

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 112 Dean	Property Fraud; Prohibiting a person from filing or causing to be filed, with intent to defraud another, a document relating to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property, which the person knows contains a material misstatement, misrepresentation, or omission of fact; providing criminal penalties; providing that a person who fraudulently records a construction lien is subject to specified fraud provisions, etc. JU 03/06/2013 Fav/CS CJ RC	Fav/CS Yeas 9 Nays 0
2	SB 286 Negron (Identical H 575)	Design Professionals; Providing that certain contracts executed by a business entity may specify that certain architects, interior designers, landscape architects, engineers, and surveyors may not be held individually liable for negligence in the performance of professional services provided under those contracts; specifying that a contract that prohibits individual liability must meet certain requirements, etc. RI 02/06/2013 Favorable JU 03/06/2013 Fav/CS CA	Fav/CS Yeas 6 Nays 3
3	SB 592 Galvano (Similar CS/H 405)	Garnishment; Revising "Notice to Defendant" provided by clerk of court in a garnishment proceeding; providing that a defendant in a garnishment proceeding may provide notice of a garnishment exemption to plaintiff or garnishee's attorney; requiring defendant to certify under oath and penalty of perjury that he or she provided notice of exemption claim and request for hearing to plaintiff, garnishee, or their respective attorneys, etc. JU 03/06/2013 Favorable CM	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 6, 2013, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 58 Hays (Compare CS/H 351)	Application of Foreign Law in Certain Cases; Clarifying that the public policies expressed in the act apply to violations of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; providing that the act does not apply to a corporation, partnership, or other form of business association, except when necessary to provide effective relief in proceedings under or relating to chapters 61 and 88, F.S., etc. JU 03/06/2013 Fav/CS GO CF RC	Fav/CS Yeas 6 Nays 3
5	SB 404 Stargel (Identical H 267)	Real Property Liens and Conveyances; Deleting a requirement that blank spaces be included on a warranty deed to allow for entry of social security numbers of grantees on the deed; providing that certain types of governmental or quasi-governmental liens on real property are valid and effectual against certain creditors and purchasers only if recorded in a specified manner, etc. JU 03/06/2013 Fav/CS CA AFT AP	Fav/CS Yeas 9 Nays 0
6	SB 746 Stargel (Identical H 7017)	Terms of Courts; Repealing provisions relating to regular terms of the Supreme Court; repealing provisions relating to requiring a judge to attend the first day of each term of the circuit court; repealing provisions relating to a requirement for a judge to state a reason for nonattendance; allowing the Supreme Court to set terms of court for the Supreme Court, district courts of appeal, and circuit courts; authorizing appellate courts to withdraw a mandate within 120 days after its issuance, etc. JU 03/06/2013 Favorable ACJ AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 6, 2013, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 294 Bradley (Identical H 619)	Controlled Substances; Adding to the list of Schedule I controlled substances certain specified materials, compounds, mixtures, or preparations that contain hallucinogenic substances, or any of their salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; providing reduced penalties for possession of 3 grams or less of specified controlled substances; providing criminal penalties for a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, a specified quantity of specified controlled substances, etc. CJ 02/05/2013 Favorable JU 03/06/2013 Favorable ACJ AP	Favorable Yeas 9 Nays 0
8	SB 556 Ring (Identical H 643)	Clerks of the Court; Providing requirements for the storage of papers and electronic filings and requiring that they be stamped with the date and time of submission; requiring that the clerk provide access to public records without charge to certain persons, subject to a limitation and an exception; specifying the bid process for tax deed sales at public auction; providing a procedure for the disbursement of proceeds from a tax deed sale if delinquent or current taxes are due, etc. JU 03/06/2013 Fav/CS GO AFT AP	Fav/CS Yeas 9 Nays 0
9	CS/SB 166 Banking and Insurance / Richter (Similar CS/H 167)	Annuities; Providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers; increasing the period of time that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age, etc. BI 02/06/2013 Fav/CS JU 03/06/2013 Fav/CS RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 6, 2013, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	SB 736 Richter (Similar H 995)	Limitations Relating to Deeds and Wills; Providing for limitations of actions when a deed or will is on record; providing that a person claiming an interest in real property affected by amendments made in the act has until a specified date to file a claim or defense in court to determine the validity of the instrument; providing that if a claim or defense is filed within the specified period, the validity of the instrument is determined without regard to these amendments, etc. JU 03/06/2013 Favorable CF RC	Favorable Yeas 9 Nays 0
11	SB 832 Joyner (Similar H 841)	Powers of Attorney; Authorizing a notary public to sign the principal's name to the power of attorney under certain circumstances; providing that an original power of attorney, rather than a photocopy or electronic copy, may be required under certain circumstances; providing that an original power of attorney may be presented for recording in the official records for a fee; adding exceptions to a provision that prohibits an agent who has accepted appointment from delegating authority to a third person, etc. JU 03/06/2013 Favorable GO RC	Favorable Yeas 9 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 112

INTRODUCER: Judiciary Committee and Senator Dean

SUBJECT: Property Fraud

DATE: March 7, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 112 creates the offense of filing or directing to file, with the intent to defraud or harass another, a document in an official records which contains materially false, fictitious, or fraudulent statements or representations that affect the owner’s interest in property described in the document. A person who commits the new offense is subject to punishment for a third-degree felony.¹ If a person commits this offense a second or subsequent time the person is liable to punishment for a second-degree felony.² The bill enhances the applicable punishment for the offender under circumstances outlined in the bill. The bill also provides that a person who files a fraudulent construction lien is subject to penalties under the Construction Lien Law, not the newly-created offense in the bill.

The bill amends the law relating to criminal actions under color of law or through use of simulated legal process, to revise definitions. For purposes of that law, the bill defines the term, “public officer or employee.” The bill specifies additional civil remedies to grant relief to public

¹ A third-degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

² A second-degree felony is punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

officers or employees affected by the offense of filing of false statements or claims. The bill ranks offenses created in the bill in the severity ranking chart under the Criminal Punishment Code for purposes of sentencing.

The bill creates section 817.535, Florida Statutes.

This bill amends ss. 843.0855 and 921.0022, F.S.

II. Present Situation:

Fraud

Chapter 817, F.S., deals with a variety of fraudulent practices. Section 817.54, F.S., for example, states that a person commits a third-degree felony if he or she obtains a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Additionally, s. 817.155, F.S., makes it a third-degree felony to knowingly falsify any matter within the jurisdiction within the Department of State. The conduct subject to penalties appears to include filing fraudulent liens. Other provisions of law contain similar penalties specific to liens. Under s. 713.31(3), F.S., it is a third-degree felony to fraudulently file a construction lien. A construction lien is considered fraudulent if the person who filed the lien purposefully exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.³

In a 2011 federal case in Florida, the defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecutions against him.⁴ Although the liens in this case were “fantastic, delusional and incredible,”⁵ with each claiming the amount owed was “\$48,489,000.00 plus interest, penalties, and fees,”⁶ the court found that the sham documents could still be damaging to the credit of the federal officers because they were recorded in official state and local registries.⁷ The court found that the liens were fraudulent and void, and enjoined the defendant from filing future liens against federal employees absent a commercial relationship and a contract authorizing the filing.⁸ The defendant was subsequently sentenced to 30 months in prison for the fraudulent filings.⁹

Fraudulent Recording of Deeds

Property owners who have wild deeds¹⁰ recorded on their property may pursue a suit to quiet title, “an equitable action that involves clearing title of an invalid charge against the title.”¹¹ In

³ Section 713.31(2)(a), F.S.

⁴ *United States v. Leitner*, 2011 WL 2532745, No. 3:10cv454/RS/CJK. (N.D. Fla. June 6, 2011).

⁵ *Id.* at *7.

⁶ *Id.* at *5.

⁷ *Id.* at *7.

⁸ *Id.* at *9.

⁹ See Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, <http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html> (last visited Jan. 4, 2013).

¹⁰ A wild deed is a recorded deed that is not in the chain of title, usu. because a previous instrument connected to the chain of title has not been recorded.

the alternative, property owners may sue for slander of title, a tort action for which damages may be recovered.¹² The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney's fees.¹³ A tort claim is not actionable as slander of title if the defendant acted without malice and with the belief that he or she had a valid claim against the property and was entitled to record that claim.¹⁴

Florida Recording Statute

Florida has a recording statute which states:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.¹⁵

Section 695.01, F.S., is a notice-recording statute and "Florida courts over time have described and applied Florida's recording statute in a manner that is consistent with a 'notice' type of recording statute."¹⁶ The recording system serves two purposes: it protects existing property owners and protects new buyers.¹⁷ The system does so by allowing access to any person such as a creditor, tax collector, or prospective purchaser to ascertain who owns the property and what encumbrances might exist to the title. Because these records are open for the public to rely on and have the potential to call into question the owner's clear title to the property, having accurate property records is vital. Clerks of court have very little control over which documents are recorded, because the law generally does not require that the clerk examine a document for its validity or accuracy.¹⁸

III. Effect of Proposed Changes:

The bill creates the offense of filing or directing to file, with the intent to defraud or harass another, a document in an official record which contains materially false, fictitious, or fraudulent statements or representations that affect the owner's interest in property described in the document. A person who commits the new offense is subject to punishment for a third-degree felony.¹⁹ If a person commits this offense a second or subsequent time, the person is liable to

¹¹ See 65 AM. JUR.2D *Quieting Title* s. 2 (2012).

¹² *Id.*

¹³ Section 86.081, F.S., and see also *Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984).

¹⁴ *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566 (Fla. 4th DCA 2008).

¹⁵ Section 695.01(1), F.S.

¹⁶ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).

¹⁷ John G. Sprankling, *UNDERSTANDING PROPERTY Law*, 394-95 (2000).

¹⁸ *Cf.* Sprankling, 395.

¹⁹ A third-degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

punishment for a second-degree felony.²⁰ The bill enhances the applicable punishment for the offender if the owner of the property is a public officer or employee or if the offender is convicted of the crime while incarcerated or on probation. The bill also enhances the applicable punishment for the offender if the owner of the property incurs financial loss as a result of the document being recorded in the official record.

The bill also provides that a person who fraudulently records a claim for a construction lien pursuant to part I of chapter 713, F.S., is subject to penalties under the Construction Lien Law, and not the offense created under the bill. If a person is convicted of the offense created in the bill, the court must issue an order declaring the document forming the basis of the conviction void and may enjoin the person convicted of the offense from filing any document in an official record without review and approval by a circuit or county judge. The court may order the document forming the basis of the conviction to be sealed from the official record and removed from any applicable electronic database.

The bill gives a cause of action to a person adversely affected by a document filed in an official record which contains a materially false, fictitious, or fraudulent statement or representation. A *notice of lis pendens*²¹ must be filed which specifically describes the document under challenge and the real or personal property affected by the document. If a court finds that the document contains a materially false, fictitious, or fraudulent statement or representation such that the document does not establish a legitimate property or lien interest in favor of another person, then the court must enter a judgment that:

- Determines whether the entire document or parts of the document are void from the beginning. If the court finds the entire document void, it may order the document sealed from the official record and removed from any electronic database used for indexing or locating documents in the official record.
- Awards actual and punitive damages upon a finding of an intent to defraud or harass, awarding the person adversely affected by the document a civil penalty of \$2,500 for each document found to be in violation of the bill.
- Enjoins the defendant who filed the document from filing any other document in the official records without prior review and approval for filing by a circuit or county court judge.
- Grants any other relief or remedy that the court determines is just and proper.

The prevailing party in the civil cause of action created in the bill may recover costs and reasonable attorney fees.

The custodian of any official record must, upon payment of appropriate fees, provide a certified copy of the sealed document to the person who is adversely affected by the document for use in subsequent court proceedings or in addressing or correcting adverse effects on the person's credit

²⁰ A second-degree felony is punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

²¹ "The term *lis pendens* means a pending suit" Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 8:25 (2007 ed.). "The notice must be recorded in the office of the clerk of the circuit court of the county where the property is located. [The notice of *lis pendens*] must contain the name of the court, the names of all of the parties, the time of institution of the action, a description of the property affected and a statement of the relief sought concerning the property." *Id.* and s. 48.23(1), F.S.

or property rights. The custodian of any official record must, upon payment of appropriate fees, provide a certified copy of the sealed instrument to a federal, state, or local law enforcement agency. If feasible, the custodian of the official record where the document is recorded must record any court order finding that parts of the document or that the entire document is void. The bill requires the voided instrument be removed from electronic databases used for recording instruments in the public record, but be maintained so that the document may be reduced to paper form. The bill authorizes a government agency to provide legal representation to a public officer or employee if the document at issue appears to have been filed to defraud or harass the public officer or employee on account of the performance of that officer's or employee's official duties. If the public officer or employee is the prevailing party, the award of reasonable attorney fees must be paid to the government agency that provided the legal representation.

The bill provides that the requirements of the bill do not apply to the procedures for sealing or expunging criminal history records in s. 943.0585 and 943.059, F.S.

The bill amends s. 843.0855, F.S., relating to criminal actions under color of law or through use of simulated legal process, to revise definitions. For purposes of s. 843.0855, F.S., the bill defines the term, "public officer or employee" to include, but not be limited to: a person elected or appointed to a state or federal office, including a person serving on an advisory body, board, commission, committee, council, or authority; an employee of a state, county, municipal, political subdivision, school district, educational institution, or special district agency or entity, including all judges, attorneys, law enforcement officers, deputy clerks of courts or marshals; a state or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or services for any executive, legislative, or judicial office, agency, officer, or employee; a person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee hearing officer, or consultant to any state or local governmental entity; and a person who is a candidate for public office or judicial position.

The bill provides criminal penalties for a person who impersonates a public official or employee or who, under the color of law, intimidates certain specified officials. The bill revises the offense severity ranking chart under the Criminal Punishment Code to rank as level seven offenses for purposes of sentencing: the filing of false liens or other unauthorized documents; impersonation of a public officer or tribunal; unlawful simulation of legal process; and the intimidation of a public officer or tribunal. The bill ranks the following offenses as level eight offenses: a second or subsequent offense of issuing or filing a false document; and the filing of a false lien or other unauthorized document affecting a public officer or employee. The bill ranks the following offense as a level nine offense: the filing of a false document where the property owner is a public official or employee.

The bill takes effect October 1, 2013.

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 requires that upon payment of the appropriate fee the custodian of any official record must provide a certified copy of the sealed instrument to the party who is adversely affected by the filing of a fraudulent record.

Additionally, the custodian of any official record must upon payment of appropriate fees, provide a certified copy of the sealed instrument to a federal, state, or local law enforcement agency.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator has not completed a judicial impact statement for the bill for the bill as amended.

The Criminal Justice Impact Conference has not yet considered the impact of this bill on jail beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 6, 2013:

The committee substitute revises the elements of the offense of fraudulently filing a document in the official records. The committee substitute provides circumstances for which an enhanced punishment may be imposed for violating the offense created in the

committee substitute. The committee substitute specifies additional civil remedies to grant relief to public officers or employees affected by the offense of filing of false statements or claims. The committee substitute ranks offenses created in the committee substitute in the severity ranking chart under the Criminal Punishment Code for purposes of sentencing.

B. Amendments:

None.

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

By Senator Dean

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1 A bill to be entitled
 2 An act relating to property fraud; creating s.
 3 817.535, F.S.; prohibiting a person from filing or
 4 causing to be filed, with intent to defraud another, a
 5 document relating to the ownership, transfer, or
 6 encumbrance of or claim against real or personal
 7 property, or any interest in real or personal
 8 property, which the person knows contains a material
 9 misstatement, misrepresentation, or omission of fact;
 10 providing criminal penalties; providing that a person
 11 who fraudulently records a construction lien is
 12 subject to specified fraud provisions; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 817.535, Florida Statutes, is created to
 18 read:

19 817.535 Fraudulent creation of interest in real or personal
 20 property.-

21 (1) A person may not, with the intent to defraud another,
 22 file or cause to be filed for recording in the official records
 23 a document relating to real or personal property which the
 24 person knows to contain a material misstatement,
 25 misrepresentation, or omission of fact. The filed document may
 26 include, but need not be limited to, a deed, lease, bill of
 27 sale, agreement, mortgage, notice of claim of lien, notice of
 28 levy, promissory note, mortgage note, or any other instrument
 29 that relates to the ownership, transfer, or encumbrance of or

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30 claim against real or personal property or any interest in real
 31 or personal property.

32 (2) A person who violates subsection (1) commits the
 33 offense of fraudulent creation of an interest in real or
 34 personal property, a felony of the third degree, punishable as
 35 provided in s. 775.082, s. 775.083, or s. 775.084.

36 (3) A person who fraudulently records a claim of lien in
 37 the official records pursuant to part I of chapter 713 is
 38 subject to the fraud provisions of s. 713.31 and not this
 39 section.

40 Section 2. This act shall take effect October 1, 2013.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
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The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 817.535, Florida Statutes, is created to
read:

817.535 Unlawful filing of false documents or records
against real or personal property.-

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

(a) "File" means to present an instrument for recording in
an official record or to cause an instrument to be presented for
recording in an official record.



(b) "Filer" means the person who presents an instrument for
recording in an official record, or causes an instrument to be
presented for recording in an official record.

(c) "Instrument" means any judgment, mortgage, assignment,
pledge, lien, financing statement, encumbrance, deed, lease,
bill of sale, agreement, mortgage, notice of claim of lien,
notice of levy, promissory note, mortgage note, release, partial
release or satisfaction of any of the foregoing, or any other
document that relates to or attempts to restrict the ownership,
transfer, encumbrance of or claim against real or personal
property, or any interest in real or personal property.

(d) "Official record" means the series of instruments,
regardless of how they are maintained, which a clerk of the
circuit court, or any person or entity designated by general
law, special law, or county charter, is required or authorized
by law to record. The term also includes a series of instruments
pertaining to the Uniform Commercial Code filed with the
Secretary of State or with any entity under contract with the
Secretary of State to maintain Uniform Commercial Code records
and a database of judgment liens maintained by the Secretary of
State.

(e) "Public officer or employee" means, but is not limited
to:

1. A person elected or appointed to a state or federal
office, including any person serving on an advisory body, board,
commission, committee, council, or authority;

2. An employee of a state, county, municipal, political
subdivision, school district, educational institution, or
special district agency or entity, including all judges,



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43 attorneys, law enforcement officers, deputy clerks of court, and
44 marshals;

45 3. A state or federal executive, legislative, or judicial
46 officer, employee, or volunteer authorized to perform actions or
47 services for any executive, legislative, or judicial office,
48 agency, officer, or employee;

49 4. A person who acts as a general or special magistrate,
50 auditor, arbitrator, umpire, referee hearing officer, or
51 consultant to any state or local governmental entity; and

52 5. A person who is a candidate for public office or
53 judicial position.

54 (2) (a) A person who files or directs a filer to file, with
55 the intent to defraud or harass another, any instrument
56 containing a materially false, fictitious, or fraudulent
57 statement or representation that purports to affect the owner's
58 interest in the property described in the instrument commits a
59 felony of the third degree, punishable as provided in s.
60 775.082, s. 775.083, or s. 775.084.

61 (b) A person who violates paragraph (a) a second or
62 subsequent time commits a felony of the second degree,
63 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

64 (3) If the owner of the property subject to the false
65 instrument is a public officer or employee, such offense shall
66 be reclassified as follows:

67 (a) In the case of a felony of the third degree, to a
68 felony of the second degree, punishable as provided in s.
69 775.082, s. 775.083, or s. 775.084.

70 (b) In the case of a felony of the second degree, to a
71 felony of the first degree, punishable as provided in s.



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72 775.082, s. 775.083, or s. 775.084.

73 (4) If a person is convicted of violating subsection (2)
74 while incarcerated in a jail or correctional institution or
75 while participating in a pretrial diversion program under any
76 form of pretrial release or bond, on probation or parole, or
77 under any postrelease supervision, the offense for which the
78 person is convicted shall be reclassified as follows:

79 (a) In the case of a felony of the third degree, to a
80 felony of the second degree, punishable as provided in s.
81 775.082, s. 775.083, or s. 775.084.

82 (b) In the case of a felony of the second degree, to a
83 felony of the first degree, punishable as provided in s.
84 775.082, s. 775.083, or s. 775.084.

85
86 Any person convicted of violating this subsection while
87 incarcerated in a jail or correctional institution shall forfeit
88 all gain-time or any early release credits accumulated before
89 the date of the violation.

90 (5) If the owner of the property covered by the false
91 instrument incurs financial loss as a result of the instrument
92 being recorded in the official record, including costs and
93 attorney fees incurred in correcting, sealing, or removing the
94 false instrument from the official record as described herein,
95 such an offense shall be reclassified as follows:

96 (a) In the case of a felony of the third degree, to a
97 felony of the second degree, punishable as provided in s.
98 775.082, s. 775.083, or s. 775.084.

99 (b) In the case of a felony of the second degree, to a
100 felony of the first degree, punishable as provided in s.



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101 775.082, s. 775.083, or s. 775.084.

102 (6) A person who fraudulently records a claim of lien in
103 the official records pursuant to part I of chapter 713 is
104 subject to the fraud provisions of s. 713.31 and not this
105 section.

106 (7) If a person is convicted of violating this section, the
107 court shall issue an order declaring the instrument forming the
108 basis of the conviction null and void and may enjoin the person
109 from filing any instrument in an official record absent prior
110 review and approval by a circuit or county court judge. The
111 court may also order the instrument forming the basis of the
112 conviction sealed from the official record and removed from any
113 applicable electronic database used for recording instruments in
114 the official record.

115 (8) (a) Any person adversely affected by an instrument filed
116 in the official record which contains a materially false,
117 fictitious, or fraudulent statement or representation has a
118 civil cause of action under this section without regard to
119 whether criminal charges are pursued under subsection (2). A
120 notice of lis pendens in accord with s. 48.23 shall be filed
121 which specifically describes the instrument under challenge and
122 the real or personal property affected by the instrument.

123 (b) Upon a finding that the instrument contains a
124 materially false, fictitious, or fraudulent statement or
125 representation such that the instrument does not establish a
126 legitimate property or lien interest in favor of another person,
127 the court shall enter judgment:

128 1. Determining whether the entire instrument or certain
129 parts thereof are null and void ab initio. If the court finds



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130 the instrument void in its entirety, it may order the instrument
131 sealed from the official record and removed from any electronic
132 database used for indexing or locating instruments in the
133 official record.

134 2. Awarding actual damages and punitive damages upon a
135 finding of an intent to defraud or harass, awarding the person
136 adversely affected by the instrument a civil penalty of \$2,500
137 for each instrument determined to be in violation of subsection
138 (2).

139 3. Enjoining the defendant who filed the instrument,
140 permanently or for a period of time, from filing any other
141 instrument in the official records without prior review and
142 approval for filing by a circuit or county court judge, provided
143 that as to third parties who may have given value for an
144 interest described or granted by any instrument filed in
145 violation of the injunction, the instrument shall be deemed
146 validly filed and provides constructive notice, notwithstanding
147 any failure to comply with the terms of the injunction.

148 4. Granting such other relief or remedy that the court
149 determines is just and proper within its sound judicial
150 discretion.

151 (c) The prevailing party in such a suit is entitled to
152 recover costs and reasonable attorney fees.

153 (d) The custodian of any official record shall, upon
154 payment of appropriate fees, provide a certified copy of the
155 sealed instrument to the party seeking relief under this section
156 for use in subsequent court proceedings, in addressing or
157 correcting adverse effects upon the person's credit or property
158 rights, or reporting the matter for investigation and



159 prosecution; or in response to a subpoena seeking the instrument
160 for criminal investigative or prosecution purposes.

161 (e) Upon request, the custodian of any official record
162 shall, upon payment of appropriate fees, provide a certified
163 copy of the sealed instrument to any federal state or local law
164 enforcement agency.

165 (f) If feasible, the custodian of the official record where
166 the instrument is recorded shall record any court order finding
167 that the instrument is null and void in its entirety or in
168 certain parts thereof.

169 (g) An instrument removed from an electronic database used
170 for recording instruments in the public record pursuant to this
171 section shall be maintained in a manner in which the instrument
172 can be reduced to paper form.

173 (9) A government agency may provide legal representation to
174 a public officer or employee if the instrument at issue appears
175 to have been filed to defraud or harass the public officer or
176 employee on account of the performance in that officer's or
177 employee's official duties. If the public officer or employee is
178 the prevailing party, the award of reasonable attorney fees
179 shall be paid to the government agency that provided the legal
180 representation.

181 (10) This section does not apply to the procedures for
182 sealing or expunging criminal history records as provided in ss.
183 943.0585 and 943.059.

184 Section 2. Section 843.0855, Florida Statutes, is amended
185 to read:

186 843.0855 Criminal actions under color of law or through use
187 of simulated legal process.—



188 (1) As used in this section:

189 (a) The term "legal process" means a document or order
190 issued by a court or filed or recorded with an official court of
191 this state or the United States or with any official
192 governmental entity of this state or the United States for the
193 purpose of exercising jurisdiction or representing a claim
194 against a person or property, or for the purpose of directing a
195 person to appear before a court or tribunal, or to perform or
196 refrain from performing a specified act. "Legal process"
197 includes, but is not limited to, a summons, lien, complaint,
198 warrant, injunction, writ, notice, pleading, subpoena, or order.

199 (b) The term "person" means an individual, public or
200 private group incorporated or otherwise, legitimate or
201 illegitimate legal tribunal or entity, informal organization,
202 official or unofficial agency or body, or any group of
203 individuals associated in fact, whether a legal entity or not
204 assemblage of individuals.

205 (c) The term "public officer or employee" includes, but is
206 not limited to:

207 1. A person elected or appointed to a state or federal
208 office, including a person serving on an advisory body, board,
209 commission, committee, council, or authority;

210 2. An employee of a state, county, municipal, political
211 subdivision, school district, educational institution, or
212 special district agency or entity, including all judges,
213 attorneys, law enforcement officers, deputy clerks of court, or
214 marshals;

215 3. A state or federal executive, legislative, or judicial
216 officer, employee, or volunteer authorized to perform actions or



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217 services for any executive, legislative, or judicial office,
 218 agency, officer, or employee;
 219 4. A person who acts as a general or special magistrate,
 220 auditor, arbitrator, umpire, referee hearing officer, or
 221 consultant to any state or local governmental entity; and
 222 5. A person who is a candidate for public office or
 223 judicial position
 224 ~~(c) The term "public officer" means a public officer as~~
 225 ~~defined by s. 112.061.~~
 226 ~~(d) The term "public employee" means a public employee as~~
 227 ~~defined by s. 112.061.~~
 228 (2) A Any person who deliberately impersonates or falsely
 229 acts as a public officer or employee tribunal, public employee
 230 or utility employee, including, but not limited to, marshals,
 231 judges, prosecutors, sheriffs, deputies, court personnel, or any
 232 law enforcement authority in connection with or relating to any
 233 legal process affecting persons and property, or otherwise takes
 234 any action under color of law against persons or property,
 235 commits a felony of the third degree, punishable as provided in
 236 s. 775.082, ~~or~~ s. 775.083, or s. 775.084. It is the intent of
 237 the Legislature that this section applies if a person acts as an
 238 officer or employee purporting to supersede or override any
 239 legislation or statute of this state, or to supersede or
 240 override any action of any court, of this state.
 241 (3) A Any person who simulates legal process, including,
 242 but not limited to, actions affecting title to real estate or
 243 personal property, indictments, subpoenas, warrants,
 244 injunctions, liens, orders, judgments, or any legal documents or
 245 proceedings, knowing or having reason to know the contents of



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246 any such documents or proceedings or the basis for any action to
 247 be fraudulent, commits a felony of the third degree, punishable
 248 as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.
 249 (4) A Any person who falsely under color of law attempts in
 250 any way to influence, intimidate, harass, retaliate against, or
 251 hinder a public officer or employee involving ~~or law enforcement~~
 252 ~~officer~~ in the discharge of his or her official duties by means
 253 of, but not limited to, threats of or actual physical abuse or
 254 harassment, or through the use of simulated legal process,
 255 commits a felony of the third degree, punishable as provided in
 256 s. 775.082, ~~or~~ s. 775.083, or s. 775.084.
 257 (5) (a) ~~Nothing in~~ This section does not shall make unlawful
 258 any act of any law enforcement officer or legal tribunal which
 259 is performed under lawful authority.
 260 (b) ~~Nothing in~~ This section does not shall prohibit
 261 individuals from assembling freely to express opinions or
 262 designate group affiliation or association.
 263 (c) ~~Nothing in~~ This section does not shall prohibit or in
 264 any way limit a person's lawful and legitimate access to the
 265 courts or prevent a person from instituting or responding to
 266 legitimate and lawful legal process.
 267 Section 3. Paragraphs (g) through (i) of subsection (3) of
 268 section 921.0022, Florida Statutes, are amended to read:
 269 921.0022 Criminal Punishment Code; offense severity ranking
 270 chart.-
 271 (3) OFFENSE SEVERITY RANKING CHART
 272 (g) LEVEL 7
 273



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Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfigurement, permanent disability, or death.
409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.



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281	456.065(2)	3rd	Practicing a health care profession without a license.
282	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
283	458.327(1)	3rd	Practicing medicine without a license.
284	459.013(1)	3rd	Practicing osteopathic medicine without a license.
285	460.411(1)	3rd	Practicing chiropractic medicine without a license.
286	461.012(1)	3rd	Practicing podiatric medicine without a license.
287	462.17	3rd	Practicing naturopathy without a license.
288	463.015(1)	3rd	Practicing optometry without a license.
289	464.016(1)	3rd	Practicing nursing without a license.
290	465.015(2)	3rd	Practicing pharmacy without a license.
291	466.026(1)	3rd	Practicing dentistry or dental hygiene



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292 without a license.

293 467.201 3rd Practicing midwifery without a license.

294 468.366 3rd Delivering respiratory care services
without a license.

295 483.828(1) 3rd Practicing as clinical laboratory
personnel without a license.

296 483.901(9) 3rd Practicing medical physics without a
license.

297 484.013(1)(c) 3rd Preparing or dispensing optical devices
without a prescription.

298 484.053 3rd Dispensing hearing aids without a
license.

299 494.0018(2) 1st Conviction of any violation of ss.
494.001-494.0077 in which the total
money and property unlawfully obtained
exceeded \$50,000 and there were five or
more victims.

560.123(8)(b)1. 3rd Failure to report currency or payment
instruments exceeding \$300 but less
than \$20,000 by a money services
business.



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300 560.125(5)(a) 3rd Money services business by unauthorized
person, currency or payment instruments
exceeding \$300 but less than \$20,000.

301 655.50(10)(b)1. 3rd Failure to report financial
transactions exceeding \$300 but less
than \$20,000 by financial institution.

302 775.21(10)(a) 3rd Sexual predator; failure to register;
failure to renew driver's license or
identification card; other registration
violations.

303 775.21(10)(b) 3rd Sexual predator working where children
regularly congregate.

304 775.21(10)(g) 3rd Failure to report or providing false
information about a sexual predator;
harbor or conceal a sexual predator.

305 782.051(3) 2nd Attempted felony murder of a person by
a person other than the perpetrator or
the perpetrator of an attempted felony.

306 782.07(1) 2nd Killing of a human being by the act,
procurement, or culpable negligence of
another (manslaughter).

307



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308 782.071 2nd Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).

309 782.072 2nd Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

310 784.045(1)(a)1. 2nd Aggravated battery; intentionally causing great bodily harm or disfigurement.

311 784.045(1)(a)2. 2nd Aggravated battery; using deadly weapon.

312 784.045(1)(b) 2nd Aggravated battery; perpetrator aware victim pregnant.

313 784.048(4) 3rd Aggravated stalking; violation of injunction or court order.

314 784.048(7) 3rd Aggravated stalking; violation of court order.

315 784.07(2)(d) 1st Aggravated battery on law enforcement officer.

784.074(1)(a) 1st Aggravated battery on sexually violent



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316 predators facility staff.

317 784.08(2)(a) 1st Aggravated battery on a person 65 years of age or older.

318 784.081(1) 1st Aggravated battery on specified official or employee.

319 784.082(1) 1st Aggravated battery by detained person on visitor or other detainee.

320 784.083(1) 1st Aggravated battery on code inspector.

321 787.06(3)(a) 1st Human trafficking using coercion for labor and services.

322 787.06(3)(e) 1st Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

323 790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

324 790.16(1) 1st Discharge of a machine gun under specified circumstances.

790.165(2) 2nd Manufacture, sell, possess, or deliver



hoax bomb.

325

790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

326

790.166(3) 2nd Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

327

790.166(4) 2nd Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

328

790.23 1st,PBL Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.

329

794.08(4) 3rd Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.

330

796.03 2nd Procuring any person under 16 years for prostitution.

331

800.04(5)(c)1. 2nd Lewd or lascivious molestation; victim less than 12 years of age; offender



less than 18 years.

332

800.04(5)(c)2. 2nd Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.

