improving the delivery, cost, or diversification of fuel or renewable energy. This would put public providers of electric utility services at a competitive disadvantage by limiting their ability to optimize services to their customers and adversely affecting the customers of those utilities by depriving them of opportunities for rate reductions or other improvements in services. The Legislature also found that the public and private harm in disclosing such proprietary confidential business information significantly outweighed any public benefit derived from disclosure of the information and that the exemption would enhance the ability of electric utilities to optimize their performance, thereby benefiting ratepayers.

The survey responses reflect that these findings are borne out in these utilities' operations. Prior to enactment of the exemption, some of the responding utilities were able to enter into contracts by using a due diligence process in which no documents came into the utility's possession, using third party providers of due diligence services, or using detailed nondisclosure agreements. They note, however, that businesses have become more willing to make proposals and enter into agreements since the exemption was enacted, particularly with new or emerging technology such as solar energy and battery storage. Respondents also stated that the protected information could not be readily obtained by alternative means and that it was not protected by any other exemption. As such, all recommend retaining the exemption in its current form.

Based on this information, the exemption both protects confidential business information related to competitiveness and allows these governmental utilities to effectively and efficiently produce and deliver electricity to their customers, and these services would be significantly impaired without the exemption. The purpose appears sufficient to override public policy favoring open government, and could not be accomplished without the exemption.

### **III. Effect of Proposed Changes:**

The bill amends s. 119.0713(4), F.S., to remove the scheduled repeal of the public records exemption for proprietary confidential business information held by a local government electric utility. As a result, these records will remain exempt from disclosure requirements under public records law.

The bill takes effect October 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **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 it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption allows business entities to propose and negotiate projects with municipal utilities without the risk of disclosure of proprietary confidential business information, which allows these entities to increase their business activities.

The exemption allows municipal utility customers to benefit from anticipated improvements to utility infrastructure and systems.

C. Government Sector Impact:

The exemption allows the municipal utilities to increase the size and efficiency of their electricity generation and delivery infrastructure, utilize newer technologies, and reduce costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The First Amendment Foundation conducted its annual review of exemptions from public records subject to review during the 2018 legislative session. It concluded that the public record exemption which this bill maintains “is sufficiently narrow and the Foundation does not object to its reenactment as currently worded.”<sup>27</sup>

**VIII. Statutes Affected:**

This bill substantially amends section 119.0713 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.

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<sup>27</sup> Letter from Barbara A. Peterson, President, First Amendment Foundation, to Senator Dennis Baxley, Chair, Senate Committee on Government Oversight and Accountability (Aug. 17, 2017) (on file with the Senate Governmental Oversight and Accountability Committee).

B. Amendments:

None.

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

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417470

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 28  
and insert:  
1. Trade secrets, as defined in s. 688.002.

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

And the title is amended as follows:

Delete line 7  
and insert:



417470

12 utility; clarifying the meaning of the term "trade  
13 secret"; removing the scheduled repeal of the



By the Committee on Communications, Energy, and Public Utilities

579-01381-18

20187008\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., relating to an exemption from public records requirements for proprietary confidential business information held by a local government electric utility; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (4) of section 119.0713, Florida Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(4) (a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to this chapter ~~119~~, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

1. Trade secrets.
2. Internal auditing controls and reports of internal

579-01381-18

20187008\_\_

auditors.

3. Security measures, systems, or procedures.

4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.

5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

(b) Proprietary confidential business information held by an electric utility that is subject to this chapter ~~119~~ in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

~~(d) 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1094

INTRODUCER: Senator Simmons

SUBJECT: Trespass on Airport Property

DATE: February 22, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	<b>Favorable</b>
2. Cochran	Yeatman	CA	<b>Favorable</b>
3. Erickson	Phelps	RC	<b>Pre-meeting</b>

## **I. Summary:**

SB 1094 provides that it is a third degree felony to trespass with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified as specified in the bill. The bill defines the term “operational area of an airport.”

## **II. Present Situation:**

### **Trespass upon the Operational Area of an Airport**

Four incidents reported in the media provide examples of trespassing upon the operational area of an airport. In 2014, a man reportedly breached a fence at the Orlando International Airport and tried to crawl into the wheel well of a parked airplane.<sup>1</sup> That same year, a man reportedly scaled a fence at Tampa International Airport and went onto an active runway.<sup>2</sup> In March of 2015, a woman reportedly scaled a fence on the perimeter of the Miami-Dade International Airport.<sup>3</sup> In June of 2017, a man reportedly entered an airfield owned by the City of Lakeland and jumped onto the wing of an airplane that was preparing to taxi down the runway.<sup>4</sup>

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<sup>1</sup> “Arrest at Orlando International Airport” (September 18, 2014), cityoforlando.net, available at <http://www.cityoforlando.net/police/arrest-at-orlando-international-airport/> (last visited on Feb. 15, 2018).

<sup>2</sup> Mike M. Ahlers, “Man Jumps Tampa airport fence, taken into custody” (May 19, 2014), CNN, available at <http://www.cnn.com/2014/05/19/us/florida-airport-fence-jumper/index.html> (last visited on Feb. 15, 2018).

<sup>3</sup> Peter D’Oench, “Police: Woman Arrested for Scaling Miami Airport Fence” (March 2, 2015), CBS Miami, available at <http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/> (last viewed on Feb. 15, 2018).

<sup>4</sup> “Florida man steals van, tries to board airplane in Lakeland” (June 23, 2017), WFTS Tampa Bay, available at <https://www.abcactionnews.com/news/region-polk/lakeland/florida-man-steals-van-tries-to-board-airplane-on-runway-in-lakeland> (last visited on Feb. 15, 2018).

## Florida Trespassing Law

Florida law does not specifically punish trespassing upon the operational area of an airport,<sup>5</sup> though such trespassing could be charged and punished under s. 810.09, F.S., relating to trespass on property other than a structure or conveyance. Further, s. 901.15(14), F.S., authorizes a law enforcement officer to make a warrantless arrest when there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. An arrest under this subsection may be made on or off airport premises.

Section 810.09(1)(a) and (2)(a), F.S., provides that a person commits the offense of trespass on property other than a structure or conveyance, a first degree misdemeanor,<sup>6</sup> if the person, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation;<sup>7</sup> or
- If the property is the unenclosed curtilage<sup>8</sup> of a dwelling<sup>9</sup> and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Section 810.09(2)(b), F.S., provides that it is a first degree misdemeanor if a person defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance.

Generally, trespass on property other than a structure or conveyance is a misdemeanor. However, such trespass is a third degree felony<sup>10</sup> if a person is armed with a firearm or other dangerous weapon during the commission of such trespass<sup>11</sup> or if such trespass is upon specified types of property. For example, it is a third degree felony to trespass on a designated construction site,

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<sup>5</sup> Federal law prohibits a person from knowingly and willfully entering, in violation of specified federal security requirements, an aircraft or an airport area that serves an air carrier or foreign air carrier. 49 U.S.C. s. 46314(a). A violation is punishable by fine and imprisonment of not more than one year. 49 U.S.C. s. 46314(b)1. However, a person committing this violation with intent to evade security procedures or restrictions or with intent to commit, in the aircraft or airport area, a federal or state felony, is subject to a fine, imprisonment for not more than 10 years, or both. 42 U.S.C s. 46314(b)(2).

<sup>6</sup> A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>7</sup> "Cultivated land" means land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation. Section 810.011(6), F.S.

<sup>8</sup> "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. Section 810.09(1)(b), F.S.

<sup>9</sup> "Dwelling" means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. Section 810.011(2), F.S.

<sup>10</sup> A third degree felony is punishable by up to five years in prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>11</sup> Section 810.09(2)(c), F.S.

commercial horticulture property, and agricultural chemical manufacturing facility.<sup>12</sup> The protected property must have a posted sign that contains specific language identifying the property and indicating that trespass on the property is a felony.<sup>13</sup>

### III. Effect of Proposed Changes:

The bill amends s. 810.09, F.S., relating to trespass on property other than a structure or conveyance, to provide that it is a third degree felony<sup>14</sup> to trespass with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway,<sup>15</sup> taxiway,<sup>16</sup> ramp, or apron area,<sup>17</sup> and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the following manner:

THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND  
ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.

The bill defines the term “operational area of an airport” as any portion of an airport to which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill takes effect October 1, 2018.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>12</sup> Section 810.09(2)(d), (e), and (i), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> *Supra*, n. 10.

<sup>15</sup> A “runway” is “[a] defined rectangular area on a land aerodrome prepared for the landing and take-off of aircraft.” *Runway Safety Team Handbook*, Second Ed. (unedited version) (June 2015), p. 5, International Civil Aviation Organization, available at <https://www.icao.int/safety/RunwaySafety/Documents%20and%20Toolkits/ICAO%20RST%20Handbook%202nd%20Edition%202015%20REV2.pdf> (last visited on Feb. 15, 2018).

<sup>16</sup> A “taxiway” is “any surface area of an airport used for taxiing airplanes to and from a runway, parking apron, terminal, etc.” Definition of “taxiway,” Dictionary.com, available at <http://www.dictionary.com/browse/taxiway> (last visited on Feb. 15, 2018).

<sup>17</sup> An “apron” or “ramp” is “[a] defined area on an airport intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, and maintenance.” Advisory Circular, No: 120-57A (Dec. 19, 1996), p. 2, Federal Aviation Administration, available at: [https://www.faa.gov/documentLibrary/media/Advisory\\_Circular/AC%20120-57A.pdf](https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-57A.pdf) (last visited on Feb. 15, 2018).

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may financially benefit airports if it reduces instances of trespassing on airport property and if there are currently costs to airports associated with responding to such trespassing.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 810.09 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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<sup>18</sup> Email from staff of the Legislature’s Office of Economic and Demographic Research, dated Feb. 6, 2018 (on file with the Senate Committee on Criminal Justice).

By Senator Simmons

9-00857-18

20181094

A bill to be entitled

An act relating to trespass on airport property; amending s. 810.09, F.S.; providing enhanced criminal penalties for a trespass upon the operational area of an airport with specified intent if specified signage is posted; defining the term "operational area of an airport"; providing an effective date.

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

Section 1. Paragraph (j) is added to subsection (2) of section 810.09, Florida Statutes, and paragraph (a) of subsection (1) of that section is republished, to read:

810.09 Trespass on property other than structure or conveyance.—

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

(2)

(j)1. The offender commits a felony of the third degree,

Page 1 of 2

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

9-00857-18

20181094

punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

2. For purposes of this paragraph, the term "operational area of an airport" means any portion of an airport to which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

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

Page 2 of 2

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 520

INTRODUCER: Health Policy Committee and Senators Young and Campbell

SUBJECT: Optometry

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	<b>Fav/CS</b>
2.	Loe	Hansen	AP	<b>Favorable</b>
3.	Rossitto-Van Winkle	Phelps	RC	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 520 eliminates the requirement in current law that any person desiring an optometry license in Florida must file an application for licensure and subsequently take and successfully pass the licensure exam. Under the bill, an applicant may submit an application and proof of having successfully passed the licensure examination within three years before the date of the application or after the submission of the application. This process applies to a new licensee in the practice of optometry as well as to a person who is licensed to practice optometry in another state who desire licensure in Florida.

The bill requires the Board of Optometry (board) to approve the licensure examination and clarifies that the board may, by rule, offer a practical examination in addition to a written examination.

The bill may increase state expenditures by an indeterminate amount. The Department of Health (DOH) may experience an increase in workload if the board elects to offer a practical examination in addition to a written examination; however, these costs can be absorbed within existing resources.

The bill takes effect on July 1, 2018.

## II. Present Situation:

### The Practice of Optometry

The DOH is responsible for the regulation of optometrists in Florida for the preservation of the health, safety, and welfare of the public. The board was established to ensure that every person engaged in the practice of optometry meets minimum requirements for safe practice.<sup>1</sup>

Optometry is the diagnosis of conditions of the human eye and its appendages.<sup>2</sup> The practice of optometry includes the employment of any objective or subjective means or methods to assist in the diagnosis of conditions of the human eyes and its appendages, including:

- The administration of ocular pharmaceutical agents for the purpose of determining the refractive powers of the human eyes, or any visual, muscular, neurological, or anatomic anomalies of the human eyes and their appendages; and
- The prescribing and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, light frequencies, and any other means or methods, including ocular pharmaceutical agents,<sup>3</sup> for the correction, remedy, or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages.<sup>4</sup>

Licensed optometrists who are not certified may only use topical anesthetics for the purpose of glaucoma examinations and are otherwise prohibited from administering or prescribing ocular pharmaceutical agents.<sup>5</sup> A licensed optometrist is required to post in his or her practice location a sign, which states: “I am a Licensed Practitioner, not a Certified Optometrist, and I am not able to prescribe ocular pharmaceutical agents.”<sup>6</sup>

All optometrists initially licensed after July 1, 1993,<sup>7</sup> are now required to be certified and may administer and prescribe ocular pharmaceutical agents for the diagnosis and treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.<sup>8</sup>

### Licensure and Certification

Pursuant to ch. 456, F.S., the general provisions applicable to all professions regulated by the Division of Medical Quality Assurance within the DOH, the DOH must provide for the

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<sup>1</sup> Section 463.001, F.S., and The Department of Health, *Florida Board of Optometry*, available at: <http://floridasoptometry.gov/>, (last visited Nov. 8, 2017).

<sup>2</sup> Section 463.002(10), F.S. “Appendages” means the eyelids, the eyebrows, the conjunctiva, and the lacrimal apparatus.

<sup>3</sup> Section 463.002(5), F.S. “Ocular pharmaceutical agent” means a pharmaceutical agent that is administered topically or orally for the diagnosis or treatment of ocular conditions of the human eye and its appendages without the use of surgery or other invasive techniques.

<sup>4</sup> Section 463.002(7), F.S.

<sup>5</sup> Section 463.0055(1)(a), F.S.

<sup>6</sup> Section 463.002(3), F.S.

<sup>7</sup> Section 463.002(3), F.S. The 1986 Legislature amended ch. 463, F.S., to require that anyone applying for an optometrist license after July 1, 1993, become a Certified Optometrist. The legislation required all applicants after that date to meet additional education and examination requirements. *See also* the Department of Health, Board of Optometry, *Licensing and Registration*, available at <http://floridasoptometry.gov/licensing/>, (last visited Nov. 8, 2017).

<sup>8</sup> Sections 463.002(4) and 463.0055, F.S.



development, preparation, administration, scoring, score reporting, and evaluation of all examinations in consultation with the appropriate board. For each examination developed by the DOH or a contracted vendor, the board must specify by rule:

- The general areas to be covered by each examination;
- The relative weight to be assigned in grading each area tested; and
- The score necessary to achieve a passing grade.<sup>9</sup>

The board and the DOH may not administer a state-developed written examination if a national examination has been certified by the DOH.<sup>10</sup> The board may administer a state-developed practical or clinical examination, if required by the applicable practice act, if all costs are paid by the candidate. If a national practical or clinical examination is available and certified by the DOH, the board may administer the national examination.<sup>11</sup>

Currently, any person desiring to be a certified optometrist in Florida must apply to the DOH to take the licensure and certification examinations.<sup>12</sup> To be certified as an optometrist the applicant must:

- Submit a completed application form;
- Submit an application and examination fee;
- Be at least 18 years of age;
- Graduate from a school or college of optometry approved by the board;
- Provide proof of at least 110 hours of transcript quality course work and clinical training in general and ocular pharmacology;
- Have completed at least one year of supervised experience in differential diagnosis of eye disease or disorders as part of the optometric training or in a clinical setting as part of the optometric experience;
- Successfully pass all four parts of the Florida Licensure Examination, consisting of:
  - Part I – the Applied Basic Science (ABS) portion of the examination developed by the National Board of Examiners in Optometry (NBEO);
  - Part II – the Patient Assessment and Management (PAM) portion of the examination developed by the NBEO which includes an embedded Treatment and Management of Ocular Disease examination;
  - Part III – the Clinical Skills Examination (CSE) portion of the examination developed by the NBEO; and
  - Part IV – a written examination on applicable Florida laws and rules governing the practice of optometry; and
- If the applicant is, or has ever been, licensed in another state, he or she must also submit a licensure verification from each state.<sup>13</sup>

An applicant who fails to achieve a passing score on Part I, Part II, Part III, or Part IV of the licensure examination may retake any part. Reexamination is limited to an 18-month period from

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<sup>9</sup> Section 456.017(1)(a) and (b), F.S.

<sup>10</sup> Section 456.017(1)(c)2., F.S.

<sup>11</sup> Section 456.017, F.S.

<sup>12</sup> Section 463.006(1), F.S.

<sup>13</sup> The Department of Health, Board of Optometry, *Licensure Requirements*, available at: <http://floridasoptometry.gov/licensing/certified-optometrist/>, (last visited November 8, 2017).

the date of the original failure. The board may grant an extension of one year to allow an additional retake based on a medical disability substantiated by documentation from the applicant's physician.<sup>14</sup>

Florida schools of optometry, and several out of state colleges, include the 4-part examination in the school curriculum and spread the four parts over the course of the four years of education and training required by the program.<sup>15</sup>

Prior to April 14, 2017, the DOH and board had, by rule,<sup>16</sup> accepted licensure applicants' passing scores on Part I, Part II, Part III, and Part IV of the licensure examination that had been obtained within the seven-year period immediately preceding licensure application. This practice was challenged in 2016<sup>17</sup> at the Division of Administrative Hearings, and the administrative law judge found that the petitioners had demonstrated that the rule's look-back period for test scores was an invalid exercise of delegated authority in violation of section 120.52(8)(b) and (c), F.S.; "and that should this result be onerous, the answer [was] a legislative change."<sup>18</sup> As a result of this decision, graduating students applying for licensure in Florida were required to retake examinations they had previously taken and passed while in school or college, and all out-of-state applicants were required to retake the examination.<sup>19</sup>

### **Renewal of Licensure and Certification**

A licensed optometrist must renew his or her license every two years, pay a renewal fee not to exceed \$300, and demonstrate his or her professional competence by completing 30 hours of continuing education during the preceding two-year period before license renewal. Certified optometrists must also complete 30 hours of continuing education during the preceding two years, but their hours must include six or more hours of approved transcript-quality coursework in ocular and systemic pharmacology and the diagnosis, treatment, and management of ocular and systemic conditions and diseases.<sup>20</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 463.006, F.S., to eliminate the requirement that applicants for licensure must take, and successfully pass, the licensure examinations after an application for licensure is submitted. The bill permits an applicant for licensure to submit an application for licensure that includes proof of specific items, and to also submit proof that he or she has successfully passed all parts of the licensure examination within three years prior to the date of application or after submission of the application. This allows graduates from a board approved, accredited school or college, and some out-of-state practitioners from taking the licensure examination a second time if the applicant successfully passed the examination within the prior three years.

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<sup>14</sup> Rule 64B13-4.002, F.A.C.

<sup>15</sup> See Department of Health, *Senate Bill 520 Analysis* (Oct. 12, 2017) (on file with the Senate Committee on Health Policy).

<sup>16</sup> Rule 64B13-4.001, F.A.C.

<sup>17</sup> See Department of Administrative Hearings, *Final Order, Yontz & Johnson, v. DOH*, Case No. 16-6663RX (April 14, 2017), available at <https://www.doah.state.fl.us/ROS/2016/16006663.pdf> (last visited Dec. 5, 2017).

<sup>18</sup> Id. at page 42.

<sup>19</sup> *Supra* note 15.

<sup>20</sup> Section 463.007, F.S.

The bill requires the board to approve the licensure examination that meets certain requirements, and clarifies that the board may offer a practical examination in addition to a written examination.

**Section 2** amends s. 463.0057, F.S., to make a conforming cross-reference change.

**Section 3** provides 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:

New licensees to the optometry profession, as well as some optometrists licensed in other states seeking licensure in Florida, may avoid the cost of retaking the required examinations if they successfully passed the examinations within three years prior to submitting an application. The estimated cost of the examination, not including travel and overnight accommodations to North Carolina, the only location Part III is given, is approximately \$2,500.<sup>21</sup>

C. Government Sector Impact:

The DOH may incur additional expenses in the development, preparation, administration, scoring, score reporting and evaluation of the examinations if the board elects to offer its own practical examination; however, these costs can be absorbed within its existing resources.

#### **VI. Technical Deficiencies:**

None.

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<sup>21</sup> *Supra* note 15.

**VII. Related Issues:**

Lines 31-35 of the bill contains existing statutory language that establishes caps for fees required for the licensure and certification of optometrists in Florida. The Department of Health no longer offers a state examination; therefore, fees required related to examinations are no longer collected, and the current statutory language can be deleted. The existing statutory language does not establish caps for a licensure application fee or a licensure fee. The current statutory language should be revised to include these fees in order to comply with section 456.025, F.S.

The bill permits three years to lapse since successful passage of the required licensure examination, either prior to the date of application or after the submission of an application, for licensure as an optometrist. It is not clear if the intent of this requirement is to limit the time period to three years or six years based on how the language is currently drafted. This language should be amended to clarify the intent of the restriction on the time permitted to lapse to qualify for licensure. Nonetheless, the restriction on the time permitted to lapse to qualify for licensure could deter the licensure of experienced optometrists who wish to move to Florida and continue practicing if more time has lapsed since they initially passed the examination. The restriction on the time permitted to lapse to qualify for licensure could be removed by incorporating similar language contained in the chiropractic practice act,<sup>22</sup> or the time frame could be extended to allow more time to lapse prior to requiring an optometrist licensed in another state to retake the licensure examination.

**VIII. Statutes Affected:**

This bill substantially amends sections 463.006 and 463.0057, 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 Health Policy on December 5, 2017:**

The original bill amended s. 463.006, F.S., to authorize an optometry student, attending a board approved, accredited school of optometry, to submit his or her application for licensure and certification during the 24 months preceding his or her graduation. The CS removes this language and permits a graduate from a board-approved, accredited school or college, and certain out-of-state optometrists seeking licensure in Florida, to submit an application for licensure and proof that the applicant has passed all parts of the licensure examination within three years before the date of application or after the application submission. The CS also requires the board to approve the licensure examination.

- B. **Amendments:**

None.

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

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<sup>22</sup> Section 460.406(5), F.S.



373208

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Young) recommended the following:

**Senate Amendment**

Delete lines 65 - 83  
and insert:  
board that he or she has met the requirements of subsection (1),  
who successfully passes the licensure examination within 3 years  
before the date of application or after the submission of an  
application, and who otherwise meets the requirements of this  
chapter is entitled to be licensed as a practitioner and to be  
certified to administer and prescribe ocular pharmaceutical  
agents in the diagnosis and treatment of ocular conditions.



373208

Section 2. Subsection (3) of section 463.0057, Florida Statutes, is amended to read:

463.0057 Optometric faculty certificate.—

(3) The holder of a faculty certificate may engage in the practice of optometry as permitted by this section but may not administer or prescribe topical ocular pharmaceutical agents unless the certificateholder has satisfied the requirements of s. 463.006(1)(e) and (f) ~~s. 463.006(1)(b)4. and 5.~~ If a certificateholder wishes to administer or prescribe oral ocular pharmaceutical agents, the certificateholder must also satisfy the requirements of s. 463.0055(1)(b).

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

By the Committee on Health Policy; and Senators Young and Campbell

588-01802-18

2018520c1

A bill to be entitled

An act relating to optometry; amending s. 463.006, F.S.; requiring an applicant for licensure as an optometrist to submit proof to the Department of Health that she or he meets certain requirements; removing a requirement that the department examine an applicant who meets specified requirements for licensure and certification; requiring the Board of Optometry to approve a licensure examination that meets certain requirements; clarifying that the board may offer a practical examination in addition to a written examination under certain circumstances; providing that an applicant must pass the licensure examination within a specified timeframe as a condition of licensure as an optometrist and certification to administer and prescribe ocular pharmaceutical agents; amending s. 463.0057, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Section 463.006, Florida Statutes, is amended to read:

463.006 Licensure and certification by examination.—

(1) Any person desiring to be a licensed practitioner pursuant to this chapter must ~~shall~~ apply to the department and must submit proof ~~to take the licensure and certification examinations.~~ the department that she or he ~~shall examine each~~

Page 1 of 3

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

588-01802-18

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~~applicant who the board determines has:~~

(a) Has completed the application forms as required by the board, remitted an application fee for certification not to exceed \$250, remitted an examination fee for certification not to exceed \$250, and remitted an examination fee for licensure not to exceed \$325, all as set by the board.

(b) ~~Submitted proof satisfactory to the department that she or he+~~

~~1.~~ Is at least 18 years of age.

(c) ~~2.~~ Has graduated from an accredited school or college of optometry approved by rule of the board.

(d) ~~3.~~ Is of good moral character.

(e) ~~4.~~ Has successfully completed at least 110 hours of transcript-quality coursework and clinical training in general and ocular pharmacology as determined by the board, at an institution that:

~~1.a.~~ Has facilities for both didactic and clinical instructions in pharmacology; and

~~2.b.~~ Is accredited by a regional or professional accrediting organization that is recognized and approved by the Commission on Recognition of Postsecondary Accreditation or the United States Department of Education.

(f) ~~5.~~ Has completed at least 1 year of supervised experience in differential diagnosis of eye disease or disorders as part of the optometric training or in a clinical setting as part of the optometric experience.

(2) The board shall approve a licensure examination consisting ~~shall consist~~ of the appropriate subjects and, including applicable state laws and rules and general and ocular

Page 2 of 3

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

588-01802-18

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59 pharmacology with emphasis on the use and side effects of ocular  
60 pharmaceutical agents. The board may by rule substitute a  
61 national examination as part or all of the examination and,  
62 notwithstanding chapter 456, may by rule offer a practical  
63 examination in addition to ~~a the~~ written examination.

64 (3) Each applicant who submits proof satisfactory to the  
65 department that he or she has met the requirements of subsection  
66 (1), who successfully passes the licensure examination within 3  
67 years before the date of application or after the submission of  
68 an application, and who otherwise meets the requirements of this  
69 chapter is entitled to be licensed as a practitioner and to be  
70 certified to administer and prescribe ocular pharmaceutical  
71 agents in the diagnosis and treatment of ocular conditions.

72 Section 2. Subsection (3) of section 463.0057, Florida  
73 Statutes, is amended to read:

74 463.0057 Optometric faculty certificate.—

75 (3) The holder of a faculty certificate may engage in the  
76 practice of optometry as permitted by this section but may not  
77 administer or prescribe topical ocular pharmaceutical agents  
78 unless the certificateholder has satisfied the requirements of  
79 s. 463.006(1)(e) and (f) ~~s. 463.006(1)(b)4. and 5.~~ If a  
80 certificateholder wishes to administer or prescribe oral ocular  
81 pharmaceutical agents, the certificateholder must also satisfy  
82 the requirements of s. 463.0055(1)(b).

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



**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1876

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Health and Human Services); Health Policy Committee; and Senator Young

SUBJECT: Trauma Services

DATE: February 23, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<b>Fav/CS</b>
2.	<u>Loe</u>	<u>Williams</u>	<u>AHS</u>	<b>Recommend: Fav/CS</b>
3.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	<b>Fav/CS</b>
4.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-Meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1876 amends various sections of law related to the selection and approval of trauma centers and the reporting of trauma center data. The bill:

- Eliminates outdated language related to a Department of Health (DOH) assessment of the trauma system and continuing annual reviews of the assignment of counties to trauma service areas (TSA).
- Eliminates TSA 19 and revises the county composition of certain TSAs.
- Restricts the DOH from designating a Level II trauma center as a pediatric or a Level I trauma center in a TSA that has a Level I or pediatric trauma center.
- Designates the number of trauma centers assigned to each TSA for a total of 35 trauma centers statewide and specifies that each TSA may have no more than five total Level I, Level II, Level II/pediatric, and stand-alone pediatric trauma centers, and no more than one standalone pediatric trauma center.
- Requires the DOH to establish the Florida Trauma System Advisory Council (FTSAC) by October 1, 2018. The bill specifies the composition of the FTSAC and allows the FTSAC to submit recommendations to the DOH on how to maximize existing resources to achieve an inclusive trauma system.
- Requires the DOH to prepare an analysis of the Florida trauma system every three years, beginning August 31, 2020, to include information on the population growth in each TSA, the caseload levels of high-risk patients for each trauma center and acute care hospital in the

TSA, and the percentage of minimum caseload levels established under the bill for each trauma center.

- Defines “high-risk patient” as a trauma patient with an International Classification Injury Severity Score (ICISS) of less than 0.85.
- Revises the procedure for the DOH to select and approve new trauma centers if there is statutory capacity within a TSA.
- Allows the DOH to approve new trauma centers that exceed the statutory limit in a TSA if there is a sufficient volume of high-risk patients.
- Provides grandfathering language for currently verified trauma centers and for certain provisionally approved trauma centers and provides that if any of the grandfathering provisions are found to be invalid, the entire act is invalid.
- Requires the DOH to designate any hospital as a Level II trauma center if the hospital receives a final recommended order from the Division of Administrative Hearings (DOAH) or a final determination from the DOH or a court that it was entitled to be a Level II trauma center and was provisionally approved and operating within specified dates.
- Eliminates the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.
- Replaces provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the Agency for Health Care Administration (AHCA) pursuant to s. 408.061.

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

The Office of Program Policy Analysis and Governmental Accountability (OPPAGA) may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of OPPAGA.

The bill takes effect upon becoming a law.

## **II. Present Situation:**

The regulation of trauma centers in Florida is established under part II of ch. 395, F.S. Trauma centers treat individuals who have incurred single or multiple injuries because of blunt or penetrating means or burns, and who require immediate medical intervention or treatment. Currently, there are 36 verified and provisional trauma centers in the state.<sup>1</sup>

Trauma centers in Florida are divided into three categories including Level I, Level II, and Pediatric trauma centers.

- A Level I trauma center is defined as a trauma center that:
  - Has formal research and education programs for the enhancement of trauma care; is verified by the DOH to be in substantial compliance with Level I trauma center and pediatric trauma center standards; and has been approved by the DOH to operate as a Level I trauma center;

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<sup>1</sup> Department of Health, *Senate Bill 1876 Analysis* (January 17, 2018) (on file with the Senate Committee on Health Policy).

- Serves as a resource facility to Level II trauma centers, pediatric trauma centers, and general hospitals through shared outreach, education, and quality improvement activities; and
- Participates in an inclusive system of trauma care, including providing leadership, system evaluation, and quality improvement activities.<sup>2</sup>
- A Level II trauma center is defined as a trauma center that:
  - Is verified by the DOH to be in substantial compliance with Level II trauma center standards and has been approved by the DOH to operate as a Level II trauma center or is designated pursuant to s. 395.4025(14), F.S.;
  - Serves as a resource facility to general hospitals through shared outreach, education, and quality improvement activities; and
  - Participates in an inclusive system of trauma care.<sup>3</sup>
- A Pediatric trauma center is defined as a hospital that is verified by the DOH to be in substantial compliance with pediatric trauma center standards and has been approved by the DOH to operate as a pediatric trauma center.<sup>4,5</sup>

### **Trauma Center Apportionment**

Pursuant to s. 395.402, F.S., Florida is divided into 19 trauma service areas (TSA). A TSA is determined based on population density and an ability to respond to a specified number of patients in a trauma center environment. For purposes of medical response time, the trauma service area should have at least one Level I or Level II trauma center, and the DOH is required to allocate, by rule, the number of trauma centers for each trauma service area. There cannot be more than 44 trauma centers in the state.

### ***Administrative Rule Litigation***

Since 2011, the DOH has been involved in litigation involving its annual assessment of need for trauma centers. The majority of this litigation is based on the state's TSA allocation methodology, which imposes limitations on hospitals seeking trauma center verification. Protests have been levied regarding the validity of the DOH's allocation of new trauma centers in specific geographic areas. Despite prevailing in an administrative rule challenge in June 2014 that validated the DOH's allocation methodology, the DOH has been unable to promulgate the required annual rule change since 2014 due to litigation.<sup>6</sup>

In 2016, the DOH attempted to promulgate an apportionment rule that interpreted need to mean the "minimum" number of trauma centers in a TSA. Several hospitals subsequently challenged

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<sup>2</sup> Section 395.4001(6), F.S.

<sup>3</sup> Section 395.4001(7), F.S.

<sup>4</sup> Section 395.4001(9), F.S.

<sup>5</sup> For Level I, Level II, and pediatric trauma center standards see <http://www.floridahealth.gov/licensing-and-regulation/trauma-system/documents/traumacentrstandpamphlet150-9-2009rev1-14-10.pdf>, (last visited on Jan. 19, 2018).

<sup>6</sup> Shands Teaching Hospital and Clinics, Inc., d/b/a UF Shands Hospital v. Dep't of Health and Osceola Regional Hospital, Inc., d/b/a Osceola Regional Medical Center, DOAH Case No. 14-1022RP (June 20, 2014). This order also resolved the rule challenges filed by The Public Health Trust of Miami-Dade County (DOAH Case No. 14-1027RP); St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 14-1028RP); Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 14-1034RP); and Bayfront HMA Medical Center, LLC, d/b/a Bayfront Medical Center (DOAH Case No. 14-1035RP).

the proposed rule.<sup>7</sup> The DOAH issued an order that invalidated the proposed rule in March 2017.<sup>8</sup> The administrative law judge recognized the challenges faced by the DOH and Florida's trauma system in his final order by stating, "[a]fter considering all of the evidence and testimony, the undersigned is of the opinion that it would be impossible to draft a set of rules that would satisfy the concerns/interests of all the relevant stakeholders."<sup>9</sup> The case was appealed to the First District Court of Appeals (DCA) and is awaiting final disposition.<sup>10</sup> Since the invalidation of the rule, the DOH has been unable to promulgate a new rule.

In 2016, an administrative law judge outlined in a recommended order that the DOH must grant provisional trauma center status to all applicants that demonstrate compliance with the critical elements of the trauma center standards, regardless if there is an allocated slot in the TSA.<sup>11</sup> In addition, he indicated the DOH's determination of need happens at the point in which a trauma center is granted verification.<sup>12</sup> On appeal, the First DCA stated that a hospital may apply over multiple years without jeopardizing the previous application.<sup>13</sup> In a separate case, the First DCA addressed the issue of need and concurred that need is not addressed at the provisional licensure and is relevant only upon verification.<sup>14</sup> In combination, a hospital may essentially operate indefinitely as a provisional trauma center so long as they submit and receive approval of their provisional application annually.

The DOH has been unable to promulgate a valid allocation rule since July 2014.<sup>15</sup>

### **Trauma Center Approval**

Section 395.4025, F.S., provides a scheduled application process and specific criteria for trauma center selection. Standards for verification and approval are based on national guidelines

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<sup>7</sup> According to the DOAH's website, the challenges were filed by St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (Tampa) (DOAH Case No. 16-5841RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health – St. Petersburg (DOAH Case No. 16-5840RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP); Florida Health Sciences Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); and Shands Jacksonville Medical Center, Inc., d/b/a U.F. Hospital Jacksonville (DOAH Case No. 16-5837RP). Intervenors included JFK Medical Center Limited Partnership, d/b/a JFK Medical Center (Atlantis); The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital; and Orange Park Medical Center, Inc., d/b/a Orange Park Medical Center.

<sup>8</sup> Shands Jacksonville Medical Center, Inc., d/b/a UF Health Jacksonville v. Dep't of Health, DOAH Case No. 16-5837RP (March 28, 2017). This order also resolved the rule challenges filed by Florida Health Science Center, Inc., d/b/a Tampa General Hospital (DOAH Case No. 16-5838RP); Lee Memorial Health System, d/b/a Lee Memorial Hospital (DOAH Case No. 16-5839RP); Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health – St. Petersburg (DOAH Case No. 16-5840RP); and St. Joseph's Hospital, Inc., d/b/a St. Joseph's Hospital (DOAH Case No. 16-5841RP).

<sup>9</sup> Id.

<sup>10</sup> Dep't of Health, et al. v. Shands Jacksonville Medical Center, Inc., et al., Case No. 1D17-1713.

<sup>11</sup> The Public Health Trust of Miami-Dade County, Florida d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, DOAH Case No. 15-3171)

<sup>12</sup> Id. See also Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson Medical Center and Jackson South Community Hospital v. Dep't of Health et al., DOAH Case No. 16-3370, 16-3372 ("Order Granting Motion to Partially Dismiss Petition for Administrative Hearing," pg. 4).

<sup>13</sup> The Public Health Trust of Miami-Dade County, Florida, d/b/a Jackson South Community Hospital v. Dep't of Health and Kendall Healthcare Group, Ltd., d/b/a Kendall Regional Medical Center, Case No. 1D16-3244.

<sup>14</sup> State of Florida, Department of Health v. Bayfront HMA Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2174 (consolidated with Galencare, Inc., d/b/a Northside Hospital v. Bayfront HMA. Medical Center, LLC, d/b/a Bayfront Health-St. Petersburg, Case No. 1D17-2229).

<sup>15</sup> Supra note 1

established by the American College of Surgeons.<sup>16</sup> Standards for verification and approval as a pediatric trauma center are developed in conjunction with the DOH's Division of Children's Medical Services.

Acute care hospitals that submit a Letter of Intent to the DOH by October 1 are eligible to submit a trauma center application by April 1.<sup>17</sup> Once an applicant hospital receives the DOH's notification letter of provisional status designation, the hospital may begin operation as a provisional trauma center. During the provisional phase, the DOH conducts an in-depth review of the hospital's application. An onsite visit is conducted by an out-of-state survey team to verify compliance with the *Trauma Center Standards, DH Pamphlet 150-9*.<sup>18</sup> Based on the recommendations from the out-of-state survey team, the DOH makes the decision to approve or deny the hospital to operate as a verified trauma center.<sup>19</sup>

Hospitals verified by the DOH receive a seven-year certificate. A verified trauma center that intends to renew its verification must submit a renewal application form to the DOH at least 14 months prior to the expiration of the certificate. All renewing verified trauma centers receive an onsite visit by an out-of-state survey team after the DOH's receipt of the completed renewal form. Hospitals that have been verified by the DOH to comply with the requirements of s. 395.4025, F.S., are approved to operate as a verified trauma center.<sup>20</sup>

Florida's current trauma center verification process has experienced a number of challenges. Section 395.4025(7), F.S., allows any hospital in the state to protest verification decisions by the DOH. Hypothetically, under this subsection, a 25-bed acute care hospital in northwest Florida can protest the verification of a trauma center in Miami-Dade County. In actual application, the DOH has been involved in litigation numerous times where one or more parties operating a trauma center in one geographic area of the state have challenged trauma center verification in another area of the state.<sup>21</sup>

### **Florida Trauma Registry**

The DOH has maintained a trauma registry since at least 2000. Currently, only a small number of states nationwide do not have a state trauma registry. In 2014, the DOH upgraded the trauma registry to receive patient data from every verified trauma center in the state. Changes made to the registry in 2016, based on feedback received from trauma stakeholders, allow a Florida trauma center to submit the same data elements as those required by the National Trauma Data Bank (NTDB).

The trauma registry serves two critical functions. First, the DOH is able to perform local, regional, and statewide data analysis much faster than the NTDB. The NTDB does not perform

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<sup>16</sup> The American College of Surgeons requirements for Level I, Level II, and pediatric trauma centers are available at: <http://www.facs.org/trauma/verifivisitoutcomes.html>, (last visited on Jan. 19, 2018).

<sup>17</sup> The required criteria included in the application package is outlined in the DOH's *Trauma Center Standards, DH Pamphlet 150-9*, in accordance with s. 395.401(2), F.S., and is incorporated by reference in Rule 64J-2.011, F.A.C.

<sup>18</sup> Section 395.4025(5), F.S.

<sup>19</sup> Section 395.4025(6), F.S.

<sup>20</sup> Id.

<sup>21</sup> Supra note 1. A list of current litigation is on file with Senate Health Policy Committee staff.

local and regional analysis and due to the reporting requirements of the NTDB, data analysis is not available for 18 months after the initial reporting period and is limited to standardized reports provided to all participants. In contrast, the DOH is able to provide information as quickly as six months after the end of the reporting period. The DOH is also able to create customized, analytical reports not currently available from the NTDB. Second, s. 305.4036, F.S., requires that patient volumes from the Florida Trauma Registry be used as part of the formula to calculate the distribution of traffic fine revenues.<sup>22</sup>

### **International Classification Injury Severity Score (ICISS)**

The ICISS is a score that indicates the likelihood of survival and is calculated from the set of injury-related diagnostic codes available in the patient's medical record. The ICISS ranges from 0 to 1, and a patient who has a score of .85 or less is considered a severely injured patient. The score is based on the International Classification of Diseases, 9<sup>th</sup> revision, with conversion tables in place to allow the use of the International Classification of Diseases, 10<sup>th</sup> revision.<sup>23</sup>

### **Health Care Data Submitted to the AHCA**

Section 408.061, F.S., requires health care facilities to submit data to the AHCA including:

- Case-mix data;
- Patient admission and discharge data;
- Hospital emergency department data which includes the number of patients treated in the emergency department reported by patient acuity level;
- Data on hospital-acquired infections as specified by rule;
- Data on complications as specified by rule;
- Data on readmissions as specified by rule, with patient and provider-specific identifiers included;
- Actual charge data by diagnostic groups or other bundled groupings as specified by rule;
- Financial data, accounting data, operating expenses, expenses incurred for rendering services to patients who cannot or do not pay, interest charges, and depreciation expenses based on the expected useful life of the property and equipment involved; and
- Demographic data.

Additionally, s. 408.05, F.S., creates the Florida Center for Health Information and Transparency (Center) within the AHCA to collect, compile, coordinate, analyze, index, and disseminate health-related data and statistics. Among its other duties, the Center is required to promote data sharing through dissemination of state-collected health data by making such data available, transferable, and readily usable<sup>24</sup> and to develop written agreements with local, state, and federal agencies to facilitate the sharing of data related to health care.<sup>25</sup>

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<sup>22</sup> Supra note 1.

<sup>23</sup> Email from Steve A. McCoy, Emergency Services Administrator for the DOH, Feb. 22, 2018, on file with Senate Health Policy Committee staff.

<sup>24</sup> Section 408.05(3)(b), F.S.

<sup>25</sup> Section 408.05(3)(d), F.S.

### III. Effect of Proposed Changes:

**Sections 1 through 4 and 8** amend ss. 318.14, 318.18, 318.21, 395.4001, and 395.4036, F.S., respectively, to replace provisions requiring the use of data in the trauma registry with provisions requiring the use of data reported to the AHCA pursuant to s. 408.061, F.S.

**Section 4** amends s. 395.4001, F.S., to define the term “high-risk patient” to mean a trauma patient with an ICISS of less than 0.85.

**Section 5** amends s. 395.402, F.S., to:

- Delete language requiring Level I and Level II trauma centers to be capable of treating a minimum of 1,000 and 500 patients annually (or 1,000 in a county with 500,000 or more population) with an injury severity score (ISS) of 9 or greater, respectively.
- Delete outdated language requiring the DOH to conduct a one-time assessment of the trauma system.
- Delete a requirement that the DOH conduct annual assessments of the assignment of the counties in TSAs.
- Revise the composition of the TSAs as follows:
  - Eliminate TSA 19 and place Miami-Dade and Monroe counties into TSA 18;
  - Move Broward County from TSA 18 to TSA 17; and
  - Move Collier County from TSA 17 to TSA 15.
- Restrict the DOH from designating a Level II trauma center as a Level I or pediatric trauma center in a TSA that already has a Level I trauma center or pediatric trauma center.
- Delete the delegation of authority to the DOH to allocate the number of trauma centers by TSA and, instead, set by law the number of trauma centers allowed in each TSA for a total of 35, as follows:
  - TSAs 2, 3, 4, 6, 7, 11, 12, 14, and 15 are allocated one trauma center;
  - TSAs 10, 13, and 16 are allocated two trauma centers;
  - TSAs 1, 5, 8, 9, and 17 are allocated three trauma centers; and
  - TSA 18 is allocated five trauma centers.
- Specify that no TSA may have more than five total Level I, Level II, Level II with a pediatric, jointly certified pediatric, and stand-alone pediatric trauma centers, and more than one stand-alone pediatric trauma center.
- Require the DOH to establish the FTSAC by October 1, 2018. The FTSAC will consist of the following 11 members appointed by the Governor:
  - The State Trauma Medical Director;
  - A standing member of the Emergency Medical Services Advisory Council;
  - A representative of a local or regional trauma agency;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents an investor-owned hospital with a trauma center;
  - A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;
  - A trauma surgeon who is board-certified in critical care and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;

- A representative of the American College of Surgeons Committee on Trauma;
- A representative of the Safety Net Hospital Alliance of Florida;
- A representative of the Florida Hospital Association;
- A Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center; and
- A trauma surgeon who is board-certified in critical care and actively practicing medicine in a Level I trauma center.
- Specify that the DOH must use existing and available resources to administer and support the activities of the FTSAC.
- Specify that members of the FTSAC serve without compensation and are not entitled to reimbursement for per diem and travel expenses.
- Require members of the FTSAC to be appointed for staggered terms and no two members may be employed by the same health care facility.
- Require the FTSAC to conduct its first meeting no later than January 5, 2019 and quarterly thereafter.
- Allow the FTSAC to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.

**Section 6** amends s. 395.4025, F.S., to:

- Require the DOH to prepare an analysis of the Florida trauma system every three years, beginning in August 31, 2020. The DOH must use discharge data collected by the AHCA pursuant to s. 408.061, F.S., and the most current five years of population data for Florida available from the American Community Survey Five-Year Estimates by the United States Census Bureau. The DOH must make available all data, formulas, methodologies, calculations, and risk adjustment tools used to prepare the report. The report must include the following:
  - The population growth for each trauma service area and for the state of Florida;
  - The number of high-risk patients treated at each trauma center within each trauma service area, including pediatric trauma centers;
  - The total number of high-risk patients treated at all acute care hospitals inclusive of non-trauma centers in the trauma service area; and
  - The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.
- Rework how the DOH selects and licenses trauma centers.<sup>26</sup> The process under the bill will proceed under the following steps:

### ***Letter of Intent***

The bill requires the DOH to notify hospitals that the DOH is accepting letters of intent from applicants when there is statutory capacity for an additional trauma center based on the limits established in **Section 5** of the bill, the analysis prepared by the DOH as detailed above, and the

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<sup>26</sup> Note: Some of the information presented in this section is current law. However, for the sake of providing a timeline for how the process will work after changes are made by SB 1876, the portions that are current law are integrated into the changes made by the bill.



exception to the statutory capacity limits established in s. 395.4025(3)(d), F.S. The DOH may not accept a letter of intent from a hospital if there is not statutory capacity, in accordance with the limits established in **Section 5** of the bill, the DOH's report, and exceptions to the statutory capacity limits provided in the bill.

Letters of Intent must be postmarked by October 1 of year one.<sup>27</sup>

### ***Application***

By October 15 of year one, the DOH must send each hospital that provided a letter of intent an application package. Completed applications must be received by the DOH by April 1 [of year two].<sup>28</sup> Between April 1 and May 1 [of year two], the DOH will conduct an initial review of each application package it received to determine if each application shows that the hospital will be capable of attaining and operating with specified criteria by April 30 of year three. The operating criteria include:

- Equipment and physical facilities necessary to provide trauma services.
- Personnel in sufficient numbers and with proper qualifications to provide trauma services.
- An effective quality assurance process.

The bill specifies that the DOH may not approve an application for a trauma center if the approval would exceed the limits on the number of trauma centers established in **Section 5** of the bill. However, the DOH may approve an application that will exceed the limits if the applicant demonstrates, using the analysis of the Florida trauma system prepared by the DOH, and the DOH determines that:

- Each existing trauma centers' caseload volume of high-risk patients in that TSA is double the minimum volume requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the American Community Survey Five-Year Estimates by the United States census data for the five-year period before the date the applicant files its letter of intent; and
- A sufficient volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers' volumes are at the following levels:<sup>29</sup>

Level I trauma center; In a TSA with a population > 1.5 million.	1,200 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow. <sup>30</sup>
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<sup>27</sup> The timeframes in the bill use dates over multiple years. In order to simplify the timeline, the timeframes will be referred to as happening in year one, year two, or year three.

<sup>28</sup> The actual year that this takes place is not specified in the bill; however for the purposes of the timeline in this analysis the year will be assumed to be year two.

<sup>29</sup> Calculations of patient caseloads must be based on the most recent available hospital discharge data collected by the AHCA pursuant to s. 408.061, F.S.

<sup>30</sup> These additional patients apply if the hospital has a trauma or critical care residency or fellowship program.

Level I trauma center; In a TSA with a population < 1.5 million.	1,000 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow. <sup>31</sup>
Level II or Level II/Pediatric trauma center; In a TSA with a population > 1.25 million.	1,000 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow. <sup>32</sup>
Level II or Level II/Pediatric trauma center; In a TSA with a population < 1.25 million.	500 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow. <sup>33</sup>
All pediatric stand-alone trauma centers.	500 high-risk patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow. <sup>34</sup>

- The bill specifies that ICISS calculations and caseload volumes must be calculated using the most recent available hospital discharge data collected by the AHCA from all acute care hospitals.
- The AHCA, in consultation with the DOH, must adopt rules for the submission of data from trauma centers and acute care hospitals as required to allow the DOH to perform its duties under ch. 395, F.S.

By May 1 [of year two],<sup>35</sup> the DOH must select one or more hospitals that meet the operating criteria detailed above, up to the statutory capacity designated in s. 395.402, F.S., or allowed by the exception detail above for each TSA. If the DOH receives more applications than available capacity, the DOH must select one or more applicants, as necessary, that the DOH determines will provide the highest quality patient care using the most recent technological, medical, and staffing resources and which is the farthest away from an existing trauma center in the applicant's TSA. At this point, the applicant may begin preparing to operate, but the bill restricts an applicant from operating until the DOH completes its initial and in-depth review and approves the applicant to operate as a provisional trauma center. A hospital that is not ready to operate by April 30 of year three may not be designated as a trauma center.

### ***In-Depth Evaluation***

Following the initial review, the DOH must conduct an in-depth evaluation of each application against the criteria enumerated in the application packages. An applicant may not operate as a provisional trauma center until the DOH completes and approves the applicant through the initial and in-depth review stages. Within the year after the hospital begins operating as a provisional trauma center, the DOH must assemble a review team of out-of-state experts to make onsite

<sup>31</sup> Supra note 30.

<sup>32</sup> Supra note 30.

<sup>33</sup> Supra note 30.

<sup>34</sup> Supra note 30.

<sup>35</sup> Supra note 28.

visits to all existing trauma centers. The bill maintains current law regarding the survey instrument that the out-of-state experts must use.

### ***Designation as a Trauma Center***

Based on the recommendations from the out-of-state review team, the DOH must designate a trauma center that complies with trauma center standards, as established by the DOH in rule, and the requirements in s. 395.4025, F.S. A trauma center is designated for a seven-year approval period after which it must apply for renewal of its designation.

The bill also restricts protests against any decision made by the DOH regarding approval of an application or whether need has been established for a new trauma center unless the protest is made by an applicant or a hospital with an existing trauma center in the same or contiguous TSA.

### ***Grandfathering***

Notwithstanding any other provision of the act including statutory capacity limits and the limits placed on protests of DOH decisions, the bill deems certain currently operational trauma centers to be compliant with trauma center application and operational standards as follows:

- A trauma center that was verified by the DOH before December 15, 2017, is deemed to have met the trauma center application and operational requirements of this section and must be verified and designated as a trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, but that was provisionally approved by the DOH to be in substantial compliance with Level II trauma standards before January 1, 2017, and is operating as a Level II trauma center is deemed to have met the application and operational requirements of this section for a trauma center and must be verified and designated as a Level II trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a Level I trauma center but that was provisionally approved by the DOH as a Level I trauma center before January 1, 2017, and is operating as a Level I trauma center is deemed to have met the application and operational requirements for a Level I trauma center and must be verified and designated as a Level I trauma center.
- A trauma center that was not verified by the DOH before December 15, 2017, as a pediatric trauma center but that was provisionally approved by the DOH to be in substantial compliance with the pediatric trauma standards established by rule before January 1, 2018, and is operating as a pediatric trauma center is deemed to have met the application and operational requirements of this section for a pediatric trauma center and, upon successful completion of the in-depth and site review process, must be verified and designated as a pediatric trauma center. The bill prohibits protests of the in-depth review, site survey, and verification decisions made by the DOH regarding an applicant that meets the requirements of this paragraph.

Notwithstanding the statutory capacity limits established in s. 395.402(1), F.S., or any other provisions of the act, a hospital operating as a Level II after January 1, 2017, must be designated and verified if all of the following apply:

- The hospital was provisionally approved after January 1, 2017, to operate as a Level II trauma center, and was in operation on or before June 1, 2017;

- The department's decision to approve the hospital to operate a provisional Level II trauma center was in litigation on or before January 1, 2018;
- The hospital receives a recommended order from the Division of Administrative Hearings, a final order from the department, or an order from a court of competent jurisdiction that it was entitled to be designated and verified as a Level II trauma center; and
- The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

A provisional trauma center operating under this provision may not be required to cease operations unless a court of competent jurisdiction or the DOH determines that it has failed to meet the trauma center standards established by the DOH in rule.

The bill specifies that, notwithstanding the statutory capacity limits established in s. 395.402(1), F.S., or any other provision of this act, a joint pediatric trauma center involving a Level II trauma center and a specialty licensed children's hospital which was verified by the DOH before December 15, 2017, is deemed to have met the application and operational requirements of this section for a pediatric trauma center and shall be verified and designated as a pediatric trauma center even if the joint program is dissolved upon the expiration of the existing certificate and the pediatric trauma center continues operations independently through the specialty licensed children's hospital, provided that the pediatric trauma center meets all requirements for verification by the DOH.

The bill specifies that nothing in the grandfathering provisions limits the DOH's authority to review and approve trauma center applications.

**Section 9** amends s. 395.404, F.S., to eliminate the trauma registry under the DOH in favor of requiring trauma centers to participate in the National Trauma Data Bank. The bill requires the DOH to solely use the National Trauma Data Bank for quality and assessment purposes. Trauma centers and acute care hospitals are still required to report all transfers and outcomes of trauma patients to the DOH.

The bill also eliminates a public records exemption for the DOH's trauma registry and eliminates the requirement that pediatric trauma centers report certain data to the DOH's brain and spinal cord injury central registry.

**Section 13** creates an undesignated section of Florida law to require that the DOH and the Office of Program Policy Analysis and Government Accountability (OPPAGA) study the DOH's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to the licensure requirements, rules, regulations, standards, and guidelines for verification of pediatric trauma services by the American College of Surgeons. The OPPAGA must submit a report to the Governor, the Legislature, and the FTSAC by December 31, 2018. The bill specifies that this section expires on January 31, 2019.

**Section 14** creates an undesignated section of Florida law to specify that if any provision in the act relating to the grandfathering provisions established in s. 395.4025(16), F.S., is found to be invalid or inoperative for any reason, the remaining provisions of the act shall be deemed void

and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

**Sections 7, 10, 11, and 12** amend ss. 395.403, 395.401, 408.036, and 409.975, F.S., respectively, to make conforming and cross-reference changes.

**Section 15** provides that the bill takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues**

When establishing the grandfathering provisions in s. 395.4025(16), F.S., the bill provides that “notwithstanding the provisions of subsection (8), no existing trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located may protest the in-depth review, site survey, or verification decision of the department regarding an applicant that meets the requirements of this paragraph.” Additionally, the provisions of s. 395.4025(8), F.S., restrict any party from bringing protests of DOH decisions related to application approval and need determination unless the party is the applicant or a hospital with a trauma center in the same trauma service area or in a trauma service area contiguous to the trauma service area where the applicant is located. These provisions together may provide an unconstitutional restriction on access to the courts.

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may have an indeterminate positive fiscal impact on hospitals that are not currently verified as trauma centers but that become designated as a trauma center due to changes made by the bill.

Hospitals that are currently verified trauma centers in TSAs where new trauma centers are designated under the provisions of the bill may experience a loss in volume of trauma patients and other economic impacts of competition.

**C. Government Sector Impact:**

The DOH may experience an increase in workload. The cost of this additional workload will be absorbed within existing resources of the DOH.

OPPAGA may experience additional workload and costs associated with the report required in Section 13. The costs will be absorbed within existing workload.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The DOH may need to adopt rules or amend existing rules to implement the bill. Rule authority exists for the DOH in s. 395.405, F.S.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 318.14, 318.18, 318.21, 395.4001, 395.401, 395.402, 395.4025, 395.403, 395.4036, 395.404, 408.036, and 409.975.

The bill creates two undesignated sections of Florida law.

**IX. Additional Information:**

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

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

**CS/CS by Appropriations on February 22, 2018:**

The committee substitute:

- Adds references to AHCA discharge data collected pursuant to s. 408.061, F.S., to replace data reported to the DOH's Trauma Registry in multiple sections of the Florida Statutes.
- Corrects additional cross-references related to the elimination of the Trauma Registry.
- Defines the term "high risk" to mean a trauma patient with an International Classification Injury Severity Score less than .85 and uses this term in place of referencing "severely injured patients."
- When referencing types of trauma centers throughout the bill, clarifies the list to include a "Level II with a pediatric trauma center" and a "jointly certified pediatric trauma center."

- Specifies that no TSA may have more than five total Level I, Level II, Level II/pediatric, jointly certified pediatric trauma centers, and stand-alone pediatric trauma centers and no more than one stand-alone pediatric trauma center.
- Revises the make-up and duties of the Florida Trauma System Advisory Council (FTSAC).
  - Eliminates the requirement that the Council determine the need for additional trauma centers and the adequacy of the existing trauma system.
  - Eliminates the requirement to submit a biennial report to the Governor and the Legislature on whether to recommend an increase in the number of trauma centers within each service area.
  - Allows the Council to submit recommendations to the DOH on how to maximize existing trauma center, emergency department, and emergency medical services infrastructure and personnel to achieve the statutory goal of developing an inclusive trauma system.
  - Eliminates the following members of the Council: The State Surgeon General, a representative from the AHCA; a trauma program manager recommended by the Florida Teaching Hospital Council of Florida; a trauma surgeon recommended by the Florida Teaching Hospital Council of Florida, a representative of the Associated Industries of Florida, and a trauma program manager or medical director representing a public hospital.
  - Adds the state Trauma Medical Director and a trauma surgeon board-certified in critical care actively practicing medicine in a Level I trauma center to the council.
  - Adds a Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center.
  - Clarifies that the representative from an EMS organization must be a standing member of the Emergency Medical Services Advisory Council.
  - Requires the Council to meet quarterly.
- Specifies that the DOH must use existing resources to administer and support the activities of the FTSAC and the FTSAC members serve without compensation or reimbursement for travel or per diem expenses.
- Requires the DOH to prepare an analysis of the Florida trauma system by August 31, 2020, and every three years thereafter.
- Requires the analysis to use AHCA discharge data and the Florida population data from the American Community Survey Five-Year Estimates by the United States Census Bureau and must include:
  - The population growth for each TSA and for the state of Florida;
  - The number of high-risk patients at each trauma center within each TSA;
  - The total number of high-risk patients at all acute care hospitals, including non-trauma centers in each TSA; and
  - The percentage of each trauma center's sufficient volume of trauma patients as established in the bill.
- Specifies that the DOH must make calculations, data, formulas, methodologies, and risk adjustment tools used in preparing the analysis available.
- Allows the DOH accept a letter of intent and to approve an application for a new trauma center in a TSA that is already at its statutory maximum if each existing trauma centers' case load volume of high-risk patients is double the minimum volume

requirement for Level I and Level II trauma centers and more than triple the minimum volume requirements for stand-alone pediatric trauma centers.

- Specifies that, when demonstrating a need for an additional trauma center in a particular TSA over the statutory caps, the applicant must use the analysis prepared by the DOH.
- Specifies that the determination for the required population growth must be based on the American Community Survey Five-Year Estimates by the United States Census Bureau for the five-year period before the date the applicant files its letter of intent.
- Specifies that additional caseload volumes for certain residents and fellows apply to hospitals with a trauma or critical care residency or fellowship program.
- The minimum caseload volumes established in the bill are as follows:
  - Level I trauma center in a TSA with a population > 1.5 million: 1,200 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level I trauma center in a TSA with a population < 1.5 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level II or Level II/Pediatric trauma center in a TSA with a population > 1.25 million: 1,000 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - Level II or Level II/Pediatric trauma center in a TSA with a population < 1.25 million: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
  - All pediatric stand-alone trauma centers: 500 severely injured patients + 40 additional patients per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.
- Requires the AHCA, in consultation with the DOH, to develop rules to ensure that hospitals and trauma centers are submitting data required by the DOH to perform its duties under ch. 395, F.S.
- Specifies that, when selecting from a pool of applicants, the DOH must select the highest quality applicant that is farthest away from an existing trauma center in the TSA.
- Allows an applicant to operate as a provisional trauma center after the DOH has completed the initial and in-depth review processes.
- Requires the out-of-state review team to perform an onsite visit within the year after the trauma center has begun provisionally operating.
- Requires (rather than allows) the DOH to designate a trauma center that is in compliance with trauma center standards based on the recommendation from the review team.
- Allows the applicant, as well as hospitals with trauma centers in the same or contiguous TSAs, to protest decisions made by the DOH regarding application approval and determination of need.



- Restricts such protests for the designation of a pediatric trauma center that is grandfathered in.
- Specifies that certain provisional trauma centers must be allowed to continue operations until a court or the DOH determines that they have failed to meet the Florida trauma standards.
- Specifies that none of the grandfathering provisions limit the DOH's authority to review and approve trauma center applications.
- Specifies that if the grandfathering provisions of the act are found to be invalid or inoperative, the entire act becomes invalid.
- Requires the DOH and OPPAGA to study the DOH's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services to compare them with the American College of Surgeon's requirements. The OPPAGA must submit a report to the Governor and the Legislature by December 31, 2018. The section expires on January 31, 2019.
- Makes other technical and conforming changes.

**CS by Health Policy on January 23, 2018:**

The CS replaces grandfathering language related to Level II trauma centers in ongoing court proceedings to clarify that it is the DOH, and not a court, that must determine that the trauma center has met application and operational requirements; specifies the required court actions that qualify a trauma center under the paragraph; and conforms the title of the bill to changes made by the amendment.

**B. Amendments:**

None.

By the Committees on Appropriations; and Health Policy; and  
Senator Young

576-03559-18

20181876c2

1 A bill to be entitled  
2 An act relating to trauma services; amending ss.  
3 318.14, 318.18, and 318.21, F.S.; requiring that  
4 moneys received from specified penalties be allocated  
5 to certain trauma centers by a calculation that uses  
6 the Agency for Health Care Administration's hospital  
7 discharge data; amending s. 395.4001, F.S.; conforming  
8 cross-references; defining and redefining terms;  
9 amending s. 395.402, F.S.; revising legislative  
10 intent; revising the trauma service areas and  
11 provisions relating to the number and location of  
12 trauma centers; prohibiting the Department of Health  
13 from designating an existing Level II trauma center as  
14 a new pediatric trauma center or from designating an  
15 existing Level II trauma center as a Level I trauma  
16 center in a trauma service area that already has an  
17 existing Level I or pediatric trauma center;  
18 apportioning trauma centers within each trauma service  
19 area; requiring the department to establish the  
20 Florida Trauma System Advisory Council by a specified  
21 date; authorizing the council to submit certain  
22 recommendations to the department; providing for the  
23 membership of the council; requiring the council to  
24 meet no later than a specified date and to meet at  
25 least quarterly; amending s. 395.4025, F.S.;  
26 conforming provisions to changes made by the act;  
27 requiring the department to periodically prepare an  
28 analysis of the state trauma system using the agency's  
29 hospital discharge data and specified population data;

Page 1 of 41

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576-03559-18

20181876c2

30 specifying contents of the report; requiring the  
31 department to make available all data, formulas,  
32 methodologies, calculations, and risk adjustment tools  
33 used in preparing the data in the report; requiring  
34 the department to notify each acute care general  
35 hospital and local and regional trauma agency in a  
36 trauma service area that has an identified need for an  
37 additional trauma center that the department is  
38 accepting letters of intent; prohibiting the  
39 department from accepting a letter of intent and from  
40 approving an application for a trauma center if there  
41 is not statutory capacity for an additional trauma  
42 center; revising the department's review process for  
43 hospitals seeking designation as a trauma center;  
44 authorizing the department to approve certain  
45 applications for designation as a trauma center if  
46 specified requirements are met; providing that a  
47 hospital applicant that meets such requirements must  
48 be ready to operate in compliance with specified  
49 trauma standards by a specified date; deleting a  
50 provision authorizing the department to grant a  
51 hospital applicant an extension of time to meet  
52 certain standards and requirements; requiring the  
53 department to select one or more hospitals for  
54 approval to prepare to operate as a trauma center;  
55 providing selection requirements; prohibiting an  
56 applicant from operating as a provisional trauma  
57 center until the department has completed its review  
58 process and approved the application; requiring a

Page 2 of 41

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576-03559-18

20181876c2

59 specified review team to make onsite visits to newly  
 60 operational trauma centers within a certain timeframe;  
 61 requiring the department, based on recommendations  
 62 from the review team, to designate a trauma center  
 63 that is in compliance with specified requirements;  
 64 deleting the date by which the department must select  
 65 trauma centers; providing that only certain hospitals  
 66 may protest a decision made by the department;  
 67 providing that certain trauma centers that were  
 68 verified by the department or determined by the  
 69 department to be in substantial compliance with  
 70 specified standards before specified dates are deemed  
 71 to have met application and operational requirements;  
 72 requiring the department to designate a certain  
 73 provisionally approved Level II trauma center as a  
 74 trauma center if certain criteria are met; prohibiting  
 75 such designated trauma center from being required to  
 76 cease trauma operations unless the department or a  
 77 court determines that it has failed to meet certain  
 78 standards; providing construction; amending ss.  
 79 395.403 and 395.4036, F.S.; conforming provisions to  
 80 changes made by the act; amending s. 395.404, F.S.;  
 81 requiring trauma centers to participate in the  
 82 National Trauma Data Bank; requiring trauma centers  
 83 and acute care hospitals to report trauma patient  
 84 transfer and outcome data to the department; deleting  
 85 provisions relating to the department review of trauma  
 86 registry data; amending ss. 395.401, 408.036, and  
 87 409.975, F.S.; conforming cross-references; requiring

Page 3 of 41

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576-03559-18

20181876c2

88 the department to work with the Office of Program  
 89 Policy Analysis and Government Accountability to study  
 90 the department's licensure requirements, rules,  
 91 regulations, standards, and guidelines for pediatric  
 92 trauma services and compare them to those of the  
 93 American College of Surgeons; requiring the office to  
 94 submit a report of the findings of the study to the  
 95 Governor, Legislature, and advisory council by a  
 96 specified date; providing for the expiration of  
 97 provisions relating to the study; providing for  
 98 invalidity; providing an effective date.

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

101  
 102 Section 1. Paragraph (b) of subsection (5) of section  
 103 318.14, Florida Statutes, is amended to read:

104 318.14 Noncriminal traffic infractions; exception;  
 105 procedures.—

106 (5) Any person electing to appear before the designated  
 107 official or who is required so to appear shall be deemed to have  
 108 waived his or her right to the civil penalty provisions of s.  
 109 318.18. The official, after a hearing, shall make a  
 110 determination as to whether an infraction has been committed. If  
 111 the commission of an infraction has been proven, the official  
 112 may impose a civil penalty not to exceed \$500, except that in  
 113 cases involving unlawful speed in a school zone or involving  
 114 unlawful speed in a construction zone, the civil penalty may not  
 115 exceed \$1,000; or require attendance at a driver improvement  
 116 school, or both. If the person is required to appear before the

Page 4 of 41

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576-03559-18

20181876c2

designated official pursuant to s. 318.19(1) and is found to have committed the infraction, the designated official shall impose a civil penalty of \$1,000 in addition to any other penalties and the person's driver license shall be suspended for 6 months. If the person is required to appear before the designated official pursuant to s. 318.19(2) and is found to have committed the infraction, the designated official shall impose a civil penalty of \$500 in addition to any other penalties and the person's driver license shall be suspended for 3 months. If the official determines that no infraction has been committed, no costs or penalties shall be imposed and any costs or penalties that have been paid shall be returned. Moneys received from the mandatory civil penalties imposed pursuant to this subsection upon persons required to appear before a designated official pursuant to s. 318.19(1) or (2) shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

(b) Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry.~~

Section 2. Paragraph (h) of subsection (3) of section 318.18, Florida Statutes, is amended to read:

576-03559-18

20181876c2

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(3)

(h) A person cited for a second or subsequent conviction of speed exceeding the limit by 30 miles per hour and above within a 12-month period shall pay a fine that is double the amount listed in paragraph (b). For purposes of this paragraph, the term "conviction" means a finding of guilt as a result of a jury verdict, nonjury trial, or entry of a plea of guilty. Moneys received from the increased fine imposed by this paragraph shall be remitted to the Department of Revenue and deposited into the Department of Health Emergency Medical Services Trust Fund to provide financial support to certified trauma centers to assure the availability and accessibility of trauma services throughout the state. Funds deposited into the Emergency Medical Services Trust Fund under this section shall be allocated as follows:

1. Fifty percent shall be allocated equally among all Level I, Level II, and pediatric trauma centers in recognition of readiness costs for maintaining trauma services.

2. Fifty percent shall be allocated among Level I, Level II, and pediatric trauma centers based on each center's relative volume of trauma cases as calculated using the Agency for Health Care Administration's hospital discharge data collected pursuant to s. 408.061 ~~reported in the Department of Health Trauma Registry.~~

Section 3. Paragraph (b) of subsection (15) of section 318.21, Florida Statutes, is amended to read:

318.21 Disposition of civil penalties by county courts.—All

576-03559-18 20181876c2

175 civil penalties received by a county court pursuant to the  
176 provisions of this chapter shall be distributed and paid monthly  
177 as follows:

178 (15) Of the additional fine assessed under s. 318.18(3)(e)  
179 for a violation of s. 316.1893, 50 percent of the moneys  
180 received from the fines shall be appropriated to the Agency for  
181 Health Care Administration as general revenue to provide an  
182 enhanced Medicaid payment to nursing homes that serve Medicaid  
183 recipients with brain and spinal cord injuries. The remaining 50  
184 percent of the moneys received from the enhanced fine imposed  
185 under s. 318.18(3)(e) shall be remitted to the Department of  
186 Revenue and deposited into the Department of Health Emergency  
187 Medical Services Trust Fund to provide financial support to  
188 certified trauma centers in the counties where enhanced penalty  
189 zones are established to ensure the availability and  
190 accessibility of trauma services. Funds deposited into the  
191 Emergency Medical Services Trust Fund under this subsection  
192 shall be allocated as follows:

193 (b) Fifty percent shall be allocated among Level I, Level  
194 II, and pediatric trauma centers based on each center's relative  
195 volume of trauma cases as calculated using the Agency for Health  
196 Care Administration's hospital discharge data collected pursuant  
197 to s. 408.061 reported in the Department of Health Trauma  
198 Registry.

199 Section 4. Present subsections (4) through (18) of section  
200 395.4001, Florida Statutes, are renumbered as subsections (5)  
201 through (19), respectively, paragraph (a) of present subsection  
202 (7) and present subsections (13) and (14) of that section are  
203 amended, and a new subsection (4) is added to that section, to

576-03559-18 20181876c2

204 read:

205 395.4001 Definitions.—As used in this part, the term:

206 (4) "High-risk patient" means a trauma patient with an  
207 International Classification Injury Severity Score of less than  
208 0.85.

209 (8)(7) "Level II trauma center" means a trauma center that:

210 (a) Is verified by the department to be in substantial  
211 compliance with Level II trauma center standards and has been  
212 approved by the department to operate as a Level II trauma  
213 center or is designated pursuant to s. 395.4025(15) ~~s.~~  
214 ~~395.4025(14)~~.

215 (14)(13) "Trauma caseload volume" means the number of  
216 trauma patients calculated by the department using the data  
217 reported by each designated trauma center to the hospital  
218 discharge database maintained by the agency pursuant to s.  
219 408.061 reported by individual trauma centers to the Trauma  
220 Registry and validated by the department.

221 (15)(14) "Trauma center" means a hospital that has been  
222 verified by the department to be in substantial compliance with  
223 the requirements in s. 395.4025 and has been approved by the  
224 department to operate as a Level I trauma center, Level II  
225 trauma center, or pediatric trauma center, or is designated by  
226 the department as a Level II trauma center pursuant to s.  
227 395.4025(15) ~~s. 395.4025(14)~~.

228 Section 5. Section 395.402, Florida Statutes, is amended to  
229 read:

230 395.402 Trauma service areas; number and location of trauma  
231 centers.—

232 (1) The Legislature recognizes the need for a statewide,

576-03559-18

20181876c2

cohesive, uniform, and integrated trauma system, as well as the  
need to ensure the viability of existing trauma centers when  
designating new trauma centers. Consistent with national  
standards, future trauma center designations must be based on  
need as a factor of demand and capacity. ~~Within the trauma~~  
~~service areas, Level I and Level II trauma centers shall each be~~  
~~capable of annually treating a minimum of 1,000 and 500~~  
~~patients, respectively, with an injury severity score (ISS) of 9~~  
~~or greater. Level II trauma centers in counties with a~~  
~~population of more than 500,000 shall have the capacity to care~~  
~~for 1,000 patients per year.~~

~~(2) Trauma service areas as defined in this section are to~~  
~~be utilized until the Department of Health completes an~~  
~~assessment of the trauma system and reports its finding to the~~  
~~Governor, the President of the Senate, the Speaker of the House~~  
~~of Representatives, and the substantive legislative committees.~~  
~~The report shall be submitted by February 1, 2005. The~~  
~~department shall review the existing trauma system and determine~~  
~~whether it is effective in providing trauma care uniformly~~  
~~throughout the state. The assessment shall:~~

~~(a) Consider aligning trauma service areas within the~~  
~~trauma region boundaries as established in July 2004.~~

~~(b) Review the number and level of trauma centers needed~~  
~~for each trauma service area to provide a statewide integrated~~  
~~trauma system.~~

~~(c) Establish criteria for determining the number and level~~  
~~of trauma centers needed to serve the population in a defined~~  
~~trauma service area or region.~~

~~(d) Consider including criteria within trauma center~~

576-03559-18

20181876c2

~~approval standards based upon the number of trauma victims~~  
~~served within a service area.~~

~~(e) Review the Regional Domestic Security Task Force~~  
~~structure and determine whether integrating the trauma system~~  
~~planning with interagency regional emergency and disaster~~  
~~planning efforts is feasible and identify any duplication of~~  
~~efforts between the two entities.~~

~~(f) Make recommendations regarding a continued revenue~~  
~~source which shall include a local participation requirement.~~

~~(g) Make recommendations regarding a formula for the~~  
~~distribution of funds identified for trauma centers which shall~~  
~~address incentives for new centers where needed and the need to~~  
~~maintain effective trauma care in areas served by existing~~  
~~centers, with consideration for the volume of trauma patients~~  
~~served, and the amount of charity care provided.~~

~~(3) In conducting such assessment and subsequent annual~~  
~~reviews, the department shall consider:~~

~~(a) The recommendations made as part of the regional trauma~~  
~~system plans submitted by regional trauma agencies.~~

~~(b) Stakeholder recommendations.~~

~~(c) The geographical composition of an area to ensure rapid~~  
~~access to trauma care by patients.~~

~~(d) Historical patterns of patient referral and transfer in~~  
~~an area.~~

~~(e) Inventories of available trauma care resources,~~  
~~including professional medical staff.~~

~~(f) Population growth characteristics.~~

~~(g) Transportation capabilities, including ground and air~~  
~~transport.~~

576-03559-18

20181876c2

291 ~~(h) Medically appropriate ground and air travel times-~~  
 292 ~~(i) Recommendations of the Regional Domestic Security Task~~  
 293 ~~Force-~~  
 294 ~~(j) The actual number of trauma victims currently being~~  
 295 ~~served by each trauma center-~~  
 296 ~~(k) Other appropriate criteria-~~  
 297 ~~(4) Annually thereafter, the department shall review the~~  
 298 ~~assignment of the 67 counties to trauma service areas, in~~  
 299 ~~addition to the requirements of paragraphs (2)(b)-(g) and~~  
 300 ~~subsection (3). County assignments are made for the purpose of~~  
 301 ~~developing a system of trauma centers. Revisions made by the~~  
 302 ~~department shall take into consideration the recommendations~~  
 303 ~~made as part of the regional trauma system plans approved by the~~  
 304 ~~department and the recommendations made as part of the state~~  
 305 ~~trauma system plan. In cases where a trauma service area is~~  
 306 ~~located within the boundaries of more than one trauma region,~~  
 307 ~~the trauma service area's needs, response capability, and system~~  
 308 ~~requirements shall be considered by each trauma region served by~~  
 309 ~~that trauma service area in its regional system plan. Until the~~  
 310 ~~department completes the February 2005 assessment, the~~  
 311 ~~assignment of counties shall remain as established in this~~  
 312 ~~section-~~  
 313 (a) The following trauma service areas are hereby  
 314 established:  
 315 1. Trauma service area 1 shall consist of Escambia,  
 316 Okaloosa, Santa Rosa, and Walton Counties.  
 317 2. Trauma service area 2 shall consist of Bay, Gulf,  
 318 Holmes, and Washington Counties.  
 319 3. Trauma service area 3 shall consist of Calhoun,

Page 11 of 41

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576-03559-18

20181876c2

320 Franklin, Gadsden, Jackson, Jefferson, Leon, Liberty, Madison,  
 321 Taylor, and Wakulla Counties.  
 322 4. Trauma service area 4 shall consist of Alachua,  
 323 Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy,  
 324 Putnam, Suwannee, and Union Counties.  
 325 5. Trauma service area 5 shall consist of Baker, Clay,  
 326 Duval, Nassau, and St. Johns Counties.  
 327 6. Trauma service area 6 shall consist of Citrus, Hernando,  
 328 and Marion Counties.  
 329 7. Trauma service area 7 shall consist of Flagler and  
 330 Volusia Counties.  
 331 8. Trauma service area 8 shall consist of Lake, Orange,  
 332 Osceola, Seminole, and Sumter Counties.  
 333 9. Trauma service area 9 shall consist of Pasco and  
 334 Pinellas Counties.  
 335 10. Trauma service area 10 shall consist of Hillsborough  
 336 County.  
 337 11. Trauma service area 11 shall consist of Hardee,  
 338 Highlands, and Polk Counties.  
 339 12. Trauma service area 12 shall consist of Brevard and  
 340 Indian River Counties.  
 341 13. Trauma service area 13 shall consist of DeSoto,  
 342 Manatee, and Sarasota Counties.  
 343 14. Trauma service area 14 shall consist of Martin,  
 344 Okeechobee, and St. Lucie Counties.  
 345 15. Trauma service area 15 shall consist of Charlotte,  
 346 Collier, Glades, Hendry, and Lee Counties.  
 347 16. Trauma service area 16 shall consist of Palm Beach  
 348 County.

Page 12 of 41

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576-03559-18

20181876c2

349 17. Trauma service area 17 shall consist of Broward ~~Collier~~  
 350 County.

351 18. Trauma service area 18 shall consist of Broward ~~County~~.  
 352 ~~19. Trauma service area 19 shall consist of~~ Miami-Dade and  
 353 Monroe Counties.

354 (b) Each trauma service area ~~must~~ should have at least one  
 355 Level I or Level II trauma center. Except as otherwise provided  
 356 in s. 395.4025(16), the department may not designate an existing  
 357 Level II trauma center as a new pediatric trauma center or  
 358 designate an existing Level II trauma center as a Level I trauma  
 359 center in a trauma service area that already has an existing  
 360 Level I or pediatric trauma center ~~The department shall~~  
 361 allocate, by rule, the number of trauma centers needed for each  
 362 trauma service area.

363 (c) Trauma centers, including Level I, Level II, Level II  
 364 with a pediatric trauma center, jointly certified pediatric  
 365 trauma centers, and stand-alone pediatric trauma centers, shall  
 366 be apportioned as follows:

- 367 1. Trauma service area 1 shall have three trauma centers.
- 368 2. Trauma service area 2 shall have one trauma center.
- 369 3. Trauma service area 3 shall have one trauma center.
- 370 4. Trauma service area 4 shall have one trauma center.
- 371 5. Trauma service area 5 shall have three trauma centers.
- 372 6. Trauma service area 6 shall have one trauma center.
- 373 7. Trauma service area 7 shall have one trauma center.
- 374 8. Trauma service area 8 shall have three trauma centers.
- 375 9. Trauma service area 9 shall have three trauma centers.
- 376 10. Trauma service area 10 shall have two trauma centers.
- 377 11. Trauma service area 11 shall have one trauma center.

576-03559-18

20181876c2

- 378 12. Trauma service area 12 shall have one trauma center.
- 379 13. Trauma service area 13 shall have two trauma centers.
- 380 14. Trauma service area 14 shall have one trauma center.
- 381 15. Trauma service area 15 shall have one trauma center.
- 382 16. Trauma service area 16 shall have two trauma centers.
- 383 17. Trauma service area 17 shall have three trauma centers.
- 384 18. Trauma service area 18 shall have five trauma centers.

385  
 386 Notwithstanding other provisions of this chapter, a trauma  
 387 service area may not have more than a total of five Level I,  
 388 Level II, Level II with a pediatric trauma center, jointly  
 389 certified pediatric trauma centers, and stand-alone pediatric  
 390 trauma centers. A trauma service area may not have more than one  
 391 stand-alone pediatric trauma center ~~There shall be no more than~~  
 392 a total of 44 trauma centers in the state.

393 (2) (a) By October 1, 2018, the department shall establish  
 394 the Florida Trauma System Advisory Council to promote an  
 395 inclusive trauma system and enhance cooperation among trauma  
 396 system stakeholders. The advisory council may submit  
 397 recommendations to the department on how to maximize existing  
 398 trauma center, emergency department, and emergency medical  
 399 services infrastructure and personnel to achieve the statutory  
 400 goal of developing an inclusive trauma system.

401 (b) 1. The advisory council shall consist of 12 members  
 402 appointed by the Governor, including:

- 403 a. The State Trauma Medical Director;
- 404 b. A standing member of the Emergency Medical Services  
 405 Advisory Council;
- 406 c. A representative of a local or regional trauma agency;



576-03559-18

20181876c2

d. A trauma program manager or trauma medical director who is actively working in a trauma center and who represents an investor-owned hospital with a trauma center;

e. A trauma program manager or trauma medical director actively working in a trauma center who represents a nonprofit or public hospital with a trauma center;

f. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and who is actively practicing medicine in a Level II trauma center who represents an investor-owned hospital with a trauma center;

g. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and actively practicing medicine who represents a nonprofit or public hospital with a trauma center;

h. A representative of the American College of Surgeons Committee on Trauma who has pediatric expertise;

i. A representative of the Safety Net Hospital Alliance of Florida;

j. A representative of the Florida Hospital Association;

k. A Florida-licensed, board-certified emergency medicine physician who is not affiliated with a trauma center; and

l. A trauma surgeon who is board-certified in an appropriate trauma or critical care specialty and actively practicing medicine in a Level I trauma center.

2. No two members may be employed by the same health care facility.

3. Each council member shall be appointed to a 3-year term; however, for the purpose of providing staggered terms, of the initial appointments, four members shall be appointed to 1-year

576-03559-18

20181876c2

terms, four members shall be appointed to 2-year terms, and four members shall be appointed to 3-year terms.

(c) The department shall use existing and available resources to administer and support the activities of the advisory council. Members of the advisory council shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

(d) The advisory council shall convene no later than January 5, 2019, and shall meet at least quarterly.

Section 6. Section 395.4025, Florida Statutes, is amended to read:

395.4025 Trauma centers; selection; quality assurance; records.—

(1) For purposes of developing a system of trauma centers, the department shall use the 18 19 trauma service areas established in s. 395.402. ~~Within each service area and based on the state trauma system plan, the local or regional trauma services system plan, and recommendations of the local or regional trauma agency, the department shall establish the approximate number of trauma centers needed to ensure reasonable access to high-quality trauma services.~~ The department shall designate select those hospitals that are to be recognized as trauma centers.

(2)(a) The department shall prepare an analysis of the Florida trauma system by August 31, 2020, and every 3 years thereafter, using the agency's hospital discharge database described in s. 408.061 for the current year and the most recent 5 years of population data for Florida available from the American Community Survey 5-Year Estimates by the United States

576-03559-18

20181876c2

Census Bureau. The department's report must, at a minimum, include all of the following:

1. The population growth for each trauma service area and for this state;

2. The number of high-risk patients treated at each trauma center within each trauma service area, including pediatric trauma centers;

3. The total number of high-risk patients treated at all acute care hospitals inclusive of nontrauma centers in the trauma service area; and

4. The percentage of each trauma center's sufficient volume of trauma patients, as described in subparagraph (3)(d)2., in accordance with the International Classification Injury Severity Score for the trauma center's designation, inclusive of the additional caseload volume required for those trauma centers with graduate medical education programs.

(b) The department shall make available all data, formulas, methodologies, calculations, and risk adjustment tools used in preparing the report.

(3)(a)(2)(a) The department shall ~~annually~~ notify each acute care general hospital and each local and each regional trauma agency in a trauma service area with an identified need for an additional trauma center ~~the state~~ that the department is accepting letters of intent from hospitals that are interested in becoming trauma centers. The department may accept a letter of intent only if there is statutory capacity for an additional trauma center in accordance with subsection (2), paragraph (d), and s. 395.402 ~~In order to be considered by the department, a hospital that operates within the geographic area of a local or~~

576-03559-18

20181876c2

~~regional trauma agency must certify that its intent to operate as a trauma center is consistent with the trauma services plan of the local or regional trauma agency, as approved by the department, if such agency exists.~~ Letters of intent must be postmarked no later than midnight October 1 of the year in which the department notifies hospitals that it plans to accept letters of intent.