333

806.01(2) 2nd Maliciously damage structure by fire or explosive.

334

810.02(3)(a) 2nd Burglary of occupied dwelling; unarmed; no assault or battery.

335

810.02(3)(b) 2nd Burglary of unoccupied dwelling; unarmed; no assault or battery.

336

810.02(3)(d) 2nd Burglary of occupied conveyance; unarmed; no assault or battery.

337

810.02(3)(e) 2nd Burglary of authorized emergency vehicle.

338

812.014(2)(a)1. 1st Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.

339

812.014(2)(b)2. 2nd Property stolen, cargo valued at less than \$50,000, grand theft in 2nd



degree.

340

812.014(2)(b)3. 2nd Property stolen, emergency medical
equipment; 2nd degree grand theft.

341

812.014(2)(b)4. 2nd Property stolen, law enforcement
equipment from authorized emergency
vehicle.

342

812.0145(2)(a) 1st Theft from person 65 years of age or
older; \$50,000 or more.

343

812.019(2) 1st Stolen property; initiates, organizes,
plans, etc., the theft of property and
traffics in stolen property.

344

812.131(2)(a) 2nd Robbery by sudden snatching.

345

812.133(2)(b) 1st Carjacking; no firearm, deadly weapon,
or other weapon.

346

817.234(8)(a) 2nd Solicitation of motor vehicle accident
victims with intent to defraud.

347

817.234(9) 2nd Organizing, planning, or participating
in an intentional motor vehicle
collision.

348

817.234(11)(c) 1st Insurance fraud; property value



\$100,000 or more.

349

817.2341 1st Making false entries of material fact
(2)(b) & or false statements regarding property
(3)(b) values relating to the solvency of an
insuring entity which are a significant
cause of the insolvency of that entity.

350

817.535(2)(a) 3rd Filing false lien or other unauthorized
document.

351

825.102(3)(b) 2nd Neglecting an elderly person or
disabled adult causing great bodily
harm, disability, or disfigurement.

352

825.103(2)(b) 2nd Exploiting an elderly person or
disabled adult and property is valued
at \$20,000 or more, but less than
\$100,000.

353

827.03(2)(b) 2nd Neglect of a child causing great bodily
harm, disability, or disfigurement.

354

827.04(3) 3rd Impregnation of a child under 16 years
of age by person 21 years of age or
older.

355

837.05(2) 3rd Giving false information about alleged
capital felony to a law enforcement



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356 officer.
357 838.015 2nd Bribery.
358 838.016 2nd Unlawful compensation or reward for
359 official behavior.
360 838.021(3)(a) 2nd Unlawful harm to a public servant.
361 838.22 2nd Bid tampering.
362 843.0855(2) 2nd Impersonation of public officer or
363 tribunal.
364 843.0855(3) 3rd Unlawful simulation of legal process.
365 843.0855(4) 3rd Intimidation of public officer or
366 tribunal.
847.0135(3) 3rd Solicitation of a child, via a computer
service, to commit an unlawful sex act.
847.0135(4) 2nd Traveling to meet a minor to commit an
unlawful sex act.
872.06 2nd Abuse of a dead human body.
874.10 1st,PBL Knowingly initiates, organizes, plans,
finances, directs, manages, or



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367 supervises criminal gang-related
activity.
893.13(1)(c)1. 1st Sell, manufacture, or deliver cocaine
(or other drug prohibited under s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4.) within 1,000 feet
of a child care facility, school, or
state, county, or municipal park or
publicly owned recreational facility or
community center.
893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine
or other drug prohibited under s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4., within 1,000 feet
of property used for religious services
or a specified business site.
893.13(4)(a) 1st Deliver to minor cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d), (2)(a),
(2)(b), or (2)(c)4. drugs).
893.135(1)(a)1. 1st Trafficking in cannabis, more than 25
lbs., less than 2,000 lbs.
893.135 1st Trafficking in cocaine, more than 28
(1)(b)1.a. grams, less than 200 grams.



373 893.135 1st Trafficking in illegal drugs, more than
(1)(c)1.a. 4 grams, less than 14 grams.

374 893.135(1)(d)1. 1st Trafficking in phencyclidine, more than
28 grams, less than 200 grams.

375 893.135(1)(e)1. 1st Trafficking in methaqualone, more than
200 grams, less than 5 kilograms.

376 893.135(1)(f)1. 1st Trafficking in amphetamine, more than
14 grams, less than 28 grams.

377 893.135 1st Trafficking in flunitrazepam, 4 grams
(1)(g)1.a. or more, less than 14 grams.

378 893.135 1st Trafficking in gamma-hydroxybutyric
(1)(h)1.a. acid (GHB), 1 kilogram or more, less
than 5 kilograms.

379 893.135 1st Trafficking in 1,4-Butanediol, 1
(1)(j)1.a. kilogram or more, less than 5
kilograms.

380 893.135 1st Trafficking in Phenethylamines, 10
(1)(k)2.a. grams or more, less than 200 grams.

893.1351(2) 2nd Possession of place for trafficking in
or manufacturing of controlled
substance.



381 896.101(5)(a) 3rd Money laundering, financial
transactions exceeding \$300 but less
than \$20,000.

382 896.104(4)(a)1. 3rd Structuring transactions to evade
reporting or registration requirements,
financial transactions exceeding \$300
but less than \$20,000.

383 943.0435(4)(c) 2nd Sexual offender vacating permanent
residence; failure to comply with
reporting requirements.

384 943.0435(8) 2nd Sexual offender; remains in state after
indicating intent to leave; failure to
comply with reporting requirements.

385 943.0435(9)(a) 3rd Sexual offender; failure to comply with
reporting requirements.

386 943.0435(13) 3rd Failure to report or providing false
information about a sexual offender;
harbor or conceal a sexual offender.

387 943.0435(14) 3rd Sexual offender; failure to report and
reregister; failure to respond to
address verification.

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389	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
390	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
391	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
392	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
393	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
394	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
395	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
396	(h) LEVEL 8		
397	Florida Statute	Felony Degree	Description



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398	316.193	2nd	DUI manslaughter.
399	(3)(c)3.a.		
400	316.1935(4)(b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
401	327.35(3)(c)3.	2nd	Vessel BUI manslaughter.
402	499.0051(7)	1st	Knowing trafficking in contraband prescription drugs.
403	499.0051(8)	1st	Knowing forgery of prescription labels or prescription drug labels.
404	560.123(8)(b)2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
405	560.125(5)(b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000.
	655.50(10)(b)2.	2nd	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by



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406 financial institutions.

407 777.03(2)(a) 1st Accessory after the fact, capital felony.

408 782.04(4) 2nd Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.

409 782.051(2) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony not enumerated in s. 782.04(3).

410 782.071(1)(b) 1st Committing vehicular homicide and failing to render aid or give information.

411 782.072(2) 1st Committing vessel homicide and failing to render aid or give information.

412 787.06(3)(b) 1st Human trafficking using coercion for commercial sexual activity.



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413 787.06(3)(c) 1st Human trafficking using coercion for labor and services of an unauthorized alien.

414 787.06(3)(f) 1st Human trafficking using coercion for commercial sexual activity by the transfer or transport of any individual from outside Florida to within the state.

415 790.161(3) 1st Discharging a destructive device which results in bodily harm or property damage.

416 794.011(5) 2nd Sexual battery, victim 12 years or over, offender does not use physical force likely to cause serious injury.

417 794.08(3) 2nd Female genital mutilation, removal of a victim younger than 18 years of age from this state.

418 800.04(4) 2nd Lewd or lascivious battery.

419 806.01(1) 1st Maliciously damage dwelling or structure by fire or explosive, believing person in structure.

810.02(2)(a) 1st,PBL Burglary with assault or battery.



420 810.02 (2) (b) 1st,PBL Burglary; armed with explosives or
dangerous weapon.

421 810.02 (2) (c) 1st Burglary of a dwelling or structure
causing structural damage or \$1,000 or
422 more property damage.

812.014 (2) (a) 2. 1st Property stolen; cargo valued at
423 \$50,000 or more, grand theft in 1st
degree.

812.13 (2) (b) 1st Robbery with a weapon.

424 812.135 (2) (c) 1st Home-invasion robbery, no firearm,
deadly weapon, or other weapon.

425 817.535 (2) (b) 2nd Second or subsequent offense issuing or
426 filing false document.

817.535 (3) (a) 2nd Filing false lien or other unauthorized
427 document; property owner public officer
or employee.

817.568 (6) 2nd Fraudulent use of personal
identification information of an
individual under the age of 18.

428 825.102 (2) 1st Aggravated abuse of an elderly person



429 or disabled adult.

825.1025 (2) 2nd Lewd or lascivious battery upon an
elderly person or disabled adult.

430 825.103 (2) (a) 1st Exploiting an elderly person or
disabled adult and property is valued
431 at \$100,000 or more.

837.02 (2) 2nd Perjury in official proceedings
relating to prosecution of a capital
felony.

432 837.021 (2) 2nd Making contradictory statements in
official proceedings relating to
433 prosecution of a capital felony.

860.121 (2) (c) 1st Shooting at or throwing any object in
path of railroad vehicle resulting in
434 great bodily harm.

860.16 1st Aircraft piracy.

435 893.13 (1) (b) 1st Sell or deliver in excess of 10 grams
of any substance specified in s.
893.03 (1) (a) or (b).

436 893.13 (2) (b) 1st Purchase in excess of 10 grams of any
substance specified in s. 893.03 (1) (a)



or (b).

437

893.13(6)(c) 1st Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).

438

893.135(1)(a)2. 1st Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.

439

893.135 (1)(b)1.b. 1st Trafficking in cocaine, more than 200 grams, less than 400 grams.

440

893.135 (1)(c)1.b. 1st Trafficking in illegal drugs, more than 14 grams, less than 28 grams.

441

893.135 (1)(d)1.b. 1st Trafficking in phencyclidine, more than 200 grams, less than 400 grams.

442

893.135 (1)(e)1.b. 1st Trafficking in methaqualone, more than 5 kilograms, less than 25 kilograms.

443

893.135 (1)(f)1.b. 1st Trafficking in amphetamine, more than 28 grams, less than 200 grams.

444

893.135 (1)(g)1.b. 1st Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.

445

893.135 (1)(h)1.b. 1st Trafficking in gamma-hydroxybutyric acid (GHB), 5 kilograms or more, less



than 10 kilograms.

446

893.135 (1)(j)1.b. 1st Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.

447

893.135 (1)(k)2.b. 1st Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.

448

893.1351(3) 1st Possession of a place used to manufacture controlled substance when minor is present or resides there.

449

895.03(1) 1st Use or invest proceeds derived from pattern of racketeering activity.

450

895.03(2) 1st Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.

451

895.03(3) 1st Conduct or participate in any enterprise through pattern of racketeering activity.

452

896.101(5)(b) 2nd Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.

453



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896.104(4)(a)2. 2nd Structuring transactions to evade reporting or registration requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

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455
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(i) LEVEL 9

Florida Statute	Felony Degree	Description
316.193 (3)(c)3.b.	1st	DUI manslaughter; failing to render aid or give information.
327.35(3)(c)3.b.	1st	BUI manslaughter; failing to render aid or give information.
409.920 (2)(b)1.c.	1st	Medicaid provider fraud; \$50,000 or more.
499.0051(9)	1st	Knowing sale or purchase of contraband prescription drugs resulting in great bodily harm.
560.123(8)(b)3.	1st	Failure to report currency or payment instruments totaling or exceeding \$100,000 by money transmitter.
560.125(5)(c)	1st	Money transmitter business by

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unauthorized person, currency, or payment instruments totaling or exceeding \$100,000.

463

655.50(10)(b)3. 1st Failure to report financial transactions totaling or exceeding \$100,000 by financial institution.

464

775.0844 1st Aggravated white collar crime.

465

782.04(1) 1st Attempt, conspire, or solicit to commit premeditated murder.

466

782.04(3) 1st,PBL Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.

467

782.051(1) 1st Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).

468

782.07(2) 1st Aggravated manslaughter of an elderly person or disabled adult.

469

787.01(1)(a)1. 1st,PBL Kidnapping; hold for ransom or reward or as a shield or hostage.



470
787.01(1)(a)2. 1st,PBL Kidnapping with intent to commit or
facilitate commission of any felony.
471
787.01(1)(a)4. 1st,PBL Kidnapping with intent to interfere
with performance of any governmental
or political function.
472
787.02(3)(a) 1st False imprisonment; child under age
13; perpetrator also commits
aggravated child abuse, sexual
battery, or lewd or lascivious
battery, molestation, conduct, or
exhibition.
473
787.06(3)(d) 1st Human trafficking using coercion for
commercial sexual activity of an
unauthorized alien.
474
787.06(3)(g) 1st,PBL Human trafficking for commercial
sexual activity of a child under the
age of 18.
475
787.06(4) 1st Selling or buying of minors into human
trafficking.
476
790.161 1st Attempted capital destructive device
offense.
477



790.166(2) 1st,PBL Possessing, selling, using, or
attempting to use a weapon of mass
destruction.
478
794.011(2) 1st Attempted sexual battery; victim less
than 12 years of age.
479
794.011(2) Life Sexual battery; offender younger than
18 years and commits sexual battery on
a person less than 12 years.
480
794.011(4) 1st Sexual battery; victim 12 years or
older, certain circumstances.
481
794.011(8)(b) 1st Sexual battery; engage in sexual
conduct with minor 12 to 18 years by
person in familial or custodial
authority.
482
794.08(2) 1st Female genital mutilation; victim
younger than 18 years of age.
483
796.035 1st Selling or buying of minors into
prostitution.
484
800.04(5)(b) Life Lewd or lascivious molestation; victim
less than 12 years; offender 18 years
or older.
485



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812.13(2)(a) 1st,PBL Robbery with firearm or other deadly
486 weapon.
812.133(2)(a) 1st,PBL Carjacking; firearm or other deadly
487 weapon.
812.135(2)(b) 1st Home-invasion robbery with weapon.
488
817.535(3)(b) 1st Property owner is public official or
489 employee.
817.568(7) 2nd, Fraudulent use of personal
PBL identification information of an
individual under the age of 18 by his
or her parent, legal guardian, or
person exercising custodial authority.
490
827.03(2)(a) 1st Aggravated child abuse.
491
847.0145(1) 1st Selling, or otherwise transferring
492 custody or control, of a minor.
847.0145(2) 1st Purchasing, or otherwise obtaining
493 custody or control, of a minor.
859.01 1st Poisoning or introducing bacteria,
radioactive materials, viruses, or
chemical compounds into food, drink,
medicine, or water with intent to kill



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494 or injure another person.
893.135 1st Attempted capital trafficking offense.
495
893.135(1)(a)3. 1st Trafficking in cannabis, more than
10,000 lbs.
496
893.135 1st Trafficking in cocaine, more than 400
497 (1)(b)1.c. grams, less than 150 kilograms.
893.135 1st Trafficking in illegal drugs, more
498 (1)(c)1.c. than 28 grams, less than 30 kilograms.
893.135 1st Trafficking in phencyclidine, more
499 (1)(d)1.c. than 400 grams.
893.135 1st Trafficking in methaqualone, more than
500 (1)(e)1.c. 25 kilograms.
893.135 1st Trafficking in amphetamine, more than
501 (1)(f)1.c. 200 grams.
893.135 1st Trafficking in gamma-hydroxybutyric
502 (1)(h)1.c. acid (GHB), 10 kilograms or more.
893.135 1st Trafficking in 1,4-Butanediol, 10
503 (1)(j)1.c. kilograms or more.
893.135 1st Trafficking in Phenethylamines, 400



504 (1)(k)2.c. grams or more.

896.101(5)(c) 1st Money laundering, financial
instruments totaling or exceeding
505 \$100,000.

896.104(4)(a)3. 1st Structuring transactions to evade
reporting or registration
requirements, financial transactions
totaling or exceeding \$100,000.

506 Section 4. This act shall take effect October 1, 2013.

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

508 And the title is amended as follows:

509 Delete everything before the enacting clause

510 and insert:

511 A bill to be entitled

512 An act relating to filing false documents against real

513 or personal property; creating s. 817.535, F.S.;

514 defining terms; prohibiting a person from filing or

515 causing to be filed, with intent to defraud another, a

516 document relating to the ownership, transfer, or

517 encumbrance of or claim against real or personal

518 property, or any interest in real or personal

519 property, which the person knows contains a material

520 misstatement or misrepresentations; providing criminal

521 penalties; establishing reclassified penalties that

522 increase criminal penalties for persons who commit the

523 specified offenses a second or more times, who are

524



525 convicted offenders who commit unlawful acts while

526 incarcerated in a jail or participating in community

527 correctional programs, and when the victim of the

528 offense is a public officer or employee under certain

529 circumstances; authorizing the court to issue

530 injunction; authorizing a court to seal specified

531 public or private records under certain circumstances;

532 providing that the subject of the false statements has

533 a cause of action against the perpetrator; providing

534 for actual and punitive damages; providing that the

535 prevailing party is entitled to costs and reasonable

536 attorney fees; providing duties of the custodian of

537 the official record; providing applicability;

538 requiring that attorney fees be paid to the government

539 agency that provides legal representation, under

540 certain circumstances; amending s. 843.0855, F.S.;

541 revising definitions; defining the term "public

542 officer or employee"; providing criminal penalties for

543 a person who impersonates a public official or

544 employee or who, under color of law, intimidates

545 certain specified officials; amending s. 921.0022,

546 F.S.; revising provisions of the offense severity

547 ranking chart of the Criminal Punishment Code to

548 conform to changes made by the act; providing an

549 effective date.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic PROPERTY FRAUD

Bill Number SB 112
(if applicable)

Name JIM GABBARO

Amendment Barcode _____
(if applicable)

Job Title Florida Police Chiefs Assn

Address 924 GARDEN ST.

Phone 850-219-3631

Street

TALLAHASSEE FL

E-mail gabb221@gmail.com

City

State

Zip

Speaking: For Against Information

Representing Florida Police Chiefs Assn

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Property Fraud

Bill Number 112
(if applicable)

Name Deborah Lawson

Amendment Barcode 943938
(if applicable)

Job Title Consultant

Address 4125 Pecan Branch

Phone 850-570-0033

Street

Tallah FL 32309

City

State

Zip

E-mail deborahlawson@comcast.net

Speaking: For Against Information

Representing NACM ICPC

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/06/2013

Meeting Date

Topic Property Fraud

Bill Number SB 112
(if applicable)

Name Michael Ramage

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 2331 Phillips Road

Phone 850-410-7676

Street

Tallahassee

FL

32308

E-mail michaelramage@fdle.state.fl.us

City

State

Zip

Speaking: For Against Information

Representing Florida Department of Law Enforcement

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 6, 2013

Meeting Date

Topic False Liens

Bill Number SB 112

Name Sarah Carroll

Amendment Barcode 943938
(if applicable)

Job Title Assistant Executive Director

Address 2617 Mahan Drive

Phone 284-5993

Tallahassee FL 32308
City State Zip

E-mail Scarroll@fisheriffs.org

Speaking: For Against Information

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic FALSE LEW BILL

Bill Number SB-112
(if applicable)

Name Phillip P. Quaschnick

Amendment Barcode _____
(if applicable)

Job Title ASSISTANT ATTORNEY GENERAL

Address 107 W. GAINES ST.
Street

Phone 414-3671

TALLAHASSEE FL 32301
City State Zip

E-mail phillip.p.quaschnick
@myfloridalegal.com

Speaking: For Against Information

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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 286

INTRODUCER: Judiciary Committee and Senator Negron

SUBJECT: Design Professionals

DATE: March 7, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Shankle	Cibula	JU	Fav/CS
3.	_____	_____	CA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 286 permits a design professional employed by a business entity or an agent of the entity to be immune from tort liability for damages occurring within the course and scope of the performance of a professional services contract if:

- The contract is made between the business entity and a claimant or another entity for the provision of services to the claimant;
- The contract does not name an individual employee or agent as a party to the contract;
- The contract prominently states that an individual employee or agent may not be held individually liable for negligence;
- The business entity maintains any professional liability insurance required under the contract; and
- Any damages are solely economic in nature and do not extent to persons or property not subject to the contract.

The bill adds geologists to list of professions defined as “design professionals” in s. 588.002, F.S.

This bill amends the following sections of the Florida Statutes: 471.023, 472.021, 481.219, 481.319, 492.111, and 558.002.

The bill creates section 558.0035, Florida Statutes.

II. Present Situation:

Personal Liability for Professional Services

Under s. 621.07, F.S., a professional service corporation or professional service limited liability company is liable up to the full value of its property for the negligence of its employees. An employee or agent is also personally liable for negligent or wrongful acts or misconduct committed by that person, or by any person under that person's direct supervision and control, while rendering professional service on behalf of the corporation or limited liability.¹

Liability of Construction Defects by Design Professionals

Chapter 558, F.S., provides the process whereby a property owner can assert a claim against a contractor, subcontractor, supplier, or design professional concerning a construction defect. Section 558.002(7), F.S., defines the term "design professional" to mean "a person, as defined in s. 1.01, licensed in this state as an architect, interior designer, landscape architect, engineer, or surveyor."²

Economic Loss Rule

The economic loss rule is "a judicially created doctrine that sets forth the circumstances under which a tort action is prohibited if the only damages suffered are economic losses."³ Under the economic loss rule, economic damages may not be recovered in a negligence action if the damages are not accompanied by physical property damage or bodily injury.⁴ This rule "bars a plaintiff from bringing tort claims to recover pure economic damages arising from a breach of contract cause of action absent personal injury or property damages."⁵ As a result, if the relationship between the plaintiff and the defendant is derived in contract, and the plaintiff cannot prove a tort independent of some contractual breach, the economic loss rule bars recovery on any noncontract claims.⁶

¹ Section 621.07, F.S.

² Section 725.08(4), F.S., also defines the term "design professional" to mean "an individual or entity licensed by the state who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture, under chapter 472 to practice land surveying and mapping, or under chapter 471 to practice engineering, and who enters into a professional services contract."

³ *Indemnity Ins. Co. of N. Am. v. Am. Aviation, Inc.*, 891 So. 2d 532, 536 (Fla. 2004).

⁴ 17 FLA. JUR. 2D *Damages* s. 36 (2010).

⁵ *Id.*

⁶ *Id.*

Economic Loss Rule and Design Professionals

In *Moransais v. Heathman*, the Florida Supreme Court found that professional malpractice and negligence claims are not barred by the economic loss rule.⁷ The case involved the assertion of the economic loss rule as a defense to a professional malpractice claim brought by a homeowner (plaintiff). The defendants were licensed engineers who made a pre-purchase inspection of a home and allegedly failed to detect and disclose defects in the condition of the house. The plaintiff contracted with a professional engineering corporation to perform the home inspection services, and the contract did not name the defendants who actually conducted the inspection as parties to the contract.⁸

The court first held that home purchasers have a cause of action for professional malpractice against an employee of the engineering corporation who conducts a home inspection but with whom the home purchaser is not in privity of contract.⁹ The court then concluded that professional malpractice and negligence claims are not barred by the economic loss rule. The court's holding was based on two principal reasons:

- Florida's common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional's violation of a duty of care to the injured person.
- The economic loss rule is not intended to apply to professionals who negligently perform their duties.¹⁰

The court noted that the rule has not eliminated causes of action premised upon torts that are independent of the contract.¹¹ It also held that the rule was not intended to bar well-established common law causes of action, such as those for neglect in providing professional services.¹² The court stated that the economic loss rule was primarily intended to limit product liability claims, and that it should generally be limited to that context "or situations where the policy considerations are substantially identical to those underlying the product liability-type analysis."¹³ Noting that actions against professionals often involve only economic loss without any personal or property damage, the court stated that extending the economic loss rule to tort cases against professionals "would effectively extinguish such causes of action."¹⁴

Third-Party Liability Limitations in Contracts

Generally, Florida law recognizes limitation of liability clauses in contracts and permits third party beneficiaries to enforce a limitation of liability clause. However, in *Witt v. La Gorce Country Club, Inc.*, the Florida Third District Court of Appeal held that the limitation of liability

⁷ *Moransais v. Heathman*, 744 So. 2d 973, 983 (Fla. 1999).

⁸ *Id.* at 974.

⁹ Privity of contract is defined as: "The relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so. The requirement of privity has been relaxed under modern laws and doctrines of implied warranty and strict liability, which allow a third-party beneficiary or other foreseeable user to sue the seller of a defective product." BLACK'S LAW DICTIONARY (9th Ed.).

¹⁰ *Moransais* at 983-84.

¹¹ *Id.* at 981 (citing *HTP, Ltd. v. Lineas Aereas Costarricenses, S.A.*, 685 So. 2d 1238 (Fla. 1996)).

¹² *Id.* at 983.

¹³ *Id.*

¹⁴ *Id.*

clause in the contract was invalid and unenforceable as to a geologist in his capacity as a licensed professional.¹⁵ Consequently, the court refused to apply the economic loss rule to bar a negligence claim.

In *Witt*, the plaintiff, La Gorce Country Club, Inc., entered into a design-build contract for a reverse osmosis system with ITT Industries, Inc. (ITT), and Gerald M. Witt and Associates, Inc. (GMWA), the company of professional geologist Gerald M. Witt (Witt). The contract provided a limitation of liability to the benefit of Witt, who in his individual capacity was not a party to the contract. The reverse osmosis system failed after numerous technical problems during the design and building of the system. The plaintiff then filed suit.¹⁶

The court relied on the holding in *Moransais*, noting that, as a professional geologist, Witt was specifically subject to personal liability for negligence, misconduct, or wrongful acts under s. 492.111, F.S. Consequently, the court rejected the application of the economic loss rule to a professional malpractice claim against a licensed professional geologist.¹⁷

In effect, the *Witt* decision is an exception to the rule, as expressed in *Florida Power and Light Company v. Mid-Valley*, that third-party beneficiaries of a contract are entitled protection of a liability limitation clause in a contract.¹⁸ Under *Witt*, professionals are not entitled to that protection. In refusing to recognize the contract's liability limitation and to apply the economic loss rule to limit Witt's liability, the court noted that "claims of professional negligence operate outside of the contract."¹⁹

Engineers

Professional engineers are regulated by the Board of Professional Engineers within the Department of Business and Professional Regulation (department), which enforces and administers the provisions of ch. 471, F.S. Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an engineer:

- Graduating from an approved engineering curriculum of 4 years or more in a school, college, or university which has been approved by the board and has a record of 4 years of active engineering experience of a character indicating the competence to be in responsible charge of engineering;
- Graduating from an approved engineering technology curriculum of 4 years or more in a school, college, or university within the State University System, having been enrolled or having graduated prior to July 1, 1979, and having had a record of 4 years of active

¹⁵ *Witt v. La Gorce Country Club, Inc.*, 35 So. 3d 1033 (Fla. 3d DCA 2010).

¹⁶ The claims against Gerald M. Witt, the defendant professional geologist, and his codefendant corporations included: (1) fraud in the inducement against codefendant ITT Industries, Inc. (ITT); (2) aiding and abetting fraud in the inducement by Witt and his company Gerald M. Witt and Associates, Inc. (GMWA); (3) violation of the Florida Deceptive and Unfair Trade Practices Act in ss. 501.201-501.213, F.S., by ITT and GMWA; (4) professional malpractice by Witt and GMWA; and (5) breach of the contract by GMWA. *Witt* at 1037-1038.

¹⁷ *Id.*

¹⁸ *Florida Power and Light Company v. Mid-Valley, Inc.*, 763 F.2d 1316 (11th Cir. 1985).

¹⁹ *Witt* at 1039.

engineering experience of a character indicating competence to be in responsible charge of engineering; or

- Having, in lieu of the education and experience requirements, 10 years or more of active engineering work of a character indicating that the applicant is competent to be placed in responsible charge of engineering. This provision does not apply unless the person notified the department before July 1, 1984, that she or he would be engaged in such work on July 1, 1981.²⁰

Engineer Liability

Licensed engineers may practice through a business organization, including a partnership, corporation, or other legal entity offering professional services.²¹ Current law establishes the liability of engineers when practicing through a business organization, including the liability of partners in a partnership and of the business organization's officers, agents, or employees for negligence, misconduct, or wrongful acts.²² Section 471.023(3), F.S., provides that the "fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence, misconduct, or wrongful acts committed by him or her." With regard to the extent of a licensed engineer's liability for his or her own negligence, misconduct, or wrongful acts while employed by a business organization, s. 471.023(3), F.S., also provides that:

any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control, while rendering professional services on behalf of the business organization.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity.²³ A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.²⁴

Surveyors and Mappers

Surveyors and mappers are regulated by the Board of Professional Surveyors and Mappers within the Department of Agriculture and Consumer Services, which enforces and administers ch. 472, F.S.²⁵ Existing law provides the following education and experience requirements for a person to qualify to take the examination for licensure as a surveyor and mapper:

²⁰ Section 471.013(1), F.S.

²¹ Section 471.023, F.S.

²² *Id.*

²³ Section 471.023(3), F.S.

²⁴ *Id.*

²⁵ The regulation of surveyors and mappers was transferred from the Department of Business and Professional Regulation to the Department of Agriculture and Consumer Services by ch. 2009-66, L.O.F.

- Receiving a degree in surveying and mapping of 4 years or more in a surveying and mapping degree program from a college or university recognized by the board and having a specific experience record of 4 or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping, which experience is of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.
- Being a graduate of a 4 year course of study, other than in surveying and mapping, at an accredited college or university and having a specific experience record of 6 or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 5 years of which are of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed.²⁶

Surveyors and Mappers Liability

Licensed surveyors and mappers may practice through a corporation or partnership. Current law establishes the liability of surveyors and mappers who practice through a corporation or partnership.²⁷ “The fact that any registered surveyor and mapper practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by him or her.”²⁸

In regard to the extent of a licensed mapper and surveyor’s liability for his or her own negligence, misconduct, or wrongful acts while employed by a business organization, s. 472.021(3), F.S., also provides that:

any officer, agent, or employee of a business organization other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by him or her or committed by any person under his or her direct supervision and control while rendering professional services on behalf of the business organization.

Partnerships and all partners are also jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity.²⁹ A business organization is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.³⁰

Architects and Interior Designers

Architects and interior designers are regulated by the Board of Architecture and Interior Design within the Department of Business and Professional Regulation, which enforces and administers the provisions of part I of ch. 481, F.S. Existing law provides the following education and

²⁶ Section 472.013(2), F.S.

²⁷ Section 472.021(3), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

experience requirements for a person to qualify to take the examination for licensure as an architect:

- Graduating from a school or college of architecture accredited by the National Architectural Accreditation Board, or from an approved architectural curriculum at an unaccredited school or college of architecture approved by the board; and
- Completing one year of internship experience.³¹

Current law provides the following education and experience requirements for a person to qualify to take the examination for licensure as an interior designer:

- Graduating from a board-approved interior design program of 5 years or more and completing 1 year of diversified interior design experience;
- Graduating from a board-approved interior design program of 4 years or more and completing 2 years of diversified interior design experience;
- Completing at least 3 years of a board-approved interior design curriculum and completing 3 years of diversified interior design experience; or
- Graduating from an interior design program of at least 2 years and completing 4 years of diversified interior design experience.³²

Architects and Interior Designers Liability

Licensees may offer architecture and interior design services through a corporation, limited liability company, or partnership.³³ The corporation, limited liability company, or partnership is not relieved of responsibility for the conduct or acts of its agents, employees, or officers.³⁴

With regard to the extent of a licensed architect's or interior designer's personal liability, s. 481.219(11), F.S., also provides that:

the architect who signs and seals the construction documents and instruments of service shall be liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed.

Corporations, limited liability companies, and partnerships are not relieved of responsibility for the conduct or acts of their agents, employees, or officers.³⁵

Landscape Architects

Landscape architects are regulated by the Board of Landscape Architecture within the Department of Business and Professional Regulation, which enforces and administers the provisions of part II of ch. 481, F.S. Existing law provides the following education and

³¹ Section 481.209(1), F.S.

³² Section 481.209(2), F.S.

³³ Section 481.219, F.S.

³⁴ Section 481.219(11), F.S.

³⁵ *Id.*

experience requirements for a person to qualify to take the examination for licensure as a landscape architect:

- Completing a board-approved professional degree program in landscape architecture; or
- Having 6 years of actual practical experience in landscape architectural work of a grade and character satisfactory to the board.³⁶

Practicing landscape architecture through a corporation or partnership does not relieve any landscape architect from personal liability for his or her professional acts.³⁷

Landscape Architects Liability

Licensees may offer landscape architect services through a corporation or partnership.³⁸ Section 481.319(6), F.S., provides that:

the fact that registered landscape architects practice landscape architecture through a corporation or partnership as provided in this section shall not relieve any landscape architect from personal liability for his or her professional acts.