(b) By October 15, the department shall send to all hospitals that submitted a letter of intent an application package that will provide the hospitals with instructions for submitting information to the department for selection as a trauma center. The standards for trauma centers provided for in s. 395.401(2), as adopted by rule of the department, shall serve as the basis for these instructions.

(c) In order to be considered by the department, applications from those hospitals seeking selection as trauma centers, including those current verified trauma centers that seek a change or redesignation in approval status as a trauma center, must be received by the department no later than the close of business on April 1 of the year following submission of the letter of intent. The department shall conduct an initial a ~~provisional~~ review of each application for the purpose of determining whether ~~that~~ the hospital's application is complete and whether ~~that~~ the hospital is capable of constructing and operating a trauma center that includes ~~has~~ the critical elements required for a trauma center. This critical review must ~~will~~ be based on trauma center standards and must ~~shall~~ include, but need not be limited to, a review as to ~~of~~ whether the hospital is prepared to attain and operate with all of the

576-03559-18

20181876c2

following components before April 30 of the following year has:

1. Equipment and physical facilities necessary to provide trauma services.

2. Personnel in sufficient numbers and with proper qualifications to provide trauma services.

3. An effective quality assurance process.

~~4. Submitted written confirmation by the local or regional trauma agency that the hospital applying to become a trauma center is consistent with the plan of the local or regional trauma agency, as approved by the department, if such agency exists.~~

(d) ~~1.~~ Except as otherwise provided in this section, the department may not approve an application for a Level I, a Level II, a Level II with a pediatric trauma center, a jointly certified pediatric trauma center, or a stand-alone pediatric trauma center if approval of the application would exceed the limits on the numbers of Level I, Level II, Level II with a pediatric trauma center, jointly certified pediatric trauma centers, or stand-alone pediatric trauma centers established in s. 395.402(1). However, the department shall review and may approve an application for a trauma center when approval of the application would result in a number of trauma centers which exceeds the limit on the numbers of trauma centers in a trauma service area imposed in s. 395.402(1), if, using the analysis performed by the department as required in paragraph (2)(a), the applicant demonstrates and the department determines that:

1. The existing trauma center actual caseload volume of high-risk patients exceeds the minimum caseload volume capabilities, inclusive of the additional caseload volume for

576-03559-18

20181876c2

graduate medical education critical care and trauma surgical subspecialty residents or fellows by more than two times the statutory minimums listed in sub-subparagraphs 2.a.-d. or three times the statutory minimum listed in sub-subparagraph 2.e., and the population growth for the trauma service area exceeds the statewide population growth by more than 15 percent based on the American Community Survey 5-Year Estimates by the United States Census Bureau for the 5-year period before the date the applicant files its letter of intent; and

2. A sufficient caseload volume of potential trauma patients exists within the trauma service area to ensure that existing trauma centers caseload volumes are at the following levels:

a. For Level I trauma centers in trauma service areas with a population of greater than 1.5 million, a minimum caseload volume of the greater of 1,200 high-risk patients admitted or greater per year or, for a trauma center with a trauma or critical care residency or fellowship program, 1,200 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

b. For Level I trauma centers in trauma service areas with a population of less than 1.5 million, a minimum caseload volume of the greater of 1,000 high-risk patients admitted per year or, for a trauma center with a critical care or trauma residency or fellowship program, 1,000 high-risk patients admitted plus 40 cases per year for each accredited critical care and trauma surgical subspecialty medical resident or fellow.

c. For Level II trauma centers and Level II trauma centers

576-03559-18 20181876c2

581 with a pediatric trauma center in trauma service areas with a  
 582 population of greater than 1.25 million, a minimum caseload  
 583 volume of the greater of 1,000 high-risk patients admitted or  
 584 for a trauma center with a critical care or trauma residency or  
 585 fellowship program, 1,000 high-risk patients admitted plus 40  
 586 cases per year for each accredited critical care and trauma  
 587 surgical subspecialty medical resident or fellow.

588 d. For Level II trauma centers and Level II trauma centers  
 589 with a pediatric trauma center in trauma service areas with a  
 590 population of less than 1.25 million, a minimum caseload volume  
 591 of the greater of 500 high-risk patients admitted per year or  
 592 for a trauma center with a critical care or trauma residency or  
 593 fellowship program, 500 high-risk patients admitted plus 40  
 594 cases per year for each accredited critical care and trauma  
 595 surgical subspecialty medical resident or fellow.

596 e. For pediatric trauma centers, a minimum caseload volume  
 597 of the greater of 500 high-risk admitted patients per year or  
 598 for a trauma center with a critical care or trauma residency or  
 599 fellowship program, 500 high-risk admitted patients per year  
 600 plus 40 cases per year for each accredited critical care and  
 601 trauma surgical subspecialty medical resident or fellow.

602 The International Classification Injury Severity Score  
 603 calculations and caseload volume must be calculated using the  
 604 most recent available hospital discharge data collected by the  
 605 agency from all acute care hospitals pursuant to s. 408.061. The  
 606 agency, in consultation with the department, shall adopt rules  
 607 for trauma centers and acute care hospitals for the submission  
 608 of data required for the department to perform its duties under  
 609

576-03559-18 20181876c2

610 this chapter.

611 (e) If the department determines that the hospital is  
 612 capable of attaining and operating with the components required  
 613 by paragraph (c), the applicant must be ready to operate in  
 614 compliance with Florida trauma center standards no later than  
 615 April 30 of the year following the department's initial review  
 616 and approval of the hospital's application to proceed with  
 617 preparation to operate as a trauma center. A hospital that fails  
 618 to comply with this subsection may not be designated as a trauma  
 619 center. Notwithstanding other provisions in this section, the  
 620 department may grant up to an additional 18 months to a hospital  
 621 applicant that is unable to meet all requirements as provided in  
 622 paragraph (c) at the time of application if the number of  
 623 applicants in the service area in which the applicant is located  
 624 is equal to or less than the service area allocation, as  
 625 provided by rule of the department. An applicant that is granted  
 626 additional time pursuant to this paragraph shall submit a plan  
 627 for departmental approval which includes timelines and  
 628 activities that the applicant proposes to complete in order to  
 629 meet application requirements. Any applicant that demonstrates  
 630 an ongoing effort to complete the activities within the  
 631 timelines outlined in the plan shall be included in the number  
 632 of trauma centers at such time that the department has conducted  
 633 a provisional review of the application and has determined that  
 634 the application is complete and that the hospital has the  
 635 critical elements required for a trauma center.

636 2. Timeframes provided in subsections (1) (8) shall be  
 637 stayed until the department determines that the application is  
 638 complete and that the hospital has the critical elements

576-03559-18

20181876c2

639 ~~required for a trauma center.~~

640 (4)(3) By May 1, the department shall select one or more  
 641 hospitals After April 30, any hospital that submitted an  
 642 application found acceptable by the department based on initial  
 643 provisional review for approval to prepare shall be eligible to  
 644 operate with the components required by paragraph (3)(c). If the  
 645 department receives more applications than may be approved, the  
 646 department must select the best applicant or applicants from the  
 647 available pool based on the department's determination of the  
 648 capability of an applicant to provide the highest quality  
 649 patient care using the most recent technological, medical, and  
 650 staffing resources available, which is located the farthest away  
 651 from an existing trauma center in the applicant's trauma service  
 652 area to maximize access. The number of applicants selected is  
 653 limited to available statutory need in the specified trauma  
 654 service area, as designated in paragraph (3)(d) or s. 395.402(1)  
 655 as a provisional trauma center.

656 (5)(4) Following the initial review, Between May 1 and  
 657 October 1 of each year, the department shall conduct an in-depth  
 658 evaluation of all applications found acceptable in the initial  
 659 provisional review. The applications shall be evaluated against  
 660 criteria enumerated in the application packages as provided to  
 661 the hospitals by the department. An applicant may not operate as  
 662 a provisional trauma center until the department completes the  
 663 initial and in-depth review and approves the application.

664 (6)(5) Within Beginning October 1 of each year and ending  
 665 no later than June 1 of the following year after the hospital  
 666 begins operating as a provisional trauma center, a review team  
 667 of out-of-state experts assembled by the department shall make

576-03559-18

20181876c2

668 onsite visits to all provisional trauma centers. The department  
 669 shall develop a survey instrument to be used by the expert team  
 670 of reviewers. The instrument must ~~shall~~ include objective  
 671 criteria and guidelines for reviewers based on existing trauma  
 672 center standards such that all trauma centers are assessed  
 673 equally. The survey instrument must ~~shall~~ also include a uniform  
 674 rating system that ~~will be used by~~ reviewers must use to  
 675 indicate the degree of compliance of each trauma center with  
 676 specific standards, and to indicate the quality of care provided  
 677 by each trauma center as determined through an audit of patient  
 678 charts. In addition, hospitals being considered as provisional  
 679 trauma centers must ~~shall~~ meet all the requirements of a trauma  
 680 center and must ~~shall~~ be located in a trauma service area that  
 681 has a need for such a trauma center.

682 (7)(6) Based on recommendations from the review team, the  
 683 department shall approve for designation a trauma center that is  
 684 in compliance with trauma center standards, as established by  
 685 department rule, and with this section shall select trauma  
 686 centers by July 1. An applicant for designation as a trauma  
 687 center may request an extension of its provisional status if it  
 688 submits a corrective action plan to the department. The  
 689 corrective action plan must demonstrate the ability of the  
 690 applicant to correct deficiencies noted during the applicant's  
 691 onsite review conducted by the department between the previous  
 692 October 1 and June 1. The department may extend the provisional  
 693 status of an applicant for designation as a trauma center  
 694 through December 31 if the applicant provides a corrective  
 695 action plan acceptable to the department. The department or a  
 696 team of out-of-state experts assembled by the department shall

576-03559-18

20181876c2

697 ~~conduct an onsite visit on or before November 1 to confirm that~~  
 698 ~~the deficiencies have been corrected. The provisional trauma~~  
 699 ~~center is responsible for all costs associated with the onsite~~  
 700 ~~visit in a manner prescribed by rule of the department. By~~  
 701 ~~January 1, the department must approve or deny the application~~  
 702 ~~of any provisional applicant granted an extension.~~ Each trauma  
 703 center shall be granted a 7-year approval period during which  
 704 time it must continue to maintain trauma center standards and  
 705 acceptable patient outcomes as determined by department rule. An  
 706 approval, unless sooner suspended or revoked, automatically  
 707 expires 7 years after the date of issuance and is renewable upon  
 708 application for renewal as prescribed by rule of the department.

709 (8)(7) Only an applicant, or hospital with an existing  
 710 trauma center in the same trauma service area or in a trauma  
 711 service area contiguous to the trauma service area where the  
 712 applicant has applied to operate a trauma center, may protest a  
 713 decision made by the department with regard to whether the  
 714 application should be approved, or whether need has been  
 715 established through the criteria established in paragraph (3) (d)  
 716 ~~Any hospital that wishes to protest a decision made by the~~  
 717 ~~department based on the department's preliminary or in-depth~~  
 718 ~~review of applications or on the recommendations of the site~~  
 719 ~~visit review team pursuant to this section shall proceed as~~  
 720 ~~provided in chapter 120.~~ Hearings held under this subsection  
 721 shall be conducted in the same manner as provided in ss. 120.569  
 722 and 120.57. Cases filed under chapter 120 may combine all  
 723 disputes between parties.

724 (9)(8) Notwithstanding any provision of chapter 381, a  
 725 hospital licensed under ss. 395.001-395.3025 that operates a

576-03559-18

20181876c2

726 trauma center may not terminate or substantially reduce the  
 727 availability of trauma service without providing at least 180  
 728 days' notice of its intent to terminate such service. Such  
 729 notice shall be given to the department, to all affected local  
 730 or regional trauma agencies, and to all trauma centers,  
 731 hospitals, and emergency medical service providers in the trauma  
 732 service area. The department shall adopt by rule the procedures  
 733 and process for notification, duration, and explanation of the  
 734 termination of trauma services.

735 (10)(9) Except as otherwise provided in this subsection,  
 736 the department or its agent may collect trauma care and registry  
 737 data, as prescribed by rule of the department, from trauma  
 738 centers, hospitals, emergency medical service providers, local  
 739 or regional trauma agencies, or medical examiners for the  
 740 purposes of evaluating trauma system effectiveness, ensuring  
 741 compliance with the standards, and monitoring patient outcomes.  
 742 A trauma center, hospital, emergency medical service provider,  
 743 medical examiner, or local trauma agency or regional trauma  
 744 agency, or a panel or committee assembled by such an agency  
 745 under s. 395.50(1) may, but is not required to, disclose to the  
 746 department patient care quality assurance proceedings, records,  
 747 or reports. However, the department may require a local trauma  
 748 agency or a regional trauma agency, or a panel or committee  
 749 assembled by such an agency to disclose to the department  
 750 patient care quality assurance proceedings, records, or reports  
 751 that the department needs solely to conduct quality assurance  
 752 activities under s. 395.4015, or to ensure compliance with the  
 753 quality assurance component of the trauma agency's plan approved  
 754 under s. 395.401. The patient care quality assurance

576-03559-18

20181876c2

proceedings, records, or reports that the department may require for these purposes include, but are not limited to, the structure, processes, and procedures of the agency's quality assurance activities, and any recommendation for improving or modifying the overall trauma system, if the identity of a trauma center, hospital, emergency medical service provider, medical examiner, or an individual who provides trauma services is not disclosed.

(11)~~(10)~~ Out-of-state experts assembled by the department to conduct onsite visits are agents of the department for the purposes of s. 395.3025. An out-of-state expert who acts as an agent of the department under this subsection is not liable for any civil damages as a result of actions taken by him or her, unless he or she is found to be operating outside the scope of the authority and responsibility assigned by the department.

(12)~~(11)~~ Onsite visits by the department or its agent may be conducted at any reasonable time and may include but not be limited to a review of records in the possession of trauma centers, hospitals, emergency medical service providers, local or regional trauma agencies, or medical examiners regarding the care, transport, treatment, or examination of trauma patients.

(13)~~(12)~~ Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section, s. 395.3025(4)(f), s. 395.401, s. 395.4015, s. 395.402, s. 395.403, s. 395.404, s. 395.4045, s. 395.405, s. 395.50, or s. 395.51 must be held confidential by the department or its agent and are exempt from the provisions of s. 119.07(1). Patient care quality assurance proceedings, records, or reports obtained or made

576-03559-18

20181876c2

pursuant to these sections are not subject to discovery or introduction into evidence in any civil or administrative action.

(14)~~(13)~~ The department may adopt, by rule, the procedures and process by which it will select trauma centers. Such procedures and process must be used in ~~annually~~ selecting trauma centers and must be consistent with subsections (1)-(9) ~~(1)-(8)~~ except in those situations in which it is in the best interest of, and mutually agreed to by, all applicants within a service area and the department to reduce the timeframes.

(15)~~(14)~~ Notwithstanding the procedures established pursuant to subsections (1) through (14) ~~(13)~~, hospitals located in areas with limited access to trauma center services shall be designated by the department as Level II trauma centers based on documentation of a valid certificate of trauma center verification from the American College of Surgeons. Areas with limited access to trauma center services are defined by the following criteria:

(a) The hospital is located in a trauma service area with a population greater than 600,000 persons but a population density of less than 225 persons per square mile;

(b) The hospital is located in a county with no verified trauma center; and

(c) The hospital is located at least 15 miles or 20 minutes travel time by ground transport from the nearest verified trauma center.

(16) (a) Notwithstanding the statutory capacity limits established in s. 395.402(1), the provisions of subsection (8), or any other provision of this act, an adult Level I trauma

576-03559-18

20181876c2

813 center, an adult Level II trauma center, a Level II trauma  
 814 center with a pediatric trauma center, a jointly certified  
 815 pediatric trauma center, or a stand-alone pediatric trauma  
 816 center that was verified by the department before December 15,  
 817 2017, is deemed to have met the trauma center application and  
 818 operational requirements of this section and must be verified  
 819 and designated as a trauma center.

820 (b) Notwithstanding the statutory capacity limits  
 821 established in s. 395.402(1), the provisions of subsection (8),  
 822 or any other provision of this act, a trauma center that was not  
 823 verified by the department before December 15, 2017, but that  
 824 was provisionally approved by the department to be in  
 825 substantial compliance with Level II trauma standards before  
 826 January 1, 2017, and which is operating as a Level II trauma  
 827 center, is deemed to have met the application and operational  
 828 requirements of this section for a trauma center and must be  
 829 verified and designated as a Level II trauma center.

830 (c) Notwithstanding the statutory capacity limits  
 831 established in s. 395.402(1), the provisions of subsection (8),  
 832 or any other provision of this act, a trauma center that was not  
 833 verified by the department before December 15, 2017, as a Level  
 834 I trauma center but that was provisionally approved by the  
 835 department to be in substantial compliance with Level I trauma  
 836 standards before January 1, 2017, and is operating as a Level I  
 837 trauma center is deemed to have met the application and  
 838 operational requirements of this section for a trauma center and  
 839 must be verified and designated as a Level I trauma center.

840 (d) Notwithstanding the statutory capacity limits  
 841 established in s. 395.402(1), the provisions of subsection (8),

576-03559-18

20181876c2

842 or any other provision of this act, a trauma center that was not  
 843 verified by the department before December 15, 2017, as a  
 844 pediatric trauma center but was provisionally approved by the  
 845 department and found to be in substantial compliance with the  
 846 pediatric trauma standards established by rule before January 1,  
 847 2018, and is operating as a pediatric trauma center is deemed to  
 848 have met the application and operational requirements of this  
 849 section for a pediatric trauma center and, upon successful  
 850 completion of the in-depth and site review process, shall be  
 851 verified and designated as a pediatric trauma center.  
 852 Notwithstanding the provisions of subsection (8), no existing  
 853 trauma center in the same trauma service area or in a trauma  
 854 service area contiguous to the trauma service area where the  
 855 applicant is located may protest the in-depth review, site  
 856 survey, or verification decision of the department regarding an  
 857 applicant that meets the requirements of this paragraph.

858 (e) Notwithstanding the statutory capacity limits  
 859 established in s. 395.402(1) or any other provision of this act,  
 860 any hospital operating as a Level II trauma center after January  
 861 1, 2017, must be designated and verified by the department as a  
 862 Level II trauma center if all of the following apply:

863 1. The hospital was provisionally approved after January 1,  
 864 2017, to operate as a Level II trauma center and was in  
 865 operation on or before June 1, 2017;

866 2. The department's decision to approve the hospital to  
 867 operate a provisional Level II trauma center was in litigation  
 868 on or before January 1, 2018;

869 3. The hospital receives a recommended order from the  
 870 Division of Administrative Hearings, a final order from the



576-03559-18

20181876c2

department, or an order from a court of competent jurisdiction which provides that it was entitled to be designated and verified as a Level II trauma center; and

4. The department determines that the hospital is in substantial compliance with the Level II trauma center standards, including the in-depth and site reviews.

Any provisional trauma center operating under this paragraph may not be required to cease trauma operations unless a court of competent jurisdiction or the department determines that it has failed to meet the trauma center standards, as established by department rule.

(f) Notwithstanding the statutory capacity limits established in s. 395.402(1), or any other provision of this act, a joint pediatric trauma center involving a Level II trauma center and a specialty licensed children's hospital which was verified by the department before December 15, 2017, is deemed to have met the application and operational requirements of this section for a pediatric trauma center and shall be verified and designated as a pediatric trauma center even if the joint program is dissolved upon the expiration of the existing certificate and the pediatric trauma center continues operations independently through the specialty licensed children's hospital, provided that the pediatric trauma center meets all requirements for verification by the department.

(g) Nothing in this subsection shall limit the department's authority to review and approve trauma center applications.

Section 7. Section 395.403, Florida Statutes, is amended to read:

576-03559-18

20181876c2

395.403 Reimbursement of trauma centers.—

(1) All verified trauma centers shall be considered eligible to receive state funding when state funds are specifically appropriated for state-sponsored trauma centers in the General Appropriations Act. Effective July 1, 2010, the department shall make payments from the Emergency Medical Services Trust Fund under s. 20.435 to the trauma centers. Payments shall be in equal amounts for the trauma centers approved by the department as of July 1 of the fiscal year in which funding is appropriated. In the event a trauma center does not maintain its status as a trauma center for any state fiscal year in which such funding is appropriated, the trauma center shall repay the state for the portion of the year during which it was not a trauma center.

(2) Trauma centers eligible to receive distributions from the Emergency Medical Services Trust Fund under s. 20.435 in accordance with subsection (1) may request that such funds be used as intergovernmental transfer funds in the Medicaid program.

(3) In order to receive state funding, a hospital must ~~shall~~ be a verified trauma center and shall:

(a) Agree to conform to all departmental requirements as provided by rule to assure high-quality trauma services.

(b) Agree to report trauma data to the National Trauma Data Bank ~~provide information concerning the provision of trauma services to the department, in a form and manner prescribed by rule of the department.~~

(c) Agree to accept all trauma patients, regardless of ability to pay, on a functional space-available basis.

576-03559-18

20181876c2

(4) A trauma center that fails to comply with any of the conditions listed in subsection (3) or the applicable rules of the department ~~may shall~~ not receive payments under this section for the period in which it was not in compliance.

Section 8. Section 395.4036, Florida Statutes, is amended to read:

395.4036 Trauma payments.—

(1) Recognizing the Legislature's stated intent to provide financial support to the current verified trauma centers and to provide incentives for the establishment of additional trauma centers as part of a system of state-sponsored trauma centers, the department shall use ~~utilize~~ funds collected under s. 318.18 and deposited into the Emergency Medical Services Trust Fund of the department to ensure the availability and accessibility of trauma services throughout the state as provided in this subsection.

(a) Funds collected under s. 318.18(15) shall be distributed as follows:

1. Twenty percent of the total funds collected during the state fiscal year shall be distributed to verified trauma centers that have a local funding contribution as of December 31. Distribution of funds under this subparagraph shall be based on trauma caseload volume for the most recent calendar year available.

2. Forty percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the agency's hospital

576-03559-18

20181876c2

discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data.~~

3. Forty percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(b) Funds collected under s. 318.18(5)(c) and (20) shall be distributed as follows:

1. Thirty percent of the total funds collected shall be distributed to Level II trauma centers operated by a public hospital governed by an elected board of directors as of December 31, 2008.

2. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on trauma caseload volume for the most recent calendar year available. The determination of caseload volume for distribution of funds under this subparagraph shall be based on the agency's hospital discharge data reported by each trauma center pursuant to s. 408.061 and meeting the criteria for classification as a trauma patient ~~department's Trauma Registry data.~~

576-03559-18

20181876c2

3. Thirty-five percent of the total funds collected shall be distributed to verified trauma centers based on severity of trauma patients for the most recent calendar year available. The determination of severity for distribution of funds under this subparagraph shall be based on the department's International Classification Injury Severity Scores or another statistically valid and scientifically accepted method of stratifying a trauma patient's severity of injury, risk of mortality, and resource consumption as adopted by the department by rule, weighted based on the costs associated with and incurred by the trauma center in treating trauma patients. The weighting of scores shall be established by the department by rule.

(2) Funds deposited in the department's Emergency Medical Services Trust Fund for verified trauma centers may be used to maximize the receipt of federal funds that may be available for such trauma centers. Notwithstanding this section and s. 318.14, distributions to trauma centers may be adjusted in a manner to ensure that total payments to trauma centers represent the same proportional allocation as set forth in this section and s. 318.14. For purposes of this section and s. 318.14, total funds distributed to trauma centers may include revenue from the Emergency Medical Services Trust Fund and federal funds for which revenue from the Administrative Trust Fund is used to meet state or local matching requirements. Funds collected under ss. 318.14 and 318.18 and deposited in the Emergency Medical Services Trust Fund of the department shall be distributed to trauma centers on a quarterly basis using the most recent calendar year data available. Such data shall not be used for more than four quarterly distributions unless there are

576-03559-18

20181876c2

extenuating circumstances as determined by the department, in which case the most recent calendar year data available shall continue to be used and appropriate adjustments shall be made as soon as the more recent data becomes available.

(3) (a) Any trauma center not subject to audit pursuant to s. 215.97 shall annually attest, under penalties of perjury, that such proceeds were used in compliance with law. The annual attestation shall be made in a form and format determined by the department. The annual attestation shall be submitted to the department for review within 9 months after the end of the organization's fiscal year.

(b) Any trauma center subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules adopted by the Auditor General.

(4) The department, working with the Agency for Health Care Administration, shall maximize resources for trauma services wherever possible.

Section 9. Section 395.404, Florida Statutes, is amended to read:

395.404 Reporting ~~Review~~ of trauma ~~registry~~ data; report to National Trauma Data Bank ~~central registry, confidentiality and limited release.~~

(1) ~~(a)~~ Each trauma center shall participate in the National Trauma Data Bank, and the department shall solely use the National Trauma Data Bank for quality and assessment purposes.

(2) Each trauma center and acute care hospital shall report to the department all transfers of trauma patients and the outcomes of such patients furnish, and, upon request of the department, all acute care hospitals shall furnish for

576-03559-18

20181876c2

department review trauma registry data as prescribed by rule of the department for the purpose of monitoring patient outcome and ensuring compliance with the standards of approval.

~~(b) Trauma registry data obtained pursuant to this subsection are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, the department may provide such trauma registry data to the person, trauma center, hospital, emergency medical service provider, local or regional trauma agency, medical examiner, or other entity from which the data were obtained. The department may also use or provide trauma registry data for purposes of research in accordance with the provisions of chapter 405.~~

(3)(2) Each trauma center, ~~pediatric trauma center,~~ and acute care hospital shall report to the department's brain and spinal cord injury central registry, consistent with the procedures and timeframes of s. 381.74, any person who has a moderate-to-severe brain or spinal cord injury, and shall include in the report the name, age, residence, and type of disability of the individual and any additional information that the department finds necessary.

Section 10. Paragraph (k) of subsection (1) of section 395.401, Florida Statutes, is amended to read:

395.401 Trauma services system plans; approval of trauma centers and pediatric trauma centers; procedures; renewal.—

(1)

(k) It is unlawful for any hospital or other facility to hold itself out as a trauma center unless it has been so verified or designated pursuant to s. 395.4025(15) ~~s. 395.4025(14)~~.

576-03559-18

20181876c2

Section 11. Paragraph (1) of subsection (3) of section 408.036, Florida Statutes, is amended to read:

408.036 Projects subject to review; exemptions.—

(3) EXEMPTIONS.—Upon request, the following projects are subject to exemption from the provisions of subsection (1):

(1) For the establishment of:

1. A Level II neonatal intensive care unit with at least 10 beds, upon documentation to the agency that the applicant hospital had a minimum of 1,500 births during the previous 12 months;

2. A Level III neonatal intensive care unit with at least 15 beds, upon documentation to the agency that the applicant hospital has a Level II neonatal intensive care unit of at least 10 beds and had a minimum of 3,500 births during the previous 12 months; or

3. A Level III neonatal intensive care unit with at least 5 beds, upon documentation to the agency that the applicant hospital is a verified trauma center pursuant to s. 395.4001(15) ~~s. 395.4001(14)~~, and has a Level II neonatal intensive care unit,

if the applicant demonstrates that it meets the requirements for quality of care, nurse staffing, physician staffing, physical plant, equipment, emergency transportation, and data reporting found in agency certificate-of-need rules for Level II and Level III neonatal intensive care units and if the applicant commits to the provision of services to Medicaid and charity patients at a level equal to or greater than the district average. Such a commitment is subject to s. 408.040.

576-03559-18

20181876c2

1103 Section 12. Paragraph (a) of subsection (1) of section  
 1104 409.975, Florida Statutes, is amended to read:  
 1105 409.975 Managed care plan accountability.—In addition to  
 1106 the requirements of s. 409.967, plans and providers  
 1107 participating in the managed medical assistance program shall  
 1108 comply with the requirements of this section.  
 1109 (1) PROVIDER NETWORKS.—Managed care plans must develop and  
 1110 maintain provider networks that meet the medical needs of their  
 1111 enrollees in accordance with standards established pursuant to  
 1112 s. 409.967(2)(c). Except as provided in this section, managed  
 1113 care plans may limit the providers in their networks based on  
 1114 credentials, quality indicators, and price.  
 1115 (a) Plans must include all providers in the region that are  
 1116 classified by the agency as essential Medicaid providers, unless  
 1117 the agency approves, in writing, an alternative arrangement for  
 1118 securing the types of services offered by the essential  
 1119 providers. Providers are essential for serving Medicaid  
 1120 enrollees if they offer services that are not available from any  
 1121 other provider within a reasonable access standard, or if they  
 1122 provided a substantial share of the total units of a particular  
 1123 service used by Medicaid patients within the region during the  
 1124 last 3 years and the combined capacity of other service  
 1125 providers in the region is insufficient to meet the total needs  
 1126 of the Medicaid patients. The agency may not classify physicians  
 1127 and other practitioners as essential providers. The agency, at a  
 1128 minimum, shall determine which providers in the following  
 1129 categories are essential Medicaid providers:  
 1130 1. Federally qualified health centers.  
 1131 2. Statutory teaching hospitals as defined in s.

576-03559-18

20181876c2

1132 408.07(45).  
 1133 3. Hospitals that are trauma centers as defined in s.  
 1134 395.4001(15) ~~s. 395.4001(14)~~.  
 1135 4. Hospitals located at least 25 miles from any other  
 1136 hospital with similar services.  
 1137  
 1138 Managed care plans that have not contracted with all  
 1139 essential providers in the region as of the first date of  
 1140 recipient enrollment, or with whom an essential provider has  
 1141 terminated its contract, must negotiate in good faith with such  
 1142 essential providers for 1 year or until an agreement is reached,  
 1143 whichever is first. Payments for services rendered by a  
 1144 nonparticipating essential provider shall be made at the  
 1145 applicable Medicaid rate as of the first day of the contract  
 1146 between the agency and the plan. A rate schedule for all  
 1147 essential providers shall be attached to the contract between  
 1148 the agency and the plan. After 1 year, managed care plans that  
 1149 are unable to contract with essential providers shall notify the  
 1150 agency and propose an alternative arrangement for securing the  
 1151 essential services for Medicaid enrollees. The arrangement must  
 1152 rely on contracts with other participating providers, regardless  
 1153 of whether those providers are located within the same region as  
 1154 the nonparticipating essential service provider. If the  
 1155 alternative arrangement is approved by the agency, payments to  
 1156 nonparticipating essential providers after the date of the  
 1157 agency's approval shall equal 90 percent of the applicable  
 1158 Medicaid rate. Except for payment for emergency services, if the  
 1159 alternative arrangement is not approved by the agency, payment  
 1160 to nonparticipating essential providers shall equal 110 percent

576-03559-18

20181876c2

of the applicable Medicaid rate.

Section 13. Study on pediatric trauma services; report.—

(1) The Department of Health shall work with the Office of Program Policy Analysis and Government Accountability to study the department's licensure requirements, rules, regulations, standards, and guidelines for pediatric trauma services and compare them to the licensure requirements, rules, regulations, standards, and guidelines for verification of pediatric trauma services by the American College of Surgeons.

(2) The Office of Program Policy Analysis and Government Accountability shall submit a report of the findings of the study to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Florida Trauma System Advisory Council established under s. 395.402, Florida Statutes, by December 31, 2018.

(3) This section shall expire on January 31, 2019.

Section 14. If the provisions of this act relating to s. 395.4025(16), Florida Statutes, are held to be invalid or inoperative for any reason, the remaining provisions of this act shall be deemed to be void and of no effect, it being the legislative intent that this act as a whole would not have been adopted had any provision of the act not been included.

Section 15. This act shall take effect upon becoming a law.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 1880

INTRODUCER: Governmental Oversight and Accountability Committee; Banking and Insurance Committee; and Senators Broxson and Mayfield

SUBJECT: Public Records and Meetings/Security of Data and Information Technology in Citizens Property Insurance Corporation

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 1880 creates a public records exemption for data and information from information technology (IT) systems owned by, under contract with, or maintained by Citizens Property Insurance Corporation (Citizens). The bill exempts from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the following data and information held by Citizens:

- Records that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches.
- Portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information and IT resources.

Such records are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, or information technology resources including those related to security of IT resources.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information.

The exemptions are similar to those currently in law for state agencies.

The exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of the bill.

The bill has an effective date of upon becoming a law and provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

## **II. Present Situation:**

### **Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> 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.<sup>2</sup> In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

[i]t 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.



The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>9</sup> 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.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>12</sup> 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.<sup>13</sup>

### Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>14</sup> 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.<sup>15</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>16</sup>

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”<sup>17</sup> or the “Sunshine Law,”<sup>18</sup> 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.<sup>19</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>20</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or

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<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *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.

<sup>12</sup> 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).

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> FLA. CONST., art. I, s. 24(b).

<sup>15</sup> *Id.*

<sup>16</sup> FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

<sup>17</sup> *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

<sup>18</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

<sup>19</sup> Section 286.011(1)-(2), F.S.

<sup>20</sup> *Id.*

economic status or which operates in a manner that unreasonably restricts the public's access to the facility.<sup>21</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>22</sup> Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>23</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>24</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>25</sup> 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.<sup>26</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>27</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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;<sup>31</sup>
- 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;<sup>32</sup> or
- It protects trade or business secrets.<sup>33</sup>

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<sup>21</sup> Section 286.011(6), F.S.

<sup>22</sup> Section 286.011(2), F.S.

<sup>23</sup> Section 286.011(1), F.S.

<sup>24</sup> Section 286.011(3), F.S.

<sup>25</sup> FLA. CONST., art. I, s. 24(c).

<sup>26</sup> *Id.*

<sup>27</sup> *See supra* note 11.

<sup>28</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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.

<sup>29</sup> Section 119.15(3), F.S.

<sup>30</sup> Section 119.15(6)(b), F.S.

<sup>31</sup> Section 119.15(6)(b)1., F.S.

<sup>32</sup> Section 119.15(6)(b)2., F.S.

<sup>33</sup> Section 119.15(6)(b)3., F.S.

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>35</sup> 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 otherwise provided for by law.<sup>36</sup>

### **Public Record Exemptions Related to Information Technology**

The Information Technology (IT) Security Act<sup>37</sup> requires the Agency for State Technology and state agencies<sup>38</sup> to meet certain requirements relating to IT security. The IT Security Act provides that the following state agency information is confidential and exempt from public record requirements:

- Risk assessments;<sup>39</sup>
- Evaluations;
- External audits; and
- Other reports of a state agency's IT security program.

Portions of such documents will be confidential and exempt from public disclosure only if the disclosure of such information could facilitate unauthorized access, modification, disclosure or destruction of:

- Data or information, whether physical or virtual; or
- IT resources, including protocols for protecting those resources as well as any existing or proposed IT security systems.

This confidential and exempt information must be made available to the Auditor General, the Cybercrime Office within the Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector

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<sup>34</sup> 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?

<sup>35</sup> FLA. CONST., art. I, s. 24(c).

<sup>36</sup> Section 119.15(7), F.S.

<sup>37</sup> Section 282.318, F.S.

<sup>38</sup> Section 282.0041(23), F.S., provides, in part, that “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees, or state universities. For purposes of the Information Technology Security Act, the term “state agency” also includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. *See* s. 282.318(2), F.S.

<sup>39</sup> Section 282.318(5), F.S.

General.<sup>40</sup> In addition, the records may be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.<sup>41</sup>

The IT Security Act also provides that records held by a state agency that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt.<sup>42</sup>

Such confidential and exempt records must be made available to the Auditor General, the Cybercrime Office within Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. These records may also be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.<sup>43</sup>

### **Citizens Property Insurance Corporation**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose mission is to provide property insurance coverage to those unable to find affordable coverage in the private market.<sup>44</sup> It is not a private insurance company.<sup>45</sup>

Records and meetings held by Citizens regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open records and meetings laws. Public disclosure of this information presents a significant security risk and would reveal weaknesses within Citizens' computer networks, raising the potential for exploitation.

Because Citizens is not created within the executive branch, it is not covered by the definition of "state agency"<sup>46</sup> contained in the IT Security Act. Accordingly, Citizens is not subject to the exemptions from open meetings and public records laws for data and information technology systems owned, contracted, or maintained by specified state agencies.

Therefore, Citizens is vulnerable to the disclosure of information and records which, if disclosed, could potentially compromise the confidentiality, integrity, and availability of its information technology system. Such system contains highly sensitive policyholder, insurer, claims, financial, accounting and banking, personnel, and other records.<sup>47</sup>

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<sup>40</sup> Section 282.318(5)(b), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> Section 282.318(4)(j), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> See Citizens Property Insurance Corporation, Who We Are, available at <https://www.citizensfla.com/who-we-are> (last viewed on Feb. 8, 2018). See also s. 627.351(6)(a), F.S.

<sup>45</sup> Section 627.351(6)(a).1., F.S.

<sup>46</sup> See *supra* note 38.

<sup>47</sup> Section 627.351(6)(x), F.S., requires Citizens to hold the following records as confidential and exempt from disclosure under Florida's public record laws: underwriting files, claim files, certain audit files, attorney-client privileged material, certain proprietary information licensed to Citizens, employee assistance program information, information relating to the medical condition or medical status of a Citizens employee, certain information relating to contract negotiations, and certain records related to closed meetings.

### III. Effect of Proposed Changes:

**Section 1** creates public record and public meeting exemptions to protect data and records pertaining to the security of the Citizens information networks from disclosure. The bill provides that records held by Citizens that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt from public record requirements. In addition, portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information, and IT resources that are held by Citizens are confidential and exempt. Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
  - Information relating to the security of Citizens' technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Physical or virtual security information that relates to Citizens' existing or proposed IT systems.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are confidential and exempt from public record requirements, unless a court, following an in-camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. In the event of such a judicial determination, only that portion of a transcript that reveals nonexempt data and information may be disclosed to a third party.

The bill requires the confidential and exempt records related to the public meeting exemption to be available to the Auditor General, the Cybercrime Office of Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The public record exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of this act.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** provides a public necessity statement as required by the State Constitution, specifying that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

**Section 3** directs the Division of Law Revision and Information to replace the phrase "effective date of this act" with the date the act becomes a law.

**Section 4** provides that the bill will take effect upon becoming a law.

#### **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:**

###### **Voting Requirements**

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 record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

###### **Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates an exemption from public records and public meetings for data and information from IT systems owned by Citizens. The bill appears to be no broader than necessary to accomplish the public necessity for this public records 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 creates section 627.352 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 13, 2018:**

The CS makes technical changes:

- To add public meetings to the title;
- To add upon becoming a law as effective date for public records and public meetings exemptions; and
- To direct the Division of Law Revision and Information to replace the phrase “effective date of this act” with the date the act becomes a law.

**CS by Banking and Insurance on January 30, 2018:**

The CS makes a technical change correcting the 5 year sunset review date to October 2, 2023.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Broxson) recommended the following:

**Senate Amendment**

Delete lines 202 - 265  
and insert:  
and exempt in order to protect the technology systems,  
resources, and data of the corporation. The Legislature further  
finds that this public records exemption be given retroactive  
application because it is remedial in nature.

(2) (a) The Legislature also finds that it is a public  
necessity that portions of risk assessments, evaluations,  
audits, and other reports of the corporation's information





354542

technology security program for its data, information, and information technology resources which are held by the corporation be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(b) The Legislature finds that it is valuable, prudent, and critical to the corporation to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the corporation's information technology program or related systems. Such documents would likely include an analysis of the corporation's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(3) (a) The Legislature further finds that it is a public necessity that those portions of a public meeting which could reveal information described in this section be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the



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41 State Constitution. It is a public necessity that such meetings  
42 be made exempt from the open meetings requirements in order to  
43 protect the corporation's information technology systems,  
44 resources, and data. The information disclosed during portions  
45 of meetings would clearly identify the corporation's information  
46 technology systems and its vulnerabilities. This disclosure  
47 would jeopardize the information technology security of the  
48 corporation and compromise the integrity and availability of the  
49 corporation's data and information technology resources.

50 (b) The Legislature further finds that it is a public  
51 necessity that the recording and transcript of those portions of  
52 meetings specified in paragraph (a) be made confidential and  
53 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
54 Article I of the State Constitution unless a court determines  
55 that the meeting was not restricted to the discussion of data  
56 and information made confidential and exempt by this act. It is  
57 a public necessity that the resulting recordings and transcripts  
58 be made confidential and exempt from the public records  
59 requirements in order to protect the corporation's information  
60 technology systems, resources, and data. The disclosure of such  
61 recordings and transcripts would clearly identify the  
62 corporation's information technology systems and its  
63 vulnerabilities. This disclosure would jeopardize the  
64 information technology security of the corporation and  
65 compromise the integrity and availability of the corporation's  
66 data and information technology resources.

67 (c) The Legislature further finds that this public records  
68 exemption must be given retroactive

By the Committees on Governmental Oversight and Accountability;  
and Banking and Insurance; and Senators Broxson and Mayfield

585-03168-18

20181880c2

A bill to be entitled

An act relating to public records and public meetings;  
creating s. 627.352, F.S.; providing an exemption from  
public records requirements for certain records held  
by the Citizens Property Insurance Corporation which  
identify detection, investigation, or response  
practices for suspected or confirmed information  
technology security incidents; creating an exemption  
from public records requirements for certain portions  
of risk assessments, evaluations, audits, and other  
reports of the corporation's information technology  
security program; creating an exemption from public  
meetings requirements for portions of public meetings  
which would reveal such data and information;  
providing an exemption from public records  
requirements for a specified period for the recording  
and transcript of a closed meeting; authorizing  
disclosure of confidential and exempt information to  
certain agencies and officers; providing for future  
legislative review and repeal; providing a statement  
of public necessity; providing retroactive  
application; providing a directive to the Division of  
Law Revision and Information; providing an effective  
date.

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

Section 1. Section 627.352, Florida Statutes, is created to  
read:

Page 1 of 10

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

585-03168-18

20181880c2

627.352 Security of data and information technology in  
Citizens Property Insurance Corporation.—

(1) The following data and information from technology  
systems owned by, under contract with, or maintained by Citizens  
Property Insurance Corporation are confidential and exempt from  
s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Records held by the corporation which identify  
detection, investigation, or response practices for suspected or  
confirmed information technology security incidents, including  
suspected or confirmed breaches, if the disclosure of such  
records would facilitate unauthorized access to or unauthorized  
modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, including:

a. Information relating to the security of the  
corporation's technologies, processes, and practices designed to  
protect networks, computers, data processing software, and data  
from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which  
relates to the corporation's existing or proposed information  
technology systems.

(b) Those portions of risk assessments, evaluations,  
audits, and other reports of the corporation's information  
technology security program for its data, information, and  
information technology resources which are held by the  
corporation, if the disclosure of such records would facilitate  
unauthorized access to or the unauthorized modification,  
disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

Page 2 of 10

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585-03168-18

20181880c2

2. Information technology resources, which include:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(2) Those portions of a public meeting as specified in s. 286.011 which would reveal data and information described in subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed to a third party.