Geologist

Geologists are regulated by the Board of Professional Geologists within the Department of Business and Professional Regulation, which enforces and administers chapter 492, F.S. Existing law includes the following education and experience requirements for a person to qualify to take the examination for licensure as a geologist:

- Graduating from such college or university with a major in geology or other related science acceptable to the board;
- Completing of at least 30 semester hours of geological courses, 24 of which must be at the third or fourth year or graduate level; and
- Having at least 7 years of professional geological work experience.³⁹

Currently geologists are not among the professions defined as “design professionals” by s. 588.002, F.S.

Geologist Liability

Licensees may offer landscape geology services through a corporation or partnership.⁴⁰ Section 492.111(4), F.S., provides that:

³⁶ Section 481.309(1), F.S.

³⁷ Section 481.319(6), F.S.

³⁸ Section 481.319, F.S.

³⁹ Section 492.105, F.S.

⁴⁰ Section 481.319, F.S.

The fact that a licensed professional geologist practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him.

III. Effect of Proposed Changes:

The bill creates s. 558.0035, F.S., which permits a design professional employed by a business entity or an agent of the entity to be immune from tort liability for damages occurring within the course and scope of the performance of a professional services contract if:

- The contract is made between the business entity and a claimant or another entity for the provision of services to the claimant;
- The contract does not name the individual employee or agent who will perform the professional services as a party to the contract;
- The contract prominently states that an individual employee or agent may not be held individually liable for negligence;
- The business entity maintains any professional liability insurance required under the contract; and
- Any damages are solely economic in nature and do not extend to personal injuries or property not subject to the contract.

Because the bill permits the liability of a design professional to be limited by a contract between the design professional's employer and a client, the bill effectively overrules the holding of the Florida Supreme Court in *Witt v. La Gorce Country Club, Inc.*

The bill amends s. 558.0035, F.S., to, for purposes of that section, define the term "business entity" to mean "any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."

Section 558.0035(1)(e), F.S., requires that the business entity must maintain professional liability insurance if such is such insurance is required under the contract. However, the bill does not require that the business entity maintain professional liability insurance.

If a claimant enters into a contract with a business entity and the contract meets the conditions set forth in the bill, a claimant may be barred from potential tort claims against a design professional employed by the business entity for the recovery of economic damages resulting from a construction defect.⁴¹

⁴¹ A "construction defect" is defined in s. 558.02(5), F.S., as a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property resulting from:

- Defective material, products, or components used in the construction or remodeling;
- A violation of the applicable codes in effect at the time of construction or remodeling which gives rise to the cause of action;
- A failure of the design of real property to meet the applicable professional standards of care at the time of governmental approval; or

The bill amends s. 588.002, F.S., to include geologists in the list of professions defined as “design professionals.”

The bill amends ss. 471.023(3), F.S. (engineers), 472.021(3), F.S. (surveyors and mappers), 481.219(11), F.S. (architects and interior designers), 481.319(6), F.S. (landscape architects), and 492.111(4), F.S., (geologist), which describe the liability of design professionals in cases of negligence or wrongful acts, to incorporate the exception to liability created in s. 558.0035, F.S.

The bill takes effect July 1, 2013.

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:

Section 21, Article I, of the Florida Constitution provides the constitutional right of access to court. It provides:

The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

In *Johnson v. R. H. Donnelly Company*, the Florida Supreme Court held that the constitutional right of “access to courts guarantees the continuation of common law causes of action and those causes of action may be altered only if there is a reasonable substitution which protects the persons protected by the common law remedy.”⁴² In *Kluger v. White*, the Florida Supreme Court also held that the Legislature cannot abolish a common law cause of action “unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.”⁴³ However, this only applies to common law causes of action present before the adoption of the Florida Constitution in 1968.⁴⁴

-
- A failure to construct or remodel real property in accordance with accepted trade standards for good and workmanlike construction at the time of construction.

⁴² *Johnson v. R. H. Donnelly Co.*, 402 So. 2d 518, 520 (Fla. 1981).

⁴³ *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973).

⁴⁴ *Id.*

As noted in the Present Situation, in *Moransais v. Heathman*, the Florida Supreme Court stated that Florida's common law and statutory scheme recognizes tort claims against professionals for negligence based on the professional's violation of a duty of care to injured persons.⁴⁵

As noted in the Present Situation, in *Witt v. La Gorce Country Club, Inc.*,⁴⁶ the Third District Court of Appeal held that a limitation of liability clause in the contract for the benefit of a third-party professional geologist was invalid and unenforceable as to a licensed professional. Consequently, the court refused to apply the economic loss rule to bar a negligence claim against the professional under the principle that claims of professional liability operate outside of the contract and cannot be waived.

By limiting negligence claims against licensed engineers, surveyors and mappers, architects, and landscape architects, the bill may implicate concerns relating to the constitutional right of access to courts to the extent that the bill limits causes of actions for professional negligence and professional malpractice. However, the effect of the bill is to not bar such claims in all instances. It permits a claimant, as defined in s. 558.02(3), F.S., and a business entity, as defined in the bill, to waive by contract professional liability of the business entity's employees and agents. In effect, the bill would reject the holding in *Witt*.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill limits the tort claims against a business entity's employees and agents, including licensed engineers, surveyors and mappers, architects, and landscape architects (design professionals). The design professionals affected by the bill may experience lower costs for professional liability insurance and may charge lower prices to their customers for their professional services as a consequence of the liability limitations that may be provided in a contract.

Parties to a contract who experience an economic loss that may be attributable to the professional negligence or professional malpractice of a design professional or by an employee or agent of a business entity may be limited to the remedies available under contract law, e.g., they may be barred from claims for negligence that resulted solely in economic harm to the extent that the contract does not authorize such claims.

C. Government Sector Impact:

None.

⁴⁵ *Moransais v. Heathman*, 744 So. 2d 973, 975, 976 (Fla. 1999).

⁴⁶ *Witt* at 1039.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 6, 2013

The committee substitute adds geologists to list of professions defined as “design professionals” in s. 588.002, F.S. The committee substitute amends s. 492.111(4), F.S., which describes the liability of a geologist in cases of negligence or wrongful acts, to incorporate the exception to liability created in s. 558.0035, F.S. The committee substitute moves the definition of “business entity” from s. 588.002, F.S., to 588.0035, F.S.

- B. **Amendments:**

None.

By Senator Negrón

32-00134C-13

2013286

A bill to be entitled

An act relating to design professionals; amending s. 558.002, F.S.; providing and renumbering definitions; creating s. 558.0035, F.S.; providing that certain contracts executed by a business entity may specify that certain architects, interior designers, landscape architects, engineers, and surveyors may not be held individually liable for negligence in the performance of professional services provided under those contracts; specifying that a contract that prohibits individual liability must meet certain requirements; amending ss. 471.023, 472.021, 481.219, and 481.319, 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. Present subsections (3) through (11) of section 558.002, Florida Statutes, are renumbered as subsections (4) through (12), respectively, and new subsection (3) is added to that section, to read:

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

(3) “Business entity” means any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.

Section 2. Section 558.0035, Florida Statutes, is created to read:

Page 1 of 5

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

32-00134C-13

2013286

558.0035 Contractual limitation on liability.—A contract executed by a business entity may provide that an individual employee or agent of that business entity may not be held individually liable for negligence arising from the performance of professional services under the contract, on condition that the following requirements are met:

(1) The business entity executes the contract with a claimant or with another entity for the provision of professional services on behalf of the claimant;

(2) The contract includes a prominent statement, in uppercase font that is at least 5 point sizes larger than the rest of the text, that, pursuant to this act, an individual employee or agent may not be held individually liable for negligence;

(3) The contract does not name an individual employee or agent as a party to the contract;

(4) The business entity maintains professional liability insurance required under the contract;

(5) The conduct of the design professional giving rise to the damages occurs within the course and scope of the contract; and

(6) The harm is solely economic in nature and does not extend to persons or property not subject to the contract.

Section 3. Subsection (3) of section 471.023, Florida Statutes, is amended to read:

471.023 Certification of business organizations.—

(3) Except as provided in s. 558.0035, the fact that a licensed engineer practices through a business organization does not relieve the licensee from personal liability for negligence,

Page 2 of 5

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

32-00134C-13

2013286__

59 misconduct, or wrongful acts committed by him or her.
 60 Partnerships and all partners shall be jointly and severally
 61 liable for the negligence, misconduct, or wrongful acts
 62 committed by their agents, employees, or partners while acting
 63 in a professional capacity. Any officer, agent, or employee of a
 64 business organization other than a partnership shall be
 65 personally liable and accountable only for negligent acts,
 66 wrongful acts, or misconduct committed by him or her or
 67 committed by any person under his or her direct supervision and
 68 control, while rendering professional services on behalf of the
 69 business organization. The personal liability of a shareholder
 70 or owner of a business organization, in his or her capacity as
 71 shareholder or owner, shall be no greater than that of a
 72 shareholder-employee of a corporation incorporated under chapter
 73 607. The business organization shall be liable up to the full
 74 value of its property for any negligent acts, wrongful acts, or
 75 misconduct committed by any of its officers, agents, or
 76 employees while they are engaged on its behalf in the rendering
 77 of professional services.

78 Section 4. Subsection (3) of section 472.021, Florida
 79 Statutes, is amended to read:

80 472.021 Certification of partnerships and corporations.—

81 (3) Except as provided in s. 558.0035, the fact that any
 82 registered surveyor and mapper practices through a corporation
 83 or partnership ~~does shall~~ not relieve the registrant from
 84 personal liability for negligence, misconduct, or wrongful acts
 85 committed by him or her. Partnerships and all partners shall be
 86 jointly and severally liable for the negligence, misconduct, or
 87 wrongful acts committed by their agents, employees, or partners

Page 3 of 5

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

32-00134C-13

2013286__

88 while acting in a professional capacity. ~~An~~ Any officer, agent,
 89 or employee of a business organization other than a partnership
 90 shall be personally liable and accountable only for negligent
 91 acts, wrongful acts, or misconduct committed by him or her or
 92 committed by a ~~any~~ person under his or her direct supervision
 93 and control while rendering professional services on behalf of
 94 the business organization. The personal liability of a
 95 shareholder or owner of a business organization, in his or her
 96 capacity as shareholder or owner, shall be no greater than that
 97 of a shareholder-employee of a corporation incorporated under
 98 chapter 607. The business organization shall be liable up to the
 99 full value of its property for any negligent acts, wrongful
 100 acts, or misconduct committed by any of its officers, agents, or
 101 employees while they are engaged on its behalf in the rendering
 102 of professional services.

103 Section 5. Subsection (11) of section 481.219, Florida
 104 Statutes, is amended to read:

105 481.219 Certification of partnerships, limited liability
 106 companies, and corporations.—

107 (11) No corporation, limited liability company, or
 108 partnership shall be relieved of responsibility for the conduct
 109 or acts of its agents, employees, or officers by reason of its
 110 compliance with this section. However, except as provided in s.
 111 558.0035, the architect who signs and seals the construction
 112 documents and instruments of service shall be liable for the
 113 professional services performed, and the interior designer who
 114 signs and seals the interior design drawings, plans, or
 115 specifications shall be liable for the professional services
 116 performed.

Page 4 of 5

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

32-00134C-13

2013286__

117 Section 6. Subsection (6) of section 481.319, Florida
118 Statutes, is amended to read:

119 481.319 Corporate and partnership practice of landscape
120 architecture; certificate of authorization.—

121 (6) Except as provided in s. 558.0035, the fact that a
122 registered landscape architect practices ~~architects practice~~
123 landscape architecture through a corporation or partnership as
124 provided in this section does shall not relieve the any
125 landscape architect from personal liability for his or her
126 professional acts.

127 Section 7. This act shall take effect July 1, 2013.



LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 52
and insert:

Section 1. Section 558.0035, Florida Statutes, is created
to read:

558.0035 Design professionals; contractual limitation on
liability.-

(1) A design professional employed by a business entity or
an agent of the business entity is not individually liable for
damages resulting from negligence occurring within the course
and scope of a professional services contract if:

(a) The contract is made between the business entity and a



14 claimant or with another entity for the provision of
15 professional services to the claimant;
16 (b) The contract does not name an individual employee or
17 agent as a party to the contract;
18 (c) The contract includes a prominent statement, in
19 uppercase font that is at least 5 point sizes larger than the
20 rest of the text, that, pursuant to this section, an individual
21 employee or agent may not be held individually liable for
22 negligence;
23 (d) The business entity maintains any professional
24 liability insurance required under the contract; and
25 (e) Any damages are solely economic in nature and the
26 damages do not extend to persons or property not subject to the
27 contract.
28 (2) As used in this section, the term "business entity" means
29 any corporation, limited liability company, partnership, limited
30 partnership, proprietorship, firm, enterprise, franchise,
31 association, self-employed individual, or trust, whether
32 fictitiously named or not, doing business in this state.

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

And the title is amended as follows:

Delete lines 2 - 11

and insert:

An act relating to design professionals; creating s.
558.0035, F.S.; specifying conditions under which a
design professional employed by a business entity or
an agent of the business entity may not be held
individually liable for damages resulting from



519266

43 negligence occurring within the course and scope of a
44 professional services contract; defining the term
45 "business entity";



428046

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

1 **Senate Substitute for Amendment (519266) (with title**
2 **amendment)**

3
4
5 Delete lines 18 - 52
6 and insert:

7 Section 1. Section 558.0035, Florida Statutes, is created
8 to read:

9 558.0035 Design professionals; contractual limitation on
10 liability.-

11 (1) A design professional employed by a business entity or
12 an agent of the business entity is not individually liable for
13 damages resulting from negligence occurring within the course



14 and scope of a professional services contract if:
15 (a) The contract is made between the business entity and a
16 claimant or with another entity for the provision of
17 professional services to the claimant;
18 (b) The contract does not name as a party to the contract
19 the individual employee or agent who will perform the
20 professional services;
21 (c) The contract includes a prominent statement, in
22 uppercase font that is at least 5 point sizes larger than the
23 rest of the text, that, pursuant to this section, an individual
24 employee or agent may not be held individually liable for
25 negligence;
26 (d) The business entity maintains any professional
27 liability insurance required under the contract; and
28 (e) Any damages are solely economic in nature and the
29 damages do not extend to personal injuries or property not
30 subject to the contract.
31 (2) As used in this section, the term "business entity"
32 means any corporation, limited liability company, partnership,
33 limited partnership, proprietorship, firm, enterprise,
34 franchise, association, self-employed individual, or trust,
35 whether fictitiously named or not, doing business in this state.
36
37 ===== T I T L E A M E N D M E N T =====
38 And the title is amended as follows:
39 Delete lines 2 - 11
40 and insert:
41 An act relating to design professionals; creating s.
42 558.0035, F.S.; specifying conditions under which a



43 design professional employed by a business entity or
44 an agent of the business entity may not be held
45 individually liable for damages resulting from
46 negligence occurring within the course and scope of a
47 professional services contract; defining the term
48 "business entity";



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

1
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Senate Amendment (with title amendment)

Before line 18
insert:

Section 1. Subsection (7) of section 558.002, Florida Statutes, is amended to read:
558.002 Definitions.—As used in this chapter, the term:
(7) "Design professional" means a person, as defined in s. 1.01, licensed in this state as an architect, interior designer, landscape architect, engineer, ~~or~~ surveyor, or geologist.

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

And the title is amended as follows:



14	Delete line 3
15	and insert:
16	558.002, F.S.; redefining the term "design
17	professional";



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 126 and 127
insert:

Section 7. Subsection (4) of section 492.111, Florida Statutes, is amended to read:

492.111 Practice of professional geology by a firm, corporation, or partnership; certificate of authorization.—The practice of, or offer to practice, professional geology by individual professional geologists licensed under the provisions of this chapter through a firm, corporation, or partnership offering geological services to the public through individually licensed professional geologists as agents, employees, officers,



or partners thereof is permitted subject to the provisions of this chapter, provided that:

(4) Except as provided in s. 558.0035, the fact that a licensed professional geologist practices through a corporation or partnership ~~does shall~~ not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him. The partnership and all partners are ~~shall be~~ jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a corporation is ~~shall be~~ personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by her or him or committed by any person under her or his direct supervision and control, while rendering professional services on behalf of the corporation. The personal liability of a shareholder of a corporation, in her or his capacity as shareholder, may ~~shall~~ be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The corporation is ~~shall be~~ liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.

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

And the title is amended as follows:

Delete line 12

and insert:

amending ss. 471.023, 472.021, 481.219, 481.319, and



877038

43

492.111,

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 286
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/06/2013 1 Amendment 519266		3/06/2013 2 Substitute Amendment 428046		3/06/2013 3 Late File Amendment 122190	
			Thrasher Yea	Thrasher Nay	Thrasher Yea	Thrasher Nay	Latvala Yea	Latvala Nay
X		Bradley						
X		Gardiner						
	X	Joyner						
X		Latvala						
X		Richter						
	VA	Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
7 Yea	2 Nay	TOTALS	- Yea	RS Nay	RCS Yea	- Nay	RCS Yea	- Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 286
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

SENATORS	3/06/2013 ⁴ Late File Amendment 877038 Latvala		3/06/2013 ⁵ Motion to report as Committee Substitute Thrasher		3/06/2013 ⁶ Motion to vote "Nay" after Roll Call Ring		Yea	Nay
	Yea	Nay	Yea	Nay	Yea	Nay		
	Bradley							
Gardiner								
Joyner								
Latvala								
Richter								
Ring								
Thrasher								
Soto, VICE CHAIR								
Lee, CHAIR								
TOTALS	RCS	-	FAV	-	FAV	-		
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 6 / 2013

Meeting Date

Topic _____

Bill Number 286
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

8-6-13

Meeting Date

Topic Design Professional Liability
Name KARI HERBANK
Job Title _____

Bill Number SB 286
(if applicable)

Amendment Barcode _____
(if applicable)

Address 113 EAST COLLEGE AVE.
Street
TALLAHASSEE FL 32301
City State Zip

Phone 566-7824

E-mail Kherbank@wilsonmgmt.com

Speaking: For Against Information

Representing FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Design Professionals

Bill Number SB 286
(if applicable)

Name TRAVIS MOORE

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. Box 781
Street

Phone 727.421.6907

Largo FL 33779
City State Zip

E-mail MOORET@Tampabay.com

Speaking: For Against Information

Representing Community Associations ~~Business~~ Institute - FLA

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Design Professionals

Bill Number SB 286
(if applicable)

Name Carol Bower

Amendment Barcode _____
(if applicable)

Job Title VP Gov't Affairs

Address 3730 Coconut Creek Parkway
Street

Phone 954-984-0075

Coconut Creek FL 33064
City State Zip

E-mail cbower@abestfland.com

Speaking: For Against Information

Representing Associated Builders + Contractors

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

6 MAR 2013

Meeting Date

Topic DESIGN PROFESSIONALS

Bill Number 286
(if applicable)

Name PAUL JESS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 218 S MONROE ST

Phone 224-9403

Street

TALLAHASSEE FL 32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Design Professional Liability

Bill Number 286
(if applicable)

Name Warren Husband

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10909

Phone 850 205 9000

Street

Tallahassee, FL

32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Fla. Associated General Contractors Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Design Professional Liability

Bill Number SB 286
(if applicable)

Name DAVID DANIEL

Amendment Barcode _____
(if applicable)

Job Title _____

Address 311 EAST PARK AVE
Street

Phone 224-5081

FLH FL 32312
City State Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA SURVEYING & MAPPING SOCIETY

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Design Professionals

Bill Number SB 286
(if applicable)

Name David Roberts

Amendment Barcode _____
(if applicable)

Job Title Public Policy Advisor

Address 106 East College Ave.

Phone 850-224-9634

Street

Tallahassee

FL

32301

E-mail david.roberts@akerman.com

City

State

Zip

Speaking: For Against Information

Representing American Society of Interior Designers

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic _____

Bill Number 286
(if applicable)

Name Frank Rudd

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 125 S. Gadsden St

Phone 850.224.7121

Street

Tallahassee FL

E-mail frudd@fteng.org

City

State

Zip

Speaking: For Against Information

Representing Florida Engineering Society

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-6-2013

Meeting Date

Topic CONTRACT RIGHTS

Bill Number 286
(if applicable)

Name ANDREW CUMMINGS

Amendment Barcode _____
(if applicable)

Job Title ENGINEER

Address 10060 SKINNER LAKE DR #500
Street

Phone 904.265.3030

JACKSONVILLE FL 32246
City State Zip

E-mail ACUMMINGS@CWLENG.COM

Speaking: For Against Information

Representing CONNELLY & WICKER INC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/4/13

Meeting Date

Topic DESIGN PROFESSIONALS

Bill Number 286
(if applicable)

Name MIKE HUEY

Amendment Barcode _____
(if applicable)

Job Title _____

Address 301. S. BRONCOWH ST.

Phone _____

Street

TALLAHASSEE FL 32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing FL ASSN. OF THE AMERICAN INSTITUTE OF ARCHITECTS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/8/13
Meeting Date

Topic Limited Liability

Bill Number 286
(if applicable)

Name Phil Leary

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 1821 Carr St
Street

Phone 386/937-7829

Palatka FL 32177
City State Zip

E-mail plcary@learygac.com

Speaking: For Against Information

Representing Florida Association Professional Geologists

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/2013

Meeting Date

Topic _____

Bill Number 286
(if applicable)

Name JIM HORNE

Amendment Barcode _____
(if applicable)

Job Title LOBBYIST

Address PO BOX 8339

Phone 904-759-4596

Street

FLEMING ISLAND, FL 32006

City

State

Zip

E-mail JIM@strategospublicaffairs.com

Speaking: For Against Information

Representing RSH

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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 592

INTRODUCER: Senator Galvano

SUBJECT: Garnishment

DATE: March 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.			CM	
3.				
4.				
5.				
6.				

I. Summary:

SB 592 amends s. 77.041, F.S., to extend the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Existing law authorizes a creditor to file an objection with the court within 3 business days after the debtor hand-delivers the exemption claim to creditor. The period is 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing of an exemption claim.

The bill allows a debtor to deliver a form claiming an exemption from garnishment and requesting a hearing to attorneys for the creditor and garnishees. Existing law provides for the forms to be delivered only to the creditor and garnishees.

The bill also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S. The form will include a requirement for certification under oath and penalty of perjury that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief.

The bill repeals s. 222.12, F.S., which provides procedures for claims of exemptions for garnishment.

The bill substantially amends section 77.041, Florida Statutes.

The bill repeals s. 222.12, Florida Statutes

II. Present Situation:

Garnishment is a “judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee¹ for the debtor to turn over to the creditor any of the debtor’s property (such as wages or bank accounts) held by that third party.”²

Garnishment is a statutory remedy prescribed by chapters 77 and 222, F.S. In general, a plaintiff initiates a garnishment action as a means of either prejudgment seizure³ or postjudgment collection.⁴ A creditor may obtain a continuing writ of garnishment against the debtor’s salary or wages.⁵ A garnishee is a person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment.⁶ Certain property of a debtor is exempt from creditor claims, at times and with conditions. Such exemptions include, but are not limited to:

- Homestead real property;⁷
- Personal property up to the value of \$1,000;⁸
- Head of family wages;⁹
- Firefighters’ pensions;¹⁰
- Medical savings account;¹¹
- Motor vehicles;¹²
- Pension benefits; and¹³
- Veterans’ benefits;¹⁴

A writ of garnishment must contain a notice to the garnishment defendant who is a natural person of the right to an immediate hearing for dissolution of the writ.¹⁵ When a garnishment plaintiff applies for a writ of garnishment, s. 77.041, F.S., provides a form for the notice that the clerk of court must furnish to a debtor who is delivered a writ of garnishment. The notice informs the debtor that he or she may have certain assets that are exempt from garnishment. If the debtor fails to timely claim an exemption, the writ of garnishment plaintiff may obtain a default judgment and is entitled to the garnished property.¹⁶

¹ A bailee is a person who receives personal property from another, and has possession of but not title to the property. BLACK’S LAW DICTIONARY (9th ed. 2009).

² BLACK’S LAW DICTIONARY (9th ed. 2009).

³ Section 77.031, F.S. A prejudgment writ of garnishment is a civil remedy available to a party to secure the anticipated money judgment the party ultimately expects to recover. *Garel and Jacobs, P.A. v. Wick*, 683 So. 2d 184, 186 (Fla. 3d DCA 1996).

⁴ Section 77.03, F.S.

⁵ Section 77.0305, F.S.

⁶ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁷ FLA. CONST. art. X, s. 4.

⁸ *Id.*

⁹ Section 222.11, F.S.

¹⁰ Section 175.241, F.S.

¹¹ Section 222.22(1), F.S.

¹² Section 222.25, F.S.

¹³ Section 222.21(1), F.S.

¹⁴ Section 744.626, F.S.

¹⁵ Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 33:6 (2012 edition). *See also* s. 77.014, F.S.

¹⁶ Section 77.081, F.S.

The clerk of court must also give the debtor a statutory form for a claim of exemption. The form lists common exemptions to garnishment that the defendant may elect, along with a request for a hearing and a signature line for the debtor.¹⁷ Although s. 222.12, F.S., requires a claim of exemption to be filed under oath, the statutory form prescribed under s. 77.041(1), F.S., contains language that would not effectuate a sworn statement.

If a claim of exemption is timely filed by the debtor, the creditor has 3 business days to file an objection to the exemption if the form is hand delivered and 8 business days if the form is mailed.¹⁸ If the creditor does not timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.¹⁹ If the creditor fails to timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.²⁰ However, if the debtor files a claim of exemption, and the creditor timely files an objection, a hearing will be held as soon as practicable to determine the validity of the exemptions claimed.²¹

Section 222.12, F.S., requires a person who claims that garnished earnings are exempt because that person is the head of a family to make this allegation in an affidavit for discharge of the garnishment before the officer who issued the writ of garnishment or a notary public. After notice of the affidavit is made to the party or his or her attorney who sued for the writ of garnishment, that creditor's objection to the claim must be filed within 2 business days.

Although the procedure for claims of exemptions for garnishment appear to be in conflict, courts have interpreted the procedure for the claims of exemptions for garnishment in s. 77.041(3), F.S., to supplement rather than replace s. 222.12, F.S.²²

III. Effect of Proposed Changes:

The bill amends s. 77.041, F.S., to extend the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Existing law authorizes a creditor to file an objection with the court within 3 business days after the debtor hand-delivers the exemption claim to creditor. The period is 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing of an exemption claim.

The bill allows a debtor to deliver a form claiming an exemption from garnishment and requesting a hearing to attorneys for the creditor and garnishees. Existing law provides for the forms to be delivered only to the creditor and garnishees.

The bill also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S., to include a requirement for certification under oath and penalty of perjury

¹⁷ Section 77.041, F.S.

¹⁸ Section 77.041(3), F.S. But see s. 222.12, F.S., which predates the enactment of s. 77.041, F.S., and provides that the creditor's objection must be filed within 2 business days.

¹⁹ *Id.*

²⁰ Section 77.041(3), F.S.

²¹ Section 77.041(3), F.S.

²² *Cadle Co. v. Pegasus Ranch, Inc.*, 920 So. 2d 1276, 1279 (Fla. 4th DCA 2006).

that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief.

The bill repeals s. 222.12, F.S., which requires a person who claims that garnished earnings are exempt because that person is the head of a family to make this allegation in an affidavit for discharge of the garnishment before the officer who issued the writ of garnishment or a notary public. Under s. 222.12, F.S., after notice of the affidavit is made to the party or his or her attorney who sued for the writ of garnishment, that creditor's objection to the claim must be filed within 2 business days.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill on lines 109-118 contains provisions in the statutory form for the debtor to certify under oath as to the facts contained in the claim. The Legislature may wish to amend s. 77.041(3), F.S., to conform to the statutory form to require the debtor (defendant) to file a sworn claim of exemption and request for hearing.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Galvano

26-00651-13

2013592__

A bill to be entitled

An act relating to garnishment; amending s. 77.041, F.S.; revising "Notice to Defendant" provided by clerk of court in a garnishment proceeding; providing that a defendant in a garnishment proceeding may provide notice of a garnishment exemption to plaintiff or garnishee's attorney; extending time for plaintiff to respond to defendant's claim of exemption and request for hearing; requiring defendant to certify under oath and penalty of perjury that he or she provided notice of exemption claim and request for hearing to plaintiff, garnishee, or their respective attorneys; repealing s. 222.12, F.S., relating to proceedings for exemption; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 77.041, Florida Statutes, are amended to read:

77.041 Notice to individual defendant for claim of exemption from garnishment; procedure for hearing.—

(1) Upon application for a writ of garnishment by a plaintiff, if the defendant is an individual, the clerk of the court shall attach to the writ the following "Notice to Defendant":

NOTICE TO DEFENDANT OF RIGHT AGAINST
GARNISHMENT OF WAGES, MONEY,
AND OTHER PROPERTY

Page 1 of 6

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

26-00651-13

2013592__

The Writ of Garnishment delivered to you with this Notice means that wages, money, and other property belonging to you have been garnished to pay a court judgment against you.

HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES, MONEY, OR PROPERTY. READ THIS NOTICE CAREFULLY.

State and federal laws provide that certain wages, money, and property, even if deposited in a bank, savings and loan, or credit union, may not be taken to pay certain types of court judgments. Such wages, money, and property are exempt from garnishment. The major exemptions are listed below on the form for Claim of Exemption and Request for Hearing. This list does not include all possible exemptions. You should consult a lawyer for specific advice.

IF AN EXEMPTION FROM GARNISHMENT APPLIES TO YOU AND YOU WANT TO KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED, OR TO RECOVER ~~GET BACK~~ ANYTHING ALREADY TAKEN, YOU MUST COMPLETE A FORM FOR CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS SET FORTH BELOW AND HAVE THE FORM NOTARIZED. IF YOU HAVE A VALID EXEMPTION, YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE WITHIN 20 DAYS AFTER THE DATE YOU RECEIVE THIS NOTICE OR YOU MAY LOSE IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS FORM TO THE PLAINTIFF AND THE GARNISHEE OR THEIR RESPECTIVE ATTORNEYS AT THE ADDRESSES LISTED ON THE WRIT OF GARNISHMENT. NOTE THAT THE FORM REQUIRES YOU TO COMPLETE A CERTIFICATION THAT YOU MAILED OR HAND DELIVERED COPIES TO THE PLAINTIFF AND GARNISHEE OR THEIR RESPECTIVE ATTORNEYS.

Page 2 of 6

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

26-00651-13

2013592__

59 If you request a hearing, it will be held as soon as
 60 possible after your request is received by the court. The
 61 plaintiff must file any objection within 8 ~~3~~ business days if
 62 you hand delivered to the plaintiff a copy of the form for Claim
 63 of Exemption and Request for Hearing or, alternatively, 14 ~~8~~
 64 business days if you mailed a copy of the form for claim and
 65 request to the plaintiff. If the plaintiff files an objection to
 66 your Claim of Exemption and Request for Hearing, the clerk will
 67 notify you and the other parties of the time and date of the
 68 hearing. You may attend the hearing with or without an attorney.
 69 If the plaintiff fails to file an objection, no hearing is
 70 required, the writ of garnishment will be dissolved and your
 71 wages, money, or property will be released.

72 IF YOU HAVE A VALID EXEMPTION, YOU SHOULD FILE THE
 73 FORM FOR CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR
 74 WAGES, MONEY, OR PROPERTY FROM BEING APPLIED TO THE
 75 COURT JUDGMENT. THE CLERK CANNOT GIVE YOU LEGAL
 76 ADVICE. IF YOU NEED LEGAL ASSISTANCE YOU SHOULD SEE A
 77 LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER, LEGAL
 78 SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR
 79 ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL
 80 SERVICES PROGRAM IN YOUR AREA.

81
 82 CLAIM OF EXEMPTION AND
 83 REQUEST FOR HEARING

84 I claim exemptions from garnishment under the following
 85 categories as checked:

86 1. Head of family wages. (Check either ~~You must check~~ a. or

Page 3 of 6

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

26-00651-13

2013592__

87 b. below, if one applies to you.)
 a. I provide more than one-half of the support for a child
 or other dependent and have net earnings of \$750 or less
 per week.
 88 b. I provide more than one-half of the support for a child
 or other dependent, have net earnings of more than \$750 per
 week, but have not agreed in writing to have my wages
 garnished.
 89 2. Social Security benefits.
 90 3. Supplemental Security Income benefits.
 91 4. Public assistance (welfare).
 92 5. Workers' Compensation.
 93 6. Reemployment assistance or unemployment compensation.
 94 7. Veterans' benefits.
 95 8. Retirement or profit-sharing benefits or pension money.
 96 9. Life insurance benefits or cash surrender value of a
 life insurance policy or proceeds of annuity contract.
 97 10. Disability income benefits.

Page 4 of 6

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

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.... 11. Prepaid College Trust Fund or Medical Savings Account.
.... 12. Other exemptions as provided by law.
.....(explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:
Address:
Telephone number:.....