(3) The records and portions of public meeting recordings and transcripts described in subsection (2) must be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may be made available to a state or federal agency for security

585-03168-18

20181880c2

purposes or in furtherance of the agency's official duties.

(4) The exemptions listed in this section apply to such records or portions of public meetings, recordings, and transcripts held by the corporation before, on, or after the effective date of this act.

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

Section 2. (1)(a) The Legislature finds that it is a public necessity that the following data or information from technology systems owned, under contract, or maintained by the corporation be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Records held by the corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

585-03168-18

20181880c2

2. Those portions of risk assessments, evaluations, audits, and other reports of the corporation's information technology security program for its data, information, and information technology resources which are held by the corporation, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- a. Data or information, whether physical or virtual; or
- b. Information technology resources, which include:

(I) Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(b) The Legislature also finds that those portions of a public meeting as specified in s. 286.011, Florida Statutes, which would reveal data and information described in subsection (1) are exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and

585-03168-18

20181880c2

information may be disclosed to a third party.

(c) The Legislature further finds that it is a public necessity that records held by the corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- 1. Data or information, whether physical or virtual; or
- 2. Information technology resources, which include:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(d) Such records must be made confidential and exempt for the following reasons:

1. Records held by the corporation which identify information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigations of the incidents or breaches. The release of such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of

585-03168-18

20181880c2

such information before an active investigation is completed could jeopardize the ongoing investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers and personal financial and health information. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.

3. Disclosure of a record, including a computer forensic analysis, or other information that would reveal weaknesses in the corporation's data security could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of the corporation's data and information technology resources. It is a public necessity that this information be made confidential in order to protect the technology systems, resources, and data of the corporation. The Legislature further finds that this

585-03168-18

20181880c2

public records exemption be given retroactive application because it is remedial in nature.

(2) (a) The Legislature also finds that it is a public necessity that portions of risk assessments, evaluations, audits, and other reports of the corporation's information technology security program for its data, information, and information technology resources which are held by the corporation be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(b) The Legislature finds that it is valuable, prudent, and critical to the corporation to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the corporation's information technology program or related systems. Such documents would likely include an analysis of the corporation's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose

585-03168-18 20181880c2

233 recommendations to remedy identified vulnerabilities.

234 (3) (a) The Legislature further finds that it is a public  
 235 necessity that those portions of a public meeting which could  
 236 reveal information described in this section be made exempt from  
 237 s. 286.011, Florida Statutes, and s. 24(b), Article I of the  
 238 State Constitution. It is a public necessity that such meetings  
 239 be made exempt from the open meetings requirements in order to  
 240 protect the corporation's information technology systems,  
 241 resources, and data. The information disclosed during portions  
 242 of meetings would clearly identify the corporation's information  
 243 technology systems and its vulnerabilities. This disclosure  
 244 would jeopardize the information technology security of the  
 245 corporation and compromise the integrity and availability of the  
 246 corporation's data and information technology resources.

247 (b) The Legislature further finds that it is a public  
 248 necessity that the recording and transcript of those portions of  
 249 meetings specified in paragraph (a) be made confidential and  
 250 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
 251 Article I of the State Constitution unless a court determines  
 252 that the meeting was not restricted to the discussion of data  
 253 and information made confidential and exempt by this act. It is  
 254 a public necessity that the resulting recordings and transcripts  
 255 be made confidential and exempt from the public records  
 256 requirements in order to protect the corporation's information  
 257 technology systems, resources, and data. The disclosure of such  
 258 recordings and transcripts would clearly identify the  
 259 corporation's information technology systems and its  
 260 vulnerabilities. This disclosure would jeopardize the  
 261 information technology security of the corporation and

585-03168-18 20181880c2

262 compromise the integrity and availability of the corporation's  
 263 data and information technology resources.

264 (c) The Legislature further finds that this public meeting  
 265 and public records exemption must be given retroactive  
 266 application because it is remedial in nature.

267 Section 3. The Division of Law Revision and Information is  
 268 directed to replace the phrase "the effective date of this act"  
 269 wherever it occurs in this act with the date this act becomes a  
 270 law.

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



## 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
2/8/18	SM	<b>Favorable</b>
2/13/18	JU	<b>Fav/CS</b>
2/19/18	GO	<b>Favorable</b>
2/22/18	RC	<b>Pre-meeting</b>

February 8, 2018

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

Re: **CS/SB 28** – Judiciary Committee and Senators Bill Montford  
and Linda Stewart  
**HB 6527** – Representative Ramon Alexander  
Relief of Christopher Cannon

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$500,000, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN CHRISTOPHER V. CANNON, THE CLAIMANT, AND THE CITY OF TALLAHASSEE. THE FINAL JUDGMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A CITY OF TALLAHASSEE VEHICLE WHICH INJURED CHRISTOPHER CANNON.

#### FINDINGS OF FACT:

This claim arises out of an accident involving a Dial-a-Ride (DART) vehicle and a motorcyclist, Christopher V. Cannon, which occurred on December 16, 2015, in Tallahassee, Florida. The Star Metro department of the City of Tallahassee provides public transport services on DART vehicles to residents with qualifying disabilities. The City of Tallahassee employed Ms. Rosie Kelly as a DART driver.

On December 16, 2015, Ms. Kelly was driving a DART vehicle during work hours. According to witness statements, as documented in the Leon County Sheriff's Office accident report, Ms. Kelly made a left turn onto southbound Capital Circle Northwest, from Old Bainbridge Road while Mr. Cannon



was driving his motorcycle northbound on Capital Circle Northwest. Ms. Kelly hit Mr. Cannon in a head-on crash, causing him to be ejected from his motorcycle. Mr. Cannon was not communicative at the scene. Mr. Cannon was transported by ambulance to Tallahassee Memorial Hospital. At the time of the accident, Mr. Cannon was wearing a motorcycle helmet and other protective gear in the form of a jacket and boots.

At the time of impact, Mr. Cannon suffered multiple trauma. Specifically, the accident caused Mr. Cannon to have various fractures and a pulmonary contusion. On December 17, 2015, Dr. Hank Hutchinson of Tallahassee Memorial Healthcare operated on Mr. Cannon by inserting a permanent rod in his right lower leg and a plate in his right upper arm. On January 6, 2016, Mr. Cannon underwent a second surgery for infection, while under anesthesia, at which time, Dr. Hutchinson excised and closed the infected wound.

Based on the accident, Officer Robert Gaines III issued a traffic citation to Ms. Kelly for violating the right of way with serious bodily injury.

Not including this incident, Ms. Kelly has had 7 prior accidents in her capacity as a driver for the City of Tallahassee. The City documented in Disciplinary Accident Reports each of these previous incidents as preventable accidents. Discipline ranged from a written reprimand to suspension.

On March 30, 2016, the court held a nonjury trial on the infraction as is required in incidents in which an accident results in serious bodily injury (s. 318.19(2), F.S.) On April 4, 2016, the court found Ms. Kelly guilty of both failing to yield to oncoming traffic when making a left turn, in violation of s. 316.122, F.S., and of causing serious bodily injury to Mr. Cannon. The court suspended Ms. Kelly's commercial driver's license for a period of 90 days.

FUTURE SERVICES REPORT:

Dr. Hutchinson drafted a future care plan dated November 9, 2017. In it, he indicates that Mr. Cannon's arm and leg, fractured in the incident, have completely healed. Mr. Cannon has a full range of motion in his shoulder, elbow, forearm, hand, and wrist and walks with a smooth and steady gait. He is at a significantly less than 50 percent chance of needing

hip, knee, or ankle replacement surgery in the future, and is at very low risk of long-term arthritis due to the injuries.

LITIGATION HISTORY:

On July 11, 2016, Christopher V. Cannon filed a Complaint for Damages against the City of Tallahassee in Leon County Circuit Court. The complaint alleged an action for damages against the City of Tallahassee based upon negligent hiring, discipline, and supervision of employee Rosie Kelly whose negligent driving proximately caused permanent personal injuries to Mr. Cannon. The plaintiff filed a first amended complaint on January 11, 2017, adding a Count II cause of action against the City of Tallahassee, based upon vicarious liability.

On February 9, 2017, the City filed an answer to the first amended complaint. In it, the City admitted negligence based on vicarious liability, as asserted in Count II of the plaintiff's complaint. The City also moved to dismiss Count I of the complaint.

On March 3, 2017, the parties filed a joint motion for partial summary judgment. In their motion, the parties moved to dismiss Count I of the complaint in exchange for the City of Tallahassee admitting liability under Count II based on the vicarious liability doctrine of respondeat superior. The court granted the motion and reserved judgment on the issue of damages. On June 22, 2017, the court entered a final judgment for damages in the amount of the agreed to settlement of \$200,000.

On May 24, 2017, the parties entered into a Mediation Settlement Agreement. Therein, the City of Tallahassee agreed to a total settlement of \$700,000, of which the City would pay the first \$200,000 within 14 days after approval by the City Commission and agreed to pay the remaining \$500,000 through a claim bill. The City Commission approved the settlement amount at a City Commission meeting held on June 14, 2017.

Subsequently, the parties submitted to the court a Consented Motion for Court Approval of Settlement and Final Judgment. In it, the parties agreed that upon the entry of a court order approving the settlement, the City would pay \$200,000 to the plaintiff and the Plaintiff would execute a general release and secure a dismissal with prejudice. The court entered an Order

Granting the Consented Motion for Court Approval of Settlement and Final Judgment on June 22, 2017. The plaintiff then filed with the court a Motion for a Voluntary Dismissal with Prejudice on October 16, 2017.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Ms. Kelly had a duty to safely operate the Dial-a-Ride bus. Ms. Kelly breached that duty by operating the bus in a negligent manner. Specifically, Ms. Kelly drove negligently by turning left when it was not clear to do so and colliding with Mr. Cannon. Had Ms. Kelly properly looked before attempting to turn, she would have seen Mr. Cannon and avoided hitting him, as it was foreseeable that she could have hit someone. Ms. Kelly was 100 percent at fault for causing the collision.

As a direct and proximate result of the negligence of Ms. Kelly, Mr. Cannon suffered permanent bodily injury. He has experienced pain and suffering, multiple surgeries, disfigurement, hospitalization and other medical costs, and loss of earnings.

As a result of the accident, Mr. Cannon suffered multiple fractures. He underwent several surgeries to have a rod and screws inserted through his right tibia (shinbone), and plates and screws to his right humerus (upper arm). The rod, plates, and screws are permanent. Mr. Cannon also had to be readmitted to the hospital and operated on for a wound infection on his left thigh. The surgery left Mr. Cannon with considerable scarring and permanent disfigurement at the surgery sites.

Mr. Cannon testified at his deposition that he doesn't have full strength or feeling in the areas in which he was injured. He additionally stated that now his right leg hurts if he stands on it for long periods of time.

RESPONDENT'S POSITION:

At the claim bill hearing, the City of Tallahassee admitted liability and indicated that the City fully supports the claim.

CONCLUSIONS OF LAW:

Section 768.28 (2009), F.S., governs this matter. That statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the negligence of their employees. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, Mr. Cannon will not receive the full benefit of his settlement agreement with the City of Tallahassee unless the Legislature approves a claim bill authorizing the additional payment.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence. These elements are duty, breach, causation, and damage. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992). Ms. Kelly failed to use reasonable care by not looking to the left before turning the Dial-a-Ride bus onto Capital Circle at a red light. Had Ms. Kelly looked properly, she would have seen Mr. Cannon to the left of her, and avoided striking him with her vehicle.

Due to Ms. Kelly's breach of her duty of care, she caused the accident and Mr. Cannon's damages.

Florida's dangerous instrumentality doctrine imposes strict vicarious liability on an owner of a dangerous instrumentality who entrusts the instrument to a person who operates it negligently. *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Trucks in operation are considered to be dangerous instrumentalities. *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1985).

Municipalities are subject to the dangerous instrumentality doctrine. "When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being

operated with the knowledge and consent of the municipality through its officers or employees and used on the other streets for lawful street, sewer, or other corporate purposes, the municipality may be liable for injuries ... caused by negligence of the truck driver in operating the truck ... ." *Barth v. City of Miami*, 1 So. 2d 574, 577 (Fla. 1941).

The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

The City of Tallahassee employed Ms. Kelly at the time of the accident. On that day, Ms. Kelly drove the Dial-a-Ride vehicle owned by the City of Tallahassee during the course of her normal workday. Therefore, the City of Tallahassee is liable for the negligence of Ms. Kelly and the damages caused to Mr. Cannon.

The claimant has demonstrated significant economic damages. Medical costs alone total \$211,177. Of this, Mr. Cannon incurred medical bills in the amount of \$180,235 from the Tallahassee Memorial Hospital (TMH) through a subrogation lien. TMH subsequently agreed to reduce the amount of the lien to \$100,000 and to payment as follows: \$25,000 after distribution of the first settlement with the City of Tallahassee, and \$75,000 should the claim bill be approved. Due to missing work for a month and a half, Mr. Cannon lost income of \$4,500 that he would have earned during that time. Additionally, he purchased the new motorcycle that was totaled in the accident just one day earlier for \$5,757.

Noneconomic damages have not been calculated for Mr. Cannon. However, since the accident, Mr. Cannon finds running difficult and he limps at times. When the temperature is cold, he feels the titanium in both his arm and leg. He also experiences chronic numbness at several of the surgery sites.

Should this case have proceeded to trial, Mr. Cannon appears to have presented as a sympathetic plaintiff based upon: having been just 20 years of age at the time of the incident, undergoing multiple surgeries, and living permanently with a rod, plates, and screws placed internally. Additionally, he was

not at-fault for his injuries and was even wearing a motorcycle helmet and other protective gear at the time of the accident.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

LEGISLATIVE HISTORY:

This is the first year in which the claim bill has been filed.

COLLATERAL SOURCES:

The claimant represents that he has not received payment from any collateral sources.

ATTORNEY'S FEES:

The bill provides that the total amount paid for attorney fees relating to this claim is limited to 25 percent of the \$500,000 claim.

Mr. Cannon's attorney further agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. However, 5 percent of the award will be payable to the lobbyist for his lobbying services and this amount will be paid from the attorney's fee.

Therefore, the total amount of fees payable for attorney and lobbying fees is \$125,000.

FISCAL IMPACT:

The City of Tallahassee is self-insured. If approved by the Legislature, the \$500,000 will be paid from the City's self-insurance fund. The City represents that it has reserved this amount for the claim.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 28 (2018) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown  
Senate Special Master

cc: Secretary of the Senate

**CS by Judiciary:**

SPECIAL MASTER'S FINAL REPORT – CS/SB 28

February 8, 2018

Page 8

The committee substitute provides for the claimant's attorney to be paid \$100,000, which is 20 percent of the \$500,000 claim bill. The lobbyist for the claim bill is to be paid \$25,000, which is 5 percent of the claim bill.

By the Committee on Judiciary; and Senator Montford

590-03192-18

201828c1

A bill to be entitled

An act for the relief of Christopher Cannon; providing an appropriation to compensate him for injuries and damages sustained as a result of the alleged negligence of the City of Tallahassee; providing that the appropriation satisfies all present and future claims arising out of the alleged negligent acts; providing a limitation on the payment of attorney and lobbying fees and costs; providing an effective date.

WHEREAS, on December 16, 2015, Christopher Cannon was driving his motorcycle home from work, and

WHEREAS, a City of Tallahassee Dial-A-Ride driver, believing that an intersection where she was preparing to make a turn was clear of traffic, made a left-hand turn in front of Christopher Cannon, who crashed into the left front of the Dial-A-Ride vehicle, causing him to be ejected from his motorcycle across two lanes of traffic, and

WHEREAS, Christopher Cannon was transported to Tallahassee Memorial Hospital where he was treated for a pulmonary contusion, a right sixth rib fracture, a right scapular fracture, a right kidney laceration, an adrenal gland contusion, a right tibia fracture, a right fibula fracture, a right mid-shaft femoral fracture, and a spleen laceration, and

WHEREAS, surgeons placed a rod secured by four screws through Christopher Cannon's tibia and inserted a plate and four screws to realign his right humerus fracture, and

WHEREAS, Christopher Cannon was discharged approximately 2 weeks after the accident, but was readmitted 1 week after his

Page 1 of 4

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

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initial discharge due to a wound infection that required additional surgery for debridement, and

WHEREAS, on March 30, 2016, a mandatory hearing was conducted by the Leon County Court pursuant to ss. 318.14 and 318.19, Florida Statutes, for the purpose of making a determination as to whether the Dial-A-Ride driver committed a violation of s. 316.122, Florida Statutes, related to yield of right-of-way, vehicle turning left, and

WHEREAS, on April 4, 2016, the Leon County Court entered an order finding that the Dial-A-Ride driver violated s. 316.122, Florida Statutes, and that the victim suffered serious bodily harm as a direct result of the resulting accident, and

WHEREAS, on July 11, 2016, counsel for Christopher Cannon filed a claim against the City of Tallahassee seeking compensation for the injuries and damages arising out of the accident in the Circuit Court of the Second Judicial Circuit in and for Leon County, Case No. 2016 CA 1560, alleging the negligence per se of the Dial-A-Ride driver and the negligent hiring, training, disciplining, supervision, and retention of the Dial-A-Ride driver by the City of Tallahassee, and

WHEREAS, counsel for Christopher Cannon alleged that the Dial-A-Ride driver committed negligence per se by failing to yield to oncoming traffic when making a left turn in violation of s. 316.122, Florida Statutes, during the accident, and

WHEREAS, counsel for Christopher Cannon alleged that the City of Tallahassee had a duty to exercise reasonable care in the hiring, training, disciplining, supervision, and retention of the Dial-A-Ride driver, and

WHEREAS, counsel for Christopher Cannon alleged that the

Page 2 of 4

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



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City of Tallahassee breached its duty of reasonable care by failing to exercise its duty of reasonable care to effectively and reasonably train, discipline, supervise, and retain or discharge the Dial-A-Ride driver, who incurred multiple traffic citations during the period from 1994 through 2012, and

WHEREAS, counsel for Christopher Cannon alleged that as a direct and proximate result of the negligence of the City of Tallahassee in failing to exercise a reasonable duty of care, and but for that negligence, Christopher Cannon suffered bodily injury that resulted in pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; costs associated with his hospitalization, medical and nursing care, and treatment; loss of earnings; and loss of the ability to earn money, and

WHEREAS, Christopher Cannon's past medical expenses and lost wages are in excess of \$225,000 and it is anticipated that he will incur additional medical expenses in the future as a result of his injuries, and

WHEREAS, following mediation, a final order was entered in the case approving a settlement in the sum of \$700,000 between Christopher Cannon and the City of Tallahassee to satisfy all present and future claims arising out of the factual situation described in this act, and

WHEREAS, pursuant to the final order, the City of Tallahassee has paid \$200,000 to Christopher Cannon under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and \$500,000 remains unpaid, NOW, THEREFORE, Be It Enacted by the Legislature of the State of Florida:

590-03192-18

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

Section 2. The City of Tallahassee is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of \$500,000 payable to Christopher Cannon as compensation for injuries and damages sustained.

Section 3. The amount paid by the City of Tallahassee 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 Christopher Cannon. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed \$100,000, the total amount paid for lobbying fees may not exceed \$25,000, and no amount may be paid for costs or other similar expenses.

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 920

INTRODUCER: Appropriations Committee; Commerce and Tourism Committee; and Senators Bradley and Braynon

SUBJECT: Consumer Finance

DATE: February 21, 2018

REVISED: 2/20/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Sanders</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
4.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 920 authorizes deferred presentment installment transactions under Florida law. A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive installments, which must be as equal as mathematically practicable. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days and the time between installment payments must be at least 13 days but not greater than one calendar month.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed \$1,000, exclusive of fees. The maximum fees that may be charged on a deferred presentment installment transaction are eight percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited. The bill retains current law in s. 560.404(19), F.S., prohibiting a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

If the drawer<sup>1</sup> timely informs the provider in writing or in person that the drawer cannot redeem or pay in full in cash the amount due and owing, the provider must provide a grace period for payment of a scheduled installment.

The bill amends the Florida Consumer Collection Practices Act to allow assignees of consumer debt to immediately begin collecting on a debt. Current law requires the assignee to provide to the debtor written notice of the assignment as soon as practical and prohibits an assignee from taking any action to collect a debt until at least 30 days after notice is given. The bill amends the 30-day waiting period to apply only to a legal action to collect on the debt.

The impact to state revenues and expenditures is indeterminate. The Office of Financial Regulation (OFR) indicates the bill may impact collected revenues that are assessed for deferred presentation transactions. Currently, \$1 is assessed for each deferred presentment transaction. The OFR indicates that there may need to be rule modification to require \$1 per month for each outstanding deferred presentment installment transaction, \$2 for each 60-day term, and \$3 for each 90-day term. According to the OFR, \$7,657,486 was collected in Fiscal Year 2016-2017 for the current \$1 transaction fee. It is unknown how many deferred presentment installment transactions will result from the bill's passage, what the length of their terms will be, and what the decline will be in the number of current deferred presentment transactions.<sup>2</sup>

The OFR currently contracts with a vendor to host and maintain the existing deferred presentment provider transaction database. The OFR paid the vendor \$2,656,269 in Fiscal Year 2016-2017 for the database. Based on modifications of the loan product proposed in the bill, the OFR indicates that it would likely need to procure a new contract. An increased appropriation may be required if current funding is insufficient to pay for a new contract. It is unknown how much a newly procured contract would cost.<sup>3</sup>

The bill takes effect July 1, 2019.

## **II. Present Situation:**

### **Consumer Debt Collection**

Consumer debt covers personal debt such as mortgages, credit cards, medical debts, and other debts mainly for personal, family, or household purposes. Depending on the terms of the loan, a grace period may be provided before a debt becomes delinquent. Generally, most credit issuers will attempt to collect on a delinquent debt between 120-180 days after delinquency, before it is deemed uncollectible and is "charged-off" corporate records.<sup>4</sup> Typically, the charged-off debt is

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<sup>1</sup> "Drawer" means a customer who writes a personal check and upon whose account the check is drawn. *See* s. 560.402(4), F.S.

<sup>2</sup> Office of Financial Regulation, *Senate Bill 920 Legislative Analysis* (Jan. 10, 2018) (on file with the Senate Appropriations Subcommittee on General Government).

<sup>3</sup> *Id.*

<sup>4</sup> The Uniform Retail Credit Classification and Account Management Policy, set forth by the Federal Financial Institutions Examination Council, established uniform guidelines for issuers of retail credit regarding the charge-off timeframes for open-end and closed-end credit. 65 Fed. Reg. 36903 (June 12, 2000). It should be noted that a "charge-off" does not mean the debtor is discharged from repaying the loan; in fact, a charge-off is reported as an adverse event to credit reporting agencies. <https://www.gpo.gov/fdsys/pkg/FR-2000-06-12/pdf/00-14704.pdf> (last visited February 15, 2018).

either assigned or sold as part of a portfolio to a third-party collection agency or collection law firm, which can in turn use a variety of collection methods and judgment remedies to recover the asset, subject to applicable statutes of limitations. These remedies enable creditors to minimize losses due to non-repayment by borrowers, and help ensure the availability and affordability of consumer credit.

### **State and Federal Debt Collection Regulations**

State and federal debt collection laws provide consumer protections against certain abusive, harassing, and intrusive collection practices that may occur before the debtor is sued, as well as during the litigation process. Both federal and Florida law define “debt collector” as any person who uses any instrumentality of interstate commerce in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due to asserted to be owed or due another.<sup>5</sup> The definition of “debt collector” under both federal and Florida law excludes persons such as original creditors and their in-house collectors and persons serving legal process in connection with the judicial enforcement of any debt.<sup>6</sup>

Since September 2013, debt collection has been the top consumer complaint at the federal Consumer Financial Protection Bureau (CFPB), the primary federal agency that enforces the federal Fair Debt Collection Practices Act.<sup>7</sup> Among the CFPB’s data on consumer complaints regarding debt collection, the most common type of debt collection complaint is about continued attempts to collect a debt that the consumer reports is not owed (40 percent), followed by communications tactics, particularly phone calls (18 percent). Consumers also complained of disclosure verification of debt (15 percent), taking or threatening an illegal action (11 percent) and false statements or representation (nine percent). One of the least common complaints received by the CFPB relates to consumers reporting that they are contacted directly, instead of the debt collector contacting their attorney (seven percent).<sup>8</sup>

### **Federal Regulation of Debt Collection**

#### ***Fair Debt Collection Practices Act***

In 1977, Congress enacted the Fair Debt Collection Practices Act (FDCPA)<sup>9</sup> to “eliminate abusive debt collection practices...to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.”<sup>10</sup> The FDCPA is primarily enforced by the CFPB, in coordination with the Federal Trade Commission. The FDCPA is also enforced by other federal agencies with respect to specific industries subject to other federal

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<sup>5</sup> Section 559.55(6), F.S., and 15 U.S.C. § 1692a(6).

<sup>6</sup> 15 U.S.C. 1692a § 803(6). For exclusions to term “debt collector”. <https://www.ftc.gov/system/files/documents/plain-language/fair-debt-collection-practices-act.pdf> (last visited February 16, 2018).

<sup>7</sup> See footnote 2, *supra*.

<sup>8</sup> CONSUMER FINANCIAL PROTECTION BUREAU, *Fair Debt Collection Practices Act Annual Report* (2016) (pp. 17-18), at [https://files.consumerfinance.gov/f/201603\\_cfpb-fair-debt-collection-practices-act.pdf](https://files.consumerfinance.gov/f/201603_cfpb-fair-debt-collection-practices-act.pdf) (last visited February 15, 2018).

<sup>9</sup> 15 U.S.C. 1692(e). The FDCPA is codified at 15 U.S.C. §§ 1692-1692p.

<sup>10</sup> 15 U.S.C. 1692(e). The FDCPA is codified at 15 U.S.C. §§ 1692-1692p.

laws, such as financial institutions (e.g., banks, savings associations, and credit unions).<sup>11</sup> As a result of the federal Dodd-Frank Wall Street Reform Act of 2010<sup>12</sup>, the CFPB was given rulemaking authority to define and supervise “larger participants” of certain nonbank consumer financial product and service markets, including debt collection. The CFPB test to define these “larger participants” means the covered person’s annual receipts resulting from consumer debt collection exceed \$10 million.

The FDCPA covers personal, family, credit card, automobile loans, medical bills and mortgages. The FDCPA does not include business debts. The FDCPA prohibits third-party debt collectors, which includes contingency agencies, collection law firms, and debt buyers, from engaging in certain types of abusive, harassing, unfair, or deceptive conduct in collecting or attempting to collect a debt. However, the FDCPA does not apply to original creditors.

### ***Dodd-Frank Wall Street Reform and Consumer Protection Act***

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173, commonly referred to as “Dodd-Frank”) was signed into law. It has widely been described as the most expansive financial regulatory legislation since the 1930s, and was formed with the intent “to focus directly on consumers, rather than on bank safety and soundness or on monetary policy.”<sup>13</sup> Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System.

Dodd-Frank also granted enforcement and rulemaking authority to the CFPB to protect consumers from unfair, deceptive, or abusive acts or practices (UDAAP) committed by “covered persons or service providers”<sup>14</sup> which include both third-party debt collectors and original creditors collecting debt related to certain consumer financial products or services. In July 2013, the CFPB issued a bulletin regarding UDAAP in the collection of consumer debts to give guidance regarding the applicable UDAAP standards.<sup>15</sup>

### ***Civil Remedies***

Each violation of the FDCPA carries a penalty equal to the sum of the actual damage sustained as a result of the failure to comply with the terms of the FDCPA plus additional damages as the court may allow but not to exceeding \$1,000 per violation. Damages awarded in class action suits are also covered under the provisions of the FDCPA.<sup>16</sup>

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<sup>11</sup> Pub. L. 111-201, 124 Stat. 1376.

<sup>12</sup> Pub. L. 111-203, H.R. 4173, <https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm> (last visited February 16, 2018).

<sup>13</sup> Consumer Financial Protection Bureau, *Creating the Consumer Bureau*, at <https://www.consumerfinance.gov/about-us/the-bureau/creatingthebureau/> (last visited February 15, 2018).

<sup>14</sup> 12 U.S.C. §5531.

<sup>15</sup> Consumer Financial Protection Bureau, *CFPB Bulletin 2013-07: Prohibition of Unfair, Deceptive, or Abusive Practices in the Collection of Consumer Debts* [https://files.consumerfinance.gov/f/201307\\_cfpb\\_bulletin\\_unfair-deceptive-abusive-practices.pdf](https://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf) (last visited February 15, 2018).

<sup>16</sup> U.S.C. 1692k § 813(a)

## State Regulation of Debt Collection

### *Florida Consumer Collection Practices Act*

In 1972, Florida enacted the Florida Consumer Collection Practices Act (FCCPA), codified in part VI of ch. 559, F.S.<sup>17</sup> The FCCPA gives primary regulatory authority to the Florida Office of Financial Regulation (OFR), and some enforcement authority to the Office of the Attorney General over out-of-state consumer debt collectors.<sup>18</sup> The FCCPA defines “*consumer collection agency*” (CCA) as any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts. CCAs must register with the OFR, unless expressly exempted by the Act.<sup>19</sup>

The OFR may also examine and investigate potential violations of the Act, and may impose administrative fines of up to \$10,000 for each count or offense and up to \$1,000 per day of unregistered activity; may deny, suspend, or revoke CCA registration; may impose reprimand, cease and desist orders, and emergency suspension orders.<sup>20</sup>

The FCCPA prohibits many of the same debt collection practices prohibited by the FCCPA, such as the use or threat to use force or violence, impersonating law enforcement or attorneys, communicating between 9:00 p.m. and 8:00 a.m. without the debtor’s consent, and the disclosure of the debtor’s debt except for legitimate purposes such as credit reporting agencies. However, Florida law does not specifically prohibit false, deceptive, or unfair practices the way the federal Act does.<sup>21</sup>

While the FDCPA only applies to third-party debt collectors, Florida law provides that “no person shall” engage in the prohibited acts.<sup>22</sup> As such, while the Florida act may exempt original creditors from registration with the OFR, original creditors may still be held liable (civilly and administratively) under Florida law for engaging in certain prohibited acts.

In terms of the FDCPA’s relation to Florida law, both acts were designed to work harmoniously, except to the extent state law conflicts with the FDCPA.<sup>23</sup> The FCCPA also provides that, in the event of an inconsistency with the federal law, the provision that is more protective of the consumer or debtor shall prevail.<sup>24</sup> Finally, the FCCPA provides that in construing its provisions, “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act.”<sup>25</sup> The FCCPA also does not preclude any person from pursuing remedies under the FDCPA for any violation.<sup>26</sup>

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<sup>17</sup> Ch. 72-81, Laws of Fla.

<sup>18</sup> Section 559.563, F.S.

<sup>19</sup> Sections 559.55(3) and 559.553, F.S.

<sup>20</sup> Sections 559.5541, 559.727, and 559.730, F.S.

<sup>21</sup> See 15 U.S.C. §§ 1692e and 1692f.

<sup>22</sup> Section 559.72, F.S.

<sup>23</sup> 15 U.S.C. § 1692n

<sup>24</sup> Section 559.552, F.S.

<sup>25</sup> Section 559.77(5), F.S.

<sup>26</sup> Section 559.730(8), F.S.

### ***Notification of Assignment of Consumer Debt***

Assignees of consumer debt must provide notice to the debtor of the assignment of debt as soon as practical and are prohibited from taking any action to collect on the debt until a minimum of 30 days have passed since notice has been given. The assignee is considered a real party in interest and may bring an action to collect an assigned defaulted debt.<sup>27</sup>

### ***Civil Remedies***

The FDCPA provides private civil remedies to debtors that are identical to those available under its federal counterpart.<sup>28</sup> Any person who violates the prohibited practices statute, s. 559.72, F.S., is liable to the consumer for actual and additional statutory damages up to \$1,000 and reasonable attorney's fees and costs. In determining whether any additional statutory damages should be awarded to the debtor, the court may consider the nature of the defendant's noncompliance with s. 559.72, F.S., the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional. The FDCPA also permits class action suits and punitive damages in certain instances. An action must be brought within two years after the date of occurrence of the alleged violation.<sup>29</sup>

However, if the court finds that the debtor-plaintiff's suit fails to raise a justiciable issue of law or fact, the debtor-plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant.<sup>30</sup>

Also, both acts provide a safe harbor for "bona fide errors<sup>31</sup>," in that a person may not be held liable in any civil action under the acts if the person shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

### ***Florida Deceptive and Unfair Trade Practices Act***

The Florida Deceptive and Unfair Trade Practices Act (pt. II, ch. 501, F.S.) is intended to protect consumers and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce, consistent with established policies of federal law relating to consumer protection.<sup>32</sup> It is enforced by the Department of Legal Affairs of the Office of the Attorney General, which may seek an action for damages as well as declaratory and injunctive relief.<sup>33</sup> In addition, Florida Deceptive and Unfair Trade Practices Act allows any aggrieved persons to seek civil penalties of up to \$10,000 for each willful violation, and also provides for attorney's fees to be awarded to the prevailing party in any civil litigation under this part.<sup>34</sup>

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<sup>27</sup> Section 559.715, F.S.

<sup>28</sup> 15 U.S.C. § 1692k.

<sup>29</sup> Section 559.77, F.S.

<sup>30</sup> Section 559.77, F.S. and 15 U.S.C. § 1692k.

<sup>31</sup> BLACK'S LAW DICTIONARY (Online Dictionary 2<sup>nd</sup> Ed.) Bona Fide Error is defined as "[a]n honest mistake that when rectified quickly requires no punishment. <https://thelawdictionary.org/bona-fide-error/> (last visited February 16, 2018).

<sup>32</sup> Section 501.201, F.S.

<sup>33</sup> Section 501.207, F.S.

<sup>34</sup> Sections 501.2075 and 501.2105, F.S.

However, the Florida Deceptive and Unfair Trade Practices Act does not apply to certain entities, including state and federally chartered financial institutions and insurance companies and other entities regulated by the Office of Insurance Regulation.<sup>35</sup>

### **Deferred Presentment**

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's check and agreeing to hold the check for a number of days before depositing, presenting, or redeeming the payment instrument.<sup>36</sup> The transactions are commonly referred to as "payday loans." These transactions are governed by part IV of ch. 560, F.S. The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,<sup>37</sup> and money services businesses licensed under part II<sup>38</sup> or part III<sup>39</sup> of ch. 560, F.S.

Florida law contains provisions designed to prevent consumers from being caught in a "debt trap" wherein the consumer has to continuously enter into lending transactions to pay off the principal and fees from previous transactions. The face amount of a check taken for deferred presentment may not exceed \$500, exclusive of fees.<sup>40</sup> Fees generally may not exceed 10 percent of payment provided to the drawer, except that an additional verification fee not to exceed \$5 may also be charged.<sup>41</sup> The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.<sup>42</sup> A deferred presentment provider may not enter into a deferred presentment transaction with a drawer (customer) who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.<sup>43</sup> A deferred presentment provider also may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.<sup>44</sup>

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<sup>35</sup> Section 501.212, F.S.

<sup>36</sup> See s. 560.402, F.S.

<sup>37</sup> Section 655.005(1)(i), F.S., defines a "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et Seq.

<sup>38</sup> A "money transmitter" is licensed under part II of ch. 560, F.S., and is defined as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under part III of ch. 560, F.S. See s. 560.103(23), F.S.,

<sup>39</sup> A "check casher" is licensed under part III of ch. 560, F.S. and is defined as a person who sells currency in exchange for payment instruments received, except travelers checks. Section 560.1030, F.S.

<sup>40</sup> Section 560.404(5), F.S.

<sup>41</sup> Section 560.404(6), F.S.

<sup>42</sup> Section 560.404(8), F.S.

<sup>43</sup> Section 560.404(19), F.S.

<sup>44</sup> Section 560.404(18), F.S.



If the drawer, at the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days. As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.<sup>45</sup>

The deferred presentment agreement may not include a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of part IV, ch. 560, F.S.<sup>46</sup> The deferred presentment provider must comply with state and federal disclosure requirements.<sup>47</sup>

As of June 30, 2017, there were 923 licensed locations in Florida that engage in deferred presentment transactions.<sup>48</sup> Between July 2016 and June 2017, approximately 7.7 million deferred presentment transactions were conducted in Florida, representing a total advance amount of \$3.09 billion with total advance fees of \$306 million. The average transaction from July 2016 to June 2017 was \$400.77 and the average transaction fee was 9.9 percent of the advance plus an average verification fee of \$3.09. Of all consumers who entered into a deferred presentment transaction from July 2016 to June 2017, 31.8 percent engaged in one to three transactions, 30.7 percent engaged in 4 to 9 transactions, and 37.6 percent engaged in 10 or more transactions. The loan loss rate is 1.8 percent of total transactions representing an advance amount of approximately \$50.4 million. Grace periods were used for approximately 0.71 percent of transactions from July 2016 to June 2017.

### **Bureau of Consumer Financial Protection Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans**

On October 5, 2017, the Bureau of Consumer Financial Protection (CFPB) finalized a rule governing certain consumer credit products.<sup>49</sup> The CFPB has stated that the rule is aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans.<sup>50</sup> The key provisions of the rule are as follows:<sup>51</sup>

#### ***The Lender Must Determine the Consumer's Ability to Repay***

It is an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans,<sup>52</sup> including payday and vehicle title loans, without reasonably

<sup>45</sup> Section 560.404(22), F.S.

<sup>46</sup> Section 560.404(10), F.S.

<sup>47</sup> Section 560.404(13) and (20), F.S.

<sup>48</sup> Office of Financial Regulation, *Florida Trends in Deferred Presentment – State of Florida Deferred Presentment Program Through June 2017* (June 2017) (On file with the Senate Committee on Banking and Insurance).

<sup>49</sup> 82 FR 54472.

<sup>50</sup> Bureau of Consumer Financial Protection, *CFPB Finalizes Rule to Stop Payday Debt Traps* (October 5, 2017) <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps> (last accessed February 7, 2018).

<sup>51</sup> The summary of key provisions of the CFPB rule is taken from 82 FR 54472 at pgs. 1-9, unless otherwise indicated.

<sup>52</sup> A balloon payment loan is a larger than usual one-time payment at the end of the loan term.

determining that consumers have the ability to repay the loans according to their terms. The ability-to-repay standard requires a reasonable determination by the lender that the consumer would be able to make loan payments and also meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days. The lender must:

- Verify the consumer's net monthly income using a reliable record of income payment, unless a reliable record is not reasonably available;
- Verify the consumer's monthly debt obligations using a national consumer report and a consumer report from a registered information system as defined by the rule;
- Verify the consumer's monthly housing costs using a national consumer report if possible, or otherwise rely on the consumer's written statement of monthly housing expenses;
- Forecast a reasonable amount for basic living expenses, other than debt obligations and housing costs; and
- Determine the consumer's ability to repay the loan based on the lender's projections of the consumer's residual income or debt-to-income ratio.

The rule also prohibits lenders from making a covered loan to a consumer who has already taken out three covered short-term or longer-term balloon-payment loans within 30 days of each other, for 30 days after the third loan is no longer outstanding.

The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Under the exemption, a lender may make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than \$500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. A lender may not make a covered short-term loan under the exemption if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period, or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period.

### ***Payment Practices***

The rule makes it an unfair and abusive practice for a lender to attempt to withdraw payment from consumers' accounts after two consecutive failed payments, unless the consumer provides a new, specific authorization to do so. This applies to the same loans as the ability-to-repay requirement, and also applies to specified high-cost longer-term loans. Lenders must provide notices to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

Lenders must also provide written notice, depending on means of delivery, a certain number of days before its first attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. Notice is also required before the lender attempts to withdraw a payment in a different amount than the regularly scheduled payment amount, on a date other than the regularly scheduled payment date, by a different payment channel than the prior payment, or to re-initiate a returned prior transfer. The notice must contain specified information about the upcoming payment attempt and, if applicable, alert the consumer to

unusual payment attempts. The notice may be provided electronically with the consumer's consent.

### ***Lender Reporting and Compliance Requirements***

Lenders are required to furnish registered information systems with certain information concerning loans covered by the rule. Information must be submitted at loan consummation, during the period that the loan is outstanding, and when the loan ceases to be outstanding. The registered information systems will provide consumer reports that include a reasonably comprehensive record of a consumer's recent and current use of loans addressed by the rule. Before making such loans, a lender must obtain and consider a consumer report from a registered information system.

Lenders must also develop and follow written policies and procedures that are reasonably designed to ensure compliance with the rule. Lenders must retain the loan agreement, documentation obtained for any covered loan, and electronic records regarding origination calculations and determinations, the type of loan, and the loan terms.

### **Implementation of the Rule**

The CFPB rule provides minimum consumer protections and allows state and local jurisdictions to adopt further regulatory measures to protect consumers. Lender compliance with the rule is required on August 19, 2019. Many Florida deferred presentment transactions are affected by the rule because they are for 45 days or less and do not qualify for one of the rule's exceptions. Thus deferred presentment transaction providers are required to comply with the underwriting requirements of the rule or conform their business practices to meet the exception to underwriting.

### **Reconsideration of the Rule**

On January 16, 2018, the Consumer Financial Protection Bureau (CFPB) declared its intent to engage in a rulemaking process to reconsider the rule.<sup>53</sup>

## **III. Effect of Proposed Changes:**

The bill authorizes deferred presentment installment transactions under Florida law. Deferred presentment transactions will be exempt from the underwriting requirement of the Bureau of Consumer Financial Protection (CFPB) rule because such loans will be for a term longer than 30 days, and will not be a longer-term balloon payment loan because the bill requires installment payment to be as equal as mathematically practicable. Provisions of the CFPB rule relating to payment practices, lender reporting, and compliance will apply to deferred presentment installment transaction lenders that provide loans with a term longer than 45 days, with a cost of credit exceeding 36 percent per annum, and that have a leveraged payment mechanism.

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<sup>53</sup> Bureau of Consumer Financial Protection, *CFPB Statement on Payday Rule*, (Jan 16, 2018).  
<https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/> (last accessed Feb. 16, 2018).

**Section 1** amends s. 559, 715, F.S., to allow assignees of a consumer debt to immediately begin the process of collecting on a debt. Under current law, an assignee may not take action to collect a consumer debt until 30 days after giving the notice to the debtor of the assignment. The bill revises the waiting period to instead prohibit any *legal* action until 30 days after providing notice of the assignment, which will allow assignees to immediately use other methods of collecting the debt if notice is provided as soon as practical after the assignment is made.

**Section 2** amends s. 560.402, F.S., to define a “deferred presentment installment transaction” to mean “a deferred presentment transaction that is repayable in installments” and an “outstanding transaction balance” to mean “the amount received by the drawer from the deferred presentment provider that is due and owing, exclusive of the fees allowed under this party, in a deferred presentment transaction.”

**Section 3** amends s. 560.404, F.S., to authorize deferred presentment installment transactions under Florida law.

The maximum face amount of a check taken for a deferred presentment installment transaction may not exceed \$1,000, exclusive of fees. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days. The bill retains current law in s. 560.404(19), F.S., which prohibits a provider from entering into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

The maximum fees that may be charged by a provider or its affiliate on a deferred presentment installment transaction are eight percent of the outstanding transaction balance on a biweekly basis. Fees for a deferred presentment installment transaction are calculated using simple interest. Prepayment penalties are prohibited.

A deferred presentment installment transaction must be fully amortizing (the balance due will be entirely paid after the last payment is made) and repayable in consecutive and as equal as mathematically practicable installments. The time between installment payments must be at least 13 days but not greater than one calendar month. The provider of a deferred presentment installment transaction may accept additional checks bearing the date that the check is given to the provider if the deferred presentment agreement includes the deferment period applicable to each check.<sup>54</sup>

The provider must provide a grace period for payment of a scheduled installment if the drawer informs the deferred presentment installment transaction provider in writing or in person by noon of the business day before a scheduled payment. The bill clarifies that “by noon” means 12:00 p.m. of the same time zone in which the deferred presentment agreement was entered into. The grace period postpones the due date of an installment until after the last scheduled installment payment, at an interval that is no less than the intervals between the originally scheduled payments. Thus, for a deferred presentment installment transaction in which payments

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<sup>54</sup> The bill subjects these checks to the limitations in subsection 560.404(5), F.S., of the bill, which provides that neither the face value of a check nor the outstanding transaction balance may exceed \$1,000, exclusive of the fees.

are due once every two weeks, the grace period must be at least two weeks after the final installment payment is due.

The bill amends the notice that must be prominently posted by the provider and included in the deferred presentment agreement. The bill requires the notice to detail the availability of the single grace period for a deferred presentment installment transaction.

The bill authorizes the Financial Services Commission to impose a fee of up to \$1 for each full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction.

**Section 4** amends s. 560.405, F.S., to allow a deferred presentment provider to present a check before the end of a deferment transaction if the check is for a missed scheduled payment for a deferred presentment installment transaction. The bill also makes a technical change to clarify that the drawer may redeem the check used in the deferred presentment transaction by paying the outstanding transaction balance and earned fees.

**Section 5** reenacts s. 560.111, F.S., for the purpose of incorporating the amendments made by the bill to ss. 560.404 and 560.405, F.S. Section 560.111, F.S., makes willful violations of those sections a third degree felony.

**Section 6** provides an effective date of July 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:

The bill allows the Office of Financial Regulation (OFR) to increase the deferred presentment transaction database fee to vary with the term of the loan, thus increasing the total possible database fee from \$1 to \$3.

B. Private Sector Impact:

The impact to the private sector is indeterminate.

Many payday lenders assert that the Bureau of Consumer Financial Protection (CFPB) rule imposes additional costs and administrative burdens that will result in reducing the availability of deferred presentment transactions. Some consumer advocates assert that the CFPB rule provides necessary safeguards to prevent consumers from being caught in debt traps.

There are many circumstances where a new loan under this bill would result in lower fees than a current payday loan. For instance, below is an example using the standard payoff average of 14 days<sup>55</sup> under current law for a \$500 loan and a \$500 deferred presentment installment loan under CS/CS/SB 920 that an individual pays off early (the same standard payoff average of 14 days).

Loan Comparison	Current Loan	CS/CS/SB 920 Loan
Loan Amount	\$500.00	\$500.00
Fees (interest and \$5 Verification fee)	\$55.00	\$45.00
Payoff Period (days)	14	14
Payments	1	1
Payment Amount	\$555.00	\$545.00
Fees per day	\$3.93	\$3.21
APR	286.79% <sup>56</sup>	234.64% <sup>57</sup>

Below is a comparison between how a payday loan works under CS/CS/SB 920 for \$500 with 60-day and 90-day terms with a current maximum \$500 payday loan transaction with the maximum payoff period of 31 days. The examples below assume a payday lender collects the maximum allowable verification fee of \$5.

Loan Comparison	Current Law Loans	60-day Loan under CS/CS/SB 920	90-day Loan under CS/CS/SB 920
Loan Amount	\$500.00	\$500.00	\$500.00
Fees (interest and \$5 Verification fee)	\$55.00	\$122.21	\$175.56
Term (days)	31	60	90
Payments	1	4	6
Payment Amount	\$555.00	\$155.55	\$112.59
Total Payment	555.00	\$622.21	\$675.56
Fees per day	\$1.77	\$2.04	\$1.95
APR	129.52% <sup>58</sup>	148.69% <sup>59</sup>	142.40% <sup>60</sup>

<sup>55</sup> Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2018) (On file with the Senate Committee on Banking and Insurance).

<sup>56</sup>  $\$55 / \$500 \times 365 \text{ days} / 14 \text{ days} \times 100 = 286.79\%$

<sup>57</sup>  $\$45 / \$500 \times 365 \text{ days} / 14 \text{ days} \times 100 = 234.64\%$

<sup>58</sup>  $\$55 / \$500 \times 365 \text{ days} / 31 \text{ days} \times 100 = 129.52\%$

<sup>59</sup>  $\$122.21 / \$500 \times 365 \text{ days} / 60 \text{ days} \times 100 = 148.69\%$

<sup>60</sup>  $\$175.56 / \$500 \times 365 \text{ days} / 90 \text{ days} \times 100 = 142.40\%$

**C. Government Sector Impact:****Office of Financial Regulation<sup>61</sup>**

The Office of Financial Regulation (OFR) assesses each deferred presentment provider a \$1 transaction fee for each deferred presentment transaction to maintain an Internet database that records all deferred presentment transactions in the state. Deferred presentment providers and the OFR use the database to verify whether any deferred presentment transactions are outstanding for a particular person. The database is required by s. 560.404(23), F.S. The impact of the bill on the number of transactions is unknown and the impact of the bill on these revenues is indeterminate. The OFR received \$7,657,486 in revenue related to the \$1 transaction fee during Fiscal Year 2016-2017, which could be reduced with the longer transaction terms. If the OFR imposes a \$2 fee for deferred presentment installment transactions with a 60-day term and a \$3 fee for transactions with a 90-day term as permitted in this bill, the reduction in revenue may be offset.

The OFR contracts with a third-party vendor that maintains a database that records all deferred presentment transactions in the state, the cost of which is directly related to the number of deferred presentment transactions and database fees collected. For Fiscal Year 2016-2017, the OFR paid its third-party vendor \$2,656,269 for hosting, maintaining, and operating the database. The bill may increase or decrease this cost if the statutory authorization of deferred presentment installment transactions increases or decreases the number of deferred presentment transactions.

The bill would require modifications to the database, which the OFR would obtain through a procurement requiring a legislative budget appropriation and between 18 to 24 months to implement. The actual cost would not be known until bids are received from vendors pursuant to the procurement process.

The OFR believes that the provisions of the bill would require the OFR, through the Financial Services Commission, to amend a number of administrative rules. The cost incurred by the OFR for the rulemaking filings can be absorbed within the current budget of the Division of Consumer Finance.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>61</sup> Office of Financial Regulation, *2018 Agency Legislative Bill Analysis for Senate Bill 920* (December 28, 2017) (On file with the Senate Committee on Banking and Insurance).

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 559.715, 560.402, 560.404, 560.405, and 560.111.

**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 by Appropriations on February 15, 2018:**

The committee substitute:

- Allows the assignees of a consumer debt to immediately begin the process of collecting on a debt; and
- Retains the 30 day waiting period after notice of the assignment is given before any legal actions can be taken to collect on the debt.

**CS by Commerce and Tourism on January 29, 2018:**

The bill is amended to:

- Define “outstanding transaction balance” as the amount received by the drawer from the deferred presentment provider that is due and owing in a deferred presentment transaction, exclusive of allowable fees;
- Provide that the deferred presentment provider for a deferred presentment installment transaction may accept additional checks bearing the date that the check was given to the provider if the deferred presentment agreement includes the deferment period applicable to each check;
- Require the deferred presentment provider to access the current database until the OFR is able to implement a database that includes deferred presentment installment contracts;
- Allow the drawer to inform the deferred presentment provider in writing or in person if the drawer cannot redeem or pay in full in cash;
- Clarify that the term “by noon” means 12:00 p.m. of the same time zone in which the deferred presentment installment transaction agreement was entered into;
- Provide that the Financial Services Commission may impose a fee of up to \$1 per full or partial 30-day period that a balance is scheduled to be outstanding for a deferred presentment installment transaction, rather than \$1 per transaction;
- Provide that the bill takes effect on July 1, 2019; and
- Make additional technical and conforming changes throughout the bill.

**B. Amendments:**

None.





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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 67 - 76.

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

And the title is amended as follows:

Delete lines 2 - 5

and insert:

An act relating to deferred presentment transactions;

By the Committees on Appropriations; and Commerce and Tourism;  
and Senators Bradley and Braynon

576-03292-18

2018920c2

1 A bill to be entitled  
2 An act relating to consumer finance; amending s.  
3 559.715, F.S.; revising a requirement for an assignee  
4 of the right to bill and collect a consumer debt to  
5 give the debtor written notice of the assignment;  
6 amending s. 560.402, F.S.; providing and revising  
7 definitions; amending s. 560.404, F.S.; specifying the  
8 maximum face amount of checks that may be taken for  
9 deferred presentment installment transactions,  
10 exclusive of fees; specifying the maximum rate and  
11 frequency of fees that deferred presentment providers  
12 or their affiliates may charge on deferred presentment  
13 installment transactions; specifying when fees are  
14 earned for certain deferred presentment transactions;  
15 specifying the calculation of fees earned for deferred  
16 presentment installment transactions; prohibiting  
17 prepayment penalties; specifying the minimum and  
18 maximum terms of a deferred presentment installment  
19 transaction; specifying dates that checks must bear;  
20 authorizing providers of deferred presentment  
21 installment transactions to accept additional checks  
22 subject to certain limitations; requiring the deferred  
23 presentment agreement to include the deferment period  
24 applicable to each check; correcting a reference to  
25 federal law; providing an exception to a prohibition  
26 against the acceptance or holding of undated checks or  
27 checks with certain dates by a deferred presentment  
28 provider or its affiliate; conforming a cross-  
29 reference; providing a verification process that may

Page 1 of 16

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

576-03292-18

2018920c2

30 be relied upon under certain conditions; revising a  
31 notice in deferred presentment agreements; authorizing  
32 a drawer to inform a provider in writing that the  
33 drawer cannot redeem or pay in full the amount due and  
34 owing to the provider; providing an exception to a  
35 prohibition, under certain circumstances, against a  
36 deferred presentment provider's deposit or presentment  
37 of a drawer's check; requiring a provider of a  
38 deferred presentment installment transaction to allow  
39 a drawer to defer one scheduled payment under certain  
40 circumstances; providing requirements for the deferred  
41 payment; specifying the frequency a certain fee may be  
42 imposed by Financial Services Commission rule for data  
43 on certain transactions submitted by deferred  
44 presentment providers to a certain database; providing  
45 an exception to a limitation on a deferred presentment  
46 provider's acceptance of a certain check or  
47 authorization; specifying requirements for  
48 amortization, installment repayments, and the  
49 calculation of charges for deferred presentment  
50 installment transactions; conforming provisions to  
51 changes made by the act; amending s. 560.405, F.S.;  
52 providing an exception to a prohibition against a  
53 deferred presentment provider's or its affiliate's  
54 presentment of a drawer's check before the end of the  
55 deferment period; revising a condition under which a  
56 deferred presentment provider may allow the check to  
57 be redeemed in lieu of presentment; revising a  
58 prohibition against requiring a drawer to redeem his

Page 2 of 16

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576-03292-18

2018920c2

or her check before the agreed-upon date; reenacting s. 560.111(5), F.S., relating to prohibited acts, to incorporate the amendments made to ss. 560.404 and 560.405, F.S., in references thereto; providing an effective date.

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

Section 1. Section 559.715, Florida Statutes, is amended to read:

559.715 Assignment of consumer debts.—This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before bringing any legal action to collect the debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

Section 2. Present subsections (3) through (5) and (6) of section 560.402, Florida Statutes, are renumbered as subsections (4) through (6) and (8), respectively, present subsection (7) is amended, and new subsections (3) and (7) are added to that section, to read:

560.402 Definitions.—For the purposes of this part, the term:

(3) "Deferred presentment installment transaction" means a deferred presentment transaction that is repayable in installments.

(7) "Outstanding transaction balance" means the amount

576-03292-18

2018920c2

received by the drawer from the deferred presentment provider that is due and owing, exclusive of the fees allowed under this part, in a deferred presentment transaction.

~~(9)(7)~~ "Termination of a deferred presentment agreement" means that all checks ~~the check~~ that are ~~is~~ the basis for the agreement are ~~is~~ redeemed by the drawer by payment in full in cash, or are ~~is~~ deposited and the deferred presentment provider has evidence that such checks have ~~check has~~ cleared. Verification of sufficient funds in the drawer's account by the deferred presentment provider is not sufficient evidence to deem that the deferred presentment ~~deposit~~ transaction is terminated.

Section 3. Subsections (5), (6), (8), (12), (13), (14), (19), (20), (21), and (22) and present subsections (23) and (24) of section 560.404, Florida Statutes, are amended, and new subsection (23) and subsection (26) are added to that section, to read:

560.404 Requirements for deferred presentment transactions.—

(5) The face amount of a check taken for deferred presentment transactions not repayable in installments may not exceed \$500, exclusive of the fees allowed under this part. For a deferred presentment installment transaction, neither the face amount of a check nor the outstanding transaction balance may exceed \$1,000, exclusive of the fees allowed under this part.

(6) (a) A deferred presentment provider or its affiliate may not charge fees that exceed 10 percent of the currency or payment instrument provided for a deferred presentment transaction not repayable in installments. A deferred presentment provider or its affiliate may not charge fees on any

576-03292-18

2018920c2

deferred presentment installment transaction which exceed 8 percent of the outstanding transaction balance on a biweekly basis.

(b) Notwithstanding paragraph (a) ~~However~~, a verification fee may be charged as provided in s. 560.309(8). The fees in paragraph (a) The 10-percent fee may not be applied to the verification fee.

(c) Fees are earned at the time of origination for a deferred presentment transaction scheduled to be paid off in 31 days or less; however, fees for a deferred presentment installment transaction are earned using a simple interest calculation. A deferred presentment provider may charge only those fees specifically authorized in this section. Prepayment penalties are prohibited.

(8) A deferred presentment agreement may not be for a term longer than 31 days or fewer ~~less~~ than 7 days, except for a deferred presentment installment transaction, which may not be for a term longer than 90 days or fewer than 60 days.

(12) The deferred presentment agreement and the drawer's initial check must bear the same date, and the number of days of the deferment period must ~~shall~~ be calculated from that date. For deferred presentment installment transactions, the deferred presentment provider may accept additional checks, subject to the limitations in subsection (5), each bearing the date that the check was given to the provider, and the deferred presentment agreement must include the deferment period applicable to each check. The deferred presentment provider and the drawer may not alter or delete the date on any written agreement or check held by the deferred presentment provider.

576-03292-18

2018920c2

(13) For each deferred presentment transaction, the deferred presentment provider must comply with the disclosure requirements of 12 C.F.R. part 226, relating to the federal Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer Financial Protection Board of Governors of the Federal Reserve Board. A copy of the disclosure must be provided to the drawer at the time the deferred presentment transaction is initiated.

(14) A deferred presentment provider or its affiliate may not accept or hold an undated check or a check dated on a date other than the date on which the deferred presentment provider agreed to hold the check and signed the deferred presentment transaction agreement, except when a customer provides a new payment instrument reflecting the new outstanding transaction balance and anticipated fees upon making a payment on a deferred presentment installment transaction.

(19) A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with that provider or with any other deferred presentment provider, or with a person whose previous deferred presentment transaction with that provider or with any other provider has been terminated for less than 24 hours. The deferred presentment provider must verify such information as follows:

(a) The deferred presentment provider must ~~shall~~ maintain a common database and ~~shall~~ verify whether the provider or an affiliate has an outstanding deferred presentment transaction with a particular person or has terminated a transaction with that person within the previous 24 hours. If a provider has not established a database, the provider may rely upon the written

576-03292-18 2018920c2

175 verification of the drawer as provided in subsection (20).

176 (b) The deferred presentment provider must ~~shall~~ access the  
 177 office's database established pursuant to subsection (24) ~~(23)~~  
 178 and ~~shall~~ verify whether any other deferred presentment provider  
 179 has an outstanding deferred presentment transaction with a  
 180 particular person or has terminated a transaction with that  
 181 person within the previous 24 hours. Before the office has  
 182 implemented a database to include deferred presentment  
 183 installment transactions ~~If a provider has not established a~~  
 184 ~~database,~~ the deferred presentment provider must access the  
 185 office's current database pursuant to this paragraph and may  
 186 rely upon the written verification of the drawer as provided in  
 187 subsection (20).

188 (20) A deferred presentment provider must ~~shall~~ provide the  
 189 following notice in a prominent place on each deferred  
 190 presentment agreement in at least 14-point type in substantially  
 191 the following form and ~~must~~ obtain the signature of the drawer  
 192 where indicated:

193 NOTICE

194  
 195  
 196 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE  
 197 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE  
 198 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED  
 199 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER  
 200 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT  
 201 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE  
 202 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.  
 203

576-03292-18 2018920c2

204 YOU MUST SIGN THE FOLLOWING STATEMENT:

205  
 206 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT  
 207 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT  
 208 THIS TIME. I HAVE NOT TERMINATED A DEFERRED  
 209 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.  
 210 (Signature of Drawer)  
 211

212 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A  
 213 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY  
 214 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE  
 215 PURSUED AGAINST YOU.  
 216

217 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT PROVIDER  
 218 (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR  
 219 DEFERRED PRESENTMENT TRANSACTION. THIS MEANS THAT YOU  
 220 CANNOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE  
 221 IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT  
 222 OF YOUR CHECK FOR PAYMENT.  
 223

224 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT REPAYABLE  
 225 IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON  
 226 THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE  
 227 AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,  
 228 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF  
 229 THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE  
 230 ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL  
 231 CHARGE. THE DEFERRED PRESENTMENT PROVIDER MUST ~~SHALL~~  
 232 REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE

576-03292-18

2018920c2

233 GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING  
 234 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL  
 235 BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO  
 236 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN  
 237 APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND  
 238 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE  
 239 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND  
 240 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE  
 241 THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.  
 242

243 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:  
 244 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY  
 245 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A  
 246 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE  
 247 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE  
 248 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR  
 249 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT  
 250 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY  
 251 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT  
 252 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS  
 253 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS  
 254 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.  
 255

256 (21) The deferred presentment provider may not deposit or  
 257 present the drawer's check if the drawer informs the provider in  
 258 writing or in person that the drawer cannot redeem or pay in  
 259 full in cash the amount due and owing the deferred presentment  
 260 provider, unless the drawer fails to comply with subsection (22)  
 261 or subsection (23), as applicable. No additional fees or

Page 9 of 16

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576-03292-18

2018920c2

262 penalties may be imposed on the drawer by virtue of any  
 263 misrepresentation made by the drawer as to the sufficiency of  
 264 funds in the drawer's account. Additional fees may not be added  
 265 to the amounts due and owing to the deferred presentment  
 266 provider.

267 (22) For deferred presentment transactions not repayable in  
 268 installments, if, by the end of the deferment period, the drawer  
 269 informs the deferred presentment provider in writing or in  
 270 person that the drawer cannot redeem or pay in full in cash the  
 271 amount due and owing the deferred presentment provider, the  
 272 deferred presentment provider must ~~shall~~ provide a grace period  
 273 extending the term of the agreement for an additional 60 days  
 274 after the original termination date, without any additional  
 275 charge.

276 (a) The provider must ~~shall~~ require, ~~that~~ as a condition of  
 277 providing a grace period, that the drawer make an appointment  
 278 with a consumer credit counseling agency within 7 days after the  
 279 end of the deferment period and complete the counseling by the  
 280 end of the grace period. The drawer may agree to, comply with,  
 281 and adhere to a repayment plan approved by the counseling  
 282 agency. If the drawer agrees to comply with and adhere to a  
 283 repayment plan approved by the counseling agency, the provider  
 284 must also comply with and adhere to that repayment plan. The  
 285 deferred presentment provider may not deposit or present the  
 286 drawer's check for payment before the end of the 60-day grace  
 287 period unless the drawer fails to comply with such conditions or  
 288 the drawer fails to notify the provider of such compliance.  
 289 Before each deferred presentment transaction, the provider may  
 290 verbally advise the drawer of the availability of the grace

Page 10 of 16

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576-03292-18

2018920c2

period consistent with the written notice in subsection (20), and may not discourage the drawer from using the grace period.

(b) At the commencement of the grace period, the deferred presentment provider ~~must~~ ~~shall~~ provide the drawer:

1. Verbal notice of the availability of the grace period consistent with the written notice in subsection (20).

2. A list of approved consumer credit counseling agencies prepared by the office. The office list ~~must~~ ~~shall~~ include nonprofit consumer credit counseling agencies affiliated with the National Foundation for Credit Counseling which provide credit counseling services to state residents in person, by telephone, or through the Internet. The office list must include phone numbers for the agencies, the counties served by the agencies, and indicate the agencies that provide telephone counseling and those that provide Internet counseling. The office ~~must~~ ~~shall~~ update the list at least once each year.

3. The following notice in at least 14-point type in substantially the following form:

AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE

576-03292-18

2018920c2

MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT.

(c) If a drawer completes an approved payment plan, the deferred presentment provider ~~must~~ ~~shall~~ pay one-half of the drawer's fee for the deferred presentment agreement to the consumer credit counseling agency.

(23) For deferred presentment installment transactions, if a drawer informs the deferred presentment provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the scheduled payment amount due and owing the provider, the deferred presentment provider must provide the drawer the opportunity to defer the scheduled payment, at no additional fee or charge, until after the last scheduled payment. The phrase "by noon" means 12:00 p.m. of the same time zone in which the deferred presentment agreement was entered into. Only one deferred payment is permitted for each deferred presentment installment transaction. The deferred payment must be due at an interval after the last scheduled payment which is no shorter than the intervals between the originally scheduled payments.

576-03292-18

2018920c2

349 ~~(24) (a) (23)~~ The office must ~~shall~~ implement a common  
 350 database with real-time access through an Internet connection  
 351 for deferred presentment providers, as provided in this  
 352 subsection. The database must be accessible to the office and  
 353 the deferred presentment providers in order to verify whether  
 354 any deferred presentment transactions are outstanding for a  
 355 particular person. Deferred presentment providers must ~~shall~~  
 356 submit such data before entering into each deferred presentment  
 357 transaction in such format as required by rule, including the  
 358 drawer's name, social security number or employment  
 359 authorization alien number, address, driver license number,  
 360 amount of the transaction, date of transaction, the date that  
 361 the transaction is closed, and such additional information as is  
 362 required by rule.

363 (b) For data that must be submitted by a deferred  
 364 presentment provider, the commission may by rule impose a fee of  
 365 up to \$1 per transaction for deferred presentment transactions  
 366 not repayable in installments, and the commission may impose a  
 367 fee of up to \$1 for each full or partial 30-day period that a  
 368 balance is scheduled to be outstanding for a deferred  
 369 presentment installment transaction for data that must be  
 370 submitted by a deferred presentment provider.

371 (c) A deferred presentment provider may rely on the  
 372 information contained in the database as accurate and is not  
 373 subject to any administrative penalty or civil liability due to  
 374 relying on inaccurate information contained in the database.

375 (d) A deferred presentment provider must notify the office,  
 376 in a manner as prescribed by rule, within 15 business days after  
 377 ceasing operations or no longer holding a license under part II

576-03292-18

2018920c2

378 or part III of this chapter. Such notification must include a  
 379 reconciliation of all open transactions. If the provider fails  
 380 to provide notice, the office must ~~shall~~ take action to  
 381 administratively release all open and pending transactions in  
 382 the database after the office becomes aware of the closure.

383 (e) This section does not affect the rights of the provider  
 384 to enforce the contractual provisions of the deferred  
 385 presentment agreements through any civil action allowed by law.

386 (f) The commission may adopt rules to administer this  
 387 subsection and to ensure that the database is used by deferred  
 388 presentment providers in accordance with this section.

389 ~~(25) (24)~~ A deferred presentment provider may not accept  
 390 more than one check or authorization to initiate more than one  
 391 automated clearinghouse transaction to collect on a deferred  
 392 presentment transaction for a single deferred presentment  
 393 transaction, except for deferred presentment installment  
 394 transactions in which such checks or authorizations represent  
 395 multiple scheduled payments.

396 (26) A deferred presentment installment transaction must be  
 397 fully amortizing and repayable in consecutive installments as  
 398 nearly equal as mathematically practicable according to a  
 399 payment schedule agreed upon by the parties with no fewer than  
 400 13 days and not more than 1 calendar month between payments,  
 401 except that the first installment may be longer than the  
 402 remaining installments by not more than 15 days, and the first  
 403 installment payment may be larger than the remaining installment  
 404 payments by the amount of charges applicable to the extra days.  
 405 In calculating charges under this subsection, when the first  
 406 installment is longer than the remaining installments, the



576-03292-18 2018920c2

407 amount of the charges applicable to the extra days may not  
 408 exceed those that would accrue under a simple interest  
 409 calculation based on the rate allowed under subsection (6).

410 Section 4. Subsections (1), (3), and (4) of section  
 411 560.405, Florida Statutes, are amended to read:

412 560.405 Deposit; redemption.—

413 (1) The deferred presentment provider or its affiliate may  
 414 not present the drawer's check before the end of the deferment  
 415 period, except for a missed scheduled payment for a deferred  
 416 presentment installment transaction that has not been otherwise  
 417 deferred pursuant to s. 560.404(23), as reflected and described  
 418 in the deferred presentment transaction agreement.

419 (3) Notwithstanding subsection (1), in lieu of presentment,  
 420 a deferred presentment provider may allow the check to be  
 421 redeemed at any time upon payment of the outstanding transaction  
 422 balance and earned fees ~~face amount of the drawer's check~~.

423 However, payment may not be made in the form of a personal  
 424 check. Upon redemption, the deferred presentment provider must  
 425 ~~shall~~ return the drawer's check and provide a signed, dated  
 426 receipt showing that the drawer's check has been redeemed.

427 (4) A drawer may not be required to redeem his or her check  
 428 in full before the agreed-upon date; however, the drawer may  
 429 choose to redeem the check before the agreed-upon presentment  
 430 date.

431 Section 5. For the purpose of incorporating the amendments  
 432 made by this act to sections 560.404 and 560.405, Florida  
 433 Statutes, in references thereto, subsection (5) of section  
 434 560.111, Florida Statutes, is reenacted to read:

435 560.111 Prohibited acts.—

Page 15 of 16

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576-03292-18 2018920c2

436 (5) Any person who willfully violates any provision of s.  
 437 560.403, s. 560.404, or s. 560.405 commits a felony of the third  
 438 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 439 775.084.

440 Section 6. This act shall take effect July 1, 2019.

Page 16 of 16

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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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1044

INTRODUCER: Senator Book

SUBJECT: Victims of Human Trafficking

DATE: February 21, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<b>Fav/CS</b>
2.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1044 creates an additional civil cause of action for victims of human trafficking. The bill allows victims who prevail in any such action to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. It requires the court impose civil penalties, the proceeds of which are to be distributed to the Trust Fund for Victims of Human Trafficking and Prevention, created in SB 1046, and to local law enforcement agencies involved in the apprehension of defendants in related criminal matters.

The bill also specifies that the standard of proof for this civil action is by the preponderance of the evidence, and provides an affirmative defense for operators of public lodging establishments.

The bill will likely have an indeterminate impact both on hotels in the state and on the state court system.

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

**II. Present Situation:**

**Human Trafficking**

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There is an estimated 20.9 million adults and children in

the world who are in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent of them are children, and in 2010, it was estimated that as many as 300,000 children in the United States were at risk for exploitation each year.<sup>1</sup>

Section 787.06, F.S., is Florida's human trafficking statute and defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.<sup>2</sup>

### **Civil Cause of Action**

Victims of human trafficking have a civil cause of action against a person who:

- With criminal intent, has:
  - Received any proceeds derived, directly or indirectly, from a pattern of criminal activity; or
  - Through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, has acquired or maintained, directly or indirectly, any interest in or control of any enterprise or real property.
- Was employed by or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- Has conspired or endeavored to violate any of the actions listed above.<sup>3</sup>

The civil cause of action allows for threefold the actual damages sustained. The victim is entitled to minimum damages of \$200 and reasonable attorney's fees and court costs. Section 772.104(3), F.S., prohibits punitive damages from being awarded. The standard of proof for the civil cause of action is clear and convincing evidence.<sup>4</sup>

The statute of limitations for the civil cause of action is 5 years after the conduct constituting a violation of one of the above stated provisions. The statute of limitations is suspended during prosecution for the criminal activity or criminal conduct, which is the basis for the civil action and for two years after its conclusion.<sup>5</sup>

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<sup>1</sup> U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at [http://ojp.gov/newsroom/factsheets/ojpfs\\_humantrafficking.html](http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html) (last visited February 8, 2018). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited February 8, 2018).

<sup>2</sup> See ss. 787.06(3) and (4), F.S.

<sup>3</sup> Section 772.103, F.S.

<sup>4</sup> Section 772.104, F.S.

<sup>5</sup> Section 772.17, F.S.

### III. Effect of Proposed Changes:

**Section 1** provides that this act may be cited as the “Civil Action for Victims of Human Trafficking and Prevention of Human Trafficking Act.”

**Section 2** creates s. 787.061, F.S., which provides an additional civil cause of action for victims of human trafficking to bring against the trafficker or facilitator of human trafficking who victimized them and allows the victims to recover damages. The Legislature finds that, to achieve the state’s goals relating to human trafficking set forth in s. 787.06(1)(d), F.S., it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages.

The bill defines the following terms:

- “Facilitator” means a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker, which assist or enable the trafficker to carry out human trafficking. The term does not include a person who facilitates human trafficking as a result of force, threat, or coercion.
- “Human trafficking” has the same meaning as provided in s. 787.06, F.S.
- “Trafficker” means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.
- “Trust fund” refers to the Trust Fund for Victims of Human Trafficking and Prevention proposed in SB 1046.
- “Venture” means any group of two or more individuals associated in fact, whether or not a legal entity.
- “Victim of human trafficking” means a person subjected to coercion, as defined in s. 787.06, F.S., for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.
- “Willful blindness” occurs when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the fact avoided can reasonably and fairly be imputed to the person who avoided confirming it.

The bill allows a victim to bring a civil action against the trafficker or facilitator of human trafficking who victimized the victim. An action may be brought in any court of competent jurisdiction and the standard of proof is preponderance of the evidence. The court has specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. The bill requires the noneconomic damages be calculated as in a tort action.

The bill specifies that economic damages for services or labor coerced from the victim of human trafficking include:

- Past and future medical and mental health expenses;
- Repatriation expenses, when a victim elects repatriation; and
- All other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

The bill specifies that if the victim's parent or legal guardian knowingly, or through willful blindness, participated in the human trafficking, he or she is not entitled to damages or distributions from any successful suit under this section. The bill also states that remedies under this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking.

If a victim prevails in an action, the bill imposes a civil penalty against the defendant of \$50,000. This penalty is in addition to, and not in lieu of, any other damage award. The civil penalty cannot be disclosed to the jury. The proceeds from the civil penalty must be deposited into the trust fund.

The bill also imposes a civil penalty against the defendant in favor of the law enforcement agencies for \$50,000, if one or more law enforcement agencies rescued the victim or located the property upon which the abuse or exploitation occurred. The bill specifies that the award of the penalty to the law enforcement agencies is to fund future efforts to combat human trafficking. The court must equitably distribute the civil penalty among the law enforcement agencies.

The bill requires that any punitive damages awarded be equally divided between the victim and the trust fund.

The bill provides a statute of limitations as defined in ss. 95.11(7) and 95.11(9) and as described in Section 4.

The bill also creates an affirmative defense to an owner or operator of a public lodging establishment when an action is brought against them based on a claim of vicarious liability<sup>6</sup>. In actions alleging a violation against the owner or operator of a public lodging establishment based on vicarious liability, the owner or operator may avoid liability by proving, by a preponderance of the evidence, it:

- Required management employees and employees of the establishment reasonably expected to routinely interact with guests to complete an educational program designed to effectively train such employees in the identification, prevention, and reporting of suspected human trafficking within 30 days of hiring or by July 1, 2019, whichever occurs later.
- Had in place an employee protocol or code of conduct to detect and report suspected human trafficking; and
- Ensured that any employees alleged in the action to have been facilitators of, or otherwise participants in, human trafficking, complied with the recommendations and practices suggested or required in the training, protocols, or policies.

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<sup>6</sup> According to Black's Law Dictionary, 11<sup>th</sup> Edition, "vicarious liability" is "the imposition of liability on one person for the actionable conduct of another, based solely on the relationship between the two persons; indirect or imputed legal responsibility for the acts of another; for example, the liability of an employer for the acts of an employee, or, a principal for the torts or [actions] of an agent."

**Section 3** amends s. 772.104, F.S., by adding subsection (4), which states that s. 772.104, the section of the Florida Statutes that currently provides a civil cause of action for human trafficking victims, does not apply to a cause of action that may be brought under the newly created s. 787.061, F.S. The effect of this change is to prevent recovery for the same cause of action under both statutes.

**Section 4** amends s. 95.11, F.S., to add civil suits involving human trafficking to a list of other civil actions that have either a 7 or 4 year statute of limitations, depending on the circumstances of the victim. The bill also requires that civil actions brought under the newly created s. 786.061 involving a victim under 16 years of age have no statute of limitations.

**Section 5** provides an effective date of October 1, 2018.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will likely be a negative, indeterminate impact on hotels and restaurants who need to develop an educational program and provide training to employees on recognizing and combating human trafficking. The bill could result in additional lawsuits and damages paid by hotels and restaurants.

C. Government Sector Impact:

There may be an indeterminate impact on the state court system from the creation of a new civil cause of action.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The term ‘willful blindness’ as used and defined in the newly created s. 787.061, F.S., is not a traditional legal term and is vague to a degree which may require extensive litigation to resolve.

The two potential \$50,000 civil penalties may give a disproportionate amount of leverage to force a potential defendant with little to no culpability into settlements.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 772.104, 95.11. This bill creates section 787.061 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 Children, Families, and Elder Affairs on February 12, 2018:**

- Provides a statute of limitations in actions alleging sexual abuse of 7 years from the date the victim reaches age 18.
- Provides an alternative statute of limitations of 4 years after the victim leaves the dependency of the alleged abuser or 4 years from the time the victim discovers both the injury and the causal relationship between injury and the abuse, whichever occurs later.
- Provides an indefinite statute of limitations in cases alleging sexual abuse of a victim under 16 years old.
- Revises the amount of a mandatory civil penalty levied against a defendant from \$100,000 down to \$50,000.
- Requires that the method for calculating economic damages awarded to a successful plaintiff be equal to all reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the trafficking.
- Eliminates the use of the fair market value of services or labor performed by the victim as a method for calculating economic damages.
- Modifies an employee training program, which serves as the basis for an affirmative defense for hotel operators, to require employee training in prevention of human trafficking.
- Eliminates the requirement that hotel operators prove they took reasonable steps to ensure any employees alleged to have been facilitators in trafficking complied with training or protocols to prevent human trafficking.

- Provides a new effective date of October 1, 2018.

B. Amendments:

None.

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

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654858

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Book) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. This act may be cited as the "Civil Cause of  
Action for Victims of Human Trafficking Act."

Section 2. Section 787.061, Florida Statutes, is created to  
read:

787.061 Civil actions by victims of human trafficking.—

(1) FINDINGS.—The Legislature finds that, to achieve the  
intent of the Legislature relating to human trafficking



654858

expressed in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages, attorney fees, and costs.

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

(a) "Facilitator" means a person who knowingly, or in willful blindness, assists or provides resources, goods, or services to a trafficker which assist or enable the trafficker to carry out human trafficking. The term does not include a person who facilitates human trafficking as a result of force, threat, or coercion.

(b) "Human trafficking" has the same meaning as provided in s. 787.06.

(c) "Trafficker" means any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.

(d) "Trust fund" means the Trust Fund for Victims of Human Trafficking and Prevention created in s. 787.0611.

(e) "Venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

(f) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06, for the purpose of being used in human trafficking; a child under 18 years of age subjected to human trafficking; or an individual subjected to human trafficking as defined by federal law.

(g) "Willful blindness" exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining



654858

41 confirmation of or acting on the information because he or she  
42 wants to remain in ignorance, such that knowledge of the facts  
43 avoided can reasonably and fairly be imputed to the person who  
44 avoided confirming it.

45 (3) CIVIL CAUSE OF ACTION.—

46 (a) A victim of human trafficking has a civil cause of  
47 action against the trafficker or facilitator who victimized her  
48 or him and may recover damages as provided in this section.

49 (b) The action may be brought in any court of competent  
50 jurisdiction, and the standard of proof is the greater weight of  
51 the evidence, but the standard of proof for punitive damages  
52 under this section is clear and convincing evidence.

53 (c) A victim who prevails in any such action is entitled to  
54 recover economic and noneconomic damages, penalties, punitive  
55 damages, reasonable attorney fees, reasonable investigative  
56 expenses, and costs.

57 1. Economic damages include, but are not limited to, past  
58 and future medical and mental health expenses; repatriation  
59 expenses, when a victim elects repatriation; and all other  
60 reasonable costs and expenses incurred by the victim in the past  
61 or estimated to be incurred by the victim in the future as a  
62 result of the human trafficking.

63 2. Noneconomic damages include pain and suffering,  
64 inconvenience, physical impairment, mental anguish,  
65 disfigurement, loss of capacity for enjoyment of life, and other  
66 nonfinancial losses.

67 (d) The remedies provided in this section are in addition  
68 to and cumulative with other legal and administrative remedies  
69 available to victims of human trafficking, except that a victim



654858

may not recover under both this section and s. 772.104(2). If a parent or legal guardian knowingly or through willful blindness trafficked the victim, facilitated such trafficking, or otherwise participated in the human trafficking of the victim, such parent or legal guardian is not entitled to damages or distributions under this section.

(e) If a victim prevails in an action under this section, in addition to any other award imposed, the court shall assess a civil penalty against the defendant in the amount of \$50,000. This penalty is in addition to and not in lieu of any other damage award. The civil penalty must be assessed by the court and may not be disclosed to the jury. The entire \$50,000 civil penalty shall be deposited into the trust fund unless the proceeds become subject to equitable distribution under paragraph (g).

(f) If a victim prevails in an action under this section, and if one or more law enforcement agencies rescued the victim or stopped the abuse or exploitation of a victim on the property where it occurred, the court shall assess a civil penalty against the defendant in the amount of \$50,000 and award the penalty to such law enforcement agencies to fund future efforts to combat human trafficking. This penalty is in addition to, and not in lieu of, any other damage award or civil penalty. The court shall equitably distribute this civil penalty among the law enforcement agencies. The entire \$50,000 civil penalty shall be distributed to the law enforcement agencies unless the proceeds become subject to equitable distribution under paragraph (g).

(g) If an action brought under this section is either



654858

99 settled before a jury verdict or the victim is unable to recover  
100 the full amount of the compensatory damages caused by the human  
101 trafficking, the court must determine the percentage of the  
102 victim's damages that were recovered, after deducting the  
103 victim's reasonable and necessary out-of-pocket expenses, but  
104 before deducting attorney fees, and that same percentage of  
105 \$50,000 shall be paid from the recovery to the trust fund. If  
106 one or more law enforcement agencies are entitled to a civil  
107 penalty under paragraph (f), that same percentage of \$50,000  
108 shall be paid from the recovery to the law enforcement agencies  
109 to fund future efforts to combat human trafficking.

110 (h) The court shall have specific authority to consolidate  
111 civil actions for the same trafficker or facilitator for the  
112 purpose of case resolution and aggregate jurisdiction.

113 (i) Notwithstanding any other law to the contrary, the  
114 amount of punitive damages awarded under this section shall be  
115 equally divided between the victim and the trust fund.

116 (j) Moneys collected from penalties, damages, or other  
117 costs imposed by this section which are to be deposited into the  
118 trust fund shall be remitted to the Department of Revenue for  
119 deposit into the Department of Law Enforcement Trust Fund for  
120 Victims of Human Trafficking and Prevention.

121 (4) STATUTE OF LIMITATIONS.—The statutes of limitations as  
122 specified in s. 95.11(7) and (9) are applicable to actions  
123 brought under this section.

124 (5) AFFIRMATIVE DEFENSE.—

125 (a) In any action brought under this section against the  
126 owner or operator of a public food service or lodging  
127 establishment based on a claim of vicarious liability for an



654858

employee's conduct, it is an affirmative defense to punitive damages recoverable under such claim if the owner or operator proves by the greater weight of evidence that:

1. Its personnel have been trained to identify and report suspected human trafficking activity in accordance with s. 509.210 and rules adopted thereunder.

2. The owner or operator had in place an employee protocol or employee code of conduct to detect and report suspected human trafficking activity to appropriate law enforcement authorities, which may include the National Human Trafficking Hotline, the United States Department of Justice Hotline, the Florida Abuse Hotline, or local law enforcement authorities.

3. If the victim of human trafficking was a minor at the time of the trafficking, the owner or operator exercised reasonable care and diligence, screening, training, overseeing, and supervising the employee, and exercised reasonable care and diligence in its compliance with the anti-human-trafficking protocols and training required by this section.

(b) If the victim of human trafficking was an adult at the time of the trafficking, the affirmative defense provided in this subsection may be overcome with proof by clear and convincing evidence that the officers, directors, or managers of the owner or operator of the public food service or lodging establishment knowingly, or in willful blindness, condoned, ratified, permitted, caused, or consented to the conduct constituting human trafficking or the facilitation of such trafficking or failed to use reasonable care and diligence in its compliance with the anti-human-trafficking protocols and training required by this section.



654858

Section 3. Subsection (4) is added to section 772.104, Florida Statutes, to read:

772.104 Civil cause of action.—

(4) This section does not apply to a cause of action that may be brought under s. 787.061.

Section 4. Section 509.210, Florida Statutes, is created to read:

509.210 Training of public food service and lodging establishment personnel regarding human trafficking.—

(1) In consultation with the Attorney General, human trafficking victim advocacy organizations, and state and national restaurant and lodging associations, the division shall adopt by rule one or more educational programs designed to train employees of public food service and lodging establishments in the identification and reporting of suspected human trafficking activity. The owner or operator of a public food service or lodging establishment may also adopt its own educational program for this purpose, which must be submitted to the division and approved by it for the owner's or operator's use. The division shall approve such a program for the use by the owner or operator and its affiliated establishments if it is determined to be at least as comprehensive and effective as the other programs adopted by the division by rule. The rule must require the owner or operator of each public food service or lodging establishment to train those classes of employee reasonably expected to routinely interact with guests, using an approved educational program, within a reasonable time after hiring, and at appropriate intervals thereafter, and to maintain documentation of such training for routine inspection. If the



654858

owner or operator fails to comply with the rule's requirements,  
the division shall impose administrative sanctions pursuant to  
s. 509.261.