I CERTIFY UNDER OATH AND PENALTY OF PERJURY that a copy of this claim of exemption and request for hearing has been furnished by U.S. mail or hand delivery on ..(insert date)..., to: ..(insert names and addresses of plaintiff or plaintiff's attorney and of garnishee or garnishee's attorney to whom a copy of this document was mailed or hand delivered....

I FURTHER CERTIFY UNDER OATH AND PENALTY OF PERJURY that the statements made in this request are true to the best of my knowledge and belief.
.....
Defendant's signature
Date.....

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STATE OF FLORIDA
COUNTY OF

Sworn and subscribed to before me this day of ...(month and year)..., by ...(name of person making statement)...
Notary Public/Deputy Clerk
Personally KnownOR Produced Identification....
Type of Identification Produced.....

(3) Upon the filing by a defendant of a claim of exemption and request for hearing, a hearing will be held as soon as is practicable to determine the validity of the claimed exemptions. If the plaintiff does not file a sworn written statement that contests the defendant's claim of exemption within 8 ~~3~~ business days after hand delivering the claim and request or, alternatively, 14 ~~3~~ business days, if the claim and request were served by mail, no hearing is required and the clerk must automatically dissolve the writ and notify the parties of the dissolution by mail.

Section 2. Section 222.12, Florida Statutes, is repealed.
Section 3. This act shall take effect July 1, 2013.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 592
FINAL ACTION: Favorable
MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
X		Gardiner						
X		Joyner						
		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
8	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 58

INTRODUCER: Judiciary Committee; Senators Hays and Evers

SUBJECT: Application of Foreign Law in Certain Cases

DATE: March 7, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			GO	
3.			CF	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 58 restricts courts from applying foreign law, legal codes, and systems to disputes brought under chapters 61 and 88, F.S. These chapters relate to divorce, alimony, the division of marital assets, child support, and child custody.

The bill restricts courts from applying foreign laws that do not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

The bill authorizes a party to a contract to waive his or her rights, but requires the court to narrowly construe the scope of a waiver.

This bill does not apply to the following:

- Corporations, partnerships, and other types of business associations;
- Ecclesiastical matters; and
- Matters governed by federal treaty or international agreements to which the United States is a party and which preempt state law.

This bill creates section 45.022, Florida Statutes.

II. Present Situation:

Choice of Law and Choice of Forum

Questions of choice of law or forum generally arise when a case involves parties or situations with connections to multiple states or countries.

Domestic Law

The Full Faith and Credit Clause, found in section 1, Article IV of the U.S. Constitution, provides, in part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." The question of full faith and credit may arise after a state refuses to enforce another state's judgment, considered to be a "sister state."¹ Full faith and credit may also arise when a party to a case involving contacts in one state seeks to have the law of another state apply.

In choice of law cases, a court typically requires proof of sufficient contacts to a state, such as through residency, home ownership, or place of work to apply the law of that state. This test remains the prevailing standard in choice of law cases.²

¹ William B. Sohn, *Supreme Court Review of Misconstructions of Sister State Law*, 98 VA. L. REV. 1861, 1864-65 (Dec. 2012).

² In the seminal case of *Allstate Insurance Co. v. Hague*, the Supreme Court considered whether Minnesota law could apply where the widow established the following state ties to Minnesota: the decedent's long-term workplace, a daily commute between states, the insurer's place of operation, and the wife's new place of residency. The Court required proof of a singular or aggregate significant contact to a state so that choice of its law is not arbitrary or fundamentally unfair. Here, the court determined that the aggregate of contacts justified application of Minnesota law. 449 U.S. 302, 313-319 (1981).

Foreign Law

Choice of Law

Some contracts stipulate a choice of law, defined as “A contractual provision by which the parties designate the jurisdiction whose law will govern any disputes that may arise between the parties.”³

Numerous policies exist that favor the application of foreign law to U.S. state and federal courts.⁴ These policies are based on principles of international comity, reciprocity, predictability, fairness, and disapproval of forum shopping.⁵ The term “comity” is defined as “A practice among political entities (as nations, states, or courts of different jurisdictions), involving esp[ecially] mutual recognition of legislative, executive, and judicial acts.”⁶ Principles of comity are the international equivalent of full faith and credit.⁷

A court does not take judicial notice of the law of another country.⁸ Instead, if relevant to a case, a court conducts a review of foreign statutes, case law, and secondary sources and heavily relies on expert testimony.⁹

Choice of Forum

The term “forum non conveniens” is defined as:

The doctrine that an appropriate forum – even though competent under the law – may divest itself of jurisdiction if, for the convenience of the litigants and the witnesses, it appears that the action should proceed in another forum in which the action might also have been properly brought in the first place.¹⁰

Courts apply a strong presumption in favor of a plaintiff’s choice of forum.¹¹ Still, the proponent must firmly establish bona fide connections to the forum choice to outweigh perceptions of forum shopping.¹² Courts typically allow a U.S. citizen to choose a U.S. forum, rather than have the case heard in a foreign jurisdiction. However, if a U.S.

³ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁴ Nicholas M. McLean, *Intersystemic Statutory Interpretation in Transnational Litigation*, 122 YALE L.J. 303, 304 (Oct. 2012). “A court sitting in diversity might apply a state choice-of-law rule that requires the court to apply the tort law of a foreign nation. In a contract dispute, a federal court might apply foreign substantive law pursuant to an international agreement’s choice-of-law clause. In the realm of corporate law, a court might find, based on an application of the internal affairs doctrine, that a foreign nation’s procedural requirements govern a shareholder derivative suit (citation omitted).” *Id.*

⁵ *Id.* at 304.

⁶ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁷ James Botsford and Paul Stenzel, *The Wisconsin Way Forward with Comity: A Legal Term for Respect*, 47 TULSA L. REV. 659 (Spring 2012). “Full faith and credit is a constitutional principle requiring states to enforce fully the judgments and orders of other states. Comity is the principle of international law by which a sovereign gives deference to the judgments of another due to mutual respect.” *Id.* at 660.

⁸ Determination of question relating to foreign law as one of law or fact, 34 A.L.R. 1447.5

⁹ McLean, *supra* note 4, at 306-307.

¹⁰ BLACK’S LAW DICTIONARY (9th ed. 2009).

¹¹ Plaintiff’s choice of forum, 32A AM. JUR. 2D FED. CTS. § 1364.

¹² Forum Non Conveniens – Deference to Plaintiff’s Forum Choice, 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.)

corporation operates in international commerce, not all litigation will be heard in the U.S.¹³

Courts place a high burden on a defendant who seeks dismissal of a case based on forum non conveniens. Although international treaty requirements promote the principle “equal access to courts,” in practice, courts do not accord foreign plaintiffs the same deference to move a case to another jurisdiction as U.S. citizens.¹⁴

Validity of Judgment

U.S. courts are generally not bound by foreign judgments. Still, principles of comity dictate strong consideration of another country’s judicial orders, based on deference and mutual respect.

Criteria that courts apply in accepting a foreign judgment include proof that:

- The parties had access to a full and fair trial.
- The proceeding took place after due notice and voluntary appearance.
- The jurisdiction operates under impartiality, rather than prejudice, between its own citizens and those of other countries.
- No evidence of fraud existed in securing the judgment.¹⁵

Chapter 61, F.S.

Chapter 61, F.S., addresses dissolution of marriage including the distribution of assets and liabilities, alimony, and child support and child custody arrangements. Regarding child support, the public policy of the state is that each parent has a fundamental obligation towards dependent children.¹⁶ Child support is based in part on a parent’s income and the child’s needs.¹⁷

Child custody arrangements, whether developed by the parents or by a court, must comply with state law and international treaties.¹⁸

Florida courts distribute assets and liabilities through equitable distribution, rather than, say, community property, as is done in California and a handful of other Western states. Under equitable distribution, a court considers various factors including contributions to the marriage, economic circumstances of the parties, and the length of marriage.¹⁹ The court also

¹³ American citizenship of party; suits by aliens, 32A AM. JUR. 2D FED. CTS. §1365.

¹⁴ 14D FED. PRAC. & PROC. JURIS. §3828.2 (3d ed.)

¹⁵ 9 AM. JUR. *Proof of Facts* 3D 687 §1.5. Comity (Dec. 2012).

¹⁶ Section 61.29, F.S.

¹⁷ Section 61.30, F.S.

¹⁸ These laws include the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, the Parental Kidnapping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction.

¹⁹ Section 61.075(1), F.S.

considers various factors in awarding alimony and awards it on different bases, such as, monthly, lump sum, temporary, or permanent.²⁰

Florida recognizes written, signed premarital agreements as enforceable contracts.²¹ These agreements may include choice of law clauses.²² However, an agreement cannot negatively affect the rights of a child to support.²³ Grounds for unenforceability of a premarital agreement include coercion, fraud, duress, or overreaching or that the agreement is unconscionable.²⁴

To relocate with a child, absent an agreement between the parents, the relocating parent must petition the court or face contempt charges.²⁵

Chapter 88, F.S.

Federal law required each state to adopt the Uniform Interstate Family Support Act (UIFSA), codified in chapter 88, F.S.²⁶ The purpose of the UIFSA is to unify state law among the states regarding child support obligations, reconcile child support orders issued by more than one state, and streamline procedures for out-of-state petitioners.²⁷ Under the Act, only one court possesses jurisdiction and only one order is in effect at any given time.²⁸ This can change, however, to another court for modification, if that court has personal jurisdiction.²⁹

The UIFSA applies to support proceedings involving a foreign support order (meaning an order entered into out-of-state), a foreign tribunal, or a case in which an obligee, obligor, or child lives in a foreign country.³⁰

The UIFSA governs the:

²⁰ The law recognizes bridge-the-gap, rehabilitative, durational, and permanent forms of alimony. Section 61.08(1) and (2), F.S.

²¹ Section 61.079, F.S.

²² Section 61.079(4)(a)7., F.S.

²³ Section 61.079(4) (b), F.S.

²⁴ Section 61.079(7), F.S.

²⁵ Section 61.13001(3), F.S.

²⁶ Building on earlier federal efforts to address the complications of enforcing child support across state lines, Congress passed the original UIFSA in 1992, and later amended it in 1996 and 2001. Kimball Denton, *A Brief History of Uniform Laws for Private Interstate Support Enforcement*, 20 J. CONTEMP. LEGAL ISSUES 323, 326 (2011-12). “[T]he Act innovatively created a one-order system by including a long-arm jurisdiction provision, which provided that a case should be kept in the obligee’s home state as often as possible. The long-arm provision called for ‘extended personal jurisdiction over nonresidents’... .” This was thought to remove the noncustodial parent’s advantage of having automatic case transfer to his or her home state. Nicole K. Bridges, *The “Strengthen and Vitalize Enforcement of Child Support (Save Child Support) Act: Can the Save Child Support Act Save Child Support from the Recent Economic Downturn?”*, 36 OKLA. CITY U.L. REV. 679, 692-93 (Fall 2011).

²⁷ 23 AM. JUR. 2D *Desertion and Nonsupport* § 73; 67A C.J.S. Parent and Child §247.

²⁸ Denton, *supra* note 26 at 327.

²⁹ *Id.* at 327. In Florida, a court may establish personal jurisdiction over an individual based on any of the following: The individual is served with citation, summons, or notice in-state; the individual consents to jurisdiction in the state; the individual lived with the child in-state and provided prenatal expenses or child support; the child lives in the state as a result of the acts or directives of the individual; the individual had sexual intercourse in this state which may have resulted in the conception of the child; the individual asserted parentage in a court or putative father registry in the state; or any other basis which is constitutional for the exercise of personal jurisdiction. Section 88.2011, F.S.

³⁰ Section 88.1041(1), F.S.

- Establishment of a spousal or child support order.
- Enforcement of support orders and income-withholding orders without the registration of an order from out-of-state with a court in this state.
- Registration of a support order of another state for enforcement in this state.
- Modification of a child support order issued by a court of the state in which the support obligations originated.
- Registration of an order of another state for modification.
- Determination of parentage as it relates to child support.³¹

Jurisdiction

Section 88.2011, F.S., addresses a court's jurisdiction over parties to a support order or parentage determination. When a court exercises personal jurisdiction over a nonresident, in some circumstances, the state procedural and substantive laws apply, including choice of law rules, unless specified otherwise in the UIFSA:

Under ... choice of law ... the substantive law of an issuing state applies to petitions filed in a responding state to enforce the existing ... orders of the issuing state; ... the substantive law of the issuing state does not apply to petitions filed in a [subsequent] responding state to modify the existing child support orders of the issuing state.

A foreign country may be a "state" for purposes of application of the UIFSA, but the Act does not apply to obligations established under the law of a foreign country where there is no state law or contravening treaty or federal statute recognizing the enforcement of support orders from the foreign country ...³²

Enforcement of Income-Withholding Orders Without Registration

Part V of chapter 88, F.S., provides for income-withholding orders issued by another state to be self-executing and treated as if a Florida court issued them.³³ However, a Florida court can enforce out-of-state support and income-withholding orders once a party registers the order with the Florida court.³⁴

Choice of Law

Under the UIFSA, the law of the issuing or originating state applies regarding the nature, extent, amount and duration of payments and other support obligations, including arrearages. In proceedings to collect arrearages under support orders, the statute of limitation that applies is whichever is longer, this state's or the issuing state's.³⁵

³¹ 23 AM. JUR. 2D *Desertion and Nonsupport* § 73.

³² Section 88.2021, F.S.; 67A C.J.S. *Parent and Child* §247.

³³ Sections 88.5011 and 88.50211(2), F.S.

³⁴ Section 88.6011, F.S.

³⁵ Section 88.6041(1) and (2), F.S.

Enforcement and Modification of Support Order After Registration

Under the UIFSA, jurisdiction to enforce or modify another state’s child support order in a registration proceeding in this state is proper if all parties, including children, reside here.³⁶

To modify a support order from another state, an agency or party must register it in Florida.³⁷ Once the recipient meets personal jurisdiction and other factors, the court can enforce the order just as if it had been issued in-state.³⁸

To enforce orders involving a foreign country, the UIFSA authorizes:

- A tribunal of this state to assume jurisdiction to modify an order and make it the controlling order if a foreign country lacks or refuses jurisdiction to modify its own order.³⁹
- A party or support enforcement agency seeking to modify or enforce a foreign order which is not governed by an international convention to register the order in this state.⁴⁰

The UIFSA requires courts to recognize and enforce foreign support orders and agreements, unless:

- A court finds that a registered convention support order is manifestly incompatible with public policy. Incompatibility with public policy includes the failure of the issuing court to maintain minimum standards of due process such as notice and an opportunity to be heard.⁴¹
- A court finds that a registered foreign support agreement is manifestly incompatible with public policy.”⁴²

Use and Acceptance of Religious Law by U.S. Courts

The U.S. Constitution does not permit official adoption of religious law by federal, state or local governments.⁴³ Examples exist, however, of judicial deference to religious edicts.

In the seminal case of *Wisconsin v. Yoder*, the U.S. Supreme Court reviewed a challenge by Amish parents of a Wisconsin law requiring mandatory school attendance.⁴⁴ At the time, the law did not recognize home schooling as an alternative education. The parents asserted that high school would negatively impact their children through exposure to “worldly” views, self-distinction, and social life, all antithetical to Amish religion.⁴⁵ The Court noted the reputable work ethic, law-abiding nature, and potentially-compromised

³⁶ Section 88.6131(1), F.S.

³⁷ Section 88.6091, F.S.

³⁸ Section 88.6101, F.S.; Requirements for modification of child support orders issued out-of-state are provided in s. 88.6111, F.S.

³⁹ Section 88.6151(1) and (2), F.S.

⁴⁰ Section 88.6161, F.S.

⁴¹ Section 88.7081(1) and (2)(a), F.S.

⁴² Section 88.7101(3), F.S.

⁴³ Jaron Ballou, *Sooners vs. Shari’a: The Constitutional and Societal Problems Raised by the Oklahoma State Ban on Islamic Shari’a Law*, 30 LAW & INEQ. 309, 314 (Summer 2012).

⁴⁴ *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

⁴⁵ *Id.* at 210-11 (1972).

survival of the Amish.⁴⁶ The Court found the parents' violation of compulsory school attendance to be firmly rooted in Amish religion.⁴⁷ Requiring high school attendance would violate the defendants' rights to religious Free Exercise, under the First Amendment of the U.S. Constitution.⁴⁸

Scholars suggest that the Court is inclined to uphold a religious practice that violates a law if the statute unduly burdens religious First Amendment rights. This is particularly so where the practice cannot be said to harm others.⁴⁹ Still, "American laws impose behavioral mandates on all citizens, regardless of faith, and to the extent that religious regimes tolerate behaviors that fall outside those mandates, the secular court system will always come down on the side of secular laws."⁵⁰

Another group that the Court recognizes is the Beth Din of America (BDA), or a Jewish rabbinic court. The BDA established itself as a limited court alternative to civil disputes.⁵¹ Functioning primarily as a court of arbitration, the court has undergone significant changes since its inception 50 years ago.⁵² Present day proceedings before the BDA include:

- A detailed and standardized rules of procedure.
- An internal appellate process.
- Consideration of choice of law.
- Testimony from experts on secular law and commercial practice.
- Recognition of common commercial custom.
- Belief in communal governance, as reflected in multiple individual arbitration.⁵³

As noted, the BDA incorporated these features over time. "Recognizing this secular focus on procedure and procedural fairness, the BDA adopted detailed rules and procedures that contributed tremendously to the eventual secular acceptance of BDA decisions."⁵⁴ To date, no U.S. court has overturned a BDA case.⁵⁵

BDA cases apply to situations in which:

⁴⁶ *Id.* at 212-13.

⁴⁷ *Id.* at 213-16.

⁴⁸ *Id.* at 234.

⁴⁹ Omar T. Mohammedi, *Sharia-compliant Wills: Principles, Recognition, and Enforcement*, 57 N.Y.L. SCH. L. REV. 259, 280 (2012-13).

⁵⁰ Michael J. Broyde, *Jewish Law Courts in America: Lessons Offered to Sharia Courts by the Beth Din of American Precedent*, 57 N.Y.L. SCH. L. REV. 287, 303 (2012-13).

⁵¹ *Id.* at 288.

⁵² *Id.* at 288.

⁵³ Broyde, *supra* note 50, at 288-89. "Traditionally, Jewish law did not offer an appellate process like the American secular court system Over time, however, the BDA came to find that if it did not provide an internal mechanism by which parties could appeal perceived errors, secular judges would interject and substitute their own judgment. Because the ultimate goal for litigants submitting to a religious tribunals' jurisdiction (and for the tribunal itself) is to have matters resolved internally from start to finish, the BDA added an appellate process to its arbitration services." *Id.* at 293.

⁵⁴ *Id.* at 290.

⁵⁵ *Id.* at 288.

- A contract contains an arbitration provision that designates the BDA as the preferred forum for arbitration; or
- A party to a dispute invites an opposing party to bring the case to the BDA.⁵⁶

Anti-Foreign Law

In recent years, state legislatures have moved to limit Sharia law, or the applicability of foreign law through choice of law and choice of forum clauses in contracts. Starting with Louisiana and Tennessee, 21 states have considered some limits on the application of foreign law, either through legislation or ballot initiative.⁵⁷

Scholars generally classify initiatives or legislation in one of three ways:

- Bills that singularly restrict the use of Sharia law;⁵⁸
- Bills that include Sharia as one of several banned types of law or tradition;⁵⁹ or
- Prohibitions on foreign law generally, commonly known as a foreign or international law bill.⁶⁰

Proposals passed through initiative or legislation in Arizona,⁶¹ Kansas,⁶² Louisiana,⁶³ Oklahoma, and Tennessee.

⁵⁶ *Id.* at 291-92.

⁵⁷ Asma T. Uddin and Dave Pantzer, *A First Amendment Analysis of Anti-Sharia Initiatives*, 10 FIRST AMEND. L. REV. 363, 370 (Winter 2012).

⁵⁸ Alabama's proposed language read, in part: "The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia." H.R. 597 (Ala. 2011). Iowa, Missouri, and New Mexico proposed virtually the same language. Language before the Wyoming legislature would ban both direct use of Sharia law, and citing other states that use Sharia law. H.R. 8, (Wyo. 2011). Udder and Pantzer, *supra* note 57, at 371-73.

⁵⁹ An example of this was the language initially proposed in Arizona, which provided, in part: "... court shall not use, implement, refer to or incorporate [a] tenet of any body of religious sectarian law in to any decision, finding or opinion as controlling or influential authority." And further, the bill defines "religious sectarian law", as "a tenet or body of law evolving within and binding a specific religious sect or tribe. Religious sectarian law includes sharia law, canon law, halacha and karma" H.R. 2582 (Ariz. 2011). Udder and Pantzer, *supra* note 58, at 373-74.

⁶⁰ *Id.* at 373-74. An example of the more generalist approach was tried in Michigan. It defined foreign law as "any law, rule or legal code or system other than the constitution, laws and ratified treaties of the United States and the territories of the United States, or the constitution and laws of this state a court ... shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution of this state or of the United States, or the constitution and laws of this state." *Id.* at 375.

⁶¹ Ariz.Rev.Stat. §12-3103, provides, in part: "A court, arbitrator, administrative agency or other adjudicative, mediation or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the Constitution of this state or of the United States"

⁶² Kan. Stats. §§60-5103, 60-5104, and 60-5105 (a) and (b), provide, in part: "Any court, arbitration, tribunal or administrative agency ruling ... shall violate the public policy of this state and be void and unenforceable if the court ... bases its rulings ... on any foreign law, legal code or system that would not grant the parties affected ... the same fundamental liberties, rights and privileges granted under the ... constitutions, including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. A contract or ... provision ... which provides for the choice of a foreign law, legal code or system to govern ... shall violate the public policy of this state and be void and unenforceable if the foreign law, legal code or system chosen ... would not grant the parties the same fundamental liberties, rights and privileges granted under the ... constitutions, including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. A contract or ... provision ... which provides for a jurisdiction for ... in personam jurisdiction ... shall violate the public policy of this state and be void and unenforceable if the jurisdiction ... includes any foreign law, legal code or system ... that would not grant the parties the same fundamental liberties,

Perhaps the most notable attempt to limit court use of foreign law was the constitutional amendment placed on the ballot in Oklahoma in 2010. The amendment restricted courts to the use of federal and state law, and expressly banned consideration of international and Sharia laws. The initiative defined Sharia law as Islamic law, based on the Koran and the teachings of Mohammed.⁶⁴ Fewer than 1 percent of Oklahoma’s population self-identifies as Muslim.⁶⁵ Known as the “Save our State” amendment, the measure passed handily both in the legislature and through adoption by voters.⁶⁶

A Muslim Oklahoma resident challenged the amendment on the basis that it violated his First Amendment rights under the Establishment Clause and the Free Exercise Clause of the U.S. Constitution. The U.S. District Court for the Western District of Oklahoma ruled in favor of the plaintiff. The plaintiff argued that the initiative unconstitutionally interfered with his ability to indicate his wishes as detailed in his will. Specifically, the will provided for:

charitable allotments to be made “in a manner that does not exceed the proscribed limitations found in Sahih Bukhari ... a highly respected collection of the “sayings and deeds of Prophet Muhammed,” and the cited provision appears to set a cap on the amount of property that a decedent may give to charity by will. It also provides for the preparation of Awad’s body in a manner that “comports precisely with ... Sahih Bukhari” ... and for “a burial plot that allows my body to be interned [sic] with my head pointed in the direction of Mecca.”⁶⁷

rights and privileges granted under the ... constitutions, including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage. ... If a resident ... subject to personal jurisdiction in this state, seeks to maintain litigation, ... in this state and if the courts ... find that granting ... forum non conveniens or a related claim violates ... the fundamental liberties, rights and privileges granted under the United States and Kansas constitutions of the nonclaimant in the foreign forum ... including ... equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage ... the claim shall be denied.

⁶³ La. Rev. Stat. §9:6001B, provides: “ ... it shall be the public policy of this state to protect its citizens from the application of foreign laws when the application ... will result in the violation of a right guaranteed by the constitution ... including ... due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state. ... A court, arbitrator, administrative agency, or other adjudicative, mediation, or enforcement authority shall not enforce a foreign law if doing so would violate a right guaranteed by the constitution. ... If any contractual provision or agreement provides for the choice of a foreign law ... would result in a violation of a right guaranteed by the constitution ..., the agreement or contractual provision shall be modified or amended ... to preserve the constitutional rights of the parties. ... If any contractual provision or agreement provides for the choice of venue or forum outside of the states or territories of the United States, and if the enforcement or interpretation ... would result in a violation of any right guaranteed by the constitution ... that contractual provision or agreement shall be interpreted ... to preserve the constitutional rights of the person against whom enforcement is sought. ... if a natural person subject to personal jurisdiction in this state seeks to maintain litigation ... in this state, and ... granting a claim of forum non conveniens or a related claim violates or would likely lead to the violation of the constitutional rights of the nonclaimant in the foreign forum with respect to the matter in dispute, the claim shall be denied.

⁶⁴*Id.* at 367-68.

⁶⁵ Ballou, *supra* note 43, at 310.

⁶⁶ Udder and Pantzer, *supra* note 57, at 377-78.

⁶⁷ *Id.* at 390.

His will, the plaintiff argued, would be rendered unenforceable under the amendment.⁶⁸

The court noted that the amendment language subjected the plaintiff and other Muslims in the state to disfavored treatment.⁶⁹ In determining the proper test to apply, the Court reviewed the principles of the tests established in *Lemon v. Kurtzman*⁷⁰ and *Larson v. Valente*.⁷¹ The Court cited *Larson* for the proposition that *Lemon* applies to laws providing a uniform benefit to all religions, while *Larson* applies in instances where a law discriminates among religions. Therefore, *Larson* provided the proper test in the Oklahoma challenge.⁷² The *Larson* test requires both strict scrutiny, and more narrowly, language “closely fitting” to a compelling interest.⁷³

This case presents even stronger ‘explicit and deliberate distinctions’ among religions than the provision that warranted strict scrutiny in *Larson* *Larson* involved a ... statute that imposed certain registration and reporting requirements upon only those religious organizations that solicited more than 50 percent of their funds from nonmembers Unlike the provision in *Larson*, the Oklahoma amendment specifically names the target of its discrimination.⁷⁴

The court selected the *Larson* test as the proper test. To satisfy strict scrutiny, the state must show that the interest addresses a real, identified problem, rather than a mere perception of harm.⁷⁵ As the state could not identify even a single time when an Oklahoma court applied Sharia law, the court found that the state failed to illustrate an actual problem, and therefore, failed to show a compelling state interest.⁷⁶ As the state failed the first prong, the court did not reach whether the state complied with the “close fit” required of the second prong.⁷⁷

Of the four states having laws in this area, Kansas and Louisiana are the most similar to SB 58.

Constitutional Impairment of Contracts

Article 1, Section 10, of the Florida Constitution provides, “No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”

As a result of the constitutional limitation, the courts typically invalidate statutes that retroactively apply to existing contracts. In a 1940 Florida Supreme Court case, the

⁶⁸ *Id.* at 390.

⁶⁹ *Awad v. Ziriox*, 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).

⁷⁰ 403 U.S. 602 (1971). The *Lemon* test of constitutionality requires the language in question to have a secular legislative purpose, a primary effect that neither advances nor inhibits religion, and that does not foster an excessive government entanglement with religion. *Id.* at 612-13.

⁷¹ *Larson v. Valente*, 456 U.S. 228 (1982).

⁷² *Awad*, 670 F.3d at 1126-27, 1128.

⁷³ *Larson*, 456 U.S. at 246-47.

⁷⁴ *Awad*, 670 F.3d at 1128.

⁷⁵ *Awad*, 670 F.3d at 1129-30.

⁷⁶ *Awad v. Ziriox*, 670 F.3d at 1111.

⁷⁷ *Awad*, 670 F.3d at 1130-31.

Court ruled any statute enacted by the Legislature void which would impair the obligation of a contract.⁷⁸ Subsequent courts, however, carved out limited exceptions.

In *Pomponio v. Claridge of Pompano Condo, Inc.*, the Florida Supreme Court recognized that the state may have a legitimate interest in amending a law that impacts existing contracts based on its police power.⁷⁹ In determining legitimacy, the Court employed a balancing test to “weigh the degree to which a party’s contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy.”⁸⁰

The Court then applied the test established in the U.S. Supreme Court case of *Allied Structural Steel Co. v. Spannaus* to determine whether a law may apply to existing contracts.⁸¹ Under the test, a law is more likely to be upheld if it meets the following three prongs of the test, which are, cumulatively that:

- The law was enacted to deal with a broad, generalized economic or social problem.
- The law operates in an area already subject to state regulation at the time the parties’ contractual obligations were originally undertaken, rather than invading an area not previously subject to regulation by the state.
- The law effects a temporary alteration of the contractual relationships of those within its coverage, instead of working a severe, permanent, and immediate change in those relationships irrevocably and retroactively.⁸²

In an impairment of contracts challenge to a municipal ordinance, the Fifth District Court of Appeal reiterated the principle that laws that are reasonable and necessary to preserve public health, safety, and welfare are constitutional even if obligations of a private contract are impaired.⁸³ However, “the government’s authority in this regard is not unrestrained.”⁸⁴

In *Cohn v. Grand Condominium Association, Inc.*, the statute changed voting arrangements in condominium governance. In employing the *Pomponio* test, the court determined that the state failed to identify a current social problem, the law did not regulate the specific area at issue at the time that the condo organized, and the resulting change from the law would be severe, permanent, and immediate.⁸⁵ Therefore, the state failed to meet its burden.⁸⁶ On appeal, the Florida Supreme Court

⁷⁸ *Bedell v. Lassiter*, 143 Fla. 43 (Fla. 1940).

⁷⁹ *Pomponio v. Claridge of Pompano Condo, Inc.*, 378 So. 2d 774 (Fla. 1979).

⁸⁰ *Id.* at 780.

⁸¹ *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978). “Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.” *Id.* at 245.

⁸² *Pomponio*, 378 So. 2d at 779.

⁸³ *Brevard County v. Florida Power & Light Co.*, 693 So. 2d 77, 81 (Fla. 5th DCA 1997).

⁸⁴ *Id.* at 81.

⁸⁵ *Cohn v. Grand Condominium Assoc.*, 26 So. 3d 8, 11 (Fla. 3d DCA 2009).

⁸⁶ *Id.* at 11.

affirmed but recognized that new laws apply to related contracts with provisions which incorporate future changes to the law.⁸⁷

III. Effect of Proposed Changes:

This bill restricts courts from applying foreign law to dissolution of marriage cases and issues involving multiple-state child support enforcement actions.

Specifically, under the bill, the courts of this state may not:

- Base a decision on a foreign law that does not grant the parties to litigation the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a choice of law clause in a contract which requires a dispute to be resolved under a foreign law that does not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Enforce a forum selection clause in a contract which requires a dispute to be resolved in a forum in which a party would be denied his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.
- Grant a motion to dismiss a lawsuit based on forum non conveniens if granting the motion would likely result in the denial of a party's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

This bill does not apply to:

- Corporations, partnerships, and other types of business associations; and
- Ecclesiastical matters.

Although this bill recognizes that a party may waive his or her rights through a contract, the bill requires a court to narrowly construe the scope of the waiver.

The bill does not identify any laws or conduct authorized under foreign laws within the family law context which would deny a person's fundamental liberties, rights, and privileges. As such, courts will likely determine the impact of the bill on a case-by-case basis.

The bill requires a court to invalidate contractual provisions or judgments not based on laws that provide the parties with the "same" constitutional protections as the state and federal constitutions. As the "same" standard appears inflexible, the bill may result in the invalidation of contractual provisions or judgments based on foreign laws that grant the parties similar rights, privileges, and immunities as those granted by this country.

The bill declares in s. 45.022(4), F.S., that court orders based on disfavored foreign laws are void and unenforceable. However, the bill does not specifically address a situation in which a person seeks to enforce in this state a court order from a sister state which is based on a disfavored

⁸⁷ *Cohn v. Grand Condominium Assoc.*, 62 So. 3d 1120 (Fla. 2011).

foreign law. In those situations, a court may likely rule that the Full Faith and Credit Clause of the U.S. Constitution requires enforcement of the order.

Similarly, the bill does not specifically address how a court would reconcile the bill with chapter 88, F.S., the Uniform Interstate Family Support Act, which was mandated by Congress. Under the bill, a support order entered in a foreign nation whose laws are inconsistent with this nation's constitutional "fundamental liberties, rights, and privileges" is unenforceable. In contrast, chapter 88, F.S., renders foreign support orders and agreements unenforceable if they are "manifestly incompatible with public policy." Although the two provisions appear to overlap (for example, manifest incompatibility includes due process and opportunity to be heard), the scope of the bill is likely broader than the restrictions on foreign law under the UIFSA.

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:

Four constitutional issues may potentially be raised:

First Amendment

States that have proposed legislation to restrict courts from applying foreign law have banned the use of Sharia law, banned several types of law or tradition including Sharia law, or prohibited the use of foreign law generally. Of the three types of initiatives, this bill comes under the third category, as it contains no mention of Sharia or another specific type of banned law other than foreign law in general. In contrast to the law at issue in *Awad v. Ziriax*⁸⁸, the bill appears to carry the greatest merit constitutionally, as it does not specifically single out a particular religion for disfavor or preference. If this bill is challenged based on First Amendment grounds, a court following past precedents will initially review the language for facial discrimination. Again, as religion is not mentioned at all, the court will deem it facially neutral. A court will then apply the *Lemon* test, and likely find both a secular government purpose and that the law does not facilitate excessive governmental entanglement with religion. Because of this, a court will likely uphold the law.

⁸⁸ 670 F.3d 1111, 1123 (10th Cir. U.S.C.O.A. 2012).

Impairment of Contracts

The bill takes effect upon becoming a law and is silent regarding whether it applies retroactively or prospectively. Therefore, as it does not contain a clause providing for retroactive application, it will likely operate prospectively. Still, if a party attempts to apply the law to invalidate provisions in existing contracts, he or she must demonstrate that the law is a legitimate use of the state's police power and that the change operates in less than a severe, permanent, and immediate fashion, as required under *Pomponio v. Claridge of Pompano Condo, Inc.*⁸⁹ This test places a very high burden on the state. Alternatively, this bill may reach back to existing contracts, if a contractual provision expressly incorporates future changes to the law.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"⁹⁰ and the action must pose a "great potential for disruption or embarrassment"⁹¹ to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad. Due to the fact that these factors could only be evaluated if and when a challenge to this bill was brought, an assessment of the likelihood for success that such an action would have is not practical at this time.

Separation of Powers

The first three articles of the U.S. Constitution define the powers given to the three branches of government in the United States.⁹² Article I defines the legislative branch and vests with it all power to make law. Article II defines the executive branch and vest in it the power to enforce the law. Article III defines the judicial branch and vests in it all judicial power. For time immemorial, that power has been understood to mean the power to interpret and apply the law.⁹³

As discussed above, to the extent that this bill directs Florida courts to consider and interpret foreign decisions and law in a certain manner, it may interfere with the federal government's ability to govern foreign policy with one voice. As such, this bill could be challenged as preempted by the federal government. Similarly, as previously stated, the judiciary's constitutional role is to act as the sole interpreter of laws; therefore, the bill

⁸⁹ 378 So. 2d 774 (Fla. 1979).

⁹⁰ *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).

⁹¹ *Id.* at 435.

⁹² Articles I, II, III, U.S. Const.

⁹³ *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

could be challenged as an infringement on the essential role of the judicial branch in violation of the constitutional separation of powers. Similarly, the Florida Constitution explicitly mandates separation of powers between branches of the Florida government. Article II, section 3 of the Florida Constitution specifically states: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

Because of this language, Florida’s separation of powers doctrine is even stronger than the federal concept of separation of powers. Therefore, the bill may face an additional separation of powers inquiry.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Although private parties will be impacted by the bill, the extent of the impact is unknown at this time.

C. Government Sector Impact:

The Office of the State Courts Administrator anticipates that the bill will not have a fiscal impact on judicial workloads. However, the bill may require the drafting of new or amended jury instructions in family law cases, but no significant impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Judiciary on March 6, 2013:

This CS:

- Adds liberties granted under the State and Federal Constitution to the list of the state’s interests to be upheld by the bill.
- Makes a choice of venue or choice of forum clause in a contract void and unenforceable if the clause would violate constitutional liberties, rights, or

protections. This provision makes the remedy the same for choice of venue or choice of forum clause violations as that of choice of foreign law clauses.

B. Amendments:

None.

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

By Senator Hays

11-00039A-13

201358__

1 A bill to be entitled
 2 An act relating to application of foreign law in
 3 certain cases; creating s. 45.022, F.S.; providing
 4 intent; defining the term "foreign law, legal code, or
 5 system"; clarifying that the public policies expressed
 6 in the act apply to violations of a natural person's
 7 fundamental liberties, rights, and privileges
 8 guaranteed by the State Constitution or the United
 9 States Constitution; providing that the act does not
 10 apply to a corporation, partnership, or other form of
 11 business association, except when necessary to provide
 12 effective relief in proceedings under or relating to
 13 chapters 61 and 88, F.S.; specifying the public policy
 14 of this state in applying the choice of a foreign law,
 15 legal code, or system under certain circumstances in
 16 proceedings brought under or relating to chapters 61
 17 and 88, F.S., which relate to dissolution of marriage,
 18 support, time-sharing, the Uniform Child Custody
 19 Jurisdiction and Enforcement Act, and the Uniform
 20 Interstate Family Support Act; declaring that certain
 21 decisions rendered under such laws, codes, or systems
 22 are void; declaring that certain choice of venue or
 23 forum provisions in a contract are void; providing for
 24 the construction of a waiver by a natural person of
 25 the person's fundamental liberties, rights, and
 26 privileges guaranteed by the State Constitution or the
 27 United States Constitution; declaring that claims of
 28 forum non conveniens or related claims must be denied
 29 under certain circumstances; providing that the act

Page 1 of 5

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

11-00039A-13

201358__

30 may not be construed to require or authorize any court
 31 to adjudicate, or prohibit any religious organization
 32 from adjudicating, ecclesiastical matters in violation
 33 of specified constitutional provisions or to conflict
 34 with any federal treaty or other international
 35 agreement to which the United States is a party to a
 36 specified extent; providing for severability;
 37 providing an effective date.
 38
 39 Be It Enacted by the Legislature of the State of Florida:
 40
 41 Section 1. Section 45.022, Florida Statutes, is created to
 42 read:
 43 45.022 Application of foreign law contrary to public policy
 44 in certain cases.—
 45 (1) While the Legislature fully recognizes the right to
 46 contract freely under the laws of this state, it also recognizes
 47 that this right may be reasonably and rationally circumscribed
 48 pursuant to the state's interest to protect and promote rights
 49 and privileges granted under the State Constitution or the
 50 United States Constitution.
 51 (2) As used in this section, the term "foreign law, legal
 52 code, or system" means any law, legal code, or system of a
 53 jurisdiction outside any state or territory of the United
 54 States, including, but not limited to, international
 55 organizations or tribunals, and applied by that jurisdiction's
 56 courts, administrative bodies, or other formal or informal
 57 tribunals. The term does not include the common law and statute
 58 laws of England as described in s. 2.01 or any laws of the

Page 2 of 5

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

11-00039A-13

201358__

59 Native American tribes in this state.

60 (3) (a) This section applies only to actual or foreseeable
 61 denials of a natural person's fundamental liberties, rights, and
 62 privileges guaranteed by the State Constitution or the United
 63 States Constitution from the application of a foreign law, legal
 64 code, or system in proceedings brought under, pursuant to, or
 65 pertaining to the subject matter of chapter 61 or chapter 88.

66 (b) Except as necessary to provide effective relief in
 67 proceedings brought under, pursuant to, or pertaining to the
 68 subject matter of chapter 61 or chapter 88, this section does
 69 not apply to a corporation, partnership, or other form of
 70 business association.

71 (4) Any court, arbitration, tribunal, or administrative
 72 agency ruling or decision violates the public policy of this
 73 state and is void and unenforceable if the court, arbitration,
 74 tribunal, or administrative agency bases its ruling or decision
 75 in the matter at issue in whole or in part on any foreign law,
 76 legal code, or system that does not grant the parties affected
 77 by the ruling or decision the same fundamental liberties,
 78 rights, and privileges guaranteed by the State Constitution or
 79 the United States Constitution.

80 (5) (a) A contract or contractual provision, if severable,
 81 that provides for the choice of a foreign law, legal code, or
 82 system to govern some or all of the disputes between the parties
 83 to be adjudicated by a court of law or by an arbitration panel
 84 arising from the contract violates the public policy of this
 85 state and is void and unenforceable if the foreign law, legal
 86 code, or system chosen includes or incorporates any substantive
 87 or procedural law, as applied to the dispute at issue, which

11-00039A-13

201358__

88 would not grant the parties the same fundamental liberties,
 89 rights, and privileges guaranteed by the State Constitution or
 90 the United States Constitution.

91 (b) This subsection does not limit the right of a natural
 92 person in this state to voluntarily restrict or limit his or her
 93 fundamental liberties, rights, and privileges guaranteed by the
 94 State Constitution or the United States Constitution by contract
 95 or specific waiver consistent with constitutional principles,
 96 but the language of any such contract or other waiver must be
 97 strictly construed in favor of preserving such liberties,
 98 rights, and privileges.

99 (6) (a) If any contractual provision or agreement provides
 100 for the choice of venue or forum outside a state or territory of
 101 the United States, and if the enforcement or interpretation of
 102 the contract or agreement applying that choice of venue or forum
 103 provision would result in a violation of any fundamental
 104 liberties, rights, and privileges guaranteed by the State
 105 Constitution or the United States Constitution, that contractual
 106 provision or agreement shall be interpreted or construed to
 107 preserve such liberties, rights, and privileges of the person
 108 against whom enforcement is sought.

109 (b) If a natural person who is subject to personal
 110 jurisdiction in this state seeks to maintain litigation,
 111 arbitration, agency, or similarly binding proceedings in this
 112 state and the courts of this state find that granting a claim of
 113 forum non conveniens or a related claim denies or would likely
 114 lead to the denial of any fundamental liberties, rights, and
 115 privileges guaranteed by the State Constitution or the United
 116 States Constitution of the nonclaimant in the foreign forum with

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201358__

117 respect to the matter in dispute, it is the public policy of
118 this state that the claim be denied.

119 (7) This section may not be construed to:

120 (a) Require or authorize any court to adjudicate, or
121 prohibit any religious organization from adjudicating,
122 ecclesiastical matters, including, but not limited to, the
123 election, appointment, calling, discipline, dismissal, removal,
124 or excommunication of a member, officer, official, priest, nun,
125 monk, pastor, rabbi, imam, or member of the clergy of the
126 religious organization, or determination or interpretation of
127 the doctrine of the religious organization, if such adjudication
128 or prohibition would violate s. 3, Art. I of the State
129 Constitution or the First Amendment to the United States
130 Constitution; or

131 (b) Conflict with any federal treaty or other international
132 agreement to which the United States is a party to the extent
133 that such federal treaty or international agreement preempts or
134 is superior to state law on the matter at issue.

135 (8) If any provision of this section or its application to
136 any natural person or circumstance is held invalid, the
137 invalidity does not affect other provisions or applications of
138 this section which can be given effect, and to that end the
139 provisions of this section are severable.

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



137308

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment

Delete lines 48 - 50
and insert:

pursuant to the state's interest to protect and promote
liberties, rights, and privileges granted under the State
Constitution or the United States Constitution.



343598

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment

Delete lines 99 - 108
and insert:

(6) (a) A contract or contractual provision, if severable, that
provides for the choice of venue or choice of forum outside a
state or territory of the United States violates the public
policy of this state and is void and unenforceable if the
enforcement of the choice of venue or forum provision would
result in a violation of any fundamental liberties, rights, and
privileges guaranteed by the State Constitution or the United
States Constitution.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 58
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/06/2013 1 Amendment 137308		3/06/2013 2 Amendment 343598		3/06/2013 3 Motion to report as Committee Substitute	
			Gardiner	Gardiner	Gardiner	Gardiner	Gardiner	Gardiner
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
X		Gardiner						
	X	Joyner						
X		Latvala						
X		Richter						
	X	Ring						
X		Thrasher						
	X	Soto, VICE CHAIR						
X		Lee, CHAIR						
6	3	TOTALS	RCS	-	RCS	-	FAV	-
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-6-13

Meeting Date

Topic Applicable of Foreign Law

Bill Number 58
(if applicable)

Name Raquel Rodriguez

Amendment Barcode _____
(if applicable)

Job Title Managing Member

Address 200 S. Biscayne Blvd. #3130

Phone 305-704-3994

Street

MIAMI

City

FL

State

33131

Zip

E-mail rrodriguez@
mcdonaldhopkins.com

Speaking: For Against Information

Representing Administrative Consultants LLC

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic SB 58 Bill Number SB 58
(if applicable)

Name Dr. Mandi Falkhour Amendment Barcode _____
(if applicable)

Job Title _____

Address PO BOX 4428 Phone 352-266-1268
Street

Ocala FL 34478 E-mail mandi.falkhour@gmail.com
City State Zip

Speaking: For Against Information

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-6-2013
Meeting Date

Topic Application of Foreign Law

Bill Number 58
(if applicable)

Name ZE'EV HARARI

Amendment Barcode _____
(if applicable)

Job Title RABBI

Address 3001 SW 24th AVE # 215
Street

Phone 224-772-9713

OCALA FL 34472
City State Zip

E-mail razeh45@aol.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/13
Meeting Date

Topic HAYS - Application of Foreign Law Bill Number 58
(if applicable)

Name Ahmed Bedier (Pa-deer) Amendment Barcode _____
(if applicable)

Job Title President - united voices

Address 7320 EAST Fletcher Ave Phone 813-421-1101
Street

TAMPA, FL 33637 E-mail Bedier@unitedvoices.com
City State Zip

Speaking: For Against Information

Representing united voices FOR 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Foreign Law

Bill Number SB 58
(if applicable)

Name Ron Bilbao

Amendment Barcode _____
(if applicable)

Job Title SP. Legis. Assol.

Address 4500 Biscayne Blvd, 3rd

Phone 319-923-7288

Street Miami FL 33137
City State Zip

E-mail rbilbao@aclufl.org

Speaking: For Against Information

Representing ACLU of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic Unintended Consequences of Bill

Bill Number SB 50
(if applicable)

Name CARLOS OSORIO

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 1 SE 3rd Ave
Street

Phone 305 373 6600

Miami FL 33131
City State Zip

E-mail COSORIO@aball.com

Speaking: For Against Information

Representing International Law Section of FBA

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)

March 1, 2013
Meeting Date

Topic Application of Same Law

Bill Number 58
(if applicable)

Name Franklin D. Holder

Amendment Barcode _____
(if applicable)

Job Title Col USMC (Ret)

Address 52 Ridge Ct

Phone 321 433 0833

Rockledge, FL 32935
Street City State Zip

E-mail colfdholder@yahoo.com

Speaking: For Against Information

Representing Veteran for Defense of American Interests

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)

6 MAR 2013

Meeting Date

Topic SB 58 Bill Number _____ (if applicable)

Name JOHN R MCMAITON Amendment Barcode _____ (if applicable)

Job Title RETIRED MILITARY OFFICER

Address 2121 ROCKLEDGE DR Phone 703-901-9355
Street

ROCKLEDGE FL 32955 E-mail JRMCM 4737 @gmail.com
City State Zip

Speaking: For Against Information

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

13 MAR 13

Meeting Date

Topic SB 58

Bill Number SB 58
(if applicable)

Name JOHN CLELAND

Amendment Barcode _____
(if applicable)

Job Title MAJ GEN, US ARMY, RET

Address 1340 DEMOCRACY AVE
Street
MELBOURNE FL 32940
City State Zip

Phone 321-757-9327

E-mail JROL4BN@AOL.COM

Speaking: For Against Information

Representing VETERANS IN DEFENSE OF AMERICAN LIBERTIES

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic APPLICATIONS OF FOREIGN LAWS IN CERTAIN CASES Bill Number SB 58
(if applicable)

Name MAJOR JOE OBLACK USAF RETIRED Amendment Barcode _____
(if applicable)

Job Title VDAL MEMBER

Address 2631 LITTLE BEND PL Phone 321 453 2947
Street

MERRITT ISLAND FL 32952
City State Zip

E-mail OBLACK1032@201.COM

Speaking: For Against Information

Representing VDAL

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No
REQUEST BY JEN HAYS

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 6 / 2012

Meeting Date

Topic _____

Bill Number 58
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

<< Back to Recent News**CLE Course on Draft Uniform Act: American Laws for American Courts**

November 07, 2012

Welcome to the continuing legal education course entitled, "American Laws for American Courts," prepared and presented by the Law Offices of David Yerushalmi, P.C. This course was made possible by the Public Policy Alliance, a non-profit group dedicated to resisting the application of foreign laws and transnational legal systems in U.S. domestic courts when those foreign laws, if passed by a state legislature, would violate U.S. and state fundamental constitutional privileges and liberties. The Public Policy Alliance turned to the Law Offices of David Yerushalmi, P.C., to craft a uniform act that state legislatures could enact that would prevent local courts from applying those offending foreign laws in state courts.

The purpose of this course is to analyze and to provide the factual and legal context for the draft legislation that goes by the name, American Laws for American Courts. We consider this draft legislation to be a model uniform law for the states.

The essence of this draft legislation is to provide a baseline law that provides a statutory framework for precluding constitutionally objectionable foreign laws and legal systems from finding their way into the state judicial system. One example of an offending transnational law is sharia—authoritative Islamic law that is applied as the law of the land in many countries around the world. Sharia is patently offensive to U.S. and state constitutional law because it criminalizes apostasy (violation of Free Exercise of Religion) and blasphemy against Islam, Mohammed, and sharia itself (violation of Free Speech). Sharia also violates principles of due process and equal protection by discriminating against non-Muslims and women.

Countries that apply sharia as the law of the land include Saudi Arabia, Iran, Sudan, and Somalia. Many Muslim countries apply sharia as the law of the land in specific legal areas such as family law and inheritance. Examples of these countries and political regimes include Pakistan, Afghanistan, Nigeria, parts of Indonesia, Gaza, Jordan, Yemen, and almost all of the Gulf states. In addition, just about all Muslim countries have a de jure or de facto sharia supremacy clause which effectively does not allow any "secular" law to violate sharia's fundamental principles of Islamic supremacy. Countries of this type include such "moderate" countries such as Egypt, Jordan, Afghanistan, and even Iraq.

This CLE course will analyze each provision of this draft legislation so that legislators will have a better idea why this legislation is needed and so that practicing lawyers and policy professionals will have a better understanding of how this law might impact litigation in state courts.

The uniform act reads as follows:

AN ACT to protect rights and privileges granted under the United States or [State] Constitution.

WHEREAS, while the [general assembly/state legislature] fully recognizes the right to contract freely under the laws of this state, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest to protect and promote rights and privileges granted under the United States or [State] Constitution; now, therefore,

BE IT ENACTED BY THE [GENERAL ASSEMBLY/LEGISLATURE] OF THE STATE OF []:

[1] As used in this act, "foreign law, legal code, or system" means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals.

[2] Any court, arbitration, tribunal, or administrative agency ruling or decision shall violate the public policy of this State and be void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions.

[3] A contract or contractual provision (if severable) which provides for the choice of a law, legal code or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the law, legal code or system chosen includes or incorporates any substantive or procedural law, as

applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions.

[4] (a) A contract or contractual provision (if severable) which provides for a jurisdiction for purposes of granting the courts or arbitration panels in personam jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the jurisdiction chosen includes any law, legal code or system, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions.

(b) If a resident of this state, subject to personal jurisdiction in this state, seeks to maintain litigation, arbitration, agency or similarly binding proceedings in this state and if the courts of this state find that granting a claim of forum non conveniens or a related claim violates or would likely violate the fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions of the non-claimant in the foreign forum with respect to the matter in dispute, then it is the public policy of this state that the claim shall be denied.

The CLE course is provided below as a 40-minute fully narrated online PowerPoint presentation. You can maximize the screen for best viewing. We trust you will find this course illuminating and most importantly, you will see through the examples we discuss that sharia is a real threat even now because it has already insinuated its way into our courts as litigants ask courts, applying the police power of the states, to enforce sharia judgments and arbitration decisions and to apply sharia as the law at work here in the U.S.

We also recommend you take our CLE course on shariah-compliant finance ("SCF"), which is a financial model promoted by the Muslim Brotherhood and sharia-advocating Islamists, properly understood as advocates of applying Islamic law within Muslim and non-Muslim countries as the law of the land in an effort to revitalize the concept of a worldwide Caliphate. Under sharia, the "Caliphate" is the goal: a sharia-based transnational political order. SCF is also promoted by transnational financiers and their facilitators, such as lawyers, who profit by promoting sharia in our financial system. SCF, we believe, is another of the great dangers to our financial system and to the integrity of our constitutional system. Our CLE course on SCF is available here.

CLE Course on American Laws for American Courts

Source:

Law Offices of David Yerushalmi, P.C.

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American Laws for American Courts

American Laws for American Courts was crafted to protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Shariah Law.

Why American Laws for American Courts?

Some 235 years ago, America's forefathers gathered in Philadelphia to debate and write a unique document. That single-page document announced the formation of a new country—one that would no longer find itself in the clutches of a foreign power. That document was the Declaration of Independence. Eleven years later, many of those same men gathered again to lay the foundation for how the United States of America was to be governed: The US Constitution, a form of government like no other *by the people, of the people and for the people*.

For more than two centuries, hundreds of thousands of courageous men and women have given their lives to protect America's sovereignty and freedom.

American constitutional rights must be preserved in order to preserve unique American values of liberty and freedom. State legislatures have a vital role to play in preserving those constitutional rights and American values of liberty and freedom.

America has unique values of liberty which do not exist in foreign legal systems, particularly Shariah Law. Included among, but not limited to, those values and rights are:

- Freedom of Religion
- Freedom of Speech
- Freedom of the Press
- Due Process
- Right to Privacy
- Right to Keep and Bear Arms

Civil and Criminal Law Serve as the Bedrock for American Values: We are a nation of laws.

Unfortunately, increasingly, foreign laws and legal doctrines, including Shariah law principles, are finding their way into US court cases.

Reviews of state laws provide extensive evidence that foreign laws and legal doctrines are introduced into US state court cases, including, notably, Islamic law known as Shariah, which is used in family courts and other courts in dozens of foreign Muslim-majority nations .

These foreign laws, **frequently at odds with U.S. constitutional principles of equal protection and due process**, typically enter the American court system through:

- Comity (mutual respect of each country's legal system)
- Choice of law issues and

NEW!
Cases:
10 American Families
and Shariah Law

COUNT ME IN!
"I support American Laws
for American Courts"

add your name, email and other info below.

E-mail:

Name:

Organization/Title:

Zip Code:

- Choice of forum or venue

Granting comity to a foreign judgment is a matter of state law, and most state and federal courts will grant comity unless the recognition of the foreign judgment would violate some important public policy of the state. This doctrine, the “Void as against Public Policy Rule,” has a long and pedigreed history.

Unfortunately, because state legislatures have generally not been explicit about what their public policy is relative to foreign laws, including as an example, Shariah, the courts and the parties litigating in those courts are left to their own devices – first to know what Shariah is, and second, to understand that granting comity to a Shariah judgment may be at odds with our state and federal constitutional principles in the specific matters at issue.

The goal of the **American Laws for American Courts Act** is a clear and unequivocal application of what should be the goal of all state courts: No U.S. citizen or resident should be denied the liberties, rights, and privileges guaranteed in our constitutional republic.

American Laws for American Courts is needed especially to protect women and children, identified by international human rights organizations as the primary victims of discriminatory foreign laws.

By promoting American Laws for American Courts, we are preserving *individual* liberties and freedoms which become eroded by the encroachment of foreign laws and foreign legal doctrines, such as Shariah.

It is imperative that we safeguard our constitutions’ fundamentals, particularly the individual guarantees in the Bill of Rights, the sovereignty of our Nation and its people, and the principles of the rule of law—*American laws, not foreign laws*.

MODEL LEGISLATION

AN ACT to protect rights and privileges granted under the United States or [State] Constitution.

BE IT ENACTED BY THE [GENERAL ASSEMBLY/LEGISLATURE] OF THE STATE OF []:

The [general assembly/legislature] finds that it shall be the public policy of this state to protect its citizens from the application of foreign laws when the application of a foreign law will result in the violation of a right guaranteed by the constitution of this state or of the United States, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

The [general assembly/state legislature] fully recognizes the right to contract freely under the laws of this state, and also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state’s interest to protect and promote rights and privileges granted under the United States or [State] Constitution, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

[1] As used in this act, “foreign law, legal code, or system” means any law, legal code, or system of a jurisdiction outside of any state or territory of the United States, including, but not limited to, international organizations and tribunals, and applied by that jurisdiction’s courts, administrative bodies, or other formal or informal tribunals. For the purposes of this act, foreign law shall not mean, nor shall it include, any laws of the Native American tribes in this state.

[2] Any court, arbitration, tribunal, or administrative agency ruling or decision shall violate the public policy of this State and be void and unenforceable if the court, arbitration, tribunal, or

administrative agency bases its rulings or decisions in in the matter at issue in whole or in part on any law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

[3] A contract or contractual provision (if severable) which provides for the choice of a law, legal code or system to govern some or all of the disputes between the parties adjudicated by a court of law or by an arbitration panel arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the law, legal code or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.

[4]

1. **A.** A contract or contractual provision (if severable) which provides for a jurisdiction for purposes of granting the courts or arbitration panels *in personam* jurisdiction over the parties to adjudicate any disputes between parties arising from the contract mutually agreed upon shall violate the public policy of this State and be void and unenforceable if the jurisdiction chosen includes any law, legal code or system, as applied to the dispute at issue, that would not grant the parties the same fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions, including but not limited to due process, freedom of religion, speech, or press, and any right of privacy or marriage as specifically defined by the constitution of this state.
2. **B.** If a resident of this state, subject to personal jurisdiction in this state, seeks to maintain litigation, arbitration, agency or similarly binding proceedings in this state and if the courts of this state find that granting a claim of forum non conveniens or a related claim violates or would likely violate the fundamental liberties, rights, and privileges granted under the U.S. and [State] Constitutions of the non-claimant in the foreign forum with respect to the matter in dispute, then it is the public policy of this state that the claim shall be denied.

[5] Without prejudice to any legal right, this act shall not apply to a corporation, partnership, limited liability company, business association, or other legal entity that contracts to subject itself to foreign law in a jurisdiction other than this state or the United States.

[6] This subsection shall not apply to a church, religious corporation, association, or society, with respect to the individuals of a particular religion regarding matters that are purely ecclesiastical, to include, but not be limited to, matters of calling a pastor, excluding members from a church, electing church officers, matters concerning church bylaws, constitution, and doctrinal regulations and the conduct of other routine church business, where 1) the jurisdiction of the church would be final; and 2) the jurisdiction of the courts of this State would be contrary to the First Amendment of the United States and the Constitution of this State. This exemption in no way grants permission for any otherwise unlawful act under the guise of First Amendment protection.

[7] This statute shall not be interpreted by any court to conflict with any federal treaty or other international agreement to which the United States is a party to the extent that such treaty or international agreement preempts or is superior to state law on the matter at issue.

American Laws for American Courts has passed into law in the following states:

American and Tennessee Laws for Tennessee Courts

Tampa Bay Times

Two Florida lawmakers target 'sharia' law

Wednesday, March 9, 2011 7:31pm

TALLAHASSEE — Two Republican legislators want to make sure Florida courts aren't tainted by what one of them calls foreign "shenanigans": Muslim sharia or legal codes from other nations.

Neither Sen. Alan Hays nor Rep. Larry Metz, though, could name a Florida case where international law or Islamic law has caused a problem in a state court. They said they weren't targeting sharia, a body of law primarily based on the Koran and the Hadith, the sayings of Islam's founder, Mohammed.

But the legislation, which resembles efforts in a dozen other states where Islamic law is under scrutiny, was copied almost word-for-word from the "model legislation" posted on the website of a group called the American Public Policy Alliance.

"American Laws for American Courts was crafted to protect American citizens' constitutional rights against the infiltration and incursion of foreign laws and foreign legal doctrines, especially Islamic Sharia Law," the group's website says.

Hays, R-Umatilla, said he just wants to protect the rights of Floridians.

"I filed a bill that says in the courts of Florida the laws of no other country can be used to influence the decisions of Florida," Hays said. "If it's sharia law or any other law — I don't care what law it is — if it's not a Florida law and if it's some foreign law, it doesn't belong in our courts."

Nezar Hamze, executive director of the South Florida chapter of the Council on American-Islamic Relations, said he called Hays' office a week ago to discuss the "garbage" bill but never got a call back. If the bill passes, he said, "we are prepared to fight it.

"It's absurd. I've never even heard of a court using sharia law in making a ruling in a case," Hamze said. "If it is intended to combat people's fear of Islamic law, it does a poor job ... because it does not mention Islam or sharia but it does mention foreign law, which affects all religions, not just Islam, because you have Jewish, Muslim, Christian, Hindu laws."

One reason sharia isn't mentioned in the bill is due to the U.S. Constitution's ban on religious discrimination or favoritism. Citing the First Amendment, a federal judge recently blocked a voter-approved Oklahoma law targeting sharia.

Conservative activists have increasingly become concerned with sharia. U.S. Rep Peter King, R-N.Y., plans to hold congressional hearings today into Islam and sharia, which he has linked to terrorism.

King was recently the first guest interviewed in a cable news show hosted by sharia critic Brigitte Gabriel, founder of the group ACT! for America, which ballyhooed the recent filing of the Florida legislation.

"Other states have had these shenanigans tried and I don't want that to happen in Florida," Hays said, declining to cite specifics.

Activists with ACT! pointed to a handful of appellate-court cases where Florida courts struggled with Islamic codes and sharia. The cases involved divorce, a contract dispute and an incident where a Muslim woman

--- COMPILED BY AHMED BEDIER ---3/6/13

unsuccessfully argued that she could wear a veil for her driver's license photo. In each case, the courts didn't base their rulings on sharia but on contractual law precepts and prior court rulings.

The American Public Policy Alliance cites 17 cases on its website where sharia has been introduced in courts in other states. In most cases, however, courts ruled that Islamic-based laws didn't apply when they conflicted with laws in the United States.

But the courts have clearly struggled with child-custody and divorce cases that emanate from other countries. Critics of sharia and Islam in general note that women are considered second-class citizens in many Muslim countries, thereby putting them at a disadvantage in the United States when sharia are considered.

Lawyers also have concerns about the legislation, which first appeared last year in the Florida Senate and made it through a committee.

An analysis by Senate staff last year expressed concern that the law could violate the U.S. Constitution's separation-of-powers doctrine because it could lead state courts to "interfere with the federal government's ability to "govern foreign policy with one voice and the judiciary's constitutional role as the sole interpreter of laws."

Ed Mullins, the head of the Florida Bar's International Law Section, said he was concerned that the bill could interfere with federal rules governing arbitration. But he wasn't sure.

"The bill is badly written," he said.

Mullins, the Office of State Court Administration and a spokesman for the Florida Supreme Court said they were unaware of cases where sharia or other international laws were infringing the rights of people in Florida courts.

Rep. Metz, R-Yalaha, said he's just trying to ensure that judges don't use foreign laws that disadvantage Florida citizens.

"We want to make sure we don't have an unconstitutional outcome in our court system," he said.

Miami Herald staff writer Jaweed Kaleem contributed to this report.

.FAST FACTS

What is Sharia?

Sharia law is "the path that must be followed by a Muslim." It brings together elements from the Koran and the teachings and examples of the Prophet Mohammed, plus judges' rulings from Islam's first centuries. It was fixed by about the 10th century, and contains detailed instructions for practically every aspect of life.

In the West, it is most famous for its penal code: the prescribed punishments for sexual offences, which include stoning; for theft, which include amputation; and for apostasy, for which the punishment is death.

Much more important for most Muslims, however, are the parts of *sharia* that relate to the status of women, to contracts and to family law.

These include provisions that allow men several wives and that enshrine, in law, the inferiority of women.

Women can be divorced merely by their husbands reciting "I divorce you" three times; their testimony is worth less than that of men; and they cannot marry a non-Muslim man — although it is permissible for a Muslim man to marry a non-Muslim woman.

Source: The Telegraph
--- COMPILED BY AHMED BEDIER ---3/6/13

**MODEL LEGISLATION DRAFTED BY YERUSHALMI/ APPA
COMPARED TO FLORIDA SB 58**

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

Section 1. Section 45.022, Florida Statutes, is created to read:
45.022 Application of foreign law contrary to public policy
in certain cases.—

(1) While the Legislature fully recognizes the right to contract freely under the laws of this state, it also recognizes that this right may be reasonably and rationally circumscribed pursuant to the state's interest to protect and promote rights and privileges granted under the State Constitution or the United States Constitution.

(2) As used in this section, the term "foreign law, legal code, or system" means any law, legal code, or system of a jurisdiction outside any state or territory of the United States, including, but not limited to, international organizations or tribunals, and applied by that jurisdiction's courts, administrative bodies, or other formal or informal tribunals. The term does not include the common law and statute laws of England as described in s. 2.01 or any laws of the Native American tribes in this state.

(3)(a) This section applies only to actual or foreseeable denials of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution from the application of a foreign law, legal code, or system in proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88.

(b) Except as necessary to provide effective relief in proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88, this section does not apply to a corporation, partnership, or other form of business association.