(2) All public food service and lodging establishments  
shall provide the division with proof of employee training upon  
request, including, but not limited to, at the time of any  
division inspection of the establishment. Proof of training for  
each employee shall include the name, date of birth, and job  
title of the trained employee, the date the training occurred,  
and the approved educational program used.

Section 5. The Division of Hotels and Restaurants of the  
Department of Business and Professional Regulation may adopt  
emergency rules pursuant to s. 120.54, Florida Statutes, to  
implement s. 509.210, Florida Statutes, as created by this act.  
The Legislature finds emergency rulemaking power necessary for  
the preservation of the rights and welfare of the people of  
Florida and to address the scourge of human trafficking in our  
state. The adoption of emergency rules pursuant to this section  
is exempt from s. 120.54(4)(a), Florida Statutes.

Section 6. Subsections (7) and (9) of section 95.11,  
Florida Statutes, are amended to read:

95.11 Limitations other than for the recovery of real  
property.—Actions other than for recovery of real property shall  
be commenced as follows:

(7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded  
on alleged abuse, as defined in s. 39.01, s. 415.102, or s.  
984.03, ~~or~~ incest, as defined in s. 826.04, or human  
trafficking, as defined in s. 787.06, may be commenced at any  
time within 7 years after the age of majority, or within 4 years





654858

after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

(9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An action related to an act constituting a violation of s. 794.011 or brought pursuant to s. 787.061 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.

Section 7. This act shall take effect October 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 victims of human trafficking;  
providing a short title; creating s. 787.061, F.S.;  
providing legislative findings; defining terms;  
providing a civil cause of action for victims of human  
trafficking against a trafficker or facilitator;  
providing procedures and requirements for bringing a  
claim; providing for damages, penalties, punitive  
damages, attorney fees, expenses, and costs; requiring  
a court to impose civil penalties in certain  
circumstances; providing for the deposit or  
distribution of civil penalties; requiring the equal  
distribution of punitive damages between victims and a



654858

specified trust fund; requiring the remittance of  
certain collected moneys to the Department of Revenue  
for deposit into a certain trust fund; providing that  
such actions are subject to specified statutes of  
limitations; providing an affirmative defense for  
owners or operators of public lodging establishments  
under certain circumstances; amending s. 772.104,  
F.S.; specifying that certain provisions concerning  
civil actions for criminal practices do not apply to  
actions that may be brought under s. 787.061, F.S.;  
creating s. 509.210, F.S.; requiring educational  
programs for employees of public food service and  
lodging establishments regarding human trafficking;  
specifying proof of compliance requirements for  
establishments; requiring rulemaking; providing  
emergency rulemaking authority and an exemption from  
specified provisions for the Division of Hotels and  
Restaurants; amending s. 95.11, F.S.; conforming  
provisions to changes made by the act; providing an  
effective date.

By the Committee on Children, Families, and Elder Affairs; and  
Senators Book and Campbell

586-03130-18

20181044c1

A bill to be entitled

An act relating to victims of human trafficking;  
providing a short title; creating s. 787.061, F.S.;  
providing legislative findings; defining terms;  
providing a civil cause of action for victims of human  
trafficking against a trafficker or facilitator;  
providing procedures and requirements for bringing a  
claim; providing for damages, penalties, punitive  
damages, attorney fees, expenses, and costs; requiring  
a court to impose civil penalties in certain  
circumstances; providing for the deposit or  
distribution of civil penalties; requiring the equal  
distribution of punitive damages between victims and  
the trust fund; providing that such actions are  
subject to specified statute of limitations; providing  
an affirmative defense for owners or operators of  
public lodging establishments under certain  
circumstances; amending s. 772.104, F.S.; specifying  
that certain provisions concerning civil actions for  
criminal practices do not apply to actions that may be  
brought under s. 787.061, F.S.; amending s. 95.11,  
F.S.; conforming provisions to changes made by the  
act; providing an effective date.

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

Section 1. This act may be cited as the "Civil Cause of  
Action for Victims of Human Trafficking Act."

Section 2. Section 787.061, Florida Statutes, is created to

Page 1 of 6

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

586-03130-18

20181044c1

read:

787.061 Civil actions by victims of human trafficking.-

(1) FINDINGS.-The Legislature finds that, to achieve the  
intent of the Legislature relating to human trafficking  
expressed in s. 787.06(1)(d), it is necessary to provide a civil  
cause of action for the recovery of compensatory and punitive  
damages and costs.

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

(a) "Facilitator" means a person who knowingly, or in  
willful blindness, assists or provides goods or services to a  
trafficker which assist or enable the trafficker to carry out  
human trafficking. The term does not include a person who  
facilitates human trafficking as a result of force, threat, or  
coercion.

(b) "Human trafficking" has the same meaning as provided in  
s. 787.06.

(c) "Trafficker" means any person who knowingly engages in  
human trafficking, attempts to engage in human trafficking, or  
benefits financially by receiving anything of value from  
participation in a venture that has subjected a person to human  
trafficking.

(d) "Trust fund" means the Trust Fund for Victims of Human  
Trafficking and Prevention created in s. 787.0611.

(e) "Venture" means any group of two or more individuals  
associated in fact, whether or not a legal entity.

(f) "Victim of human trafficking" means a person subjected  
to coercion, as defined in s. 787.06, or by any other means, for  
the purpose of being used in human trafficking; a child under 18  
years of age subjected to human trafficking; or an individual

Page 2 of 6

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

586-03130-18

20181044c1

subjected to human trafficking as defined by federal law.

(g) "Willful blindness" exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the facts avoided can reasonably and fairly be imputed to the person who avoided confirming it.

(3) CIVIL CAUSE OF ACTION.-

(a) A victim of human trafficking has a civil cause of action against the trafficker or facilitator who victimized her or him and may recover damages as provided in this section.

(b) The action may be brought in any court of competent jurisdiction, and the standard of proof is a preponderance of the evidence.

(c) A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs.

1. Economic damages include, but are not limited to, past and future medical and mental health expenses; repatriation expenses, when a victim elects repatriation; and all other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

2. Noneconomic damages are nonfinancial losses that would not have occurred but for the victimization, and include pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life,

586-03130-18

20181044c1

and other nonfinancial losses.

(d) The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking, except that a victim may not recover under both this section and s. 772.104(2). If a parent or legal guardian knowingly or through willful blindness trafficked the victim, facilitated such trafficking, or otherwise participated in the human trafficking of the victim, such parent or legal guardian is not entitled to damages or distributions under this section.

(e) If a victim prevails in an action under this section, in addition to any other award imposed, the court shall assess a civil penalty against the defendant in the amount of \$50,000. This penalty is in addition to and not in lieu of any other damage award. The civil penalty must be assessed by the court and may not be disclosed to the jury. Proceeds from this civil penalty shall be deposited into the trust fund.

(f) If one or more law enforcement agencies rescued the victim or located the property where the abuse or exploitation of a victim or victims occurred, the court must impose a civil penalty against the defendant in the amount of \$50,000 and award the penalty to the law enforcement agencies to fund future efforts to combat human trafficking. The court must equitably distribute this civil penalty among the law enforcement agencies.

(g) The court shall have specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution and aggregate jurisdiction.

(h) Notwithstanding any other law to the contrary, the

586-03130-18 20181044c1

amount of punitive damages awarded under this section shall be  
equally divided between the victim and the trust fund.

(4) STATUTE OF LIMITATIONS.—The statute of limitations as  
specified in ss. 95.11(7) and 95.11(9) is applicable to actions  
brought under this section.

(5) AFFIRMATIVE DEFENSE.—In any action brought under this  
section against the owner or operator of a public lodging  
establishment based on a claim of vicarious liability, it is an  
affirmative defense to damages recoverable under such claim if  
the owner or operator proves by the preponderance of evidence  
that:

(a) It required management employees and employees of the  
establishment reasonably expected to routinely interact with  
guests to complete an educational program designed to  
effectively train such employees in the identification,  
prevention, and reporting of suspected human trafficking within  
30 days after hiring or by January 1, 2019, whichever occurs  
later;

(b) It had in place an effective employee protocol or  
employee code of conduct to prevent, detect, and report  
suspected human trafficking; and

(c) Any employee alleged in the action to have been  
facilitators of, or otherwise participants in, human  
trafficking, complied with the recommendations and practices  
suggested or required in the training, protocols, or policies  
required in this subsection.

Section 3. Subsection (4) is added to section 772.104,  
Florida Statutes, to read:

772.104 Civil cause of action.—

586-03130-18 20181044c1

(4) This section does not apply to a cause of action that  
may be brought under s. 787.061.

Section 4. Subsections (7) and (9) of section 95.11,  
Florida Statutes, are amended to read:

95.11 Limitations other than for the recovery of real  
property.—Actions other than for recovery of real property shall  
be commenced as follows:

(7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded  
on alleged abuse, as defined in s. 39.01, s. 415.102, or s.  
984.03, ~~or~~ incest, as defined in s. 826.04, or human  
trafficking, as defined in s. 787.06, may be commenced at any  
time within 7 years after the age of majority, or within 4 years  
after the injured person leaves the dependency of the abuser, or  
within 4 years from the time of discovery by the injured party  
of both the injury and the causal relationship between the  
injury and the abuse, whichever occurs later.

(9) SEXUAL BATTERY OFFENSES ON VICTIMS UNDER AGE 16.—An  
action related to an act constituting a violation of s. 794.011  
or brought pursuant to s. 787.061 involving a victim who was  
under the age of 16 at the time of the act may be commenced at  
any time. This subsection applies to any such action other than  
one which would have been time barred on or before July 1, 2010.

Section 5. This act shall take effect October 1, 2018.

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1226

INTRODUCER: Criminal Justice Committee; and Senators Book and Hutson

SUBJECT: Sentencing for Sexual Offenders and Sexual Predators

DATE: February 23, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	<b>Fav/CS</b>
2. Forbes	Hansen	AP	<b>Favorable</b>
3. Erickson	Phelps	RC	<b>Pre-Meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1226 modifies definitions of the terms “permanent residence,” “temporary residence,” and “transient residence.” These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3 days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The bill also requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws. The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

According to the Florida Department of Law Enforcement, the bill could have a fiscal impact on sheriff’s offices if they have to expand registration hours. The Department of Corrections states that the impact on that department is indeterminate. See Section V. Fiscal Impact Statement.

## II. Present Situation:

### Florida's Sexual Predator and Sexual Offender Registration Laws

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender.<sup>1</sup> The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes<sup>2</sup> and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;<sup>3</sup>
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.<sup>4</sup>

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997, from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.<sup>5</sup>

Requirements for registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration may differ.<sup>6</sup> Registration requirements may also

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<sup>1</sup> Sections 775.21 and 943.0435, F.S.

<sup>2</sup> Sections 775.21-775.25, 943.043-943.0437, 944.606, 944.607, and 985.481-985.4815, F.S.

<sup>3</sup> Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

<sup>4</sup> Section 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

<sup>5</sup> Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the DOC's supervision, also define the term "sexual offender."

<sup>6</sup> All sexual predators, sexual offenders convicted for offenses specified in s. 943.0435(14)(b), F.S., and juvenile sexual offenders required to register per s. 943.0435(1)(h)1.d., F.S., for certain offenses must reregister four times per year (on the birth month of the sexual predator or qualifying sexual offender and every third month thereafter). Sections 775.21(8)(a), 943.0435(14)(b), 944.607(13)(a), and 985.4815(13)(a), F.S. All other sexual offenders are required to reregister two times

differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under the DOC's or the DJJ's supervision, or in a residential commitment program under the DJJ.

Sexual predators and sexual offenders are required to report certain information, including residence information, at registration and reregistration (see discussion, *infra*).

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders, including residence information.<sup>7</sup> Further, local law enforcement agencies may also provide access to this information, such as providing a link to the state public registry webpage.

### **Reporting Residence Information During Registration and Reregistration**

Section 775.21, F.S., defines terms relevant to the reporting of residence information by sexual predators and sexual offenders (registrant):

- “Permanent residence” means a place where the person abides, lodges, or resides for 5 or more consecutive days.<sup>8</sup>
- “Temporary residence” means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 5 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.<sup>9</sup>
- “Transient residence” means a county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address.<sup>10</sup>

Provided below is a description of the registration and reregistration processes and the reporting of residence information for sexual predators and sexual offenders who are not in custody or under supervision of the DOC, the DJJ, or another agency.<sup>11</sup>

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per year (on the birth month of the qualifying sexual offender and during the sixth month following the sexual offender's birth month). Section 943.0435(14)(a), F.S.

<sup>7</sup> The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. *About Us* (updated October 1, 2016), Florida Department of Law Enforcement, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on Feb. 1, 2018). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at an institute of higher education. *See* <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on Feb. 1, 2018).

<sup>8</sup> Section 775.21(2)(k), F.S.

<sup>9</sup> Section 775.21(2)(n), F.S.

<sup>10</sup> Section 775.21(2)(o), F.S.

<sup>11</sup> Registration and reregistration and reporting requirements for persons in those statuses are addressed not only in ss. 775.21 and 934.0435, F.S., but also in ss. 944.606, 944.607, 985.481, and 985.4815, F.S.



Upon initial registration, a registrant who is a sexual offender must report in person at the sheriff's office:

- In the county in which the registrant establishes or maintains a residence within 48 hours after:
  - Establishing a residence in this state; or
  - Being released from the custody, control, or supervision of the DOC or from the custody of a private correctional facility; or
- In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration, if the offender is not in the custody or control of, or under the supervision of, the DOC, or is not in the custody of a private correctional facility.<sup>12</sup>

A registrant who is a sexual predator must register in person:

- At the sheriff's office in the county where he or she establishes or maintains a residence within 48 hours after establishing or maintaining a residence in this state; and
- At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.<sup>13</sup>

At this registration, the registrant must report specified information, including residence information.<sup>14</sup>

Generally, within 48 hours after this registration, a registrant must report in person at a driver license office of the DHSMV. At the driver license office, the registrant must, if otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The registrant must provide any of the information required to be provided at initial registration, if requested. Each time a registrant's driver license or identification card is subject to renewal, and, without regard to the status of the registrant's driver license or identification card, within 48 hours after any change in the offender's residence, the registrant must report in person to a driver license office, and is subject to the same reporting requirements. A registrant who is unable to secure or update a driver license or an identification card with the DHSMV must report any change in the registrant's residence within 48 hours after the change to the sheriff's office in the county where the registrant resides or is located and provide confirmation that he or she reported such information to the DHSMV, but this reporting requirement does not negate the requirement for a registrant to obtain a Florida driver license or an identification card.<sup>15</sup>

A registrant who vacates a residence and fails to establish or maintain another one must, within 48 hours after vacating the residence, report in person to the sheriff's office of the county in which he or she is located. The registrant must specify the date upon which he or she intends to or did vacate the residence, and provide or update all of the registration information required to be reported at initial registration. The registrant must provide an address for the residence or

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<sup>12</sup> Section 943.0435(2)(a), F.S.

<sup>13</sup> Section 775.21(6)(e) F.S.

<sup>14</sup> Sections 775.21(6)(a) and (e) and 943.0435(2), F.S.

<sup>15</sup> Sections 775.21(6)(f) and (g)1. and 943.0435(3) and (4)(a), F.S.

other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.<sup>16</sup>

A registrant must report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The registrant must provide the addresses and locations where he or she maintains a transient residence. A registrant who remains at a residence after reporting his or her intent to vacate the residence must, within 48 hours after the date upon which the registrant said he or she would or did vacate such residence, report in person to the agency to which he or she reported vacating the residence. The failure of a registrant to make this report is a second degree felony.<sup>17</sup> The failure of a registrant who maintains a transient residence to report in person to the sheriff's office every 30 days (as previously described) is a third degree felony.<sup>18</sup>

A registrant who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than this state must report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The registrant must provide to the sheriff the address, municipality, county, state, and country of intended residence. The failure of a registrant to provide his or her intended place of residence is a third degree felony.<sup>19</sup>

A registrant who indicates his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country and later decides to remain in this state must, within 48 hours after the date upon which the registrant indicated he or she would leave this state, report in person to the sheriff to which the registrant reported the intended change of residence, and report his or her intent to remain in this state. A registrant who reports his or her intent to establish a residence in another state, a jurisdiction other than this state, or another country but who remains in this state without reporting to the sheriff (as previously described) commits a second degree felony.<sup>20</sup>

A registrant must report in person to the sheriff's office in the county in which he or she resides or is otherwise located to reregister. Reregistration includes reporting any changes to residence information. Any registrant who fails to report in person as required at the sheriff's office or fails to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence commits a third degree felony.<sup>21</sup>

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<sup>16</sup> Sections 775.21(6)(g)2.a. and 943.0435(4)(b)1., F.S.

<sup>17</sup> A second degree felony is punishable by a prison sentence not exceeding 15 years, a fine not exceeding \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>18</sup> Sections 775.21(6)(g)2.b., 3., and 4., and 943.0435(4)(b)2., (c), and (d), F.S. A third degree felony is punishable by a prison sentence not exceeding 5 years, a fine not exceeding \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>19</sup> Sections 775.21(6)(i) and 943.0435(7), F.S.

<sup>20</sup> Sections 775.21(6)(j) and 943.0435(8), F.S.

<sup>21</sup> Sections 775.21(8)(a) and (10)(a), and 943.0435(14), 944.607(12), and 985.4815(13). F.S.

### **General Penalties under Sections 775.21 and 943.0435, F.S.**

Sections 775.21 and 943.0435, F.S., contain a general penalties provision. Section 775.21(10)(a), F.S., provides that it is a third degree felony for a sexual predator to:

- Fail to register;
- Fail, after registration, to maintain, acquire, or renew a driver license or an identification card;
- Fail to provide required location information;
- Fail to provide electronic mail addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name;
- Fail to provide all home telephone numbers and cellular telephone numbers, employment information, change in status at an institution of higher education, or change-of-name information;
- Fail to make a required report in connection with vacating a permanent residence;
- Fail to reregister as required;
- Fail to respond to any address verification correspondence from the FDLE within 3 weeks of the date of the correspondence;
- Knowingly provide false registration information by act or omission; or
- Otherwise fail, by act or omission, to comply with the requirements of s. 775.21, F.S., or s. 943.0435, F.S., as applicable.

Section 943.0435(9)(a), F.S., provides that a sexual offender who does not comply with the requirements of s. 943.0435, F.S., commits a third degree felony.

### **Community Control**

Community control” is a form of intensive, supervised custody<sup>22</sup> in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced.<sup>23</sup> “As with probation, violation of any community control condition may result in revocation by the court and imposition of any sentence which it might have imposed before placing the offender on community control supervision. Many of the offenders who are placed on community control are prison diversions.”<sup>24</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 775.21, F.S., to modify definitions of the terms “permanent residence,” “temporary residence,” and “transient residence.” These terms are relevant to reporting residence information under Florida laws requiring reporting of certain information by those persons required to register as a sexual predator or sexual offender. The bill decreases from 5 days to 3

<sup>22</sup> The DOC describes it as “form of intensive supervised house arrest in the community[.]” *Community Supervision*, Florida Department of Corrections, available at [http://www.dc.state.fl.us/pub/annual/9798/stats/stat\\_cs.html](http://www.dc.state.fl.us/pub/annual/9798/stats/stat_cs.html) (last visited on Feb. 1, 2018).

<sup>23</sup> Section 948.001(3), F.S.

<sup>24</sup> *Supra*, n. 22.

days the time period in which a person must abide, lodge, or reside at a place in order to meet any of the definitions for reporting purposes.

The definitions of these terms and corresponding changes to the definitions also apply to s. 943.435, F.S.<sup>25</sup>

The bill also amends the general penalties provisions in ss. 775.21 and 943.0435, F.S., to require mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of either of these statutes if the court does not impose a prison sentence. These felonies punish various acts that constitute noncompliance with the requirements of the registry laws (see “Present Situation” section of this analysis, *supra*). The bill excludes mandatory community control for an offense relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.<sup>26</sup>

Mandatory community control with electronic monitoring shall be imposed as follows:

- For a first offense committed on or after July 1, 2018, a mandatory minimum term of 6 months of community control with electronic monitoring;
- For a second offense committed on or after July 1, 2018, a mandatory minimum term of 1 year of community control with electronic monitoring; and
- For a third or subsequent offense committed on or after July 1, 2018, a mandatory minimum term of 2 years of community control with electronic monitoring.

Felony violations of ss. 775.21 and 943.0435, F.S., are ranked in Level 7 of the offense severity ranking chart of the Criminal Punishment Code.<sup>27</sup> A Level 7 offense scores sufficient sentence points to require a prison sentence,<sup>28</sup> which a sentencing court must impose absent mitigation of a prison sentence.<sup>29</sup> Therefore, if the court does not impose a prison sentence, and the mandatory community control provisions of the bill apply, this is because the court imposed a downward departure sentence.

The bill takes effect on July 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>25</sup> Section 943.0435(1)(f), F.S.

<sup>26</sup> See ss. 775.21(10)(g) and 943.0435(13), F.S. This prohibited act is not committed by a sexual predator or sexual offender. The act involves a person unlawfully facilitating the sexual predator's or sexual offender's noncompliance with registration requirements by the person withholding important information, providing false information, or harboring or concealing the noncompliant sexual predator or sexual offender.

<sup>27</sup> Section 921.0022(3)(g), F.S.

<sup>28</sup> A Level 7 offense scores 56 sentence points. Section 921.0024(1)(a), F.S. When total sentence points exceed 44 points, the lowest permissible sentence is a prison sentence. Section 921.0024(2), F.S.

<sup>29</sup> The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

**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:**

According to the FDLE, the bill could have a fiscal impact on sheriff's offices if they have to expand registration hours.<sup>30</sup>

The DOC states that probation officers "who supervise sex offenders on community control with electronic monitoring have reduced caseloads due to the workload associated with this type of supervision and the monitoring required. Impact is indeterminate at this time as we are unable to estimate how many offenders will be sentenced under this requirement."<sup>31</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill also reenacts the following sections of the Florida Statutes: 775.25, 944.606, 985.481, and 985.4815, F.S.

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<sup>30</sup> 2018 FDLE Legislative Bill Analysis (SB 1226) (Dec. 15, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

<sup>31</sup> 2018 Agency Legislative Bill Analysis (SB 1226) (Jan. 19, 2018), Department of Corrections (on file with the Senate Committee on Criminal Justice).

**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 February 6, 2018:**

The committee substitute:

- Requires mandatory community control with electronic monitoring for sexual predators and sexual offenders who commit a felony violation of the registry laws if the court does not impose a prison sentence.
- Excludes from mandatory community control offenses relating to harboring a sexual predator or sexual offender in noncompliance with registration requirements.

- B. **Amendments:**

None.

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

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By the Committee on Criminal Justice; and Senators Book and Hutson

591-02892-18

20181226c1

1 A bill to be entitled  
 2 An act relating to sentencing for sexual offenders and  
 3 sexual predators; amending s. 775.21, F.S.; redefining  
 4 the terms "permanent residence," "temporary  
 5 residence," and "transient residence" by decreasing  
 6 the amount of days a person abides, lodges, or resides  
 7 in a certain place to qualify for that type of  
 8 residency category; revising existing criminal  
 9 penalties for sexual predators to require mandatory  
 10 minimum terms of community control with electronic  
 11 monitoring for first, second, and third and subsequent  
 12 felony violations if the court does not impose a  
 13 prison sentence; amending s. 943.0435, F.S.; revising  
 14 existing criminal penalties for sexual offenders to  
 15 require mandatory minimum terms of community control  
 16 with electronic monitoring for first, second, and  
 17 third and subsequent felony violations if the court  
 18 does not impose a prison sentence; reenacting s.  
 19 775.25, F.S., relating to prosecutions for certain  
 20 acts or omissions, to incorporate the amendments made  
 21 to ss. 775.21 and 943.0435, F.S., in references  
 22 thereto; reenacting ss. 944.606(1)(d), 985.481(1)(d),  
 23 and 985.4815(1)(f), F.S., relating to sexual offenders  
 24 and required notifications upon release, sexual  
 25 offenders adjudicated delinquent and required  
 26 notifications upon release, and notification to the  
 27 Department of Law Enforcement of information on  
 28 juvenile sexual offenders, respectively, to  
 29 incorporate the amendment made to s. 775.21, F.S., in

Page 1 of 17

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591-02892-18

20181226c1

30 references thereto; providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Paragraphs (k), (n), and (o) of subsection (2)  
 35 and subsection (10) of section 775.21, Florida Statutes, are  
 36 amended, and paragraph (d) of subsection (5) and paragraphs (g)  
 37 and (i) of subsection (6) of that section are republished, to  
 38 read:  
 39 775.21 The Florida Sexual Predators Act.—  
 40 (2) DEFINITIONS.—As used in this section, the term:  
 41 (k) "Permanent residence" means a place where the person  
 42 abides, lodges, or resides for 3 5 or more consecutive days.  
 43 (n) "Temporary residence" means a place where the person  
 44 abides, lodges, or resides, including, but not limited to,  
 45 vacation, business, or personal travel destinations in or out of  
 46 this state, for a period of 3 5 or more days in the aggregate  
 47 during any calendar year and which is not the person's permanent  
 48 address or, for a person whose permanent residence is not in  
 49 this state, a place where the person is employed, practices a  
 50 vocation, or is enrolled as a student for any period of time in  
 51 this state.  
 52 (o) "Transient residence" means a county where a person  
 53 lives, remains, or is located for a period of 3 5 or more days  
 54 in the aggregate during a calendar year and which is not the  
 55 person's permanent or temporary address. The term includes, but  
 56 is not limited to, a place where the person sleeps or seeks  
 57 shelter and a location that has no specific street address.  
 58 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated

Page 2 of 17

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591-02892-18

20181226c1

as a sexual predator as follows:

(d) A person who establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person was a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender, shall register in the manner provided in s. 943.0435 or s. 944.607 and shall be subject to community and public notification as provided in s. 943.0435 or s. 944.607. A person who meets the criteria of this section is subject to the requirements and penalty provisions of s. 943.0435 or s. 944.607 until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(6) REGISTRATION.—

(g)1. Each time a sexual predator's driver license or identification card is subject to renewal, and, without regard

591-02892-18

20181226c1

to the status of the predator's driver license or identification card, within 48 hours after any change of the predator's residence or change in the predator's name by reason of marriage or other legal process, the predator shall report in person to a driver license office and is subject to the requirements specified in paragraph (f). The Department of Highway Safety and Motor Vehicles shall forward to the department and to the Department of Corrections all photographs and information provided by sexual predators. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual predators as provided in this section. A sexual predator who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in paragraph (f) and this paragraph shall also report any change of the predator's residence or change in the predator's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the predator resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this subparagraph do not negate the requirement for a sexual predator to obtain a Florida driver license or identification card as required by this section.

2.a. A sexual predator who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall,



591-02892-18

20181226c1

within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator shall specify the date upon which he or she intends to or did vacate such residence. The sexual predator shall provide or update all of the registration information required under paragraph (a). The sexual predator shall provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

b. A sexual predator shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual predator must provide the addresses and locations where he or she maintains a transient residence. Each sheriff's office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this sub-subparagraph. Reporting to the sheriff's office as required by this sub-subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this sub-subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual

591-02892-18

20181226c1

predator to the department.

3. A sexual predator who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the predator indicated he or she would or did vacate such residence, report in person to the sheriff's office to which he or she reported pursuant to subparagraph 2. for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under subparagraph 2. but fails to make a report as required under this subparagraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. The failure of a sexual predator who maintains a transient residence to report in person to the sheriff's office every 30 days as required by sub-subparagraph 2.b. is punishable as provided in subsection (10).

5.a. A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to

591-02892-18

20181226c1

the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

b. A sexual predator shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual predator is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual predator is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported in this sub-subparagraph shall be reported within 48 hours after the change.

c. The department shall establish an online system through which sexual predators may securely access, submit, and update all electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of

591-02892-18

20181226c1

higher education information.

(i) A sexual predator who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual predator 21 days before the departure date must be reported to the sheriff's office as soon as possible before departure. The sexual predator shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual predator shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual predator. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual predator's intended residence. The failure of a sexual predator to provide his or her intended place of residence is punishable as provided in subsection (10).

(10) PENALTIES.—

(a) Except as otherwise specifically provided, a sexual predator who fails to register; who fails, after registration, to maintain, acquire, or renew a driver license or an

591-02892-18 20181226c1

233 identification card; who fails to provide required location  
 234 information; who fails to provide electronic mail addresses,  
 235 Internet identifiers, and each Internet identifier's  
 236 corresponding website homepage or application software name; who  
 237 fails to provide all home telephone numbers and cellular  
 238 telephone numbers, employment information, change in status at  
 239 an institution of higher education, or change-of-name  
 240 information; who fails to make a required report in connection  
 241 with vacating a permanent residence; who fails to reregister as  
 242 required; who fails to respond to any address verification  
 243 correspondence from the department within 3 weeks of the date of  
 244 the correspondence; who knowingly provides false registration  
 245 information by act or omission; or who otherwise fails, by act  
 246 or omission, to comply with the requirements of this section  
 247 commits a felony of the third degree, punishable as provided in  
 248 s. 775.082, s. 775.083, or s. 775.084.

249 (b) A sexual predator who has been convicted of or found to  
 250 have committed, or has pled nolo contendere or guilty to,  
 251 regardless of adjudication, any violation, or attempted  
 252 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where  
 253 the victim is a minor; s. 794.011, excluding s. 794.011(10); s.  
 254 794.05; former s. 796.03; former s. 796.035; s. 800.04; s.  
 255 827.071; s. 847.0133; s. 847.0135(5); s. 847.0145; or s.  
 256 985.701(1); or a violation of a similar law of another  
 257 jurisdiction when the victim of the offense was a minor, and who  
 258 works, whether for compensation or as a volunteer, at any  
 259 business, school, child care facility, park, playground, or  
 260 other place where children regularly congregate, commits a  
 261 felony of the third degree, punishable as provided in s.

591-02892-18 20181226c1

262 775.082, s. 775.083, or s. 775.084.

263 (c) For a felony violation of this section, excluding  
 264 paragraph (10)(g), committed on or after July 1, 2018, if the  
 265 court does not impose a prison sentence, the court shall impose  
 266 a mandatory minimum term of community control, as defined in s.  
 267 948.001, as follows:

268 1. For a first offense, a mandatory minimum term of 6  
 269 months of community control with electronic monitoring.

270 2. For a second offense, a mandatory minimum term of 1 year  
 271 of community control with electronic monitoring.

272 3. For a third or subsequent offense, a mandatory minimum  
 273 term of 2 years of community control with electronic monitoring.

274 (d) ~~(e)~~ Any person who misuses public records information  
 275 relating to a sexual predator, as defined in this section, or a  
 276 sexual offender, as defined in s. 943.0435 or s. 944.607, to  
 277 secure a payment from such a predator or offender; who knowingly  
 278 distributes or publishes false information relating to such a  
 279 predator or offender which the person misrepresents as being  
 280 public records information; or who materially alters public  
 281 records information with the intent to misrepresent the  
 282 information, including documents, summaries of public records  
 283 information provided by law enforcement agencies, or public  
 284 records information displayed by law enforcement agencies on  
 285 websites or provided through other means of communication,  
 286 commits a misdemeanor of the first degree, punishable as  
 287 provided in s. 775.082 or s. 775.083.

288 (e) ~~(d)~~ A sexual predator who commits any act or omission in  
 289 violation of this section may be prosecuted for the act or  
 290 omission in the county in which the act or omission was

591-02892-18 20181226c1

committed, in the county of the last registered address of the sexual predator, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator, in the county where the sexual predator was released from incarceration, or in the county of the intended address of the sexual predator as reported by the predator prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

(f) ~~(e)~~ An arrest on charges of failure to register, the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register when the predator has been provided and advised of his or her statutory obligation to register under subsection (6). A sexual predator's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual predator charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual predator who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(f)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual predator of criminal liability for the failure to register.

591-02892-18 20181226c1

(g) Any person who has reason to believe that a sexual predator is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual predator in eluding a law enforcement agency that is seeking to find the sexual predator to question the sexual predator about, or to arrest the sexual predator for, his or her noncompliance with the requirements of this section:

1. Withholds information from, or does not notify, the law enforcement agency about the sexual predator's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual predator;

2. Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual predator;

3. Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual predator; or

4. Provides information to the law enforcement agency regarding the sexual predator which the person knows to be false information,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This paragraph does not apply if the sexual predator is incarcerated in or is in the custody of a state correctional facility, a private correctional facility, a local jail, or a federal correctional facility.

Section 2. Subsection (9) of section 943.0435, Florida Statutes, is amended, and paragraph (f) of subsection (1), paragraph (d) of subsection (4), and subsection (7) of that

591-02892-18

20181226c1

section are republished, to read:

943.0435 Sexual offenders required to register with the department; penalty.—

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

(f) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

(4)

(d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel.

591-02892-18

20181226c1

The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(9) (a) Except as otherwise specifically provided, a sexual offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) For a felony violation of this section, excluding subsection (13), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months of community control with electronic monitoring.

2. For a second offense, a mandatory minimum term of 1 year of community control with electronic monitoring.

3. For a third or subsequent offense, a mandatory minimum term of 2 years of community control with electronic monitoring.

(c) ~~(b)~~ A sexual offender who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for

591-02892-18

20181226c1

designating a person as a sexual offender, in the county where the sexual offender was released from incarceration, or in the county of the intended address of the sexual offender as reported by the offender prior to his or her release from incarceration.

(d) ~~(e)~~ An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under subsection (2), the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register.

~~(d)~~ Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

Section 3. For the purpose of incorporating the amendments made by this act to sections 775.21 and 943.0435, Florida Statutes, in references thereto, section 775.25, Florida Statutes, is reenacted to read:

775.25 Prosecutions for acts or omissions.—A sexual

591-02892-18

20181226c1

predator or sexual offender who commits any act or omission in violation of s. 775.21, s. 943.0435, s. 944.605, s. 944.606, s. 944.607, or former s. 947.177 may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual predator or sexual offender, in the county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual predator or sexual offender, in the county where the sexual predator or sexual offender was released from incarceration, or in the county of the intended address of the sexual predator or sexual offender as reported by the predator or offender prior to his or her release from incarceration. In addition, a sexual predator may be prosecuted for any such act or omission in the county in which he or she was designated a sexual predator.

Section 4. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 944.606, Florida Statutes, is reenacted to read:

944.606 Sexual offenders; notification upon release.—

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

(d) "Permanent residence," "temporary residence," and "transient residence" have the same meaning as provided in s. 775.21.

Section 5. For the purpose of incorporating the amendment made by this act to section 775.21, Florida Statutes, in a reference thereto, paragraph (d) of subsection (1) of section 985.481, Florida Statutes, is reenacted to read:

985.481 Sexual offenders adjudicated delinquent;

591-02892-18

20181226c1

notification upon release.—

(1) As used in this section:

(d) "Permanent residence," "temporary residence," and  
"transient residence" have the same meaning as provided in s.  
775.21.

Section 6. For the purpose of incorporating the amendment  
made by this act to section 775.21, Florida Statutes, in a  
reference thereto, paragraph (f) of subsection (1) of section  
985.4815, Florida Statutes, is reenacted to read:

985.4815 Notification to Department of Law Enforcement of  
information on juvenile sexual offenders.—

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

(f) "Permanent residence," "temporary residence," and  
"transient residence" have the same meaning as provided in s.  
775.21.

Section 7. This act shall take effect July 1, 2018.

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1302

INTRODUCER: Senator Brandes

SUBJECT: Consumer Report Security Freezes

DATE: February 21, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Johnson	Knudson	BI	<b>Favorable</b>
2. Harmsen	McKay	CM	<b>Favorable</b>
3. Johnson	Phelps	RC	<b>Pre-meeting</b>

## I. Summary:

SB 1302 prohibits consumer reporting agencies (CRAs) from charging fees for placing, removing, or temporarily lifting a security freeze on a consumer report. A security freeze prevents a CRA from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the consumer's express authorization. Currently, Florida law permits a CRA to charge a consumer up to \$10 to institute a credit freeze.

## II. Present Situation:

### Data Breaches and Identity Theft

In recent years, data breaches<sup>1</sup> have increased in frequency, scale, sophistication, and severity of impact; as a result, identity theft has been rampant. In late 2013, Target experienced a data breach that provided cybercriminals with access to 41 million customer payment card accounts<sup>2</sup> (customer name, credit or debit card number, and the card's expiration date) and contact information for more than 60 million Target customers.<sup>3</sup> In 2017, Equifax, one of the three major CRAs in the United States, reported that the sensitive personal information of an estimated 143

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<sup>1</sup> A data breach occurs when a cybercriminal successfully infiltrates a data source and extracts sensitive information. This can be done physically by accessing a computer or network to steal local files, or by bypassing network security remotely. See TRENDMICRO, *Data Breaches 101* (Oct. 23, 2015) available at

<https://www.trendmicro.com/vinfo/us/security/news/cyber-attacks/data-breach-101> (last visited Feb. 9, 2018).

<sup>2</sup> Target to pay \$18.5M for 2013 data breach that affected 41 million consumers, (May 23, 2017), available at <https://www.usatoday.com/story/money/2017/05/23/target-pay-185m-2013-data-breach-affected-consumers/102063932/> (last visited Feb. 9, 2018).

<sup>3</sup> Federal Trade Commission, *Are you affected by the recent Target hack?* <https://www.consumer.ftc.gov/blog/2013/12/are-you-affected-recent-target-hack> (last visited Feb. 9, 2018).



million American consumers<sup>4</sup> was disclosed in a data breach earlier that year. The cybercriminals accessed the names, Social Security numbers, birth dates, and addresses and, in some instances, consumers' driver's license numbers. They also accessed credit card numbers of about 209,000 consumers and dispute documents with personal identifying information of about 182,000 consumers.<sup>5</sup>

In response to identity theft, or as a precautionary action, consumers may place a security freeze on their credit reports. Such a freeze can help stop identity thieves from opening new accounts under a stolen identity by preventing new creditors from accessing a credit file.<sup>6</sup>

### **Consumer Reports and Consumer Reporting Agencies**

Consumer reports include any written, oral, or other communication of any information by a CRA on a consumer's credit worthiness, credit standing, credit capacity, general reputation, personal characteristics, or mode of living.<sup>7</sup> Consumer reports generally list a consumer's name, address, Social Security number, credit cards, loans, debts, and history of timely bill payment.<sup>8</sup> Information contained in such reports is used as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes; and other purposes authorized under federal law.<sup>9</sup>

CRAs assemble or evaluate consumer credit information or other information on consumers and furnish consumer reports to third parties.<sup>10</sup> CRAs may provide consumer credit reports and credit scores to lenders, retail stores, employers, residential real estate management companies, payment processors, retail stores, debt buyers and collectors, insurance companies, communications and utility companies.<sup>11</sup> The three largest consumer-reporting agencies are Equifax, Experian, and TransUnion.<sup>12</sup>

### **Federal Fair Credit Reporting Act (FCRA)**

The federal Fair Credit Reporting Act (FCRA) governs the collection and use of consumer report information and establishes the framework for the credit reporting system in the United States.<sup>13</sup> The FCRA prevents the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; improving the accuracy and integrity of consumer

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<sup>4</sup> Equifax, *Cybersecurity Incident and Important Consumer Information*, available at <https://www.equifaxsecurity2017.com/frequently-asked-questions/> (last visited Feb. 9, 2018). Subsequently, on October 2, 2017, Equifax announced that approximately 2.5 million additional U.S. consumers were potentially impacted.

<sup>5</sup> Federal Trade Commission, *the Equifax Data Breach: What to Do*, <https://www.consumer.ftc.gov/blog/2017/09/equifax-data-breach-what-do> (last visited Feb. 9, 2018).

<sup>6</sup> Consumer Finance Protection Bureau, *Credit Reports and Scores*, available at <https://www.consumerfinance.gov/consumer-tools/credit-reports-and-scores/key-terms/#security-freeze> (last visited Feb. 9, 2018.)

<sup>7</sup> See 15 U.S.C. 1681a(d).

<sup>8</sup> See 15 U.S.C. 1681c.

<sup>9</sup> See 15 U.S.C. 1681b.

<sup>10</sup> See 15 U.S.C. 1681a(f).

<sup>11</sup> Consumer Financial Protection Bureau (CFPB), *List of Consumer Reporting Companies*, pgs. 4-5 (2016). [http://files.consumerfinance.gov/f/201604\\_cfpb\\_list-of-consumer-reporting-companies.pdf](http://files.consumerfinance.gov/f/201604_cfpb_list-of-consumer-reporting-companies.pdf) (last visited Feb. 9, 2018).

<sup>12</sup> See note, CFPB 10 at pg. 8.

<sup>13</sup> 15 U.S.C. s. 1681 *et seq.*

reports; and promoting the efficiency of the nation's banking and consumer credit systems.<sup>14</sup> The FCRA regulates the practices of CRAs (e.g., Equifax, Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.<sup>15</sup> Both the Federal Trade Commission and the Consumer Financial Protection Bureau provide education regarding, and enforcement of, the FCRA.<sup>16</sup>

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA, to add a number of provisions to help consumers and businesses combat identity theft; mitigate the damage when identity theft occurs; and establish a national fraud alert system.<sup>17</sup> The FACT Act allows a consumer or the consumer's representative to assert a good-faith suspicion to a CRA that he or she has been or is about to become the victim of identity theft.<sup>18</sup> The CRA must then, at no charge to the consumer, place an initial fraud alert on the consumer's credit report for at least 90 days.<sup>19</sup> A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to 7 years if an identity theft report is submitted to the CRA.<sup>20</sup> While fraud alerts help make a consumer more aware of activity related to his or her consumer report, they do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.<sup>21</sup>

## Florida

### *Identity Theft*

The Florida Department of Agriculture and Consumer Services' Division of Consumer Services (division) regulates 18 specific industries and serves as a clearinghouse for consumer complaints regarding unregulated issues. The division also focuses on consumer education to protect consumers from unfair or unsafe business practices.<sup>22</sup> The division and the Florida Attorney General's Office provide consumer resources to help prevent and to respond to identity theft in Florida.<sup>23</sup>

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<sup>14</sup> Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>. (last visited Feb. 9, 2018)

<sup>15</sup> *Id.*

<sup>16</sup> See 15 U.S.C. §1681a (v); Federal Trade Commission, *Fair Credit Reporting Act*, <https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act> (last visited Feb. 8, 2018). Although the Dodd-Frank Act transferred most of the rulemaking responsibilities under the FCRA to the Consumer Financial Protection Bureau, enforcement authority was retained entirely by the FTC.

<sup>17</sup> P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf>. (last visited Feb. 9, 2018).