(4) Any court, arbitration, tribunal, or administrative agency ruling or decision violates the public policy of this state and is void and unenforceable if the court, arbitration, tribunal, or administrative agency bases its ruling or decision in the matter at issue in whole or in part on any foreign law, legal code, or system that does not grant the parties affected by the ruling or decision the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

(5)(a) A contract or contractual provision, if severable, that provides for the choice of a foreign law, legal code, or system to govern some or all of the disputes between the parties to be adjudicated by a court of law or by an arbitration panel arising from the contract violates the public policy of this state and is void and unenforceable if the foreign law, legal code, or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, which would not grant the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

Deleted: BE IT ENACTED BY THE [GENERAL ASSEMBLY/LEGISLATURE] OF THE STATE OF [____]: [1]

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(b) This subsection does not limit the right of a natural person in this state to voluntarily restrict or limit his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution by contract or specific waiver consistent with constitutional principles, but the language of any such contract or other waiver must be strictly construed in favor of preserving such liberties, rights, and privileges.

(6)(a) If any contractual provision or agreement provides for the choice of venue or forum outside a state or territory of the United States, and if the enforcement or interpretation of the contract or agreement applying that choice of venue or forum provision would result in a violation of any fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution, that contractual provision or agreement shall be interpreted or construed to preserve such liberties, rights, and privileges of the person against whom enforcement is sought.

(b) If a natural person who is subject to personal jurisdiction in this state seeks to maintain litigation, arbitration, agency, or similarly binding proceedings in this state and the courts of this state find that granting a claim of forum non conveniens or a related claim denies or would likely lead to the denial of any fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution of the nonclaimant in the foreign forum with respect to the matter in dispute, it is the public policy of this state that the claim be denied.

(7) This section may not be construed to:

(a) Require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters, including, but not limited to, the election, appointment, calling, discipline, dismissal, removal, or excommunication of a member, officer, official, priest, nun, monk, pastor, rabbi, imam, or member of the clergy of the religious organization, or determination or interpretation of the doctrine of the religious organization, if such adjudication or prohibition would violate s. 3, Art. I of the State Constitution or the First Amendment to the United States Constitution; or

(b) Conflict with any federal treaty or other international agreement to which the United States is a party to the extent that such federal treaty or international agreement preempts or is superior to state law on the matter at issue.

(8) If any provision of this section or its application to any natural person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect, and to that end the provisions of this section are severable.

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

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Anti-Sharia flyers circulate Senate hallways

• Brittany Davis

Tuesday, March 6, 2012 12:35pm

Anti-Sharia flyers and booklets are circulating the Senate hallways as lawmakers prepare for a possible vote on a measure that would ban foreign law in Florida courts.

The materials present Islam as a threat to the United States, and invoke lawmakers to pass legislation to "save us from an internal attack" and "protect our freedom."

One booklet, distributed by Sen. Alan Hays, R-Umatilla, sponsor of SB 1360, is called "Shari'ah Law: Radical Islam's threat to the U.S. Constitution." He said his intent is to educate people on Islam and Sharia Law, a Koran-based code followed in some Islamic countries.

Hays's bill would ban courts or other legal authorities from using religious or foreign law as a part of a legal decision or contract. For example, Florida law would trump foreign law in marriage, divorce and custody cases. The companion bill passed Thursday in the House by a 92-24 vote.

Among other things, the booklet contains a chart of Sharia laws and punishments and compares them to the laws in the United States. For example, the chart says that under Sharia Law a person can be executed for defaming Islam, while in the United States such conduct is protected by the First Amendment.

Islamic and Jewish groups as well as the American Civil Liberties Union and the Family Law section of the Florida Bar criticize **the bill as targeting Islam, but Hays and House sponsor Rep. Larry Metz, R-Eustis, insist that's not true. Neither could point to a Florida case in which a ruling based on foreign code was upheld by courts.**

"This is being proactive. I'm going to do everything I can to make our Florida courts as pure as I can and make sure we have a very clear policy in Florida," Hays said. "There also won't be any Israeli law, or Netherlands law, or Italian Law."

Hays said the booklet he distributed, sponsored by the American Center for Law & Justice, was well-received by fellow senators. E-mails have flooded his inbox on this issue, but he's unconcerned with those who are offended, he said.

"It's not a matter of being offended or not being offended, it's a matter of a law being a law," he said with a laugh. "We dare not legislate up here with a fear of offending someone....lots of things I do offend people. That's a part of life."

As the session winds down, the chances of the Senate taking up the bill grow slimmer. But if the issue reaches a floor debate, Minority Leader Nan Rich, D-Sunrise, said she plans to discuss the "inappropriate" posters delivered to her office by activist groups.

One poster, by a group called Students for the Constitution, uses bold block print to warn of sedition, and accuses Islamic people of being determined to "overthrow our state and country." [Download Students for the Constitution Flyer\[1\]](#),

Another poster by, a group called SOAR: PI, which stands for Students on Assignment Revealing Propaganda and Infiltration, is stamped with pictures of Islamic protesters holding signs that say things like "Hate America" and "Islam will dominate the world." [Download SOAR PI Flyer\[1\]](#)


"People need to realize the fear mongering," Rich said. "We are not in danger of being ruled by Sharia Law in the United States, and it's a fear tactic."

SHARI'AH LAW: RADICAL ISLAM'S THREAT TO THE U.S. CONSTITUTION

11

"One booklet, distributed by Sen. Alan Hays, sponsor of SB 1360, is called "Shari'ah Law: Radical Islam's threat to the U.S. Constitution." He said his intent is to educate people on Islam and Sharia Law, a Koran-based code followed in some Islamic countries." - Miami Herald 3/6/2012

INTRODUCTION



Liberty is a hallmark of American society.¹ It is an unalienable right that is specifically protected under the Constitution. This right to liberty includes freedom to believe, express, and practice one's faith according to one's own conscience.² However, this liberty does not operate without limits. To properly function, individual liberty must operate in accordance with natural justice and within the bounds of the law.³ Therefore, when disagreements and controversies arise in the United States, they are fought in the free marketplace of ideas⁴ or resolved in a court of law, governed by the laws enacted by Congress and State legislatures. Those laws indiscriminately govern people of all races, religions, and social classes present in the United States⁵ and must comply with the U.S. Constitution, which is the supreme Law of the Land.⁶

Historically, immigrants to the United States have quickly assimilated themselves into the population and, despite their different countries of origin, have proudly called themselves "Americans." We are now seeing that some Muslim communities in the United States are seeking to be governed by Islamic Shari'ah, which is not only foreign to this country and not enacted by the proper authorities, but is also incompatible with the existing law of this land and contrary to natural justice.



ACLJ
American Center
for Law & Justice

I Don't Want Islamic Shariah Law in my country because...

Today's P.I.



Under Shariah law, women

- have half the rights of men (Sura 2:282)
- must veil themselves in public (Sura 24: 31)
- are inferior to men. (Sura 2: 228)
- may be beaten by their husbands. (Sura 4:34)

No thanks!!

Under Shariah law, sons and daughters

- do not have religious freedom (Sura 3:19)

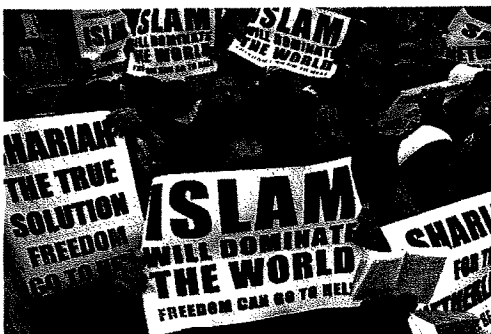
And No way!!

Under Shariah law, non-Muslims

- have to pay a poll tax to support Islam. (Sura 9:29)
- are subject to banishment, amputation, and death (Sura 5:33)

I may be young, but I'm smart, and I know that these Islamic laws violate American Constitutional law. I am counting on the adults in my family, in my state, and in my country to protect me and my freedom.

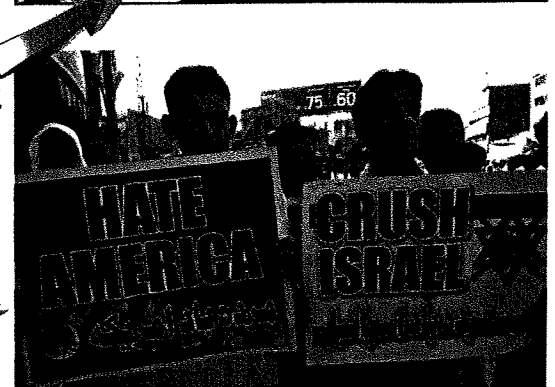
*Sincerely,
The Next Generation of Americans*



This is not the fringe but the norm of Tsunami Islam. It hates democracy.

Save us!

Yes, we go to school and we can read the signs, websites, emails and sensitivity training propaganda!



SOAR: P.I.

Students On Assignment Revealing: Propaganda and Infiltration

--- COMPILED BY AHMED BEDIER ---3/6/13
soarpiaamerica@gmail.com

Students for the Constitution

Save us from
the persecution
of Islam and
Shariah Law!

Our religious, political, & peaceful way of life is under attack by Islam and Shariah Law. Save my generation from this ideology that is invading our country and masquerading

as a 'religion.'

It's **SEDITION**: They are determined to overthrow our State and our Country.

You're our parents!!

Save us from this internal attack.

ARTICLE VI: One law of the land: Constitution!

Islam and Shariah are one and inseparable! They are **foreign** agendas determined to destroy our Constitution & way of life. It is an enemy of the United States & does not tolerate any other way of life unless it is in submission to this **Islamic Bulldozer!** Go USA

No
Shariah!

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 404

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Real Property Liens and Conveyances

DATE: March 7, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.			CA	
3.			AFT	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

SB 404 removes the requirement that the statutory warranty deed form in s. 689.02, F.S., include a blank space for the grantee's social security number.

The bill amends s. 695.01, F.S., to provide that a lien for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities is valid and effectual in law or equity against a creditor or subsequent purchaser only if the lien is properly recorded in the county in which the property is located and contains:

- The name of the owner of record;
- A description or address of the property; and
- The tax or parcel identification number applicable to the property as of the date of recording.

This bill amends sections 689.02 and 695.01, Florida Statutes.

II. Present Situation:

Statutory Warranty Deed Form

A warranty deed is a “deed containing one or more covenants of title; esp[ecially], a deed that expressly guarantees the grantor’s good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims.”¹ In Florida, the common law warranty deed has been supplanted by the statutory warranty deed form.² The use of the statutory warranty deed conveys good title with all the covenants granted under common law.³ A conveyance executed substantially in the statutory form required under s. 689.02, F.S., also conveys good title with all the covenants granted under common law.⁴

The statutory warranty deed form includes a blank space for the social security number of the individual acquiring the real property (the grantee).⁵ The failure to include the social security number on a warranty deed does not affect the validity of the conveyance or the recordability of the deed.⁶

Hidden Liens

A lien is a charge or encumbrance upon property.⁷ Liens include mortgages, construction liens, and other liens authorized by statute. Mortgages are liens on the property mortgaged.⁸ Construction liens are authorized by statute.⁹

Florida has a recording statute which states:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.¹⁰

¹ BLACK’S LAW DICTIONARY (9th ed. 2009).

² 19 FLA. PRAC. SERIES s. 383:8 (2012-2013 ed.) and s. 689.02, F.S.

³ Section 689.03, F.S.

⁴ *Id.*

⁵ Section 689.02(2), F.S.

⁶ *Id.*

⁷ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁸ Section 697.02, F.S.

⁹ See chapter 713, F.S.

¹⁰ Section 695.01, F.S.

Section 695.01, F.S., is a notice recording statute and “Florida courts over time have described and applied Florida’s recording statute in a manner that is consistent with a ‘notice’ type of recording statute.”¹¹ Under a notice type of recording statute, “a subsequent mortgagee of real property for value and without notice (actual and constructive)¹² of a prior mortgage of the real property will prevail against the prior mortgagee.”¹³

Under Florida law, a mortgage is a specific lien on the property and not a conveyance of the legal title or the right to possession.¹⁴ As a “lien theory” state, with a notice type recording statute, liens are generally afforded precedence based on whether subsequent purchasers have notice of the lien. The act of recording an instrument in compliance with s. 695.01, F.S., provides constructive notice of a prior encumbrance on the property which is the subject of the instrument.¹⁵ Grantees by quitclaim are deemed and held to be bona fide purchasers without notice within the meaning of the recording acts.¹⁶

According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL Section), liens assessed and maintained by a municipality or branch of a municipality often go undetected because:

- They are often unrecorded;
- Confusion often arises over determination of which branch of government has the right to impose the lien; and
- Confusion arises as to whom to contact to determine the existences of possible liens.¹⁷

Local governments may impose liens on real property for improvements, services, costs of repairs and associated penalties levied in accordance with local building code enforcement.¹⁸ The state government may also file a notice of a lien on real property in some instances.¹⁹ A lien, in some cases, may be legally enforceable although it is not recorded in the public records of the county in which the property is located.²⁰ This may be characterized as a “hidden lien” because the owner or other affected parties do not have actual notice and may not discover the existence of the lien through proper diligence by searching the public records in the county where the property is located.

¹¹ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).

¹² “Actual notice” means “notice expressly and actually given, and brought home to the party directly.” BLACK’S LAW DICTIONARY 550 (Abridged 5th. ed.1983). The term, “constructive notice” means “information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.” *Id.*

¹³ *Argent Mortg. Co.*, 52 So. 3d at 799.

¹⁴ Section 697.02, F.S.

¹⁵ *Lafitte v. Gigliotti Pipeline, Inc.*, 624 So. 2d 844, 845 (Fla. 2d DCA 1993). *See also*, 37 FLA. JUR. 2D *Mortgages* s. 133 (2011).

¹⁶ Section 695.01(2), F.S.

¹⁷ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Fair Notice of Government of Governmental Liens* (2009) (on file with the Senate Committee on Judiciary).

¹⁸ *See e.g.*, s. 162.09(3), F.S., which authorizes local governments to file a lien in the public records against land upon a valid order imposing a code enforcement fine.

¹⁹ *See e.g.*, ss. 589.13, 589.14, 589.15, and 589.16, F.S.

²⁰ *See Dade County v. Certain Lands*, 247 So. 2d 787, 789-90 (Fla. 3d DCA 1971).

III. Effect of Proposed Changes:**Statutory Warranty Deed Form**

The bill removes the requirement from the statutory warranty deed form to include a blank space for the grantee's social security number.

Hidden Liens

The bill amends s. 695.01, F.S., to provide that a lien for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities is valid and effectual in law or equity against a creditor or subsequent purchaser only if the lien is properly recorded in the county in which the property is located and contains:

- The name of the owner of record;
- A description or address of the property; and
- The tax or parcel identification number applicable to the property as of the date of recording.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may have a positive impact on the private sector through greater certainty and notice of governmental liens. Committee staff does not have data specifying the number of governmental entities that are not currently recording all liens on real property or how many additional liens may be filed as a result of the requirements of the bill. Private parties that are buying and selling real property may benefit to the extent the bill provides additional information to such parties prior to entering into these transactions.

C. Government Sector Impact:

Committee staff does not have data specifying the number of governmental entities that are not recording all liens on real property that will be required to do so by the bill. Any additional costs associated with recording liens as required by the bill may be negated to the extent the governmental entities may more effectively enforce collection of such liens. To date, the Revenue Estimating Conference has not scheduled the bill for a determination of its potential impact.

The clerks of court may experience increased revenue attributed to increased filings of liens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Judiciary on March 6, 2013:

The committee substitute made the following changes (*italics*) to the bill:

“A lien by a governmental entity or quasi-governmental entity that attaches to real property for an improvement, service, fine, or penalty, other than a lien for taxes, non-advalorem or special assessments, or utilities, is valid and effectual *in law or equity* against creditors *or* subsequent purchasers for a valuable consideration only if the lien is recorded in the official records of the county in which the property is located.”

The committee substitute changes the word “and” to “or,” such that certain liens are valid and effectual *in law and equity* against a creditor *or* subsequent purchaser only if the lien is recorded as required by the bill.

B. Amendments:

None.

By Senator Stargel

15-00371-13

2013404

1 A bill to be entitled
 2 An act relating to real property liens and
 3 conveyances; amending s. 689.02, F.S.; deleting a
 4 requirement that blank spaces be included on a
 5 warranty deed to allow for entry of social security
 6 numbers of grantees on the deed; conforming
 7 provisions; amending s. 695.01, F.S.; providing that
 8 certain types of governmental or quasi-governmental
 9 liens on real property are valid and effectual against
 10 certain creditors and purchasers only if recorded in a
 11 specified manner; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (2) of section 689.02, Florida
 16 Statutes, is amended to read:
 17 689.02 Form of warranty deed prescribed.-
 18 (2) The form for warranty deeds of conveyance to land shall
 19 include a blank space for the property appraiser's parcel
 20 identification number describing the property conveyed, which
 21 number, if available, shall be entered on the deed before it is
 22 presented for recording, ~~and blank spaces for the social~~
 23 ~~security numbers of the grantees named in the deed, if~~
 24 ~~available, which numbers may be entered on the deed before it is~~
 25 ~~presented for recording.~~ The failure to include such blank space
 26 ~~spaces,~~ or the parcel identification number, ~~or any social~~
 27 ~~security number,~~ or the inclusion of an incorrect parcel
 28 identification number ~~or social security number,~~ does shall not
 29 affect the validity of the conveyance or the recordability of

Page 1 of 2

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

15-00371-13

2013404

30 the deed. Such parcel identification number is shall not
 31 ~~constitute~~ a part of the legal description of the property
 32 otherwise set forth in the deed and may shall not be used as a
 33 substitute for the legal description of the property being
 34 conveyed, ~~nor shall a social security number serve as a~~
 35 ~~designation of the grantee named in the deed.~~
 36 Section 2. Subsection (3) is added to section 695.01,
 37 Florida Statutes, to read:
 38 695.01 Conveyances and liens to be recorded.-
 39 (3) A lien by a governmental entity or quasi-governmental
 40 entity that attaches to real property for an improvement,
 41 service, fine, or penalty, other than a lien for taxes, non-ad
 42 valorem or special assessments, or utilities, is valid and
 43 effectual against creditors and subsequent purchasers for a
 44 valuable consideration only if the lien is recorded in the
 45 official records of the county in which the property is located.
 46 The recorded notice of lien must contain the name of the owner
 47 of record, a description or address of the property, and the tax
 48 or parcel identification number applicable to the property as of
 49 the date of recording.
 50 Section 3. This act shall take effect October 1, 2013.

Page 2 of 2

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



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment (with title amendment)

Delete line 43

and insert:

effectual in law or equity against creditors or subsequent purchasers for a

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

And the title is amended as follows:

Delete line 10

and insert:

certain creditors or purchasers only if recorded in a

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 404
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/06/2013 1 Amendment 620140 Gardiner		3/06/2013 2 Motion to report as Committee Substitute			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
X		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
9	0	TOTALS	RCS	-	FAV	-		
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.6.13

Meeting Date

Topic HIDDEN LIENS -

Bill Number 404
(if applicable)

Name HOWARD E. "GENE" ADAMS

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address PO BOX 10095

Phone 850-222-3533

Street

Tallahassee FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information SUPPORT THE BILL

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

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 746

INTRODUCER: Senator Stargel

SUBJECT: Terms of Courts

DATE: March 6, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Favorable
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 746:

- Allows the Supreme Court to set terms of court for the Supreme Court, district courts of appeal, and circuit courts.
- Allows an appellate court to withdraw a mandate within 120 days of issuance.

This bill repeals obsolete language that includes specific references to terms of court, including provisions for:

- Regular terms of court for the Florida Supreme Court;
- Terms of the circuit courts;
- A judge’s attendance at the first day of a term;
- A judge’s stated reason for nonattendance;
- The penalty for nonattendance of a judge;
- Adjournment of court upon nonattendance of a judge;
- Calling the docket at the end of a term;
- The clerk of circuit court, or his or her deputy clerk, to reside at the county seat or within two miles of the county seat;
- The term of the district courts of appeal;
- Criminal trials to be heard in the term of court prior to civil cases; and
- Persons in custody to be arraigned and tried in the term of court unless good cause is shown.

This bill also makes conforming changes to sections of law that refer to terms of courts.

This bill substantially amends the following sections of the Florida Statutes: 26.46, 27.04, 30.12, 30.15, 34.13, 35.05, 38.23, 112.19, 206.215, 450.121, 831.10, 831.17, 877.08, 902.19, 903.32, 905.01, 905.09, 905.095, 914.03, 924.065, and 932.47.

This bill creates sections 43.43 and 43.44, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 25.051, 26.21, 26.22, 26.23, 26.24, 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33, 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365, 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and 907.055.

II. Present Situation:

Article V of the Florida Constitution establishes the judicial branch of government, including prescribing the various courts in which judicial power is vested. The Florida State Courts System consists of all officers, employees, and divisions of the following courts.¹

- The Supreme Court, the highest state appellate court, has seven justices and statewide jurisdiction. The Chief Justice is the administrator of the state courts system. The Court also regulates admission of lawyers to The Florida Bar and the discipline of judges and lawyers.
- The district courts of appeal and the state appellate courts have jurisdiction within the limits of their five geographic districts and are served by approximately 61 judges.
- The circuit courts, the highest level trial court in each of the 20 judicial circuits, are served by approximately 599 judges. The circuit courts hear, for example, felony cases, family law matters, and civil cases in which the matter in controversy exceeds \$15,000.
- The county courts, the lowest level trial courts, having at least one judge in each county, are served by approximately 322 judges. The county courts hear, for example, misdemeanor cases, small claims cases, and civil cases in which the matter in controversy does not exceed \$15,000.

Terms of courts were developed to ensure that circuit judges showed up to conduct court business in the past when riding the circuit involved traversing potentially difficult terrain from one county seat to the next.² The state constitution required terms of court until the substantial rewrite of Article V of the State Constitution in 1957.³

¹ Office of Program Policy Analysis and Government Accountability, Fla. Legislature, Government Program Summaries, *State Courts System* (last updated Jan. 2, 2013), <http://www.oppaga.state.fl.us/profiles/1072/> (last visited Feb. 22, 2013).

² See George S. Reynolds III, *The First One Hundred Years 1868-1968*, <http://2ndcircuit.leoncountyfl.gov/courtHistory/firsthundred.php> (describing the history of the Second Judicial Circuit, including how the terms of court provided for the circuit judge to travel down the Apalachicola River, and were changed to accommodate the arrival of steamboat service along the river) (last visited Feb. 22, 2013).

³ Article V, s. 8 of the Constitution of 1885 included this sentence: "Such Judge shall hold at least two terms of his court in each county within his Circuit every year, at such times and places as shall be prescribed by law, and may hold special terms.", <http://www.law.fsu.edu/crc/conhist/1885con.html> (last visited Feb. 22, 2013).

Current law mandates a minimum of two terms of court each for the Supreme Court, circuit courts, and district courts of appeal. Enacted in 1957, s. 25.051, F.S., requires the Supreme Court to hold two terms in each year, in the Supreme Court Building, commencing respectively on the first day of January and July, or the first day thereafter if that is a Sunday or holiday. Sections 26.21-26.365, F.S., require at least two regular terms of the circuit court to be held in each county each year and allow for special terms as needed. There is a separate statute for each of the 20 circuits which provides for the starting day of each term. Enacted in 1957, ss. 35.10 and 35.11, F.S., require the district courts of appeal to hold two regular terms each year at their headquarters and allow for special terms as needed. The regular terms of the district courts of appeal shall commence on the second Tuesday in January and July.

Today, terms of court seem an archaic concept. Circuit judges come and go from each of the counties as needed, and far more often than once every six months. Reference to terms of court is still relevant, however, for two purposes: designating the terms of local grand juries and limiting withdrawal of an appellate mandate. Historically, although not explicitly required by statute, the terms of a grand jury coincide with the term of the court. In the appellate courts, the terms of court limit an appellate court's ability to withdraw a mandate, a rare procedure.⁴

In addition to repealing statutes establishing the terms of court, this bill repeals a number of statutory provisions incidental to the terms of court concept. The present situation for the relevant provisions is discussed in the "Effect of Proposed Changes" section of this bill analysis, below.

III. Effect of Proposed Changes:

Repeal of Terms of Court

The bill repeals the statutes that set out the court system's regular and special terms of court. This includes the repeal of s. 25.051, F.S., requiring the Supreme Court to hold two terms in each year; ss. 26.21-26.365, F.S., requiring at least two regular terms of the circuit court to be held in each county each year and allowing for special terms as needed; and ss. 35.10 and 35.11, F.S., requiring the district courts of appeal to hold two regular terms each year and allowing for special terms as needed.

Authorization of Florida Supreme Court over Terms

This bill authorizes the Florida Supreme Court to establish terms of court for the Supreme Court and for the lower courts. Finalization of cases is addressed through permitting "the supreme court to establish, by rule, new terms of court, to authorize the district courts of appeal and circuit courts to independently set their own terms, or to dispense with terms of court altogether."

⁴ A mandate is "[a]n order from an appellate court directing a lower court to take a specified action." BLACK'S LAW DICTIONARY (9th ed. 2009).

Convening Grand Juries

Present Situation: Section 905.01, F.S., currently permits circuit court chief judges to “dispense with the convening of grand juries by written order directing clerks of court not to summon jurors.”⁵

Effect of the Bill: Section 19 amends s. 905.01, F.S., addressing the authority to convene grand juries. Specifically, the bill requires circuit court chief judges to regularly order the convening of grand juries for terms of six months.

Timeframe for Withdrawal of Mandate by Appellate Court

Present Situation: Under current law, a mandate may only be withdrawn during the current term of the appellate court. In effect, some appellate court opinions are subject to withdrawal for nearly six months while others may be subject to withdrawal only for a few days. The Florida Supreme Court in 1932 explained the scope and limits of the power to withdraw:

But, be that as it may, a majority of the court have reached the conclusion that the correct rule, which should be recognized and applied in such situation, is that the jurisdiction of this court, like the jurisdiction of courts generally, persists to the end of the term, and then terminates, but that, during the term at which a judgment of this court is rendered, this court has jurisdiction and power which it may exercise, as the circumstances and justice of the case may require, to reconsider, revise, reform, or modify its own judgments for the purpose of making the same accord with law and justice, and that it has power to recall its own mandate for the purpose of enabling it to exercise such jurisdiction and power in a proper case.⁶

Effect of the Bill: Section 10 creates s. 43.44, F.S., which provides that an appellate court may withdraw a mandate for up to 120 days after it is filed with a lower court.

Repeal of Incidental Provisions

This bill repeals a number of statutory provisions incidental to the terms of court concept.

Judge to Attend First Day of Term

Present Situation: Initially enacted in 1849, s. 26.37, F.S., requires every judge of a circuit court, unless prevented by sickness or other providential causes, to attend the first day of each term of the circuit court. If the judge fails to attend, he or she is subject to a \$100 deduction from his or her salary.

Effect of the Bill: Section 1 repeals s. 26.37, F.S.

⁵*Id.*

⁶ *Chapman v. St. Stephens Protestant Episcopal Church, Inc.*, 138 So. 630, 632 (Fla. 1932). The *Chapman* case specifically provides that the power to withdraw a mandate may be limited by statute.

Judge's Reason for Nonattendance

Present Situation: Initially enacted in 1849, s. 26.38, F.S., requires a judge who misses the first day of each term to state the reasons for such failure in writing to be handed to the clerk of the court.

Effect of the Bill: Section 1 repeals s. 26.38, F.S.

Penalty for Nonattendance of Judge

Present Situation: Initially enacted in 1849, s. 26.39, F.S., requires the clerk of court to notify the Chief Financial Officer (CFO) of the state when a judge fails to attend the first day of the term of court. The CFO is then directed to deduct \$100 from the judge's pay for every such default.

Effect of the Bill: Section 1 repeals s. 26.39, F.S.

Adjournment of Court upon Nonattendance

Present Situation: Enacted in 1828, s. 26.40, F.S., requires that, whenever a judge does not attend on the first day of any term, the court shall stand adjourned until 12 o'clock on the second day. If the judge does not attend court at that time, the clerk must continue all causes and adjourn the court to such time as the judge may appoint or to the next regular term.

Effect of the Bill: Section 1 repeals s. 26.40, F.S.

Calling Docket at End of Term

Present Situation: Enacted in 1828, s. 26.42, F.S., requires a judge, after other court business of the term has been completed, to call the remaining cases on the docket and make such orders and entries as necessary.

Effect of the Bill: Section 1 repeals s. 26.42, F.S.

Order of Cases Tried in Circuit Court

Present Situation: Enacted in 1939, s. 907.05, F.S., requires that criminal trials be heard in the term of court prior to civil cases, if they can be tried without injury to the interests of the state or defendant.

Effect of the Bill: Section 1 repeals s. 907.05, F.S.

Trial of Persons in Custody

Present Situation: Enacted in 1939, s. 907.055, F.S., requires that persons in custody be arraigned and tried in the term of court when the indictment or information for a felony is filed, unless good cause is shown for a continuance.

Effect of the Bill: Section 1 repeals s. 907.055, F.S.

Conforming Provisions

This bill amends multiple statutes that currently use the language of terms of court. Sections 2-8 and 11-24 of the bill consist of conforming provisions made to the following sections of the Florida Statutes: 26.46, regarding jurisdiction of a resident judge; 27.04, regarding witnesses in a criminal case; 30.12, regarding the power to appoint a sheriff; 30.15, regarding powers, duties, and obligations of the sheriff; 34.13, regarding methods of prosecution; 35.05, regarding the headquarters of a district court of appeal; 38.23, regarding contempt of court; 112.19, regarding law enforcement officers; 206.215, regarding court costs; 450.121, regarding child labor law; 831.10, regarding forged bills; 831.17, regarding second or subsequent offenses for possession of counterfeit coins; 877.08, regarding coin-operated machines; 902.19, regarding when a prosecutor is liable for costs; 903.32, regarding defects in a criminal bond; 905.01, regarding grand jury terms; 905.09, regarding discharge and recall of a grand jury; 905.095, regarding extension of a grand jury term; 914.03, regarding attendance of witnesses; 924.065, regarding appearance bonds; and 932.47, F.S., regarding an information filed by a prosecuting attorney.

Effective Date

The bill provides an effective date of January 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) indicates that the bill will not have a fiscal impact on court workload. The effect on judicial time will be limited to the administrative responsibilities of chief judges. OSCA does, however, anticipate a nominal near-term impact on court operations due to the mandate changes for appellate courts.⁷ An exact fiscal impact on expenditures of the State Courts System is unknown as of the date of this analysis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

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

⁷ Fla. Office of the State Courts Administrator, *SB 746 2013 Judicial Impact Statement* (Feb. 14, 2013).

By Senator Stargel

15-00441A-13

2013746__

1 A bill to be entitled
 2 An act relating to terms of courts; repealing s.
 3 25.051, F.S., relating to regular terms of the Supreme
 4 Court; repealing s. 26.21, F.S., relating to terms of
 5 the circuit courts; repealing s. 26.22, F.S., relating
 6 to terms of the First Judicial Circuit; repealing s.
 7 26.23, F.S., relating to terms of the Second Judicial
 8 Circuit; repealing s. 26.24, F.S., relating to terms
 9 of the Third Judicial Circuit; repealing s. 26.25,
 10 F.S., relating to terms of the Fourth Judicial
 11 Circuit; repealing s. 26.26, F.S., relating to terms
 12 of the Fifth Judicial Circuit; repealing s. 26.27,
 13 F.S., relating to terms of the Sixth Judicial Circuit;
 14 repealing s. 26.28, F.S., relating to terms of the
 15 Seventh Judicial Circuit; repealing s. 26.29, F.S.,
 16 relating to terms of the Eighth Judicial Circuit;
 17 repealing s. 26.30, F.S., relating to terms of the
 18 Ninth Judicial Circuit; repealing s. 26.31, F.S.,
 19 relating to terms of the Tenth Judicial Circuit;
 20 repealing s. 26.32, F.S., relating to terms of the
 21 Eleventh Judicial Circuit; repealing s. 26.33, F.S.,
 22 relating to terms of the Twelfth Judicial Circuit;
 23 repealing s. 26.34, F.S., relating to terms of the
 24 Thirteenth Judicial Circuit; repealing s. 26.35, F.S.,
 25 relating to terms of the Fourteenth Judicial Circuit;
 26 repealing s. 26.36, F.S., relating to terms of the
 27 Fifteenth Judicial Circuit; repealing s. 26.361, F.S.,
 28 relating to terms of the Sixteenth Judicial Circuit;
 29 repealing s. 26.362, F.S., relating to terms of the

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30 Seventeenth Judicial Circuit; repealing s. 26.363,
 31 F.S., relating to terms of the Eighteenth Judicial
 32 Circuit; repealing s. 26.364, F.S., relating to terms
 33 of the Nineteenth Judicial Circuit; repealing s.
 34 26.365, F.S., relating to terms of the Twentieth
 35 Judicial Circuit; repealing s. 26.37, F.S., relating
 36 to requiring a judge to attend the first day of each
 37 term of the circuit court; repealing s. 26.38, F.S.,
 38 relating to a requirement for a judge to state a
 39 reason for nonattendance; repealing s. 26.39, F.S.,
 40 relating to the penalty for nonattendance of the
 41 judge; repealing s. 26.40, F.S., relating to
 42 adjournment of the circuit court upon nonattendance of
 43 the judge; repealing s. 26.42, F.S., relating to
 44 calling all cases on the docket at the end of each
 45 term; repealing s. 35.10, F.S., relating to regular
 46 terms of the district courts of appeal; repealing s.
 47 35.11, F.S., relating to special terms of the district
 48 courts of appeal; repealing s. 907.05, F.S., relating
 49 to a requirement that criminal trials be heard in the
 50 term of court before civil cases; repealing s.
 51 907.055, F.S., relating to a requirement that persons
 52 in custody be arraigned and tried in the term of court
 53 unless good cause is shown; amending ss. 26.46, 27.04,
 54 30.12, 30.15, 34.13, 35.05, and 38.23, F.S.;
 55 conforming provisions to changes made by the act;
 56 creating s. 43.43, F.S.; allowing the Supreme Court to
 57 set terms of court for the Supreme Court, district
 58 courts of appeal, and circuit courts; creating s.