<sup>18</sup> 15 U.S.C. s. 1681c-1(a)(1).

<sup>19</sup> *Id.*

<sup>20</sup> 15 U.S.C. s. 1681c-1(b).

<sup>21</sup> 15 U.S.C. ss. 1681c-1 and 1681m(e).

<sup>22</sup> Florida Department of Agriculture and Consumer Services, *Division of Consumer Services*, <https://www.freshfromflorida.com/Divisions-Offices/Consumer-Services> (last visited Feb. 9, 2018). See also, Florida Department of Agriculture and Consumer Services, *Consumer Resources*, <https://www.freshfromflorida.com/Consumer-Resources/> (last visited Feb. 9, 2018).

<sup>23</sup> *Id.* See also, Florida Office of the Attorney General, *Identity Theft*, <http://myfloridalegal.com/identitytheft> (last visited Feb. 9, 2018).

In Florida, cases of identity theft can be prosecuted under s. 817.568, F.S. Identity theft is punishable by a third degree felony, up to a first degree felony, depending on the presence of aggravating circumstances, including the number of victims harmed and the pecuniary value amassed by the perpetrator.<sup>24</sup>

### ***Florida Consumer Report Security Freeze Law***

In 2006, Florida enacted legislation to allow a consumer to freeze access to his or her consumer report to prevent anyone from trying to open a new account or new credit under his or her name.<sup>25</sup> The consumer can place the security freeze by written request via certified mail to a CRA; the consumer must send a separate request to each CRA.<sup>26</sup> With some exceptions, a security freeze prohibits the CRA from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the consumer's express authorization.<sup>27</sup> Additionally, while a security freeze is in effect, a CRA may not change a consumer's name, address, date of birth, or social security number in a consumer report without first sending written confirmation of the change to the consumer.<sup>28</sup>

A CRA must place a security freeze within 5 business days after receiving a request and must provide the consumer with a unique personal identification number (PIN) or password for the consumer to use to authorize removal of a security freeze.<sup>29</sup> A CRA may charge a fee up to \$10 to institute, temporarily lift, or remove a security freeze, or to reissue a lost PIN or password.<sup>30</sup> However, a CRA may neither charge a consumer 65 years or older for the institution or removal of a security freeze, nor charge a victim of identity theft *any fee*.<sup>31</sup>

### ***2014 Keeping I.D. Safe (KIDS) Act***

Florida's 2006 law did not contain a mechanism for freezing the credit for individuals who do not have an existing credit report. To address this issue, the Florida Legislature passed the Keeping I.D. Safe (KIDS) Act in 2014.<sup>32</sup> The KIDS Act allows a third party to place a security freeze on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate) by submitting a request and sufficient proof of authority and identification to the CRA.<sup>33</sup> A CRA has up to 30 days after it

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<sup>24</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine; a second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine; a first degree felony is punishable by up to 30 years and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>25</sup> Ch. 2006-124, Laws of Fla.

<sup>26</sup> Section 501.005(2), F.S.

<sup>27</sup> Section 501.005(1), (12), and (15), F.S. Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.

<sup>28</sup> Section 501.005(14), F.S.

<sup>29</sup> Section 501.005(3), (4), F.S.

<sup>30</sup> Section 501.005(13)(a), (c), F.S.

<sup>31</sup> Section 501.005(13)(b), F.S.

<sup>32</sup> Ch. 2014-66, Laws of Fla.

<sup>33</sup> Section 501.0051, F.S.

confirms the authenticity of the security freeze request to place the freeze.<sup>34</sup> Otherwise, the KIDS Act credit freeze operates in the same manner as the credit freeze provided for in s. 501.005, F.S.

Like the traditional security freeze, the CRA must provide a unique PIN to the protected consumer's representative, and may charge a fee of up to \$10 to place or remove the freeze, or to reissue a lost PIN.<sup>35</sup> However, a representative of a protected consumer who is a victim of identity theft is exempt from such fees.<sup>36</sup>

### **State Survey of Laws Relating to Consumer Report Security Freezes**

Most states allow CRAs to charge fees for placing a security freeze, which generally range from \$2 to \$10.<sup>37</sup> Among the states that do not allow such fees, the majority allow some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report. Indiana and South Carolina prohibit all fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.<sup>38</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 501.005, F.S., to prohibit CRAs from charging a consumer fee for the following actions:

- Placing a security freeze on a consumer report;
- Temporarily lifting a security freeze on a consumer report; and
- Removing a security freeze on a consumer report.

The CRA may charge a reasonable fee, not to exceed \$10, to replace a consumer's original personal identification number or password. This charge applies to victims of identity theft, who are not subject to such a fee under current law.

**Section 2** amends s. 501.0051, F.S., to similarly prohibit such fees when a representative places, removes, or temporarily lifts a security freeze on a protected consumer's consumer report.

**Section 3** provides an effective date of July 1, 2018.

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<sup>34</sup> Section 501.0051(4), (5), F.S.

<sup>35</sup> Section 501.0051(9)(a) and (b), F.S.

<sup>36</sup> Section 501.0051(9)(c), F.S.

<sup>37</sup> Equifax, *What are the security freeze fees in my state?*, <https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state> (last visited Feb. 9, 2018); Experian, *Security Freeze*, <https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/> (last visited Jan. 4, 2018); TransUnion, *Credit Freeze Information by State*, <https://www.transunion.com/credit-freeze/credit-freeze-information-by-state> (last visited Feb. 9, 2018). See also, National Conference of State Legislatures, *Consumer Report Security Freeze State Laws* (Sept. 1, 2017), available at <http://www.ncsl.org/research/financial-services-and-commerce/consumer-report-security-freeze-state-statutes.aspx> (last visited Feb. 9, 2018).

<sup>38</sup> *Id.*

**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 elimination of the security freeze fees could potentially increase the utilization of security freezes and reduce identity theft. Consumers and their representatives will no longer pay fees of up to \$10 related to placing, removing, or temporarily lifting a security freeze on a consumer report.

Consumer reporting agencies will no longer collect such fees.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 501.005 and 501.0051 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Brandes

24-01395A-18

20181302\_\_

A bill to be entitled

An act relating to consumer report security freezes; amending s. 501.005, F.S.; deleting the authorization for consumer reporting agencies to charge specified fees to consumers electing to place, remove, or temporarily lift a security freeze on their consumer reports; amending s. 501.0051, F.S.; deleting the authorization for consumer reporting agencies to charge a specified fee to representatives of protected consumers electing to place a security freeze on such consumer's consumer reports; deleting the authorization for consumer reporting agencies to charge a specified fee to protected consumers or representatives of protected consumers who elect to remove a security freeze on such consumer's consumer reports; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2), paragraph (d) of subsection (5), paragraph (c) of subsection (11), subsection (13), and paragraph (c) of subsection (17) of section 501.005, Florida Statutes, are amended to read:

501.005 Consumer report security freeze.—

(2) A consumer may place a security freeze on his or her consumer report by:

~~(c) Paying a fee authorized under this section.~~

(5) A consumer may allow his or her consumer report to be accessed for a designated period of time while a security freeze

24-01395A-18

20181302\_\_

is in effect by contacting the consumer reporting agency and requesting that the freeze be temporarily lifted. The consumer must provide the following information to the consumer reporting agency as part of the request:

~~(d) Payment of a fee authorized by this section.~~

(11) A security freeze shall remain in place until the consumer requests that it be removed. A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal from the consumer, who, upon making the request for removal, must provide the following:

~~(e) Payment of a fee authorized by this section.~~

(13) (a) A consumer reporting agency may not charge a ~~reasonable fee, not to exceed \$10,~~ to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report.

~~(b) A consumer reporting agency shall not charge any fee.~~

~~1. To a consumer 65 years of age or older for the initial placement or removal of a security freeze; or~~  
~~2. To a victim of identity theft who has submitted, at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.~~

(b)-(c) A consumer reporting agency may charge a reasonable fee, not to exceed \$10, if the consumer fails to retain the original personal identification number or password provided by the consumer reporting agency and the agency must reissue the personal identification number or password or provide a new personal identification number or password to the consumer.

24-01395A-18

20181302\_\_

(17) Any written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to any consumer residing in this state shall include a written summary of all rights the consumer has under this section, and, in the case of a consumer reporting agency which compiles and maintains consumer reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer reporting agency. The information set forth in paragraph (b) of the written summary of rights must be in at least 12-point boldface type. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(c) When you place a security freeze on your consumer report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your consumer report or authorize the release of your consumer report for a designated period of time after the security freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password.
2. Proper identification to verify your identity.
3. Information specifying the period of time for which the report shall be made available.

~~4. Payment of a fee authorized by this section.~~

Section 2. Subsection (2), paragraph (a) of subsection (7), subsection (9), and paragraph (c) of subsection (14) of section 501.0051, Florida Statutes, are amended to read:

501.0051 Protected consumer report security freeze.—

(2) A representative may place a security freeze on a protected consumer's consumer report by:

24-01395A-18

20181302\_\_

(a) Submitting a request to a consumer reporting agency in the manner prescribed by that agency; and

(b) Providing the agency with sufficient proof of authority and sufficient proof of identification of the representative;

~~and~~

~~(c) Paying the agency a fee as authorized under this section.~~

(7) A consumer reporting agency shall remove a security freeze from a protected consumer's consumer report or record only under either of the following circumstances:

(a) Upon the request of a representative or a protected consumer. A consumer reporting agency shall remove a security freeze within 30 days after receiving a request for removal from a protected consumer or his or her representative.

1. A representative submitting a request for removal must provide all of the following:

a. Sufficient proof of identification of the representative and sufficient proof of authority as determined by the consumer reporting agency.

b. The unique personal identifier provided by the consumer reporting agency pursuant to subsection (5).

~~c. A fee as authorized under this section.~~

2. A protected consumer submitting a request for removal must provide both ~~all~~ of the following:

a. Sufficient proof of identification of the protected consumer as determined by the consumer reporting agency.

b. Documentation that the sufficient proof of authority of the protected consumer's representative to act on behalf of the protected consumer is no longer valid.



24-01395A-18

20181302\_\_

~~e. A fee as authorized under this section.~~

(9) (a) A consumer reporting agency may not charge any a reasonable fee, ~~not to exceed \$10,~~ to place or remove a security freeze.

(b) A consumer reporting agency may ~~also~~ charge a reasonable fee, not to exceed \$10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must reissue the unique personal identifier or provide a new unique personal identifier to the representative.

~~(c) A consumer reporting agency may not charge a fee under this section to the representative of a protected consumer who is a victim of identity theft if the representative submits, at the time the security freeze is requested, a copy of a valid investigative report, an incident report, or a complaint with a law enforcement agency about the unlawful use of the protected consumer's identifying information by another person.~~

(14) A written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to a representative and protected consumer residing in this state must include a written summary of all rights that the representative and protected consumer have under this section and, in the case of a consumer reporting agency that compiles and maintains records on a nationwide basis, a toll-free telephone number that the representative can use to communicate with the consumer reporting agency. The information provided in paragraph (b) must be in at least 12-point boldfaced type. The written summary of rights required under this section is sufficient if it is substantially in the following form:

Page 5 of 6

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

24-01395A-18

20181302\_\_

(c) To remove the security freeze on the protected consumer's record or report, you must contact the consumer reporting agency and provide all of the following:

1. Proof of identification as required by the consumer reporting agency.

2. Proof of authority over the protected consumer as required by the consumer reporting agency.

3. The unique personal identifier provided by the consumer reporting agency.

~~4. Payment of a fee.~~

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

Page 6 of 6

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1426

INTRODUCER: Senator Lee

SUBJECT: Local Government Fiscal Transparency

DATE: February 23, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Present	Yeatman	CA	<b>Favorable</b>
2. Babin	Hansen	AP	<b>Favorable</b>
3. Present	Phelps	RC	<b>Pre-Meeting</b>

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## I. Summary:

SB 1426 creates the Local Government Fiscal Transparency Act. The act:

- Requires local governments to post on their websites the voting records related to taxes and debt.
- Requires property appraisers to maintain a website that includes certain property tax information.
- Requires local governments to provide additional notice of tax increases and new tax-supported debt.
- Requires local governments to undergo a debt affordability analysis before authorizing debt.
- Requires local government audits submitted to the Auditor General to be accompanied by an affidavit from the chair of the governing board stating that the local government has complied with the Local Government Fiscal Transparency Act.

The bill also:

- Requires the Auditor General, during its review of local government audit reports, to request evidence of corrective action from local governments found not to be in compliance under certain circumstances; and requires local governments to provide evidence of such correction action and evidence of completion of such action within a specified period.
- Revises the local government annual reporting requirements for economic development incentives.

The bill does not affect state or local government revenues.

## II. Present Situation:

The present situation is included in Section III. Effect of Proposed Changes.

### **III. Effect of Proposed Changes:**

#### **General Provisions (Section 6)**

The bill creates Part VIII of Chapter 218, F.S., titled the “Local Government Fiscal Transparency Act.” The bill creates s. 218.803, F.S., providing that the purpose of the Act is to:

Promote the fiscal transparency of local governments when using public funds by requiring additional public noticing of proposed local government actions that would increase taxes, enact new taxes, extend expiring taxes, or issue tax-supported debt and requiring voting records of local governing bodies related to such actions to be easily and readily accessible by the public.

The bill creates s. 218.805, F.S., defining the following terms:

- “Debt” is defined as bonds, loans, promissory notes, lease-purchase agreements, certificates of participation, installment sales, leases, or any other financing mechanisms or financial arrangements, whether or not a debt for legal purposes, for financing or refinancing the acquisition, construction, improvement, or purchase of capital outlay projects.
- “Local government” is defined as any county, municipality, school district, special district dependent to a county or municipality, municipal service taxing unit, or independent special district, but does not include special dependent or independent districts established to provide hospital services, provided such special districts do not levy, assess, and collect ad valorem taxes.
- “Tax increase” is defined as:
  - For ad valorem taxes, any increase in a local government’s millage rate above the rolled-back rate as defined in s. 200.065(1), F.S.
  - For all other taxes, a tax enactment, tax extension, or an increase in the tax rate.
- “Tax-supported debt” is defined as debt with a duration of more than 5 years secured in whole or in part by state or local tax levies, whether such security is direct or indirect, explicit or implicit, and includes, but is not limited to, debt for which annual appropriations pledged for payment are from government fund types receiving tax revenues or shared revenues from state tax sources. The term does not include debt secured solely by the revenues generated by the project that is financed with the debt.

#### **Voting Record Access: Property Tax, Local Option Taxes, and New Debt Issuance (Section 6)**

##### ***Current Situation***

While the voting records of local governments’ governing boards are public records<sup>1</sup> and subject to public disclosure, local governments are not required to make available, on their website, the voting records of their governing board on actions related to tax increases or the issuance of new tax-supported debt.

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<sup>1</sup> See generally ch. 119, F.S., and s. 119.01, F.S.

However, there are public notice requirements for actions taken by local governments *related to* tax increases and new tax-supported debt issuance. For example, many of these actions by municipalities and counties require the adoption of an ordinance, and the adoption of an ordinance generally requires publication of notice in a newspaper at least ten days before the meeting when such adoption is scheduled to occur.<sup>2</sup>

### ***Proposed Changes***

The bill creates s. 218.81, F.S., to require each local government to post on its website, in a manner that is easily accessible to the public, the voting records of each action taken by the local governing board during the most recent four years related to tax increases or new tax-supported debt issuance. However, debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt need not be included. The bill phases these provisions in over four years.

The bill also requires that the local government provide links on its website to allow users to navigate to related sites for available supporting details or documentation. Additionally, the local government must include the website address in the public notice of a tax increase or the issuance of new tax-supported debt.

## **Tax History: Property Taxes (Section 6)**

### ***Current Situation***

Each year, the county property appraiser delivers a “notice of proposed property taxes and non-ad valorem assessments” to each taxpayer listed on the current year’s tax roll. This notice is commonly referred to as the truth-in-millage notice or TRIM notice, and it is sent on behalf of all taxing authorities and local governing boards levying ad valorem taxes or non-ad valorem assessments.<sup>3</sup> The TRIM notice contains parcel-specific information that allows the property owner to compare the prior year’s taxes with the current year’s estimated taxes based on the recommended local government budget, as well as the time and place of the budget hearing.<sup>4</sup> Several years’ of TRIM notices and corresponding tax bills are commonly available on county tax collectors’ and property appraisers’ websites.

### ***Proposed Changes***

The bill creates s. 218.82, F.S., to require each county property appraiser to maintain a website that includes, in a manner easily accessible by the public, for each parcel of property, the TRIM notice and a minimum four-year history of the millage rate and the amount of tax levied by each taxing authority on each parcel. The bill phases-in these requirements for the millage and taxes levied as follows:

- By October 1, 2017, 2 years of history;
- By October 1, 2018, 3 years of history; and
- By October 1, 2019, and thereafter 4 years of history.

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<sup>2</sup> See ss. 125.66(2)(a) and 166.041, F.S.

<sup>3</sup> See s. 200.069, F.S.

<sup>4</sup> Section 200.069(2), F.S.

The bill further requires each local government to post on its website, in a manner that is easily accessible to the public, a minimum of four years of history of its annual millage rates and the total annual amount of property tax revenue generated by each of these levies. The bill allows these provisions to be phased in over three years.

### **Public Notice: Local Option Tax Increases and New Debt Issuance (Section 6)**

#### ***Current Situation***

Current law requires public notice for certain actions taken by local governments related to tax increases and new tax-supported debt issuance. For instance, actions by municipalities and counties that require the adoption of an ordinance would be subject to public notice requirements for ordinances;<sup>5</sup> school districts are required to hold elections before the issuance of certain bonds,<sup>6</sup> and elections require publication of notice at least once a week for two consecutive weeks in a newspaper published in the district.<sup>7</sup>

Additionally, ch. 200, F.S., requires local governments to hold at least two public hearings to first adopt a tentative budget and then to adopt a final budget. The public meeting held to adopt the final budget requires publication of notice in a newspaper of general circulation in the county stating the governing board's intent to adopt a final millage rate and budget.<sup>8</sup>

#### ***Proposed Changes***

The bill creates s. 218.83, F.S., to require an additional public meeting of the local governing board before the board takes final action on a tax increase<sup>9</sup> or final action on a new tax-supported debt issuance. Specifically, at least 14 days before the governing body meeting to take a final vote to approve a tax increase or to approve the issuance of any new tax-supported debt, the governing body must hold a public hearing to solicit public input on the proposed tax increase or new tax-supported debt issuance. The public is specifically allowed to speak and ask questions relevant to the proposed tax increase or debt issuance. The public hearing must be held after 5 p.m. if scheduled on a day other than Saturday and may not be held on a Sunday.

If, after the public hearing, the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-support debt, the local government must provide additional public notice at least ten days before the date of the scheduled meeting. The notice must be in an advertisement in a newspaper of general circulation in the county or counties where the local government is located. In lieu of publishing in a newspaper, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government. However, the mailed notice must also be posted on the local government's website in a manner that is easily accessible to the public.

For tax increases, the notice must include, at a minimum:

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<sup>5</sup> See discussion related to voting records access, page 2, *infra*.

<sup>6</sup> Section 1010.41(3), F.S.

<sup>7</sup> Section 1010.43, F.S.

<sup>8</sup> Section 200.065(2)(d), F.S.

<sup>9</sup> For the purposes of this section, a tax increase does not include an ad valorem tax increase.

- A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension, or tax rate increase;
- The time and place of the meeting;
- The amount of the tax increase, including both the rate and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the local government's general revenue fund;
- A detailed explanation of the intended uses of the levy; and
- A statement indicating whether the governing board expects to use the tax proceeds to secure debt.

For the new issuance of tax-supported debt, the notice must include, at a minimum:

- A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt;
- The time and place of the meeting;
- A truth in bonding statement that includes the amount of the debt, the period of time over which the debt is expected to be repaid, a forecasted interest rate for the debt, the total amount of interest expected to be paid over the term of the debt issuance, the source of repayment or security for the debt, and a statement that the authorization of the debt will result in a specific amount of money being unavailable to finance the other services of the local government for each year of the term of the debt; and
- Presentation of the debt affordability ratios required to be calculated pursuant to s. 218.84, F.S. (see Debt Affordability Measures below).

### **New Debt Issuance: Debt Affordability Measures (Section 6)**

#### ***Current Situation***

Section 215.98, F.S., requires the state to annually prepare a debt affordability report. The report is required to include, at a minimum:

- A listing of state debt outstanding, other debt secured by state revenues, and other contingent debt;
- An estimate of revenues available for the next ten fiscal years to pay debt service, including general revenues plus any revenues specifically pledged to pay debt service;
- An estimate of additional debt issuance for the next ten fiscal years for the state's existing borrowing programs;
- A schedule of the annual debt service requirements, including principal and interest allocation, on the outstanding state debt and an estimate of the annual debt service requirements on the debt for each of the next ten fiscal years;
- An overview of the state's general obligation credit rating;
- Identification and calculation of pertinent debt ratios, including, but not limited to, debt service to revenues available to pay debt service, debt to personal income, and debt per capita for the state's net tax-supported debt;
- The estimated debt capacity available over the next ten fiscal years without the benchmark debt ratio of debt service to revenue exceeding six percent; and
- A comparison of the debt ratios prepared for the report with the comparable debt ratios for the ten most populous states.

Section 215.98, F.S., also requires legislative statements of determination (commonly referred to as “budget statements”) in the legislative authorization of new tax-supported debt if the additional borrowing would exceed certain benchmark debt ratios. If the ratio of debt service to revenue available to pay debt service on tax-supported debt would exceed six percent as a result of the borrowing, the statement of determination is that such authorization and issuance is in the best interest of the state and should be implemented. If the same ratio would exceed seven percent, the Legislature must determine that such additional debt is necessary to address a critical state emergency.

### ***Proposed Changes***

The bill creates s. 218.84, F.S., to require local governments to conduct and consider a debt affordability analysis before approving the issuance of new tax-supported debt. The analysis must, at a minimum, consist of the calculation of the local government’s actual debt affordability ratio for the five fiscal years before the year the debt is expected to be issued and a projection of the ratio for at least the two fiscal years in which the new debt is expected to be issued. The analysis must include a comparison of the debt affordability ratio with and without the new debt issuance. The debt affordability ratio is the total annual debt service for outstanding tax-supported debt divided by total annual revenues available to pay debt service on outstanding debt.

### **Consequences for Non-Compliance (Sections 1, 2, and 6)**

#### ***Current Situation***

Section 218.39, F.S., governs annual audit reports of local entities. If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, those entities must have an annual financial audit of its accounts and records completed within nine months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds. The types of local governments covered by this provision are:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of \$250,000;
- Any special district with revenues or the total of expenditures and expenses in excess of \$100,000;
- Each district school board;
- Each charter school established under s. 1002.33, F.S; and
- Each charter technical center established under s. 1002.34, F.S.<sup>10</sup>

The auditor is required to prepare an audit report in accordance with the rules of the Auditor General. The audit report must be filed with the Auditor General within 45 days after delivery of the audit report to the governing body of the audited entity, but no later than nine months after

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<sup>10</sup> Municipalities with revenues or total expenditures and expenses between \$100,000 and \$250,000, and special districts with revenues or total expenditures and expenses between \$50,000 and \$100,000 are also covered in certain circumstances. Section 218.39(1)(g)-(h), F.S.

the end of the audited entity's fiscal year. The audit report must include a written statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.<sup>11</sup>

The Auditor General is required to notify the Legislative Auditing Committee of any audit report prepared pursuant to this section that indicates that an audited entity failed to take full corrective action in response to a recommendation that was included in the two preceding financial audit reports.<sup>12</sup> The Legislative Auditing Committee may direct the governing body of the audited entity to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.<sup>13</sup> If the Legislative Auditing Committee determines that the written statement is not sufficient, it may require the chair of the governing body of the local governmental entity, the elected official of each county agency, the chair of the district school board, the chair of the board of the charter school, or the chair of the board of the charter technical career center, to appear before the committee.<sup>14</sup> If the Legislative Auditing Committee determines that an audited entity failed to take full corrective action for which there is no justifiable reason for not taking such action, or has failed to comply with committee requests made pursuant to this section, the committee may proceed in accordance with s. 11.40(2), F.S.<sup>15</sup>

Section 11.40, F.S., governs the Legislative Auditing Committee, its authority, and the actions it may take in specified circumstances. In the case of a local governmental entity or district school board, these actions include, but are not limited to, directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.<sup>16</sup>

### ***Proposed Changes***

Section 6 creates s. 218.88, F.S., to require the annual audit reports described above to include an affidavit executed by the chair of the governing board of the local government stating that the local government has complied with the requirements of Part VIII of Chapter 218, F.S. (the new provisions created by the bill). If the local government has not complied, the affidavit must include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

Section 2 amends s. 11.45, F.S., to require local governments not in compliance with Part VIII of Chapter 218, F.S., to provide, upon request of the Auditor General, evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. The Auditor General must notify the Legislative Auditing Committee if the

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<sup>11</sup> Section 218.39(7), F.S.

<sup>12</sup> Section 218.39(8), F.S.

<sup>13</sup> Section 218.39(8)(a), F.S.

<sup>14</sup> Section 218.39(8)(b), F.S.

<sup>15</sup> Section 218.39(8)(c), F.S.

<sup>16</sup> Section 11.40(2)(a), F.S.



local government fails to comply with the Auditor General's request or is unable to take correction action within the required timeframe.

Failure to comply with Part VIII, Chapter 218, F.S., could ultimately result in the Legislative Auditing Committee directing the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.<sup>17</sup>

Section 1 amends s. 11.40, F.S., to authorize the Department of Financial Services and the Division of Bond Finance of the State Board of Administration to subject a local government entity, district school board, charter school, or charter technical career center to further state action if the entity fails to comply with Part VIII of Chapter 218, F.S.

### **Administrative Changes (Section 6)**

Section 6 creates s. 218.89, F.S., to provide that if a local government is required to post information to its website, but does not operate a website, the local government must inform the county or counties within which the local government is located, of any information required to be posted. Each such county must post the required information from such local government on the county's website.

### **Economic Development Incentive Reporting (Sections 3 and 4)**

#### ***Current Situation***

Sections 125.045 and 166.021, F.S., require local governments to provide the Office of Economic and Demographic Research (EDR) with details regarding their economic development incentives in excess of \$25,000 granted during the previous fiscal year. The EDR annually collects this data from local governments through an online survey, coupled with follow-up communications as necessary. The survey questions are guided by four categories of incentives: direct financial incentives of monetary assistance, indirect incentives in the forms of grants and loans, fee-based or tax-based incentives, and below-market rate leases or deeds for real property. The EDR compiles the economic development incentives provided by the local governments in a manner that shows the total of each class of incentives into a report and provides the report to the President of the Senate, Speaker of the House of Representatives, and the Department of Economic Opportunity.

#### ***Proposed Changes***

Sections 3 and 4 amend ss. 125.045 and 166.021, F.S., respectively, to revise the local government reporting requirements for economic development incentives. Sections 3 and 4 require each county and municipality to report whether the incentive was provided directly to an individual business or by another entity on behalf of the local government and the source of local dollars, and any state or federal dollars obligated for the incentive.

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<sup>17</sup> Section 11.40(2), F.S.

The bill also revises the classes of economic development incentives. The bill requires reporting on financial incentives; general assistance, services, and support; and business recruitment, retention, or expansion efforts.

Under sections 3 and 4, EDR must compare the results of the economic development incentives provided by all local governments with the results of state incentives provided in similar classes to the extent that such a comparison is possible.

#### **Other Miscellaneous Provisions (Sections 5, 7, 8, and 9)**

The bill transfers and renumbers s. 218.80 as s. 218.795, F.S., amends s. 218.32(1)(e), F.S., to conform a cross-reference, and contains a legislative finding that the act fulfills an important state interest.

The effective date of the bill is July 1, 2018.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill could require expenditures related to the provision of additional data on local government websites, additional noticing requirements and public meetings, and additional required analysis of debt affordability.

However, there are several exemptions and exceptions to the mandate requirements. The mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2017-2018 was approximately \$2.05 million or less.<sup>18,19,20</sup> If none of the exemptions or exceptions apply, the bill must contain a finding that the bill fulfills an important state interest and must be approved by two-thirds of the membership of each house of the Legislature.

Bill Section 8 provides that this act fulfills an important state interest.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

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<sup>18</sup> FLA. CONST. art. VII, s. 18(d).

<sup>19</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

<sup>20</sup> Based on the Demographic Estimating Conference's population adopted on April 1, 2017. The executive summary is available at <http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf>.

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

The bill does not directly affect state or local government revenues.

**B. Private Sector Impact:**

Households and businesses will have improved access to upcoming local government decisions regarding tax increases and new debt issuance.

**C. Government Sector Impact:**

The provisions of the bill are expected to require indeterminate expenditures by local governments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 11.40, 11.45, 125.045, 166.021, and 218.32.

This bill creates the following sections of the Florida Statutes: 218.801, 218.803, 218.805, 218.81, 218.82, 218.83, 218.84, 218.88, and 218.89.

This bill transfers and renumbers section 218.80 of the Florida Statutes as section 218.795 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.



239684

LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Lee) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 46 - 494

and insert:

Section 1. Paragraph (c) of subsection (3) of section 129.03, Florida Statutes, is amended to read:

129.03 Preparation and adoption of budget.—

(3) The county budget officer, after tentatively ascertaining the proposed fiscal policies of the board for the next fiscal year, shall prepare and present to the board a tentative budget for the next fiscal year for each of the funds



239684

provided in this chapter, including all estimated receipts, taxes to be levied, and balances expected to be brought forward and all estimated expenditures, reserves, and balances to be carried over at the end of the year.

(c) The board shall hold public hearings to adopt tentative and final budgets pursuant to s. 200.065. The hearings shall be primarily for the purpose of hearing requests and complaints from the public regarding the budgets and the proposed tax levies and for explaining the budget and any proposed or adopted amendments. The tentative budget must be posted on the county's official website at least 2 days before the public hearing to consider such budget and must remain on the website for at least 45 days. The final budget must be posted on the website within 30 days after adoption and must remain on the website for at least 2 years. The tentative budgets, adopted tentative budgets, and final budgets shall be filed in the office of the county auditor as a public record. Sufficient reference in words and figures to identify the particular transactions must ~~shall~~ be made in the minutes of the board to record its actions with reference to the budgets.

Section 2. Paragraph (f) of subsection (2) of section 129.06, Florida Statutes, is amended to read:

129.06 Execution and amendment of budget.—

(2) The board at any time within a fiscal year may amend a budget for that year, and may within the first 60 days of a fiscal year amend the budget for the prior fiscal year, as follows:

(f) Unless otherwise prohibited by law, if an amendment to a budget is required for a purpose not specifically authorized



239684

in paragraphs (a)-(e), the amendment may be authorized by resolution or ordinance of the board of county commissioners adopted following a public hearing.

1. The public hearing must be advertised at least 2 days, but not more than 5 days, before the date of the hearing. The advertisement must appear in a newspaper of paid general circulation and must identify the name of the taxing authority, the date, place, and time of the hearing, and the purpose of the hearing. The advertisement must also identify each budgetary fund to be amended, the source of the funds, the use of the funds, and the total amount of each fund's appropriations.

2. If the board amends the budget pursuant to this paragraph, the adopted amendment must be posted on the county's official website within 5 days after adoption and must remain on the website for at least 2 years.

Section 3. Subsections (3) and (5) of section 166.241, Florida Statutes, are amended to read:

166.241 Fiscal years, budgets, and budget amendments.—

(3) The tentative budget must be posted on the municipality's official website at least 2 days before the budget hearing, held pursuant to s. 200.065 or other law, to consider such budget and must remain on the website for at least 45 days. The final adopted budget must be posted on the municipality's official website within 30 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the tentative budget and final budget to



239684

the manager or administrator of such county or counties who shall post the budgets on the county's website.

(5) If the governing body of a municipality amends the budget pursuant to paragraph (4)(c), the adopted amendment must be posted on the official website of the municipality within 5 days after adoption and must remain on the website for at least 2 years. If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the adopted amendment to the manager or administrator of such county or counties who shall post the adopted amendment on the county's website.

Section 4. Subsection (2) of section 11.40, Florida Statutes, is amended to read:

11.40 Legislative Auditing Committee.—

(2) Following notification by the Auditor General, the Department of Financial Services, or the Division of Bond Finance of the State Board of Administration of the failure of a local governmental entity, district school board, charter school, or charter technical career center to comply with the applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s. 218.38, ~~or~~ s. 218.503(3), or part VIII of chapter 218, the Legislative Auditing Committee may schedule a hearing to determine if the entity should be subject to further state action. If the committee determines that the entity should be subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not



239684

pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date such action shall begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement the provisions of this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the





239684

process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 5. Present paragraphs (d) through (j) of subsection (7) of section 11.45, Florida Statutes, are redesignated as paragraphs (e) through (k), respectively, and a new paragraph (d) is added to that subsection, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(d) During the Auditor General's review of audit reports, he or she shall contact each local government, as defined in s. 218.805(2), that is not in compliance with part VIII of chapter 218 and request evidence of corrective action. The local government shall provide the Auditor General with evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. If the local government fails to comply with the Auditor General's request or is unable to take corrective action within the required timeframe, the Auditor General shall notify the Legislative Auditing Committee.



239684

Section 6. Subsection (5) of section 125.045, Florida Statutes, is amended to read:

125.045 County economic development powers.—

(5)(a) By January 15 of each year, ~~2011, and annually thereafter~~, each county shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of \$25,000 given to businesses ~~any business~~ during the county's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the counties into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The county shall identify whether the economic development incentive is provided directly by the county or by another entity on behalf of the county, as well as the source of local dollars, and any state or federal dollars obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows include:

1. Class one: Direct ~~Financial incentives of monetary assistance provided to an individual a business from the county or through an organization authorized by the county.~~ Such incentives include: ~~, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.~~

a. Grants.

b. Tax-based credits, refunds, or exemptions.

c. Fee-based credits, refunds, or exemptions.

d. Loans, loan insurance, or loan guarantees.

e. Below-market rate leases or deeds for real property.



239684

186 f. Job training or recruitment.

187 g. Subsidized or discounted government services.

188 h. Infrastructure improvements.

189 2. Class two: General assistance, services, and support  
190 provided collectively to businesses with a common interest or  
191 purpose. Such incentives include:

192 a. Technical assistance and training.

193 b. Business incubators and accelerators.

194 c. Infrastructure improvements ~~Indirect incentives in the~~  
195 ~~form of grants and loans provided to businesses and community~~  
196 ~~organizations that provide support to businesses or promote~~  
197 ~~business investment or development.~~

198 3. Class three: Business recruitment, retention, or  
199 expansion efforts provided to benefit an individual business or  
200 class of businesses. Such incentives include:

201 a. Marketing and market research.

202 b. Trade missions and trade shows.

203 c. Site selection.

204 d. Targeted assistance with the permitting and licensing  
205 process.

206 e. Business plan or project development ~~Fee-based or tax-~~  
207 ~~based incentives, including, but not limited to, credits,~~  
208 ~~refunds, exemptions, and property tax abatement or assessment~~  
209 ~~reductions.~~

210 ~~4. Below-market rate leases or deeds for real property.~~

211 (b) A county shall report its economic development  
212 incentives in the format specified by the Office of Economic and  
213 Demographic Research.

214 (c) The Office of Economic and Demographic Research shall



239684

compile the economic development incentives provided by each county in a manner that shows the total of each class of economic development incentives provided by each county and all counties. To the extent possible, the office shall compare the results of the economic development incentives provided by all counties to the results of state incentives provided in similar classes.

Section 7. Paragraph (e) of subsection (8) of section 166.021, Florida Statutes, is amended to read:

166.021 Powers.—

(8)

(e)1. By January 15 of each year, ~~2011, and annually thereafter~~, each municipality having annual revenues or expenditures greater than \$250,000 shall report to the Office of Economic and Demographic Research ~~the~~ economic development incentives in excess of \$25,000 given to businesses ~~any business~~ during the municipality's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the municipalities into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The municipality shall identify whether the economic development incentive was provided directly by the municipality or by another entity on behalf of the municipality, as well as the source of local dollars, and any state or federal dollars obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows include:

a. Class one: ~~Direct~~ Financial incentives ~~of monetary assistance~~ provided to an individual ~~a business from the~~



239684

~~municipality or through an organization authorized by the  
municipality. Such incentives include: but are not limited to,  
grants, loans, equity investments, loan insurance and  
guarantees, and training subsidies.~~

(I) Grants.

(II) Tax-based credits, refunds, or exemptions.

(III) Fee-based credits, refunds, or exemptions.

(IV) Loans, loan insurance, or loan guarantees.

(V) Below-market rate leases or deeds for real property.

(VI) Job training or recruitment.

(VII) Subsidized or discounted government services.

(VIII) Infrastructure improvements.

b. Class two: General assistance, services, and support  
provided collectively to businesses with a common interest or  
purpose. Such incentives include:

(I) Technical assistance and training.

(II) Business incubators and accelerators.

~~(III) Infrastructure improvements Indirect incentives in  
the form of grants and loans provided to businesses and  
community organizations that provide support to businesses or  
promote business investment or development.~~

c. Class three: Business recruitment, retention, or  
expansion efforts provided to benefit an individual business or  
class of businesses. Such incentives include:

(I) Marketing and market research.

(II) Trade missions and trade shows.

(III) Site selection.

(IV) Targeted assistance with the permitting and licensing  
process.



239684

(V) Business plan or project development ~~Fee-based or tax-~~  
~~based incentives, including, but not limited to, credits,~~  
~~refunds, exemptions, and property tax abatement or assessment~~  
~~reductions.~~

~~d. Below-market rate leases or deeds for real property.~~

2. A municipality shall report its economic development  
incentives in the format specified by the Office of Economic and  
Demographic Research.

3. The Office of Economic and Demographic Research shall  
compile the economic development incentives provided by each  
municipality in a manner that shows the total of each class of  
economic development incentives provided by each municipality  
and all municipalities. To the extent possible, the office shall  
compare the results of the economic development incentives  
provided by all municipalities to the results of state  
incentives provided in similar classes.

Section 8. Section 218.80, Florida Statutes, is transferred  
and renumbered as section 218.795, Florida Statutes.

Section 9. Part VIII of chapter 218, Florida Statutes,  
consisting of sections 218.801, 218.803, 218.805, 218.81,  
218.82, 218.83, 218.84, 218.88, and 218.89, is created to read:

PART VIII

LOCAL GOVERNMENT FISCAL TRANSPARENCY ACT

218.801 Short title.—This part may be cited as the "Local  
Government Fiscal Transparency Act."

218.803 Purpose.—The purpose of this part is to promote the  
fiscal transparency of local governments when using public funds  
by requiring additional public noticing of proposed local  
government actions that would increase taxes, enact new taxes,



239684

extend expiring taxes, or issue tax-supported debt and requiring  
voting records of local governing bodies related to such actions  
to be easily and readily accessible by the public.

218.805 Definitions.—As used in this part, the term:

(1) "Debt" means bonds, loans, promissory notes, lease-  
purchase agreements, certificates of participation, installment  
sales, leases, or any other financing mechanisms or financial  
arrangements, whether or not a debt for legal purposes, for  
financing or refinancing the acquisition, construction,  
improvement, or purchase of capital improvement projects.

(2) "Local government" means any county, municipality,  
school district, special district dependent to a county or  
municipality, municipal service taxing unit, or independent  
special district, but does not include special dependent or  
independent districts established to provide hospital services,  
provided such special districts do not levy, assess, and collect  
ad valorem taxes.

(3) "Tax increase" means:

(a) For ad valorem taxes, any increase in a local  
government's millage rate above the rolled-back rate as defined  
in s. 200.065(1).

(b) For all other taxes, a tax enactment, tax extension, or  
an increase in the tax rate.

(4) "Tax-supported debt" means debt with a duration of more  
than 5 years secured in whole or in part by state or local tax  
levies, whether such security is direct or indirect, explicit or  
implicit, and includes, but is not limited to, debt for which  
annual appropriations pledged for payment are from government  
fund types receiving tax revenues or shared revenues from state



239684

tax sources. The term does not include debt secured solely by revenues generated by the project that is financed with the debt.

218.81 Voting record access.—

(1) Each local government shall post on its website, in a manner that is easily accessible to the public, a history of the voting record of each action taken by the local governing board which addressed a tax increase or new tax-supported debt issuance, except debt that was refinanced or refunded and that did not extend the term or increase the outstanding principal amount of the original debt, as follows:

(a) By October 1, 2018, the voting record history from the preceding year;

(b) By October 1, 2019, the voting record history from the preceding 2 years;

(c) By October 1, 2020, the voting record history from the preceding 3 years; and

(d) By October 1, 2021, and thereafter, the voting record history required pursuant to this subsection from the preceding 4 years.

(2) The website must provide links to allow users to navigate to related sites if supporting details or documentation are available.

(3) In any public notice of a tax increase or the issuance of new tax-supported debt, each local government shall include with the public notice the website address where the voting records can be accessed.

218.82 Property tax information and history.—

(1) Each county property appraiser, as defined in s.





239684

192.001, shall maintain a website that includes, in a manner easily accessible to the public, links that provide access to:

(a) The notice of proposed property taxes and non-ad valorem assessments required under s. 200.069 for each parcel of property in that county; and

(b) A history of the millage rate and the amount of tax levied by each taxing authority on each parcel, as follows:

1. By October 1, 2018, the history from the 2 preceding years;

2. By October 1, 2019, the history from the 3 preceding years; and

3. By October 1, 2020, and thereafter, the history from the 4 preceding years.

This subsection does not apply to information that is otherwise exempt from public disclosure.

(2) Each local government shall post on its website, in a manner that is easily accessible to the public, links that provide access to a history of each of its millage rates and the total annual amount of revenue generated by each of these levies, as follows:

(a) By October 1, 2018, the history from the 2 preceding years;

(b) By October 1, 2019, the history from the 3 preceding years; and

(c) By October 1, 2020, and thereafter, the history from the 4 preceding years.

218.83 Expanded public noticing of tax increases and new tax-supported debt issuance.—



239684

(1) For the purpose of this section, the term "tax increase" does not include an ad valorem tax increase or taxes enacted, extended, or increased by referendum.

(2) A local government that intends to vote on a proposed tax increase or the issuance of new tax-supported debt shall advertise a public hearing to solicit public input concerning the proposed tax increase or new tax-supported debt issuance. This public hearing must occur at least 14 days prior to the date that the local governing body meets to take a final vote on the tax increase or issuance of new tax-supported debt. Any hearing required under this subsection shall be held after 5 p.m. if scheduled on a day other than Saturday. No hearing shall be held on a Sunday. The general public shall be allowed to speak and to ask questions relevant to the tax increase or the tax-supported debt issuance. The local government shall provide public notice as set forth in subsection (4).

(3) (a) If, following the public hearing required under subsection (2), the local government intends to proceed with a vote to approve a tax increase or the new issuance of tax-supported debt, the local government shall provide public notice in the manner set forth in subsection (4) at least 10 days prior to the date of the scheduled public meeting.