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59 43.44, F.S.; authorizing appellate courts to withdraw
 60 a mandate within 120 days after its issuance; amending
 61 ss. 112.19, 206.215, 450.121, 831.10, 831.17, 877.08,
 62 902.19, 903.32, 905.01, 905.09, 905.095, 914.03,
 63 924.065, and 932.47, F.S.; conforming provisions to
 64 changes made by the act; providing an effective date.

65
 66 Be It Enacted by the Legislature of the State of Florida:

67
 68 Section 1. Sections 25.051, 26.21, 26.22, 26.23, 26.24,
 69 26.25, 26.26, 26.27, 26.28, 26.29, 26.30, 26.31, 26.32, 26.33,
 70 26.34, 26.35, 26.36, 26.361, 26.362, 26.363, 26.364, 26.365,
 71 26.37, 26.38, 26.39, 26.40, 26.42, 35.10, 35.11, 907.05, and
 72 907.055, Florida Statutes, are repealed.

73 Section 2. Section 26.46, Florida Statutes, is amended to
 74 read:

75 26.46 Jurisdiction of resident judge after assignment.—If
 76 ~~When~~ a circuit judge is assigned to another circuit, none of the
 77 circuit judges in that ~~such~~ other circuit shall, because of the
 78 ~~such~~ assignment, be deprived of or affected in his or her
 79 jurisdiction other than to the extent essential so as not to
 80 conflict with the authority of the temporarily assigned circuit
 81 judge as to the particular case or cases or class of cases, ~~or~~
 82 ~~in presiding at the particular term or part of term named or~~
 83 ~~specified in the assignment.~~

84 Section 3. Section 27.04, Florida Statutes, is amended to
 85 read:

86 27.04 Summoning and examining witnesses for state.—The
 87 state attorney shall have summoned all witnesses required on

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88 behalf of the state; and he or she is allowed the process of his
 89 or her court to summon witnesses from throughout the state to
 90 appear before the state attorney ~~in or out of term time~~ at such
 91 convenient places in the state attorney's judicial circuit and
 92 at such convenient times as may be designated in the summons, to
 93 testify before him or her as to any violation of the law upon
 94 which they may be interrogated, and he or she is empowered to
 95 administer oaths to all witnesses summoned to testify by the
 96 process of his or her court or who may voluntarily appear before
 97 the state attorney to testify as to any violation or violations
 98 of the law.

99 Section 4. Section 30.12, Florida Statutes, is amended to
 100 read:

101 30.12 Power to appoint sheriff.—~~If whenever~~ any sheriff in
 102 the state fails ~~shall fail~~ to attend, in person or by deputy,
 103 ~~any term of~~ the circuit court or county court of the county,
 104 from sickness, death, or other cause, the judge attending the
 105 ~~said~~ court may appoint an interim a sheriff, who shall assume
 106 all the responsibilities, perform all the duties, and receive
 107 the same compensation as if he or she had been duly appointed
 108 sheriff, ~~for only the said term of nonattendance court~~ and no
 109 longer.

110 Section 5. Paragraph (c) of subsection (1) of section
 111 30.15, Florida Statutes, is amended to read:

112 30.15 Powers, duties, and obligations.—

113 (1) Sheriffs, in their respective counties, in person or by
 114 deputy, shall:

115 (c) Attend all sessions ~~terms~~ of the circuit court and
 116 county court held in their counties.

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117 Section 6. Subsection (2) of section 34.13, Florida
118 Statutes, is amended to read:

119 34.13 Method of prosecution.—

120 (2) Upon the finding of indictments by the grand jury for
121 crimes cognizable by the county court, the clerk of the court,
122 without any order therefor, shall docket the same on the trial
123 docket of the county court ~~on or before the first day of its~~
124 ~~next succeeding term.~~

125 Section 7. Subsection (2) of section 35.05, Florida
126 Statutes, is amended to read:

127 35.05 Headquarters.—

128 (2) A district court of appeal may designate other
129 locations within its district as branch headquarters for the
130 conduct of the business of the court ~~in special or regular term~~
131 and as the official headquarters of its officers or employees
132 pursuant to s. 112.061.

133 Section 8. Section 38.23, Florida Statutes, is amended to
134 read:

135 38.23 ~~Contempt~~ ~~Contempts~~ defined.—A refusal to obey any
136 legal order, mandate or decree, made or given by any judge
137 ~~either in term time or in vacation~~ relative to any of the
138 business of ~~the said court~~, after due notice thereof, is shall
139 ~~be considered a contempt, punishable and punished~~ accordingly.
140 ~~But nothing said or written, or published, in vacation, to or of~~
141 ~~any judge, or of any decision made by a judge, shall in any case~~
142 ~~be construed to be a contempt.~~

143 Section 9. Section 43.43, Florida Statutes, is created to
144 read:

145 43.43 Terms of courts.—The Supreme Court may establish

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146 terms of court for the Supreme Court, the district courts of
147 appeal, and the circuit courts; may authorize district courts of
148 appeal and circuit courts to establish their own terms of court;
149 or may dispense with terms of court.

150 Section 10. Section 43.44, Florida Statutes, is created to
151 read:

152 43.44 Mandate of an appeals court.—An appellate court may,
153 as the circumstances and justice of the case may require,
154 reconsider, revise, reform, or modify its own opinions and
155 orders for the purpose of making the same accord with law and
156 justice. Accordingly, an appellate court may recall its own
157 mandate for the purpose of allowing it to exercise such
158 jurisdiction and power in a proper case. A mandate may not be
159 recalled more than 120 days after it has been issued.

160 Section 11. Paragraph (b) of subsection (1) of section
161 112.19, Florida Statutes, is amended to read:

162 112.19 Law enforcement, correctional, and correctional
163 probation officers; death benefits.—

164 (1) Whenever used in this section, the term:

165 (b) "Law enforcement, correctional, or correctional
166 probation officer" means any officer as defined in s. 943.10(14)
167 or employee of the state or any political subdivision of the
168 state, including any law enforcement officer, correctional
169 officer, correctional probation officer, state attorney
170 investigator, or public defender investigator, whose duties
171 require such officer or employee to investigate, pursue,
172 apprehend, arrest, transport, or maintain custody of persons who
173 are charged with, suspected of committing, or convicted of a
174 crime; and the term includes any member of a bomb disposal unit

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 175 whose primary responsibility is the location, handling, and
 176 disposal of explosive devices. The term also includes any full-
 177 time officer or employee of the state or any political
 178 subdivision of the state, certified pursuant to chapter 943,
 179 whose duties require such officer to serve process or to attend
 180 a session ~~terms~~ of a circuit or county court as bailiff.

181 Section 12. Subsection (2) of section 206.215, Florida
 182 Statutes, is amended to read:

183 206.215 Costs and expenses of proceedings.-

184 (2) The clerks of the courts performing duties under the
 185 provisions aforesaid shall receive the same fees as prescribed
 186 by the general law for the performance of similar duties, and
 187 witnesses attending any investigation pursuant to subpoena shall
 188 receive the same mileage and per diem as if attending as a
 189 witness before the circuit court ~~in term time~~.

190 Section 13. Subsection (4) of section 450.121, Florida
 191 Statutes, is amended to read:

192 450.121 Enforcement of Child Labor Law.-

193 (4) Grand juries ~~shall~~ have inquisitorial powers to
 194 investigate violations of this chapter; also, trial court judges
 195 shall specially charge the grand jury, ~~at the beginning of each~~
 196 ~~term of the court~~, to investigate violations of this chapter.

197 Section 14. Section 831.10, Florida Statutes, is amended to
 198 read:

199 831.10 Second conviction of uttering forged bills.-A person
 200 previously ~~Whoever, having been~~ convicted of violating the
 201 ~~offense mentioned in~~ s. 831.09 who is again convicted of that
 202 ~~the like offense committed after the former conviction, and on~~
 203 ~~whoever is at the same term of the court convicted upon~~ three

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 204 distinct charges of such offense committed within a 6-month
 205 period, shall be deemed a common utterer of counterfeit bills,
 206 and shall be punished as provided in s. 775.084.

207 Section 15. Section 831.17, Florida Statutes, is amended to
 208 read:

209 831.17 Violation of s. 831.16; second or subsequent
 210 conviction.-~~A person previously~~ ~~Whoever having been~~ convicted of
 211 violating either of the offenses mentioned in s. 831.16 ~~who~~, is
 212 again convicted of violating that statute either of the same
 213 offenses, committed after the former conviction on, ~~and whoever~~
 214 ~~is at the same term of the court convicted upon~~ three distinct
 215 charges of such offense committed within a 6-month period ~~said~~
 216 ~~offenses~~, commits a felony of the second degree, punishable as
 217 provided in s. 775.082, s. 775.083, or s. 775.084.

218 Section 16. Subsection (4) of section 877.08, Florida
 219 Statutes, is amended to read:

220 877.08 Coin-operated vending machines and parking meters;
 221 defined; prohibited acts, penalties.-

222 (4) Whoever violates ~~the provisions of~~ subsection (3) a
 223 second or subsequent time commits, ~~and is convicted of such~~
 224 ~~second separate offense, either at the same term or a subsequent~~
 225 ~~term of court, shall be guilty of~~ a felony of the third degree,
 226 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

227 Section 17. Subsection (1) of section 902.19, Florida
 228 Statutes, is amended to read:

229 902.19 When prosecutor liable for costs.-

230 (1) If ~~When~~ a person makes a complaint before a county
 231 court judge that a crime has been committed and is recognized by
 232 the county court judge to appear before ~~at the next term of the~~

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233 court having jurisdiction to give evidence of the crime and
 234 fails to appear, the person ~~is shall be~~ liable for all costs
 235 occasioned by his or her complaint, and the county court judge
 236 may ~~enter obtain~~ a judgment and execution for the costs as in
 237 other cases.

238 Section 18. Subsection (2) of section 903.32, Florida
 239 Statutes, is amended to read:

240 903.32 Defects in bond.—

241 (2) If no day, or an impossible day, is stated in a bond
 242 for the defendant's appearance before a trial court judge for a
 243 hearing or trial, the defendant shall be bound to appear 10 days
 244 after receipt of notice to appear by the defendant, the
 245 defendant's counsel, or any surety on the undertaking. ~~If no~~
 246 ~~day, or an impossible day, is stated in a bond for the~~
 247 ~~defendant's appearance for trial, the defendant shall be bound~~
 248 ~~to appear on the first day of the next term of court that will~~
 249 ~~commence more than 3 days after the undertaking is given.~~

250 Section 19. Section 905.01, Florida Statutes, is amended to
 251 read:

252 905.01 Number and procurement of grand jury; replacement of
 253 member; term of grand jury.—

254 (1) The grand jury shall consist of ~~no not~~ fewer than 15,
 255 ~~but no not~~ more than 21 persons. The ~~provisions of~~ law governing
 256 the qualifications, disqualifications, excusals, drawing,
 257 summoning, supplying deficiencies, compensation, and procurement
 258 of petit jurors apply to grand jurors. In addition, an elected
 259 public official is not eligible for service on a grand jury.

260 (2) The chief judge of any circuit court may provide for
 261 the replacement of any grand juror who, for good cause, is

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262 unable to complete the term of the grand jury. Such replacement
 263 shall be made by appropriate order of the chief judge from the
 264 list of prospective jurors from which the grand juror to be
 265 replaced was selected.

266 (3) The chief judge of each any circuit court shall
 267 regularly order ~~may dispense with~~ the convening of the grand
 268 jury for a at any term of 6 months ~~court by filing a written~~
 269 ~~order with the clerk of court directing that a grand jury not be~~
 270 ~~summoned.~~

271 Section 20. Section 905.09, Florida Statutes, is amended to
 272 read:

273 905.09 Discharge and recall of grand jury.—A grand jury
 274 that has been dismissed may be recalled at any time during the
 275 same term of the grand jury court.

276 Section 21. Section 905.095, Florida Statutes, is amended
 277 to read:

278 905.095 Extension of grand jury term.—Upon petition of the
 279 state attorney or the foreperson of the grand jury acting on
 280 behalf of a majority of the grand jurors, the circuit court may
 281 extend the term of a grand jury impaneled under this chapter
 282 beyond the term ~~of court~~ in which it was originally impaneled. A
 283 grand jury whose term has been extended as provided under this
 284 section herein shall have the same composition and the same
 285 powers and duties it had during its original term. If in the
 286 ~~event~~ the term of the grand jury is extended under this section,
 287 it shall be extended for a time certain, not to exceed a total
 288 of 90 days, and only for the purpose of concluding one or more
 289 specified investigative matters initiated during its original
 290 term.

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291 Section 22. Section 914.03, Florida Statutes, is amended to
292 read:

293 914.03 Attendance of witnesses.—A witness summoned by a
294 grand jury ~~or in a criminal case~~ shall remain in attendance
295 until excused by the grand jury. A witness summoned in a
296 criminal case shall remain available for attendance until the
297 case for which he or she was summoned is disposed of or until he
298 or she is excused by the court. A witness who departs without
299 permission of the court shall be in criminal contempt of court.
300 ~~A witness shall attend each succeeding term of court until the~~
301 ~~case is terminated.~~

302 Section 23. Subsection (2) of section 924.065, Florida
303 Statutes, is amended to read:

304 924.065 Denial of motion for new trial or arrest of
305 judgment; appeal bond; supersedeas.—

306 (2) An appeal may ~~shall~~ not be a supersedeas to the
307 execution of the judgment, sentence, or order until the
308 appellant has entered into a bond with at least two sureties to
309 secure the payment of the judgment, fine, and any future costs
310 that may be adjudged by the appellate court. The bond shall be
311 conditioned on the appellant's personally answering and abiding
312 by the final order, sentence, or judgment of the appellate court
313 and, if the action is remanded, on the appellant's appearing
314 before ~~at the next term of~~ the court in which the case was
315 originally determined and not departing without leave of court.

316 Section 24. Section 932.47, Florida Statutes, is amended to
317 read:

318 932.47 Informations filed by prosecuting attorneys.—
319 Informations may be filed by the prosecuting attorney of the

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320 circuit court with the clerk of the circuit court ~~in vacation or~~
321 ~~in term~~ without leave of the court first being obtained.

322 Section 25. This act shall take effect January 1, 2014.

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The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 746
FINAL ACTION: Favorable
MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
X		Gardiner						
X		Joyner						
		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
8	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 294

INTRODUCER: Senator Bradley

SUBJECT: Controlled Substances

DATE: March 7, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Shankle</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 294 codifies the Schedule I scheduling of the substances listed in the Attorney General’s emergency rule issued on December 11, 2012, that scheduled several new synthetic cannabinoids, cathinones, and phenethylamines as Schedule I controlled substances.¹ The Attorney General filed this emergency rule to address the public safety risk of new synthetic substances being sold and abused in Florida. This rule is temporary and scheduling will lapse when the rule expires on June 30, 2012, unless the scheduling is codified in statute by the Legislature.

Under SB 294, persons who engage in certain unlawful acts involving these substances will be subject to arrest and prosecution.

This bill substantially amends sections 893.03, 893.13, and 893.135, Florida Statutes. The bill reenacts sections 893.13(1)-(6) and 921.0022(3)(b)-(e), Florida Statutes.

II. Present Situation:

Schedule I Controlled Substances

A substance is a “controlled substance” if it is listed in any of five schedules in s. 893.03, F.S. The particular scheduling determines penalties that may be imposed for unlawful possession, sale, etc., and the conditions under which the substance can be legally possessed, prescribed,

¹ Office of the Attorney General, *2ER 12-1*, (December 11, 2012) available at [http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/\\$file/ER+RuleOAGRuleCertification12-11-2012.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MMFD-92VKZ8/$file/ER+RuleOAGRuleCertification12-11-2012.pdf). (further cited in this analysis as “2ER 12-1”).

sold, etc. A substance in Schedule I is considered to have a high potential for abuse and no currently accepted medical use in treatment in the United States and, in its use under medical supervision, does not meet accepted safety standards.²

As a result of legislation that became law in 2011 and 2012, there are several synthetic cannabinoids, cathinones, and phenethylamines scheduled as Schedule I controlled substances at s. 893.03(1)(c), F.S.³

Synthetic Cannabinoids, Cathinones, and Phenethylamines

“Synthetic Cannabinoids are chemicals that act as cannabinoid receptor agonists. Chemically they are not similar to cannabinoids but the term “Synthetic Cannabinoids” or “Cannabinomimetics” is widely used to refer to them as they are cannabinoid-like in their activity.”⁴ In findings relevant to the synthetic cannabinoids scheduled by emergency rule (2ER 12-1), the Attorney General states that the substances are known to produce side effects that include: headaches; agitation; vomiting; dangerous hallucinations; loss of consciousness; elevated blood pressure; seizures; increased heart rate; increased anxiety; convulsions; unresponsiveness; and suicidal thoughts.⁵

Cathinone is a Schedule I controlled substance.⁶ Cathinone is an alkaloid found in the shrub *Catha edulis* (khat) and is chemically similar to amphetamines and other substances.⁷ The “molecular architecture” of cathinone “can be altered to produce a series of different compounds which are closely structurally related to cathinone.”⁸ In findings in 2ER 12-1 relevant to the synthetic cathinones scheduled by the emergency rule, the Attorney General describes the cathinones as

stimulants that affect neurotransmitters in the brain and cause a sensation to the user similar to cocaine and amphetamines. They have been known to cause intense cravings for the substances and users have been reported to go on multiday binges that cause medical problems necessitating medical intervention.

The Attorney General states that some of the short-term side effects of the cathinones include: increased heart rate; agitation; diminished requirement for sleep; lack of appetite; increased alertness and awareness; anxiety fits and delusions; and nosebleeds. More serious side effects include: muscle spasms; blood circulation problems (including increased blood pressure); kidney failure; seizures; muscle damage; loss of bowel control; hallucinations; aggression; severe paranoia; panic attacks; sharp increase in body temperature; risk of renal failure; and cardiac arrest.

² Section 893.03(1), F.S.

³ Chapters 2011-73, 2011-90, and 2012-23, L.O.F.

⁴ Redwood Toxicology Laboratory, *Synthetic Cannabinoid Drug Information*, http://www.redwoodtoxicology.com/resources/drug_info/synthetic_cannabinoids.html (last visited Feb. 27, 2013).

⁵ All information under this subtitle is from 2ER 12-1 unless otherwise indicated.

⁶ Section 893.03(1)(c)8., F.S.

⁷ Advisory Council on the Misuse of Drugs, United Kingdom, *Consideration of the cathinones* (March 2010), available at <http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-cathinodes-report-2010?view=Binary>.

⁸ *Id.*

“Phenethylamines” is a ‘broad’ category “of psychoactive substances[.]”⁹ In findings in 2ER 12-1 relevant to the synthetic phenethylamines scheduled by the emergency rule, the Attorney General states: “Users ingest phenethylamines for their stimulant and hallucinogenic effects.” The Attorney General states that some of the dangers or side effects of these substances include: overdosing;¹⁰ hallucinations; breathing difficulties; uncontrollable muscle spasms; cardiac arrest; and Hallucinogen Persisting Perception Disorder (HPPD).¹¹

According to the Florida Department of Law Enforcement (FDLE), the synthetic substances scheduled by the bill “have no legitimate medical use and have a high potential for abuse.”¹²

Penalties for Unlawful Acts Involving Controlled Substances

The Attorney General’s emergency rule (2ER 12-1) schedules the new synthetic substances (listed in the “Effect of Proposed Changes” section of this analysis) in Schedule I at s. 893.03(1)(c), F.S. Persons who engage in certain unlawful acts under chapter 893, F.S., involving substances listed in s. 893.03(1)(c), F.S., are subject to arrest and prosecution.¹³

Selling, manufacturing, or delivering, or possessing with intent to sell, manufacture or deliver, a controlled substance listed in s. 893.03(1)(c), F.S., is a third degree felony.¹⁴ However, if any of these acts are committed within 1,000 feet of certain designated places, the felony degree and penalties are greater.¹⁵ For example, selling a controlled substance listed in s. 893.03(1)(c), F.S., within 1,000 feet of the real property of a K-12 public or private school is a second degree felony.¹⁶

⁹ Sanders B., Lankenau S.E., Bloom J.J., Hathazi D. “*Research chemicals*”: *Tryptamine and Phenethylamine Use Among High Risk Youth*, Substance Use & Misuse 2008, Vol. 43, No. 3-4, Pages 389-402, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2536767/>.

¹⁰ Because there is a delay in the drug taking effect, some users of the drug, believing the dosage they have taken is insufficient, may increase the dosage. 2ER 12-1.

¹¹ According to the Attorney General, one category of phenethylamines, the “2C derivatives,” “bind to certain serotonin receptors as a psychedelic compound...” 2ER 12-1. HPPD is the “reexperiencing, following cessation of use of a hallucinogen, of one or more of the perceptual symptoms that were experienced while intoxicated with the hallucinogen...” These symptoms “cause clinically significant distress or impairment in social, occupational, or other important areas of functioning” and “are not due to a general medical condition... and are not better accounted for by another mental disorder...” Psychiatry Online, *Diagnostic criteria for 292.89 Hallucinogen Persisting Perception Disorder (Flashbacks)*, <http://dsm.psychiatryonline.org/content.aspx?bookid=22§ionid=1889808> (last visited Feb 27, 2013).

¹² Revised Analysis of SB 294, Florida Department of Law Enforcement, dated January 29, 2013 (on file with the Senate Committee on Judiciary). The analysis is cited further in this analysis as “Revised FDLE Analysis.”

¹³ Section 893.13(9), F.S., provides an exception to the unlawful acts specified in s. 893.13(1)-(8), F.S., for delivery to, or actual or constructive possession for medical or scientific use or purpose only of controlled substances by, persons included in classes specified in this subsection, or the agents or employees of those persons, for use in the usual course of their business or profession or in the performance of their official duties.

¹⁴ Section 893.13(1)(a)2., F.S. A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

¹⁵ Section 893.13(1)(c)-(f) and (h), F.S.

¹⁶ Section 893.13(1)(c)2., F.S. A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

Purchasing, or possessing with intent to purchase, a controlled substance listed in s. 893.13(1)(c), F.S., is a third degree felony.¹⁷

Possessing 3 grams or less of a substance described in s. 893.03(1)(c)46.-50. and 114.-442., F.S., (synthetic cannabinoids) is a first degree misdemeanor.¹⁸ Possessing more than 3 grams of any of these synthetic cannabinoids or any amount of any other substance listed in s. 893.03(1)(c), F.S., is a third degree felony.¹⁹

The synthetic cannabinoids, cathinones, and phenethylamines scheduled as controlled substances are not listed in any provision of s. 893.135, F.S., the drug trafficking statute. Consequently, drug trafficking offenses do not apply.

The Attorney General’s Emergency Rule Regarding Specific Synthetic Substances

Pursuant to s. 893.035, F.S., if the Attorney General finds that the scheduling of a substance in Schedule I of s. 893.03, F.S., on a temporary basis is necessary to avoid an imminent hazard to the public safety, she or he may by rule, and without regard to requirements in s. 893.035(5), F.S., regarding medical and scientific evaluation, schedule the substance in Schedule I if it is not listed in any other schedule in s. 893.03, F.S.²⁰ The Attorney General may use emergency rulemaking provisions under s. 120.54(4), F.S., in making this scheduling.²¹

The Attorney General must consider, with respect to her or his finding of imminent hazard to the public safety, the following: potential for abuse²² of the substance; history and current pattern of abuse of the substance; scope, duration, and significance of abuse of the substance; and what, if any, risk there is to the public health.²³ These findings include consideration of actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.²⁴

The Attorney General must report to the Legislature by March 1 of each year concerning rules adopted under s. 893.035, F.S., during the previous year. Each rule so reported expires the following June 30 unless the Legislature adopts the provisions of the rule as an amendment to chapter 893, F.S.²⁵

¹⁷ Section 893.13(2)(a)2., F.S.

¹⁸ Section 893.13(6)(b), F.S. 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.

¹⁹ Section 893.13(6)(a), F.S.

²⁰ Section 893.035(7)(a), F.S.

²¹ Section 893.035(7)(b), F.S.

²² “Potential for abuse” is defined in s. 893.035(3)(a) as a substance that has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: used in amounts that create a hazard to the user’s health or the safety of the community; diverted from legal channels and distributed through illegal channels; or taken on the user’s own initiative rather than on the basis of professional medical advice.

²³ Section 893.035(3)(a), (4)(d)-(f), and (7)(a), F.S.

²⁴ Section 893.035(7)(a), F.S.

²⁵ Section 893.035(9), F.S. Section 120.54(4)(c), F.S., which addresses the expiration of an emergency rule under s. 120.54(4), F.S., does not apply. Section 893.03(7)(b), F.S.

On December 11, 2012, Attorney General Pam Bondi filed an emergency rule (2ER 12-1)²⁶ that temporarily schedules several synthetic cannabinoids, cathinones, and phenethylamines in Schedule I at s. 893.03(1)(c), F.S.

Findings in 2ER 12-1 regarding the new synthetic substances state, in part:

Attorney General Pam Bondi finds that there are currently dangerous psychoactive substances that are not scheduled as controlled substances and are being marketed in Florida. Subsequent to the most recent revisions to Section 893.03(1)(c), Florida Statutes, which became effective in March 2012, Florida law enforcement has noted the emergence of new chemical variants of several recently scheduled substances. Although technically different from currently scheduled substances, these substances are generally classifiable as Synthetic Cannabinoids, Cathinones, and Synthetic Phenethylamines. These substances are being abused because they are ostensibly legal and often times perceived as a safer alternative to illegal drugs such as marijuana, MDMA (“ecstasy”), cocaine, and amphetamines. But, in many cases, they are more dangerous. Due to their chemical design, they are commonly available for purchase in specialty smoke shops, over the internet, in convenience stores and from other retailers, making them easily obtained for abuse by Florida’s children and young adults. Such abuse present severe health risks, and an immediate danger and imminent hazard to the health, safety, and welfare of Floridians

Findings in 2ER 12-1 regarding the potential for and significance of abuse and risk to public health of the new synthetic substances state:

The Attorney General and the Florida Department of Law Enforcement has [sic] received intelligence from the Florida Department of Business and Professional regulation indicating that ... [the substances referenced in the rule] are being labeled inaccurately and marketed as a variety of legitimate household products in a thinly veiled effort to mask their true use as abused psychoactive substances. All of ... [the substances referenced in the rule] are marketed under a variety of pseudo brand names. They usually contain the disclaimer “not for human consumption,” but are sold in specialty smoke shops, over the internet,²⁷ and in convenience stores for prices that are disproportionately high for the household product they purport to be, such as up to \$30.00 for 500 mg packets. Furthermore, a pattern has emerged in which the distributors of these substances respond to scheduling of additional controlled substances by the Florida Legislature by introducing new variants with labels on the packaging claiming to conform to the new laws. These actions further emphasize the true purpose of these substances as chemicals of abuse.

²⁶ All information under this subheading is from this emergency rule unless otherwise indicated.

²⁷ The Attorney General states that the new synthetic phenethylamines “are widely available online” but less prevalent in “local smoke shops since they are obscure research substances; however, with the popularity of synthetic cannabinoids and cathinones on the rise and their respective availability being diminished due to legislation and enforcement actions, these drugs and their presence in Florida are a concern.” 2ER 12-1.

According to the FDLE, 2ER 12-1 “expires on June 30 (or sooner if supplanted by a superseding statutory amendment).”²⁸

III. Effect of Proposed Changes:

The bill codifies the Schedule I scheduling of the substances listed in the Attorney General’s emergency rule, which are the same substances listed in the bill. Persons who engage in certain unlawful acts involving these substances will be subject to arrest and prosecution.

Specifically, the bill does the following:

- Removes the current listing of 3, 4-Methylenedioxymethamphetamine (MDMA) in Schedule I at s. 893.03(1)(a), F.S., and lists this substance in Schedule I at s. 893.03(1)(c), F.S.
- Specifies that isomers of substances listed in Schedule I at s. 893.03(1)(c), F.S., include optical, positional, or geometric isomers.²⁹
- Lists the following synthetic cannabinoids in Schedule I at s. 893.03(1)(c), F.S.:
 - UR-144 ((1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone).
 - XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone).
 - (1-(5-chloropentyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl) methanone.
 - AKB48 (1-pentyl-N-tricyclo[3.3.1.1^{3,7}]dec-1-yl-1H-333 indazole-3-carboxamide).
 - AM-2233((2-iodophenyl)[1-[(1-methyl-2-335 piperidinyl) methyl]-1H-indol-3-yl]-methanone).
 - STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.1^{3,7}]dec-337 1-yl-1H-indole-3-carboxamide).
 - URB-597 ((3’-(aminocarbonyl)[1,1’-biphenyl]-3-yl)- 339 cyclohexylcarbamate).
 - URB-602 ([1,1’-biphenyl]-3-yl-carbamic acid, 341 cyclohexyl ester).
 - URB-754 (6-methyl-2-[(4-methylphenyl) amino]-1-343 benzoxazin-4-one).
- Lists the following synthetic cathinones in Schedule I at s. 893.03(1)(c), F.S.:
 - Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).
 - Fluoroamphetamine.
 - Methoxetamine.
 - Methiopropamine.
 - 4-Methylbuphedrone (2-Methylamino-1-(4-323 methylphenyl) butan-1-one).
 - APB ((2-aminopropyl) benzofuran).
 - APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).
- Lists the following synthetic phenethylamines in Schedule I at s. 893.03(1)(c), F.S.:
 - 2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine).
 - 2C-H (2-(2,5-Dimethoxyphenyl) ethanamine).

²⁸ Revised FDLE Analysis.

²⁹ The FDLE states that “the current language in F.S. 893.03(1)(c) does not specifically include optical, positional, or geometric isomers of the listed chemical substances.” *Id.*

- 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl) ethanamine)
 - 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine).
 - 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-349 methoxyphenyl) methyl]-benzeneethanamine).
- Amends s. 893.13(6)(b), F.S., to correct a statutory reference to incorporate the synthetic cannabinoids listed in Schedule I at s. 893.03(1)(c), F.S., which makes the simple possession of 3 grams or less of any of these referenced substances a first degree misdemeanor.
 - Consistent with the listing of MDMA in Schedule I at s. 893.03(1)(c), F.S., amends s. 893.135(1)(k)1. and 3., F.S., to correct a statutory reference so that those paragraphs accurately reflect that substances listed in those paragraphs are substances listed in Schedule I at s. 893.03(1)(c), F.S.³⁰
 - Reenacts ss. 893.13(1)-(6), F.S., and 921.0022(3)(b)-(e), F.S., relating to prohibited acts involving controlled substances and the offense severity ranking chart of the Criminal Punishment Code, respectively, to incorporate the amendments made to s. 893.03, F.S., by the bill.
 - Provides that the effective date of the bill is upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b), of the Florida Constitution.

C. Trust Funds Restrictions:

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f), of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁰ The FDLE states that “[t]his re-designation is in keeping with the nature of MDMA’s effects on the abuser and consistent with the Drug Enforcement Administration’s scheduling of MDMA as a hallucinogenic substance in 21 C.F.R. §1308.11.” *Id.*

B. Private Sector Impact:

According to the FDLE, the bill “should have little impact on the private sector and would only affect those retailers who are currently profiting on the sale of chemical substances known to be abused by those seeking an altered mental state or ‘high.’”³¹

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact of legislation, found that the bill will have an insignificant prison bed impact due to a small number of additional new commitments expected.³²

The bill is expected to have a minimal fiscal impact on the FDLE. The FDLE states:

The passage of SB 294 would add additional chemical substances to Florida’s controlled substances list. These additions could potentially increase the number of evidence submissions into FDLE’s Crime Laboratory System as well as local law enforcement crime laboratories. The laboratory system will be required to purchase all of the required standards necessary to test the proposed chemical substances.