(b) For a tax increase, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new tax enactment, tax extension, or tax rate increase.

2. The time and place of the meeting.

3. The amount of the tax increase, including both the rate



239684

and total amount of annual revenue expected to be generated and the expected annual revenue expressed as a percentage of the government's general fund revenue.

4. A detailed explanation of the intended uses of the levy.

5. A statement indicating whether the local government expects to use the proceeds to secure debt.

(c) For new tax-supported debt issuance, the notice shall also include, at a minimum:

1. A statement prominently posted that the local government intends to vote on a proposed new issuance of tax-supported debt.

2. The time and place of the meeting.

3. A truth in bonding statement in substantially the following form:

The ...(insert local government name)... is proposing to issue \$...(insert principal)... of debt or obligation for the purpose of ...(insert purpose).... This debt or obligation is expected to be repaid over a period of ...(insert term of issue)... years. At a forecasted interest rate of ...(insert rate of interest)...., total interest paid over the life of the debt or obligation will be \$...(insert sum of interest payments).... The source of repayment or security for this proposal is the ...(insert the local government name)... existing ...(insert fund).... Authorizing this debt or obligation will result in \$...(insert the annual amount)... of ...(insert local government name)... ...(insert fund)... moneys not being available to finance the other services of the ...(insert local government name)... each year for ...(insert the length of the debt or obligation)....



239684

4. Presentation of the debt affordability ratios calculated pursuant to s. 218.84, described in substantially the following form:

The following ratios measure the affordability of outstanding and proposed new long-term, tax-supported debt issued by ...(insert local government name).... The ratios show debt service as a percentage of the revenues available to support that debt, including the new debt being proposed ...(insert 5 year history and 2 year projection of debt affordability ratio)....

(4) The notice provided by a local government announcing a public hearing to take public input as set forth in subsection (2) or the public meeting to take a final vote as set forth in subsection (3) must meet the following requirements:

(a) The local government must advertise the notice in a newspaper of general circulation in the county or counties where the local government exists. A local government may advertise in a geographically limited insert of a general circulation newspaper if the region encompassed by the insert contains the jurisdictional boundaries of the local government. The newspaper must be of general interest with readership in the community and not one of limited subject matter, pursuant to chapter 50. The advertisement must be at least one-quarter page in size of a standard size newspaper or a half-page in size of a tabloid size newspaper, and the headline in the advertisement must be in a type no smaller than 18 point. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement must appear in a newspaper that is published at least 5 days a week unless



239684

the only newspaper in the county is published less than 5 days a week. If the advertisement appears in a geographically limited insert of a general circulation newspaper, the insert must be one that is published at least twice a week throughout the local government's jurisdiction. In lieu of publishing the notice set out in this paragraph, the local government may mail a copy of the notice to each elector residing within the jurisdiction of the local government; and

(b) The local government must post on its website in a manner that is easily accessible to the public the information required under subsections (2) and (3), as applicable.

(5) This section does not apply to the refinancing or refunding of debt that does not extend the term or increase the outstanding principal amount of the original debt.

218.84 Local government debt fiscal responsibility.—

(1) It is the public policy of this state to encourage local governments to exercise prudence in authorizing and issuing debt. Before a local government authorizes debt, it must consider its ability to meet its total debt service requirements in light of other demands on the local government's fiscal resources. Each local government shall perform a debt affordability analysis as set forth in subsection (2), and the governing board shall consider the analysis before approving the issuance of new tax-supported debt.

(2) The debt affordability analysis shall, at a minimum, consist of the calculation of the local government's actual debt affordability ratio for the 5 fiscal years prior to the year the debt is expected to be issued and a projection of the ratio for at least the first 2 fiscal years in which the new debt is



239684

expected to be issued. The analysis shall include a comparison  
of the debt affordability ratio with and without the new debt  
issuance.

(3) The debt affordability ratio for a given fiscal year  
shall be a ratio:

(a) The denominator of which is the total annual revenues  
available to pay debt service on outstanding tax-supported debt  
of the local government; and

(b) The numerator of which is the total annual debt service  
for outstanding tax-supported debt of the local government.

218.88 Audits.—Audits of financial statements of local  
governments which are performed by a certified public accountant  
pursuant to s. 218.39 and submitted to the Auditor General must  
be accompanied by an affidavit executed by the chair of the  
governing board of the local government stating that the local  
government has complied with this part. The affidavit must be  
filed with the Auditor General, or in the event the local  
government has not complied with this part, the affidavit shall  
instead include a description of the noncompliance and  
corrective action taken by the local government to correct the  
noncompliance and to prevent such noncompliance in the future.

218.89 Local government websites.—If a local government is  
required under this part to post information on its website, but  
does not operate an official website, the local government must  
provide the appropriate county or municipality within which the  
local government is located the information required to be  
posted, and each county or municipality shall post the required  
information on its website.



239684

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

And the title is amended as follows:

Delete line 3

and insert:

affairs; amending ss. 129.03, 129.06, and 166.241,  
F.S.; requiring counties and municipalities to  
maintain certain budget documents on the entities'  
websites for a specified period; amending s. 11.40,  
F.S.; expanding the

By Senator Lee

20-00941-18

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1 A bill to be entitled  
 2 An act relating to local government fiscal  
 3 transparency; amending s. 11.40, F.S.; expanding the  
 4 scope of the Legislative Auditing Committee review to  
 5 include compliance with local government fiscal  
 6 transparency requirements; amending s. 11.45, F.S.;  
 7 providing procedures for the Auditor General and local  
 8 governments to comply with the local government fiscal  
 9 transparency requirements; amending ss. 125.045 and  
 10 166.021, F.S.; revising reporting requirements for  
 11 certain local government economic development  
 12 incentives; transferring and renumbering s. 218.80,  
 13 F.S.; creating part VIII of ch. 218, F.S., consisting  
 14 of ss. 218.801, 218.803, 218.805, 218.81, 218.82,  
 15 218.83, 218.84, 218.88, and 218.89, F.S.; providing a  
 16 short title; specifying the purpose of the local  
 17 government fiscal transparency requirements; providing  
 18 definitions; requiring local governments to post  
 19 certain voting record information on their websites;  
 20 requiring the posting of specified links to related  
 21 sites if certain documentation or details are  
 22 available; requiring property appraisers to post  
 23 certain property tax information and history on their  
 24 websites; requiring local governments to post certain  
 25 property tax information and history on their  
 26 websites; requiring public notices for public hearings  
 27 and meetings before certain increases of local  
 28 government tax levies or the issuance of new tax-  
 29 supported debt; specifying noticing and advertising

Page 1 of 18

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20-00941-18

20181426\_\_

30 requirements for such public hearings and meetings;  
 31 requiring local governments to conduct certain debt  
 32 affordability analyses under specified conditions;  
 33 requiring audits of financial statements of local  
 34 governments to be accompanied by an affidavit signed  
 35 by the chair of the local government governing board;  
 36 requiring certain information to be included in  
 37 affidavits filed with the Auditor General; providing a  
 38 method for local governments that do not operate a  
 39 website to post certain required information; amending  
 40 s. 218.32, F.S.; conforming a cross-reference;  
 41 providing that this act fulfills an important state  
 42 interest; providing an effective date.  
 43

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

45  
 46 Section 1. Subsection (2) of section 11.40, Florida  
 47 Statutes, is amended to read:

48 11.40 Legislative Auditing Committee.—

49 (2) Following notification by the Auditor General, the  
 50 Department of Financial Services, or the Division of Bond  
 51 Finance of the State Board of Administration of the failure of a  
 52 local governmental entity, district school board, charter  
 53 school, or charter technical career center to comply with the  
 54 applicable provisions within s. 11.45(5)-(7), s. 218.32(1), s.  
 55 218.38, ~~or~~ s. 218.503(3), or part VIII of chapter 218, the  
 56 Legislative Auditing Committee may schedule a hearing to  
 57 determine if the entity should be subject to further state  
 58 action. If the committee determines that the entity should be

Page 2 of 18

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20-00941-18

20181426\_\_

subject to further state action, the committee shall:

(a) In the case of a local governmental entity or district school board, direct the Department of Revenue and the Department of Financial Services to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law. The committee shall specify the date such action shall begin, and the directive must be received by the Department of Revenue and the Department of Financial Services 30 days before the date of the distribution mandated by law. The Department of Revenue and the Department of Financial Services may implement the provisions of this paragraph.

(b) In the case of a special district created by:

1. A special act, notify the President of the Senate, the Speaker of the House of Representatives, the standing committees of the Senate and the House of Representatives charged with special district oversight as determined by the presiding officers of each respective chamber, the legislators who represent a portion of the geographical jurisdiction of the special district, and the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the Department of Economic Opportunity shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0651, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

2. A local ordinance, notify the chair or equivalent of the local general-purpose government pursuant to s. 189.0652 and the

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Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067. If the special district remains in noncompliance after the process set forth in s. 189.0652, or if a public hearing is not held, the Legislative Auditing Committee may request the department to proceed pursuant to s. 189.067(3).

3. Any manner other than a special act or local ordinance, notify the Department of Economic Opportunity that the special district has failed to comply with the law. Upon receipt of notification, the department shall proceed pursuant to s. 189.062 or s. 189.067(3).

(c) In the case of a charter school or charter technical career center, notify the appropriate sponsoring entity, which may terminate the charter pursuant to ss. 1002.33 and 1002.34.

Section 2. Present paragraphs (d) through (j) of subsection (7) of section 11.45, Florida Statutes, are redesignated as paragraphs (e) through (k), respectively, and a new paragraph (d) is added to that subsection, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(7) AUDITOR GENERAL REPORTING REQUIREMENTS.—

(d) During the Auditor General's review of audit reports, he or she shall contact each local government, as defined in s. 218.805(2), that is not in compliance with part VIII of chapter 218 and request evidence of corrective action. The local government shall provide the Auditor General with evidence of the initiation of corrective action within 45 days after the date it is requested by the Auditor General and evidence of completion of corrective action within 180 days after the date

20-00941-18

20181426\_\_

it is requested by the Auditor General. If the local government fails to comply with the Auditor General's request or is unable to take corrective action within the required timeframe, the Auditor General shall notify the Legislative Auditing Committee.

Section 3. Subsection (5) of section 125.045, Florida Statutes, is amended to read:

125.045 County economic development powers.—

(5) (a) By January 15 of each year, 2011, and annually thereafter, each county shall report to the Office of Economic and Demographic Research the economic development incentives in excess of \$25,000 given to businesses any business during the county's previous fiscal year. The Office of Economic and Demographic Research shall compile the information from the counties into a report and provide the report to the President of the Senate, the Speaker of the House of Representatives, and the Department of Economic Opportunity. The county shall identify whether the economic development incentive is provided directly by the county or by another entity on behalf of the county, as well as the source of local dollars, and any state or federal dollars obligated for the incentive. Economic development incentives, for purposes of this report, are classified as follows include:

1. Class one: Direct Financial incentives of monetary assistance provided to an individual a business from the county or through an organization authorized by the county. Such incentives include: but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies.

a. Grants.

20-00941-18

20181426\_\_

b. Tax-based credits, refunds, or exemptions.

c. Fee-based credits, refunds, or exemptions.

d. Loans, loan insurance, or loan guarantees.

e. Below-market rate leases or deeds for real property.

f. Job training or recruitment.

g. Subsidized or discounted government services.

h. Infrastructure improvements.

2. Class two: General assistance, services, and support provided collectively to businesses with a common interest or purpose. Such incentives include:

a. Technical assistance and training.

b. Business incubators and accelerators.

c. Infrastructure improvements ~~indirect incentives in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development.~~

3. Class three: Business recruitment, retention, or expansion efforts provided to benefit an individual business or class of businesses. Such incentives include:

a. Marketing and market research.

b. Trade missions and trade shows.

c. Site selection.

d. Targeted assistance with the permitting and licensing process.

e. Business plan or project development ~~Fee-based or tax-based incentives, including, but not limited to, credits, refunds, exemptions, and property tax abatement or assessment reductions.~~

4. ~~Below-market rate leases or deeds for real property.~~

20-00941-18

20181426\_\_

175 (b) A county shall report its economic development  
 176 incentives in the format specified by the Office of Economic and  
 177 Demographic Research.

178 (c) The Office of Economic and Demographic Research shall  
 179 compile the economic development incentives provided by each  
 180 county in a manner that shows the total of each class of  
 181 economic development incentives provided by each county and all  
 182 counties. To the extent possible, the office shall compare the  
 183 results of the economic development incentives provided by all  
 184 counties to the results of state incentives provided in similar  
 185 classes.

186 Section 4. Paragraph (e) of subsection (8) of section  
 187 166.021, Florida Statutes, is amended to read:

188 166.021 Powers.—

189 (8)

190 (e)1. By January 15 of each year, 2011, and annually  
 191 ~~thereafter~~, each municipality having annual revenues or  
 192 expenditures greater than \$250,000 shall report to the Office of  
 193 Economic and Demographic Research ~~the~~ economic development  
 194 incentives in excess of \$25,000 given to businesses ~~any business~~  
 195 during the municipality's previous fiscal year. The Office of  
 196 Economic and Demographic Research shall compile the information  
 197 from the municipalities into a report and provide the report to  
 198 the President of the Senate, the Speaker of the House of  
 199 Representatives, and the Department of Economic Opportunity. The  
 200 municipality shall identify whether the economic development  
 201 incentive was provided directly by the municipality or by  
 202 another entity on behalf of the municipality, as well as the  
 203 source of local dollars, and any state or federal dollars

Page 7 of 18

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20-00941-18

20181426\_\_

204 obligated for the incentive. Economic development incentives,  
 205 for purposes of this report, are classified as follows include:

206 a. Class one: ~~Direct~~ Financial incentives ~~of monetary~~  
 207 assistance provided to an individual a business ~~from the~~  
 208 ~~municipality or through an organization authorized by the~~  
 209 ~~municipality.~~ Such incentives include: ~~, but are not limited to,~~  
 210 ~~grants, loans, equity investments, loan insurance and~~  
 211 ~~guarantees, and training subsidies.~~

212 (I) Grants.

213 (II) Tax-based credits, refunds, or exemptions.

214 (III) Fee-based credits, refunds, or exemptions.

215 (IV) Loans, loan insurance, or loan guarantees.

216 (V) Below-market rate leases or deeds for real property.

217 (VI) Job training or recruitment.

218 (VII) Subsidized or discounted government services.

219 (VIII) Infrastructure improvements.

220 b. Class two: General assistance, services, and support  
 221 provided collectively to businesses with a common interest or  
 222 purpose. Such incentives include:

223 (I) Technical assistance and training.

224 (II) Business incubators and accelerators.

225 (III) Infrastructure improvements ~~Indirect incentives in~~  
 226 ~~the form of grants and loans provided to businesses and~~  
 227 ~~community organizations that provide support to businesses or~~  
 228 ~~promote business investment or development.~~

229 c. Class three: Business recruitment, retention, or  
 230 expansion efforts provided to benefit an individual business or  
 231 class of businesses. Such incentives include:

232 (I) Marketing and market research.

Page 8 of 18

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20-00941-18

20181426\_\_

233 (II) Trade missions and trade shows.  
 234 (III) Site selection.  
 235 (IV) Targeted assistance with the permitting and licensing  
 236 process.  
 237 (V) Business plan or project development ~~Fee based or tax~~  
 238 ~~based incentives, including, but not limited to, credits,~~  
 239 ~~refunds, exemptions, and property tax abatement or assessment~~  
 240 ~~reductions.~~  
 241 ~~d. Below-market rate leases or deeds for real property.~~  
 242 2. A municipality shall report its economic development  
 243 incentives in the format specified by the Office of Economic and  
 244 Demographic Research.  
 245 3. The Office of Economic and Demographic Research shall  
 246 compile the economic development incentives provided by each  
 247 municipality in a manner that shows the total of each class of  
 248 economic development incentives provided by each municipality  
 249 and all municipalities. To the extent possible, the office shall  
 250 compare the results of the economic development incentives  
 251 provided by all municipalities to the results of state  
 252 incentives provided in similar classes.  
 253 Section 5. Section 218.80, Florida Statutes, is transferred  
 254 and renumbered as section 218.795, Florida Statutes.  
 255 Section 6. Part VIII of chapter 218, Florida Statutes,  
 256 consisting of sections 218.801, 218.803, 218.805, 218.81,  
 257 218.82, 218.83, 218.84, 218.88, and 218.89, is created to read:  
 258 PART VIII  
 259 LOCAL GOVERNMENT FISCAL TRANSPARENCY ACT  
 260 218.801 Short title.—This part may be cited as the "Local  
 261 Government Fiscal Transparency Act."

Page 9 of 18

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20-00941-18

20181426\_\_

262 218.803 Purpose.—The purpose of this part is to promote the  
 263 fiscal transparency of local governments when using public funds  
 264 by requiring additional public noticing of proposed local  
 265 government actions that would increase taxes, enact new taxes,  
 266 extend expiring taxes, or issue tax-supported debt and requiring  
 267 voting records of local governing bodies related to such actions  
 268 to be easily and readily accessible by the public.  
 269 218.805 Definitions.—As used in this part, the term:  
 270 (1) "Debt" means bonds, loans, promissory notes, lease-  
 271 purchase agreements, certificates of participation, installment  
 272 sales, leases, or any other financing mechanisms or financial  
 273 arrangements, whether or not a debt for legal purposes, for  
 274 financing or refinancing the acquisition, construction,  
 275 improvement, or purchase of capital outlay projects.  
 276 (2) "Local government" means any county, municipality,  
 277 school district, special district dependent to a county or  
 278 municipality, municipal service taxing unit, or independent  
 279 special district, but does not include special dependent or  
 280 independent districts established to provide hospital services,  
 281 provided such special districts do not levy, assess, and collect  
 282 ad valorem taxes.  
 283 (3) "Tax increase" means:  
 284 (a) For ad valorem taxes, any increase in a local  
 285 government's millage rate above the rolled-back rate as defined  
 286 in s. 200.065(1).  
 287 (b) For all other taxes, a tax enactment, tax extension, or  
 288 an increase in the tax rate.  
 289 (4) "Tax-supported debt" means debt with a duration of more  
 290 than 5 years secured in whole or in part by state or local tax

Page 10 of 18

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20-00941-18 20181426\_\_

291 levies, whether such security is direct or indirect, explicit or  
 292 implicit, and includes, but is not limited to, debt for which  
 293 annual appropriations pledged for payment are from government  
 294 fund types receiving tax revenues or shared revenues from state  
 295 tax sources. The term does not include debt secured solely by  
 296 revenues generated by the project that is financed with the  
 297 debt.

298 218.81 Voting record access.-

299 (1) Each local government shall post on its website, in a  
 300 manner that is easily accessible to the public, a history of the  
 301 voting record of each action taken by the local governing board  
 302 which addressed a tax increase or new tax-supported debt  
 303 issuance, except debt that was refinanced or refunded and that  
 304 did not extend the term or increase the outstanding principal  
 305 amount of the original debt, as follows:

306 (a) By October 1, 2018, the voting record history from the  
 307 preceding year;

308 (b) By October 1, 2019, the voting record history from the  
 309 preceding 2 years;

310 (c) By October 1, 2020, the voting record history from the  
 311 preceding 3 years; and

312 (d) By October 1, 2021, and thereafter, the voting record  
 313 history required pursuant to this subsection from the preceding  
 314 4 years.

315 (2) The website must provide links to allow users to  
 316 navigate to related sites if supporting details or documentation  
 317 are available.

318 (3) In any public notice of a tax increase or the issuance  
 319 of new tax-supported debt, each local government shall include

20-00941-18 20181426\_\_

320 with the public notice the website address where the voting  
 321 records can be accessed.

322 218.82 Property tax information and history.-

323 (1) Each county property appraiser, as defined in s.  
 324 192.001, shall maintain a website that includes, in a manner  
 325 easily accessible to the public, links that provide access to:

326 (a) The notice of proposed property taxes and non-ad  
 327 valorem assessments required under s. 200.069 for each parcel of  
 328 property in that county; and

329 (b) A history of the millage rate and the amount of tax  
 330 levied by each taxing authority on each parcel, as follows:

331 1. By October 1, 2018, the history from the 2 preceding  
 332 years;

333 2. By October 1, 2019, the history from the 3 preceding  
 334 years; and

335 3. By October 1, 2020, and thereafter, the history from the  
 336 4 preceding years.

337

338 This subsection does not apply to information that is otherwise  
 339 exempt from public disclosure.

340 (2) Each local government shall post on its website, in a  
 341 manner that is easily accessible to the public, links that  
 342 provide access to a history of each of its millage rates and the  
 343 total annual amount of revenue generated by each of these  
 344 levies, as follows:

345 (a) By October 1, 2018, the history from the 2 preceding  
 346 years;

347 (b) By October 1, 2019, the history from the 3 preceding  
 348 years; and

20-00941-18

20181426\_\_

349 (c) By October 1, 2020, and thereafter, the history from  
 350 the 4 preceding years.

351 218.83 Expanded public noticing of tax increases and new  
 352 tax-supported debt issuance.—

353 (1) For the purpose of this section, the term "tax  
 354 increase" does not include an ad valorem tax increase.

355 (2) A local government that intends to vote on a proposed  
 356 tax increase or the issuance of new tax-supported debt shall  
 357 advertise a public hearing to solicit public input concerning  
 358 the proposed tax increase or new tax-supported debt issuance.  
 359 This public hearing must occur at least 14 days prior to the  
 360 date that the local governing body meets to take a final vote on  
 361 the tax increase or issuance of new tax-supported debt. Any  
 362 hearing required under this subsection shall be held after 5  
 363 p.m. if scheduled on a day other than Saturday. No hearing shall  
 364 be held on a Sunday. The general public shall be allowed to  
 365 speak and to ask questions relevant to the tax increase or the  
 366 tax-supported debt issuance. The local government shall provide  
 367 public notice as set forth in subsection (4).

368 (3) (a) If, following the public hearing required under  
 369 subsection (2), the local government intends to proceed with a  
 370 vote to approve a tax increase or the new issuance of tax-  
 371 supported debt, the local government shall provide public notice  
 372 in the manner set forth in subsection (4) at least 10 days prior  
 373 to the date of the scheduled public meeting.

374 (b) For a tax increase, the notice shall also include, at a  
 375 minimum:

376 1. A statement prominently posted that the local government  
 377 intends to vote on a proposed new tax enactment, tax extension,

20-00941-18

20181426\_\_

378 or tax rate increase.

379 2. The time and place of the meeting.

380 3. The amount of the tax increase, including both the rate  
 381 and total amount of annual revenue expected to be generated and  
 382 the expected annual revenue expressed as a percentage of the  
 383 government's general fund revenue.

384 4. A detailed explanation of the intended uses of the levy.

385 5. A statement indicating whether the local government  
 386 expects to use the proceeds to secure debt.

387 (c) For new tax-supported debt issuance, the notice shall  
 388 also include, at a minimum:

389 1. A statement prominently posted that the local government  
 390 intends to vote on a proposed new issuance of tax-supported  
 391 debt.

392 2. The time and place of the meeting.

393 3. A truth in bonding statement in substantially the  
 394 following form:

395 The ...(insert local government name)... is proposing to  
 396 issue \$...(insert principal)... of debt or obligation for the  
 397 purpose of ...(insert purpose).... This debt or obligation is  
 398 expected to be repaid over a period of ...(insert term of  
 399 issue)... years. At a forecasted interest rate of ...(insert  
 400 rate of interest)..., total interest paid over the life of the  
 401 debt or obligation will be \$...(insert sum of interest  
 402 payments).... The source of repayment or security for this  
 403 proposal is the ...(insert the local government name)...  
 404 existing ...(insert fund).... Authorizing this debt or  
 405 obligation will result in \$...(insert the annual amount)... of  
 406 ...(insert local government name)... ...(insert fund)... moneys

20-00941-18 20181426\_\_

not being available to finance the other services of the  
... (insert local government name) ... each year for ... (insert  
the length of the debt or obligation) ....

4. Presentation of the debt affordability ratios calculated  
pursuant to s. 218.84, described in substantially the following  
form:

The following ratios measure the affordability of  
outstanding and proposed new long-term, tax-supported debt  
issued by ... (insert local government name) .... The ratios show  
debt service as a percentage of the revenues available to  
support that debt, including the new debt being proposed  
... (insert 5 year history and 2 year projection of debt  
affordability ratio) ....

(4) The notice provided by a local government announcing a  
public hearing to take public input as set forth in subsection  
(2) or the public meeting to take a final vote as set forth in  
subsection (3) must meet the following requirements:

(a) The local government must advertise the notice in a  
newspaper of general circulation in the county or counties where  
the local government exists. A local government may advertise in  
a geographically limited insert of a general circulation  
newspaper if the region encompassed by the insert contains the  
jurisdictional boundaries of the local government. The newspaper  
must be of general interest with readership in the community and  
not one of limited subject matter, pursuant to chapter 50. The  
advertisement must be at least one-quarter page in size of a  
standard size newspaper or a half-page in size of a tabloid size  
newspaper, and the headline in the advertisement must be in a  
type no smaller than 18 point. The advertisement may not be

20-00941-18 20181426\_\_

placed in that portion of the newspaper where legal notices and  
classified advertisements appear. The advertisement must appear  
in a newspaper that is published at least 5 days a week unless  
the only newspaper in the county is published less than 5 days a  
week. If the advertisement appears in a geographically limited  
insert of a general circulation newspaper, the insert must be  
one that is published at least twice a week throughout the local  
government's jurisdiction. In lieu of publishing the notice set  
out in this paragraph, the local government may mail a copy of  
the notice to each elector residing within the jurisdiction of  
the local government; and

(b) The local government must post on its website in a  
manner that is easily accessible to the public the information  
required under subsections (2) and (3), as applicable.

(5) This section does not apply to the refinancing or  
refunding of debt that does not extend the term or increase the  
outstanding principal amount of the original debt.

218.84 Local government debt fiscal responsibility.-

(1) It is the public policy of this state to encourage  
local governments to exercise prudence in authorizing and  
issuing debt. Before a local government authorizes debt, it must  
consider its ability to meet its total debt service requirements  
in light of other demands on the local government's fiscal  
resources. Each local government shall perform a debt  
affordability analysis as set forth in subsection (2), and the  
governing board shall consider the analysis before approving the  
issuance of new tax-supported debt.

(2) The debt affordability analysis shall, at a minimum,  
consist of the calculation of the local government's actual debt

20-00941-18 20181426\_\_

affordability ratio for the 5 fiscal years prior to the year the debt is expected to be issued and a projection of the ratio for at least the first 2 fiscal years in which the new debt is expected to be issued. The analysis shall include a comparison of the debt affordability ratio with and without the new debt issuance.

(3) The debt affordability ratio for a given fiscal year shall be a ratio:

(a) The denominator of which is the total annual revenues available to pay debt service on outstanding tax-supported debt of the local government; and

(b) The numerator of which is the total annual debt service for outstanding tax-supported debt of the local government.

218.88 Audits.—Audits of financial statements of local governments which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must be accompanied by an affidavit executed by the chair of the governing board of the local government stating that the local government has complied with this part. The affidavit must be filed with the Auditor General, or in the event the local government has not complied with this part, the affidavit shall instead include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future.

218.89 Local government websites.—If a local government is required under this part to post information on its website, but does not operate an official website, the local government must provide the county or counties within which the local government is located the information required to be posted, and each such

20-00941-18 20181426\_\_

county shall post the required information on its website.

Section 7. Paragraph (e) of subsection (1) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.—

(1)

(e) Each local governmental entity that is not required to provide for an audit under s. 218.39 must submit the annual financial report to the department no later than 9 months after the end of the fiscal year. The department shall consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. The format must include balance sheet information used by the Auditor General pursuant to s. 11.45(7)(g) ~~s. 11.45(7)(f)~~. The department must forward the financial information contained within the annual financial reports to the Auditor General in electronic form. This paragraph does not apply to housing authorities created under chapter 421.

Section 8. The Legislature finds that this act fulfills an important state interest.

Section 9. This act shall take effect July 1, 2018.



**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7012

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse

DATE: February 22, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Matiyow</u>	<u>Knudson</u>		<b>BI Submitted as Committee Bill</b>
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Matiyow</u>	<u>Phelps</u>	<u>RC</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 7012 provides an Open Government Sunset Review of a public records exemption that makes confidential and exempt proprietary business information provided by participating insurers to the Citizens Property Insurance Corporation's clearinghouse program (clearinghouse). The proprietary business information is shared with the clearinghouse to facilitate placing risks with participating private market insurers instead of Citizens when applicants or current Citizens policyholders seek new or renewal property insurance coverage from Citizens. Participating insurers use their own proprietary business information in the identification and selection of risks within the program before an offer of coverage is made.

The original public necessity statement upon which the public records exemption is based provides as justification for the exemption that public disclosure of the detailed data required for the program from participating insurers could result in a substantial chilling effect on insurer participation and, ultimately undermine the success of the program.

Justification for the public records exemption remains valid. Therefore, the bill deletes the repeal of the public records exemption.

The bill requires passage by a simple majority vote of each chamber.

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.<sup>1</sup> 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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *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.’<sup>12</sup> 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.<sup>13</sup>

### **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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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;<sup>17</sup>
- 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;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>20</sup> 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.  
<sup>12</sup> 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).

<sup>13</sup> 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).

<sup>14</sup> 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.

<sup>15</sup> Section 119.15(3), F.S.

<sup>16</sup> Section 119.15(6)(b), F.S.

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup>

### **Citizens Property Insurance Corporation Policyholder Eligibility Clearinghouse Program (clearinghouse)**

The Legislature established the Citizens Property Insurance Corporation policyholder eligibility clearinghouse program (clearinghouse) in 2013.<sup>23</sup> The program identifies private-market property insurance options for homeowners who believe Citizens may be their only choice for property insurance. When an applicant applies for coverage with Citizens, the Citizens agent enters information from the application into the clearinghouse. Participating private-market companies review the information in determining whether to offer coverage. If so, the agent provides the applicant with a quote sheet that includes a side-by-side list of offers received. The quote sheet indicates which offers are comparable to Citizens and whether any of the offers falls within the threshold of no more than 15 percent greater than Citizens current rate for new policies and 0 percent of Citizens current rate for renewal policies. If an offer from a participating private market insurer falls within these thresholds, the applicant is ineligible for coverage with Citizens.<sup>24</sup> Renewal applicants made ineligible for coverage due to a private market offer through the clearinghouse can reapply and be rated as a renewal if, within the first 3 years of leaving Citizens, their private market rate increased by greater than 10 percent in one year.<sup>25</sup>

To date, a total of 15 private market insurers participate in the clearinghouse.<sup>26</sup> Since its launch in 2014, thru December 12, 2017, a total of 45,835 new policies and \$13.56 billion in Coverage A has been channeled away from Citizens.<sup>27</sup> Additionally, during this same time frame, 8,880

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- 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?

<sup>21</sup> FLA. CONST. art. I, s. 24(c).

<sup>22</sup> Section 119.15(7), F.S.

<sup>23</sup> Chapter 2013-60, L.O.F.

<sup>24</sup> Sections 627.3518(5), and 627.351(6)(n)6., F.S.

<sup>25</sup> *Id.*

<sup>26</sup> Citizens Property Insurance Corporation, *Clearinghouse*, available at: <https://www.citizensfla.com/clearinghouse> (Last visited Jan. 25, 2018).

<sup>27</sup> Citizens Property Insurance Corporation, *Citizens Market Accountability and Advisory Committee Depopulation and Clearinghouse Update*, Dec. 12, 2017, available at: <https://www.citizensfla.com/documents/20702/6045232/20171212+05+Depopulation+and+Clearinghouse+Update.pdf/4f2151bc-a9fb-4bc6-874a-4c01072b58be> (Last visited Jan. 25, 2018).

renewal policies consisting of \$1.55 billion in Coverage A has also been channeled out of Citizens and into the private market.<sup>28</sup>

### **Public Records Exemption for Proprietary Business Information**

In addition to establishing the clearinghouse, the 2013 Legislature provided a public records exemption for proprietary business information submitted to the clearinghouse.<sup>29</sup> Specifically, the exemption made confidential and exempt proprietary business information provided to the clearinghouse by insurers, which is used to identify and select risks for an offer of coverage.

Proprietary business information, for purposes of the public records exemption, is information, regardless of form or characteristics, owned or controlled by an insurer which:

- Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and
- Includes, but is not limited to:
  - Trade secrets.
  - Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks for an offer of coverage through the program and are shared with the clearinghouse to facilitate the shopping of risks by participating insurers.<sup>30</sup>

The clearinghouse may, however, disclose confidential and exempt proprietary business information:

- If the insurer to which it pertains gives prior written consent;
- If required by a court order; or
- If given to another state agency in this or another state or a federal agency provided the recipient agrees in writing to maintain the confidential and exempt status of the information.

As justification for the public records exemption, the public necessity statement provides, in part:

Obtaining offers of coverage from authorized insurers through the clearinghouse will provide more choices for consumers and reduce the corporation's exposure and potential for imposing assessments on its policyholders and policyholders in the private market. In order for the program to efficiently determine whether there are authorized insurers interested in making an offer of coverage for a particular risk, a substantial amount of detailed data from participating insurers must be

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<sup>28</sup> *Id.*

<sup>29</sup> Chapter 2013-61, L.O.F.; Section 627.3518(11), F.S. Chapter 2013-61, L.O.F., originally placed the public records exemption in subsection (10) of s. 627.3518, F.S., but it has subsequently been renumbered.

<sup>30</sup> Section 627.3518(11)(a), F.S.

provided . . . . Public disclosure of the detailed data could result in a substantial chilling effect on insurer participation in the program and thereby undermine the program's success.<sup>31</sup>

### **III. Effect of Proposed Changes:**

The bill provides an Open Government Sunset Review (OGSR) of a public records exemption that makes confidential and exempt proprietary business information provided by participating insurers to the Citizens clearinghouse program. The proprietary business information is shared with the clearinghouse to facilitate placing risks with participating private market insurers instead of Citizens when applicants or current Citizens policyholders seek new or renewal property insurance coverage from Citizens. Participating insurers use their own proprietary business information in the identification and selection of risks within the program before an offer of coverage is made.

The original public necessity statement upon which the public records exemption is based provides as justification for the exemption that public disclosure of the detailed data required for the program from participating insurers could result in a substantial chilling effect on insurer participation and, ultimately undermine the success of the program.

Justification for the public records exemption remains valid. Therefore, the bill deletes the repeal of the public records exemption.

The bill requires passage by a simple majority vote of each chamber.

The bill takes effect October 1, 2018.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

The bill complies with the requirement of article I, section 24 of the State Constitution that a public records exemption created by the Legislature may only contain exemptions from the constitutional public access requirements and shall relate to one subject.

#### **C. Trust Funds Restrictions:**

None.

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<sup>31</sup> Chapter 2013-61, L.O.F.

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

None.

**B. Private Sector Impact:**

If the exemption is repealed, insurers may stop participating in the clearinghouse program and Citizens efforts to depopulate could be negatively impacted.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 627.3518 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 Banking and Insurance

597-01997-18

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 627.3518, F.S., relating to an exemption from public records requirements for certain proprietary business information provided by insurers to the Citizens Property Insurance Corporation policyholder eligibility clearinghouse; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (11) of section 627.3518, Florida Statutes, is amended to read:

627.3518 Citizens Property Insurance Corporation policyholder eligibility clearinghouse program.—The purpose of this section is to provide a framework for the corporation to implement a clearinghouse program by January 1, 2014.

(11) Proprietary business information provided to the corporation's clearinghouse by insurers with respect to identifying and selecting risks for an offer of coverage is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(a) As used in this subsection, the term "proprietary business information" means information, regardless of form or characteristics, which is owned or controlled by an insurer and:

1. Is identified by the insurer as proprietary business information and is intended to be and is treated by the insurer as private in that the disclosure of the information would cause

Page 1 of 3

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

597-01997-18

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harm to the insurer, an individual, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;

2. Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to the clearinghouse; and

3. Includes, but is not limited to:

a. Trade secrets.

b. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Proprietary business information may be found in underwriting criteria or instructions which are used to identify and select risks through the program for an offer of coverage and are shared with the clearinghouse to facilitate the shopping of risks with the insurer.

(b) The clearinghouse may disclose confidential and exempt proprietary business information:

1. If the insurer to which it pertains gives prior written consent;

2. Pursuant to a court order; or

3. To another state agency in this or another state or to a federal agency if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality.

Page 2 of 3

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



597-01997-18

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59       ~~(e) This subsection is subject to the Open Government~~  
60       ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
61       ~~repealed on October 2, 2018, unless reviewed and saved from~~  
62       ~~repeal through reenactment by the Legislature.~~

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

# CourtSmart Tag Report

**Room:** KN 412

**Case No.:**

**Type:**

**Caption:** Senate Rules Committee

**Judge:**

**Started:** 2/26/2018 2:37:04 PM

**Ends:** 2/26/2018 5:58:46 PM **Length:** 03:21:43

2:37:07 PM Chair Benacquisto calls meeting to order  
2:37:41 PM Roll call announce a quorum  
2:38:07 PM Chair welcomes crowd  
2:39:48 PM Senator Lee asks question about agenda  
2:40:11 PM Chair Benacquisto makes comments about other bills on the agenda  
2:40:43 PM tab 2 SPB 7024 by Senator Galvano  
2:40:59 PM 442744 strike all amendment by Senator Galvano  
2:41:43 PM 442744 adopted  
2:41:52 PM back on bill as amended  
2:42:31 PM roll call vote on SPB 7024 voted favorably  
2:42:57 PM tab 3 SPB 7026 by Senator Galvano  
2:43:15 PM 345360 strike all amendment  
2:51:01 PM Senator Thurston asks question  
2:51:19 PM Senator Lee asks questions  
2:52:44 PM Senator Galvano answers questions regarding who will be allowed to carry on campus  
2:54:01 PM Senator Lee for follow up  
2:54:49 PM Senator Lee wants further info on risk assessment  
2:56:43 PM Senator Lee mentions search and seizure and probably cause and standards to obtain  
2:56:58 PM Senator Galvano answers questions  
2:58:34 PM Senator Lee needs clarification on search and seizure  
2:59:40 PM Senator Galvano speaks on possession  
3:00:03 PM Senator Rodriguez asks question  
3:01:13 PM Senator Rodriguez question about the age and purchasing from a licensed dealer  
3:02:10 PM Senator Galvano states it would only affect licensed dealers not private dealers  
3:03:01 PM Senator Galvano this bill will not affect private sellers  
3:03:19 PM Senator Rodriguez speaks about ban of gun stocks  
3:05:04 PM Senator Rodriguez asks question about arming teachers and the special risk category  
3:06:01 PM Senator Rodriguez asks question further about teachers being armed  
3:06:41 PM Senator Galvano responds  
3:07:34 PM Senator Rodriguez speaks on teacher will be identifiable they are carrying  
3:07:42 PM Senator Galvano responds  
3:08:31 PM Senator Rodriguez further questions if this will put teachers at risk  
3:09:51 PM Senator Rodriguez speaks about high liability  
3:10:51 PM Senator Rodriguez questions deals with profiling students  
3:11:44 PM Senator Galvano responds  
3:12:37 PM Senator Montford asks question regarding notification system  
3:12:51 PM Senator Galvano speaks further on the notification system  
3:13:36 PM Senator Montford asks about Marshal Program and Special Risk  
3:14:25 PM Senator Galvano responds that it is a voluntary program  
3:15:27 PM Senator Montford asks question if this bill will enhance current law  
3:16:29 PM Senator Montford asks final question regarding safety school officer  
3:17:00 PM Senator Galvano responds

3:17:30 PM Senator Braynon asks question  
3:17:52 PM Senator Galvano responds  
3:18:35 PM Senator Braynon needs further information on Resource Officers  
3:20:39 PM Senator Thurston asks question regarding registering firearms  
3:21:06 PM Senator Galvano says this bill does not require registering firearms  
3:23:19 PM Senator Thurston asks question regarding private sales  
3:23:36 PM Senator Galvano responds it only affects licensed dealers  
3:24:37 PM 579360 amendment to the amendment  
3:24:54 PM Senator Braynon to explain amendment to the amendment  
3:25:33 PM Senator Galvano cannot support this amendment  
3:26:34 PM Senator Braynon speaks about citizens being shot by LEO  
3:30:20 PM 579360 not adopted  
3:30:56 PM roll call on 579360 no adopted  
3:31:16 PM 957372 amendment by Senator Braynon  
3:32:53 PM Senator Galvano says he is ok with this amendment  
3:33:07 PM 957372 amendment to the amendment adopted  
3:33:31 PM 374978 amendment by Senator Rodriguez  
3:36:14 PM Senator Galvano states is not a friendly amendment  
3:37:06 PM 374978 roll call on the amendment not adopted  
3:37:21 PM 831648 amendment by Senator Rodriguez  
3:43:09 PM Juan Cuba speaks in support for amendment  
3:45:45 PM Pastor Oliver from St. Petersburg  
3:51:53 PM Recording Paused  
3:53:12 PM Recording Resumed  
3:53:42 PM Recording Paused  
3:54:47 PM Recording Resumed  
3:55:08 PM Chair calls meeting back on order  
3:55:30 PM we are on amendment 831648  
3:55:50 PM appearance cards for public testimony  
5:16:40 PM Senator Thurston in debate  
5:17:53 PM back on the barcode amendment 831648  
5:19:19 PM Senator Rodriguez to close on the amendment  
5:23:12 PM roll call vote on 831648 not adopted  
5:24:07 PM 355256 amendment by Senator Thurston  
5:25:50 PM tp amendment 355256  
5:26:16 PM informal recess  
5:26:22 PM Recording Paused  
5:26:41 PM Recording Resumed  
5:26:55 PM Senator Galvano to speak on 355256  
5:27:12 PM amendment is not adopted  
5:27:42 PM Senator Rodriguez to explain next amendment 335906  
5:28:35 PM Senator Galvano asks not to support amendment by Senator Rodriguez  
5:29:38 PM this amendment deals with safety locks  
5:29:47 PM the amendment is not adopted  
5:30:09 PM next amendment is by Senator Thurston regarding firearm registration 403738  
5:31:50 PM amendment is not adopted  
5:32:03 PM 260340 by Senator Galvano  
5:32:31 PM the amendment is adopted  
5:32:51 PM back on amendment as amended  
5:33:31 PM reading appearance cards  
5:34:50 PM Mayor of Parkland to speak  
5:38:45 PM 345360 as amended voted favorably

**5:38:52 PM** on the bill as amended  
**5:39:13 PM** Senator Braynon in debate of the bill  
**5:41:20 PM** Senator Montford in debate  
**5:44:08 PM** Senator Thurston in debate  
**5:47:24 PM** Senator Book in debate  
**5:49:14 PM** Senator Rodriguez in debate  
**5:50:54 PM** Senator Galvano in closing  
**5:58:20 PM** roll call vote on SPB 7026 reported favorably as amended  
**5:58:38 PM** Senator Galvano moves we rise