The bill will have minimal fiscal impact to FDLE. Any resulting increase in volume of evidence submissions to FDLE’s Crime Laboratory system, as well as costs to acquire and maintain additional required chemical standards, will be assimilated as part of the laboratories’ cost of doing business. Florida Department of Law Enforcement will monitor submissions to the crime laboratories and if necessary, request an appropriation through a future Legislative Budget Request.³³

The bill may have an impact on some local law enforcement agencies. The FDLE states:

Local agencies which fund and maintain their own crime lab with a chemistry section would potentially be facing a similar rise in submissions associated with the additions of the proposed chemical substances.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³¹ *Id.*

³² Criminal Justice Impact Conference, *2013 Session Bills and Links to Backup Materials*, http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC_13.xls (last visited Feb 27, 2013).

³³ Revised FDLE Analysis.

³⁴ *Id.*

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Bradley

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A bill to be entitled

An act relating to controlled substances; amending s. 893.03, F.S.; adding to the list of Schedule I controlled substances certain specified materials, compounds, mixtures, or preparations that contain hallucinogenic substances, or any of their salts, isomers, and salts of isomers, if the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; amending s. 893.13, F.S.; providing reduced penalties for possession of 3 grams or less of specified controlled substances; amending s. 893.135, F.S.; providing criminal penalties for a person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, a specified quantity of specified controlled substances; reenacting ss. 893.13(1)-(6) and 921.0022(3)(b)-(e), F.S., relating to prohibited acts involving controlled substances and the Criminal Punishment Code, respectively, to incorporate the amendments made to s. 893.03, F.S., in references thereto; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (1) of section 893.03, Florida Statutes, are amended to read:
893.03 Standards and schedules.—The substances enumerated

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in this section are controlled by this chapter. The controlled substances listed or to be listed in Schedules I, II, III, IV, and V are included by whatever official, common, usual, chemical, or trade name designated. The provisions of this section shall not be construed to include within any of the schedules contained in this section any excluded drugs listed within the purview of 21 C.F.R. s. 1308.22, styled "Excluded Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt Anabolic Steroid Products."

(1) SCHEDULE I.—A substance in Schedule I has a high potential for abuse and has no currently accepted medical use in treatment in the United States and in its use under medical supervision does not meet accepted safety standards. The following substances are controlled in Schedule I:

- (a) Unless specifically excepted or unless listed in another schedule, any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
1. Acetyl-alpha-methylfentanyl.
 2. Acetylmethadol.
 3. Allylprodine.
 4. Alphacetylmethadol (except levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
 5. Alphamethadol.

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59 6. Alpha-methylfentanyl (N-[1-(alpha-methyl-betaphenyl)
60 ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-
61 (N-propanilido) piperidine).
62 7. Alpha-methylthiofentanyl.
63 8. Alphameprodine.
64 9. Benzethidine.
65 10. Benzylfentanyl.
66 11. Betacetylmethadol.
67 12. Beta-hydroxyfentanyl.
68 13. Beta-hydroxy-3-methylfentanyl.
69 14. Betameprodine.
70 15. Betamethadol.
71 16. Betaprodine.
72 17. Clonitazene.
73 18. Dextromoramide.
74 19. Diampromide.
75 20. Diethylthiambutene.
76 21. Difenoxyin.
77 22. Dimenoxadol.
78 23. Dimepheptanol.
79 24. Dimethylthiambutene.
80 25. Dioxaphetyl butyrate.
81 26. Dipipanone.
82 27. Ethylmethylthiambutene.
83 28. Etonitazene.
84 29. Etoxadine.
85 30. Flunitrazepam.
86 31. Furethidine.
87 32. Hydroxypethidine.

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88 33. Ketobemidone.
89 34. Levomoramide.
90 35. Levophenacymorphan.
91 36. 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
92 37. 3-Methylfentanyl (N-
93 [3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
94 38. 3-Methylthiofentanyl.
95 ~~39. 3, 4-Methylenedioxymethamphetamine~~
96 ~~(MDMA).~~
97 39.40. Morpheridine.
98 40.41. Noracymethadol.
99 41.42. Norlevorphanol.
100 42.43. Normethadone.
101 43.44. Norpipanone.
102 44.45. Para-Fluorofentanyl.
103 45.46. Phenadoxone.
104 46.47. Phenampromide.
105 47.48. Phenomorphan.
106 48.49. Phenoperidine.
107 49.50. 1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine
108 (PEPAP).
109 50.51. Piritramide.
110 51.52. Proheptazine.
111 52.53. Properidine.
112 53.54. Propiram.
113 54.55. Racemoramide.
114 55.56. Thenylfentanyl.
115 56.57. Thiofentanyl.
116 57.58. Tilidine.

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117 ~~58.59.~~ Trimeperidine.

118 (c) Unless specifically excepted or unless listed in
119 another schedule, any material, compound, mixture, or
120 preparation that contains any quantity of the following
121 hallucinogenic substances or that contains any of their salts,
122 isomers, including optical, positional, or geometric isomers,
123 and salts of isomers, if the existence of such salts, isomers,
124 and salts of isomers is possible within the specific chemical
125 designation:

- 126 1. Alpha-ethyltryptamine.
127 2. 2-Amino-4-methyl-5-phenyl-2-oxazoline (4-
128 methylaminorex).
129 3. 2-Amino-5-phenyl-2-oxazoline (Aminorex).
130 4. 4-Bromo-2,5-dimethoxyamphetamine.
131 5. 4-Bromo-2,5-dimethoxyphenethylamine.
132 6. Bufotenine.
133 7. Cannabis.
134 8. Cathinone.
135 9. Diethyltryptamine.
136 10. 2,5-Dimethoxyamphetamine.
137 11. 2,5-Dimethoxy-4-ethylamphetamine (DOET).
138 12. Dimethyltryptamine.
139 13. N-Ethyl-1-phenylcyclohexylamine (PCE) (Ethylamine
140 analog of phencyclidine).
141 14. N-Ethyl-3-piperidyl benzilate.
142 15. N-ethylamphetamine.
143 16. Fenethylamine.
144 17. N-Hydroxy-3,4-methylenedioxyamphetamine.
145 18. Ibogaine.

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- 146 19. Lysergic acid diethylamide (LSD).
147 20. Mescaline.
148 21. Methcathinone.
149 22. 5-Methoxy-3,4-methylenedioxyamphetamine.
150 23. 4-methoxyamphetamine.
151 24. 4-methoxymethamphetamine.
152 25. 4-Methyl-2,5-dimethoxyamphetamine.
153 26. 3,4-Methylenedioxy-N-ethylamphetamine.
154 27. 3,4-Methylenedioxyamphetamine.
155 28. N-Methyl-3-piperidyl benzilate.
156 29. N,N-dimethylamphetamine.
157 30. Parahexyl.
158 31. Peyote.
159 32. N-(1-Phenylcyclohexyl)-pyrrolidine (PCPY) (Pyrrolidine
160 analog of phencyclidine).
161 33. Psilocybin.
162 34. Psilocyn.
163 35. *Salvia divinorum*, except for any drug product approved
164 by the United States Food and Drug Administration which contains
165 *Salvia divinorum* or its isomers, esters, ethers, salts, and
166 salts of isomers, esters, and ethers, if the existence of such
167 isomers, esters, ethers, and salts is possible within the
168 specific chemical designation.
169 36. Salvinorin A, except for any drug product approved by
170 the United States Food and Drug Administration which contains
171 Salvinorin A or its isomers, esters, ethers, salts, and salts of
172 isomers, esters, and ethers, if the existence of such isomers,
173 esters, ethers, and salts is possible within the specific
174 chemical designation.

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- 175 37. Tetrahydrocannabinols.
 176 38. 1-[1-(2-Thienyl)-cyclohexyl]-piperidine (TCP)
 177 (Thiophene analog of phencyclidine).
 178 39. 3,4,5-Trimethoxyamphetamine.
 179 40. 3,4-Methylenedioxy~~meth~~cathinone.
 180 41. 3,4-Methylenedioxy~~pyro~~valerone (MDPV).
 181 42. Methy~~meth~~cathinone.
 182 43. Methoxy~~meth~~cathinone.
 183 44. Fluoromethcathinone.
 184 45. Methylethcathinone.
 185 46. 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-
 186 yl)phenol, also known as CP 47,497 and its dimethyloctyl (C8)
 187 homologue.
 188 47. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
 189 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol,
 190 also known as HU-210.
 191 48. 1-Pentyl-3-(1-naphthoyl)indole, also known as JWH-018.
 192 49. 1-Butyl-3-(1-naphthoyl)indole, also known as JWH-073.
 193 50. 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl) indole, also
 194 known as JWH-200.
 195 51. BZP (Benzylpiperazine).
 196 52. Fluorophenylpiperazine.
 197 53. Methylphenylpiperazine.
 198 54. Chlorophenylpiperazine.
 199 55. Methoxyphenylpiperazine.
 200 56. DBZP (1,4-dibenzylpiperazine).
 201 57. TFMPP (3-Trifluoromethylphenylpiperazine).
 202 58. MBDB (Methylbenzodioxolylbutanamine).
 203 59. 5-Hydroxy-alpha-methyltryptamine.

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- 204 60. 5-Hydroxy-N-methyltryptamine.
 205 61. 5-Methoxy-N-methyl-N-isopropyltryptamine.
 206 62. 5-Methoxy-alpha-methyltryptamine.
 207 63. Methyltryptamine.
 208 64. 5-Methoxy-N,N-dimethyltryptamine.
 209 65. 5-Methyl-N,N-dimethyltryptamine.
 210 66. Tyramine (4-Hydroxyphenethylamine).
 211 67. 5-Methoxy-N,N-Diisopropyltryptamine.
 212 68. DiPT (N,N-Diisopropyltryptamine).
 213 69. DPT (N,N-Dipropyltryptamine).
 214 70. 4-Hydroxy-N,N-diisopropyltryptamine.
 215 71. N,N-Diallyl-5-Methoxytryptamine.
 216 72. DOI (4-Iodo-2,5-dimethoxyamphetamine).
 217 73. DOC (4-Chloro-2,5-dimethoxyamphetamine).
 218 74. 2C-E (4-Ethyl-2,5-dimethoxyphenethylamine).
 219 75. 2C-T-4 (2,5-Dimethoxy-4-isopropylthiophenethylamine).
 220 76. 2C-C (4-Chloro-2,5-dimethoxyphenethylamine).
 221 77. 2C-T (2,5-Dimethoxy-4-methylthiophenethylamine).
 222 78. 2C-T-2 (2,5-Dimethoxy-4-ethylthiophenethylamine).
 223 79. 2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine).
 224 80. 2C-I (4-Iodo-2,5-dimethoxyphenethylamine).
 225 81. Butylone (beta-keto-N-methylbenzodioxolylpropylamine).
 226 82. Ethcathinone.
 227 83. Ethylone (3,4-methylenedioxy-N-ethylcathinone).
 228 84. Naphyrone (naphthylpyrovalerone).
 229 85. N-N-Dimethyl-3,4-methylenedioxcathinone.
 230 86. N-N-Diethyl-3,4-methylenedioxcathinone.
 231 87. 3,4-methylenedioxy-propiofenone.
 232 88. 2-Bromo-3,4-Methylenedioxypropiofenone.

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- 233 89. 3,4-methylenedioxy-propiofenone-2-oxime.
 234 90. N-Acetyl-3,4-methylenedioxcathinone.
 235 91. N-Acetyl-N-Methyl-3,4-Methylenedioxcathinone.
 236 92. N-Acetyl-N-Ethyl-3,4-Methylenedioxcathinone.
 237 93. Bromomethcathinone.
 238 94. Buphedrone (alpha-methylamino-butyrophenone).
 239 95. Eutylone (beta-Keto-Ethylbenzodioxolylbutanamine).
 240 96. Dimethylcathinone.
 241 97. Dimethylmethcathinone.
 242 98. Pentylone (beta-Keto-Methylbenzodioxolylpentanamine).
 243 99. (MDPPP) 3,4-Methylenedioxy-alpha-
 244 pyrrolidinopropiophenone.
 245 100. (MDPBP) 3,4-Methylenedioxy-alpha-
 246 pyrrolidinobutiophenone.
 247 101. Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).
 248 102. Methyl-alpha-pyrrolidinohexiophenone (MPHP).
 249 103. Benocyclidine (BCP) or
 250 benzothiophenylcyclohexylpiperidine (BTCP).
 251 104. Fluoromethylaminobutyrophenone (F-MABP).
 252 105. Methoxypyrrolidinobutyrophenone (MeO-PBP).
 253 106. Ethyl-pyrrolidinobutyrophenone (Et-PBP).
 254 107. 3-Methyl-4-Methoxymethcathinone (3-Me-4-MeO-MCAT).
 255 108. Methyleneethylaminobutyrophenone (Me-EABP).
 256 109. Methylamino-butyrophenone (MABP).
 257 110. Pyrrolidinopropiophenone (PPP).
 258 111. Pyrrolidinobutiophenone (PBP).
 259 112. Pyrrolidinovalerophenone (PVP).
 260 113. Methyl-alpha-pyrrolidinopropiophenone (MPPP).
 261 114. JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole).

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- 262 115. JWH-015 (2-Methyl-1-propyl-1H-indol-3-yl)-1-
 263 naphthalenylmethanone).
 264 116. JWH-019 (Naphthalen-1-yl-(1-hexylindol-3-
 265 yl)methanone).
 266 117. JWH-020 (1-heptyl-3-(1-naphthoyl)indole).
 267 118. JWH-072 (Naphthalen-1-yl-(1-propyl-1H-indol-3-
 268 yl)methanone).
 269 119. JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-
 270 yl)methanone).
 271 120. JWH-122 (1-pentyl-3-(4-methyl-1-naphthoyl)indole).
 272 121. JWH-133 ((6aR,10aR)-3-(1,1-Dimethylbutyl)-6a,7,10,10a-
 273 tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran)).
 274 122. JWH-175 (3-(naphthalen-1-ylmethyl)-1-pentyl-1H-
 275 indole).
 276 123. JWH-201 (1-pentyl-3-(4-methoxyphenylacetyl)indole).
 277 124. JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-
 278 yl)ethanone).
 279 125. JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-
 280 yl)methanone).
 281 126. JWH-250 (2-(2-methoxyphenyl)-1-(1-pentylindol-3-
 282 yl)ethanone).
 283 127. JWH-251 (2-(2-methylphenyl)-1-(1-pentyl-1H-indol-3-
 284 yl)ethanone).
 285 128. JWH-302 (1-pentyl-3-(3-methoxyphenylacetyl)indole).
 286 129. JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole).
 287 130. HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-
 288 (2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-
 289 ol).
 290 131. HU-308 ([1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-

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291 2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl]
 292 methanol).

293 132. HU-331 (3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-
 294 methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-
 295 1,4-dione).

296 133. CB-13 (Naphthalen-1-yl-(4-pentylloxynaphthalen-1-
 297 yl)methanone).

298 134. CB-25 (N-cyclopropyl-11-(3-hydroxy-5-pentylphenoxy)-
 299 undecanamide).

300 135. CB-52 (N-cyclopropyl-11-(2-hexyl-5-hydroxyphenoxy)-
 301 undecanamide).

302 136. CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-
 303 hydroxypropyl)cyclohexyl]-5-(2-methyloctan-2-yl)phenol).

304 137. AM-694 (1-[(5-fluoropentyl)-1H-indol-3-yl]-2-
 305 iodophenyl)methanone).

306 138. AM-2201 (1-[(5-fluoropentyl)-1H-indol-3-yl]-
 307 (naphthalen-1-yl)methanone).

308 139. RCS-4 ((4-methoxyphenyl) (1-pentyl-1H-indol-3-
 309 yl)methanone).

310 140. RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-
 311 methoxyphenylethanone).

312 141. WIN55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-
 313 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 314 naphthalenylmethanone).

315 142. WIN55,212-3 ([[3S)-2,3-Dihydro-5-methyl-3-(4-
 316 morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-
 317 naphthalenylmethanone).

318 143. Pentedrone (2-(methylamino)-1-phenyl-1-pentanone).

319 144. Fluoroamphetamine.

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320 145. Fluoromethamphetamine.

321 146. Methoxetamine.

322 147. Methiopropamine.

323 148. 4-Methylbuphedrone (2-Methylamino-1-(4-
 324 methylphenyl)butan-1-one).

325 149. APB ((2-aminopropyl)benzofuran).

326 150. APDB ((2-aminopropyl)-2,3-dihydrobenzofuran).

327 151. UR-144 ((1-pentyl-1H-indol-3-yl) (2,2,3,3-
 328 tetramethylcyclopropyl)methanone).

329 152. XLR11 ((1-(5-fluoropentyl)-1H-indol-3-yl) (2,2,3,3-
 330 tetramethylcyclopropyl)methanone).

331 153. (1-(5-chloropentyl)-1H-indol-3-yl) (2,2,3,3-
 332 tetramethylcyclopropyl)methanone.

333 154. AKB48 (1-pentyl-N-tricyclo[3.3.1.1.3,7]dec-1-yl-1H-
 334 indazole-3-carboxamide).

335 155. AM-2233 ((2-iodophenyl) [1-[(1-methyl-2-
 336 piperidinyl)methyl]-1H-indol-3-yl]-methanone).

337 156. STS-135 (1-(5-fluoropentyl)-N-tricyclo[3.3.1.1.3,7]dec-
 338 1-yl-1H-indole-3-carboxamide).

339 157. URB-597 ((3'-(aminocarbonyl) [1,1'-biphenyl]-3-yl)-
 340 cyclohexylcarbamate).

341 158. URB-602 ([1,1'-biphenyl]-3-yl-carbamic acid,
 342 cyclohexyl ester).

343 159. URB-754 (6-methyl-2-[(4-methylphenyl)amino]-1-
 344 benzoxazin-4-one).

345 160. 2C-D (2-(2,5-Dimethoxy-4-methylphenyl)ethanamine).

346 161. 2C-H (2-(2,5-Dimethoxyphenyl)ethanamine).

347 162. 2C-N (2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine).

348 163. 2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine).

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349 164. 25I-NBOMe (4-iodo-2,5-dimethoxy-N-[(2-
 350 methoxyphenyl)methyl]-benzeneethanamine).
 351 165. 3,4-Methylenedioxyamphetamine (MDMA).
 352 Section 2. Paragraph (b) of subsection (6) of section
 353 893.13, Florida Statutes, is amended to read:
 354 893.13 Prohibited acts; penalties.—
 355 (6)
 356 (b) If the offense is the possession of not more than 20
 357 grams of cannabis, as defined in this chapter, or 3 grams or
 358 less of a controlled substance described in s. 893.03(1)(c)46.-
 359 50., ~~and 114.-142.,~~ or 151.-159., the person commits a
 360 misdemeanor of the first degree, punishable as provided in s.
 361 775.082 or s. 775.083. For the purposes of this subsection,
 362 "cannabis" does not include the resin extracted from the plants
 363 of the genus *Cannabis*, or any compound manufacture, salt,
 364 derivative, mixture, or preparation of such resin, and a
 365 controlled substance described in s. 893.03(1)(c)46.-50., ~~and~~
 366 114.-142., or 151.-159., does not include the substance in a
 367 powdered form.
 368 Section 3. Paragraph (k) of subsection (1) of section
 369 893.135, Florida Statutes, is amended to read:
 370 893.135 Trafficking; mandatory sentences; suspension or
 371 reduction of sentences; conspiracy to engage in trafficking.—
 372 (1) Except as authorized in this chapter or in chapter 499
 373 and notwithstanding the provisions of s. 893.13:
 374 (k)1. Any person who knowingly sells, purchases,
 375 manufactures, delivers, or brings into this state, or who is
 376 knowingly in actual or constructive possession of, 10 grams or
 377 more of any of the following substances described in s.

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378 893.03(1)(c) s. ~~893.03(1)(a) or (e):~~
 379 a. 3,4-Methylenedioxyamphetamine (MDMA);
 380 b. 4-Bromo-2,5-dimethoxyamphetamine;
 381 c. 4-Bromo-2,5-dimethoxyphenethylamine;
 382 d. 2,5-Dimethoxyamphetamine;
 383 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
 384 f. N-ethylamphetamine;
 385 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
 386 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
 387 i. 4-methoxyamphetamine;
 388 j. 4-methoxymethamphetamine;
 389 k. 4-Methyl-2,5-dimethoxyamphetamine;
 390 l. 3,4-Methylenedioxy-N-ethylamphetamine;
 391 m. 3,4-Methylenedioxyamphetamine;
 392 n. N,N-dimethylamphetamine; or
 393 o. 3,4,5-Trimethoxyamphetamine,
 394
 395 individually or in any combination of or any mixture containing
 396 any substance listed in sub-subparagraphs a.-o., commits a
 397 felony of the first degree, which felony shall be known as
 398 "trafficking in Phenethylamines," punishable as provided in s.
 399 775.082, s. 775.083, or s. 775.084.
 400 2. If the quantity involved:
 401 a. Is 10 grams or more but less than 200 grams, such person
 402 shall be sentenced to a mandatory minimum term of imprisonment
 403 of 3 years, and the defendant shall be ordered to pay a fine of
 404 \$50,000.
 405 b. Is 200 grams or more, but less than 400 grams, such
 406 person shall be sentenced to a mandatory minimum term of

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407 imprisonment of 7 years, and the defendant shall be ordered to
408 pay a fine of \$100,000.

409 c. Is 400 grams or more, such person shall be sentenced to
410 a mandatory minimum term of imprisonment of 15 calendar years
411 and pay a fine of \$250,000.

412 3. Any person who knowingly manufactures or brings into
413 this state 30 kilograms or more of any of the following
414 substances described in s. 893.03(1)(c) ~~s. 893.03(1)(a) or (e)~~:

- 415 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 416 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 417 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 418 d. 2,5-Dimethoxyamphetamine;
- 419 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 420 f. N-ethylamphetamine;
- 421 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 422 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 423 i. 4-methoxyamphetamine;
- 424 j. 4-methoxymethamphetamine;
- 425 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 426 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 427 m. 3,4-Methylenedioxyamphetamine;
- 428 n. N,N-dimethylamphetamine; or
- 429 o. 3,4,5-Trimethoxyamphetamine,

431 individually or in any combination of or any mixture containing
432 any substance listed in sub-subparagraphs a.-o., and who knows
433 that the probable result of such manufacture or importation
434 would be the death of any person commits capital manufacture or
435 importation of Phenethylamines, a capital felony punishable as

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436 provided in ss. 775.082 and 921.142. Any person sentenced for a
437 capital felony under this paragraph shall also be sentenced to
438 pay the maximum fine provided under subparagraph 1.

439 Section 4. For the purpose of incorporating the amendment
440 made by this act to section 893.03, Florida Statutes, in a
441 reference thereto, subsections (1) through (6) of section
442 893.13, Florida Statutes, are reenacted to read:

443 893.13 Prohibited acts; penalties.—

444 (1) (a) Except as authorized by this chapter and chapter
445 499, it is unlawful for any person to sell, manufacture, or
446 deliver, or possess with intent to sell, manufacture, or
447 deliver, a controlled substance. Any person who violates this
448 provision with respect to:

449 1. A controlled substance named or described in s.
450 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
451 commits a felony of the second degree, punishable as provided in
452 s. 775.082, s. 775.083, or s. 775.084.

453 2. A controlled substance named or described in s.
454 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
455 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
456 the third degree, punishable as provided in s. 775.082, s.
457 775.083, or s. 775.084.

458 3. A controlled substance named or described in s.
459 893.03(5) commits a misdemeanor of the first degree, punishable
460 as provided in s. 775.082 or s. 775.083.

461 (b) Except as provided in this chapter, it is unlawful to
462 sell or deliver in excess of 10 grams of any substance named or
463 described in s. 893.03(1)(a) or (1)(b), or any combination
464 thereof, or any mixture containing any such substance. Any

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 465 person who violates this paragraph commits a felony of the first
 466 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 467 775.084.

(c) Except as authorized by this chapter, it is unlawful
 469 for any person to sell, manufacture, or deliver, or possess with
 470 intent to sell, manufacture, or deliver, a controlled substance
 471 in, on, or within 1,000 feet of the real property comprising a
 472 child care facility as defined in s. 402.302 or a public or
 473 private elementary, middle, or secondary school between the
 474 hours of 6 a.m. and 12 midnight, or at any time in, on, or
 475 within 1,000 feet of real property comprising a state, county,
 476 or municipal park, a community center, or a publicly owned
 477 recreational facility. For the purposes of this paragraph, the
 478 term "community center" means a facility operated by a nonprofit
 479 community-based organization for the provision of recreational,
 480 social, or educational services to the public. Any person who
 481 violates this paragraph with respect to:

1. A controlled substance named or described in s.
 483 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 484 commits a felony of the first degree, punishable as provided in
 485 s. 775.082, s. 775.083, or s. 775.084. The defendant must be
 486 sentenced to a minimum term of imprisonment of 3 calendar years
 487 unless the offense was committed within 1,000 feet of the real
 488 property comprising a child care facility as defined in s.
 489 402.302.

2. A controlled substance named or described in s.
 491 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 492 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 493 the second degree, punishable as provided in s. 775.082, s.

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 494 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold,
 496 manufactured, or delivered, must be sentenced to pay a \$500 fine
 497 and to serve 100 hours of public service in addition to any
 498 other penalty prescribed by law.

This paragraph does not apply to a child care facility unless
 501 the owner or operator of the facility posts a sign that is not
 502 less than 2 square feet in size with a word legend identifying
 503 the facility as a licensed child care facility and that is
 504 posted on the property of the child care facility in a
 505 conspicuous place where the sign is reasonably visible to the
 506 public.

(d) Except as authorized by this chapter, it is unlawful
 508 for any person to sell, manufacture, or deliver, or possess with
 509 intent to sell, manufacture, or deliver, a controlled substance
 510 in, on, or within 1,000 feet of the real property comprising a
 511 public or private college, university, or other postsecondary
 512 educational institution. Any person who violates this paragraph
 513 with respect to:

1. A controlled substance named or described in s.
 515 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
 516 commits a felony of the first degree, punishable as provided in
 517 s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s.
 519 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 520 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
 521 the second degree, punishable as provided in s. 775.082, s.
 522 775.083, or s. 775.084.

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523 3. Any other controlled substance, except as lawfully sold,
524 manufactured, or delivered, must be sentenced to pay a \$500 fine
525 and to serve 100 hours of public service in addition to any
526 other penalty prescribed by law.

527 (e) Except as authorized by this chapter, it is unlawful
528 for any person to sell, manufacture, or deliver, or possess with
529 intent to sell, manufacture, or deliver, a controlled substance
530 not authorized by law in, on, or within 1,000 feet of a physical
531 place for worship at which a church or religious organization
532 regularly conducts religious services or within 1,000 feet of a
533 convenience business as defined in s. 812.171. Any person who
534 violates this paragraph with respect to:

535 1. A controlled substance named or described in s.
536 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.,
537 commits a felony of the first degree, punishable as provided in
538 s. 775.082, s. 775.083, or s. 775.084.

539 2. A controlled substance named or described in s.
540 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,
541 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of
542 the second degree, punishable as provided in s. 775.082, s.
543 775.083, or s. 775.084.

544 3. Any other controlled substance, except as lawfully sold,
545 manufactured, or delivered, must be sentenced to pay a \$500 fine
546 and to serve 100 hours of public service in addition to any
547 other penalty prescribed by law.

548 (f) Except as authorized by this chapter, it is unlawful
549 for any person to sell, manufacture, or deliver, or possess with
550 intent to sell, manufacture, or deliver, a controlled substance
551 in, on, or within 1,000 feet of the real property comprising a

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552 public housing facility at any time. For purposes of this
553 section, the term "real property comprising a public housing
554 facility" means real property, as defined in s. 421.03(12), of a
555 public corporation created as a housing authority pursuant to
556 part I of chapter 421. Any person who violates this paragraph
557 with respect to:

558 1. A controlled substance named or described in s.
559 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4.,
560 commits a felony of the first degree, punishable as provided in
561 s. 775.082, s. 775.083, or s. 775.084.

562 2. A controlled substance named or described in s.
563 893.03(1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 5., (2) (c) 6.,
564 (2) (c) 7., (2) (c) 8., (2) (c) 9., (3), or (4) commits a felony of
565 the second degree, punishable as provided in s. 775.082, s.
566 775.083, or s. 775.084.

567 3. Any other controlled substance, except as lawfully sold,
568 manufactured, or delivered, must be sentenced to pay a \$500 fine
569 and to serve 100 hours of public service in addition to any
570 other penalty prescribed by law.

571 (g) Except as authorized by this chapter, it is unlawful
572 for any person to manufacture methamphetamine or phencyclidine,
573 or possess any listed chemical as defined in s. 893.033 in
574 violation of s. 893.149 and with intent to manufacture
575 methamphetamine or phencyclidine. If any person violates this
576 paragraph and:

577 1. The commission or attempted commission of the crime
578 occurs in a structure or conveyance where any child under 16
579 years of age is present, the person commits a felony of the
580 first degree, punishable as provided in s. 775.082, s. 775.083,

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581 or s. 775.084. In addition, the defendant must be sentenced to a
582 minimum term of imprisonment of 5 calendar years.

583 2. The commission of the crime causes any child under 16
584 years of age to suffer great bodily harm, the person commits a
585 felony of the first degree, punishable as provided in s.
586 775.082, s. 775.083, or s. 775.084. In addition, the defendant
587 must be sentenced to a minimum term of imprisonment of 10
588 calendar years.

589 (h) Except as authorized by this chapter, it is unlawful
590 for any person to sell, manufacture, or deliver, or possess with
591 intent to sell, manufacture, or deliver, a controlled substance
592 in, on, or within 1,000 feet of the real property comprising an
593 assisted living facility, as that term is used in chapter 429.
594 Any person who violates this paragraph with respect to:

595 1. A controlled substance named or described in s.
596 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.
597 commits a felony of the first degree, punishable as provided in
598 s. 775.082, s. 775.083, or s. 775.084.

599 2. A controlled substance named or described in s.
600 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
601 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
602 the second degree, punishable as provided in s. 775.082, s.
603 775.083, or s. 775.084.

604 (2)(a) Except as authorized by this chapter and chapter
605 499, it is unlawful for any person to purchase, or possess with
606 intent to purchase, a controlled substance. Any person who
607 violates this provision with respect to:

608 1. A controlled substance named or described in s.
609 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,

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610 commits a felony of the second degree, punishable as provided in
611 s. 775.082, s. 775.083, or s. 775.084.

612 2. A controlled substance named or described in s.
613 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
614 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
615 the third degree, punishable as provided in s. 775.082, s.
616 775.083, or s. 775.084.

617 3. A controlled substance named or described in s.
618 893.03(5) commits a misdemeanor of the first degree, punishable
619 as provided in s. 775.082 or s. 775.083.

620 (b) Except as provided in this chapter, it is unlawful to
621 purchase in excess of 10 grams of any substance named or
622 described in s. 893.03(1)(a) or (1)(b), or any combination
623 thereof, or any mixture containing any such substance. Any
624 person who violates this paragraph commits a felony of the first
625 degree, punishable as provided in s. 775.082, s. 775.083, or s.
626 775.084.

627 (3) Any person who delivers, without consideration, not
628 more than 20 grams of cannabis, as defined in this chapter,
629 commits a misdemeanor of the first degree, punishable as
630 provided in s. 775.082 or s. 775.083. For the purposes of this
631 paragraph, "cannabis" does not include the resin extracted from
632 the plants of the genus *Cannabis* or any compound manufacture,
633 salt, derivative, mixture, or preparation of such resin.

634 (4) Except as authorized by this chapter, it is unlawful
635 for any person 18 years of age or older to deliver any
636 controlled substance to a person under the age of 18 years, or
637 to use or hire a person under the age of 18 years as an agent or
638 employee in the sale or delivery of such a substance, or to use

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639 such person to assist in avoiding detection or apprehension for
640 a violation of this chapter. Any person who violates this
641 provision with respect to:

642 (a) A controlled substance named or described in s.
643 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
644 commits a felony of the first degree, punishable as provided in
645 s. 775.082, s. 775.083, or s. 775.084.

646 (b) A controlled substance named or described in s.
647 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
648 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
649 the second degree, punishable as provided in s. 775.082, s.
650 775.083, or s. 775.084.

651 Imposition of sentence may not be suspended or deferred, nor
652 shall the person so convicted be placed on probation.

653 (5) It is unlawful for any person to bring into this state
654 any controlled substance unless the possession of such
655 controlled substance is authorized by this chapter or unless
656 such person is licensed to do so by the appropriate federal
657 agency. Any person who violates this provision with respect to:

658 (a) A controlled substance named or described in s.
659 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.,
660 commits a felony of the second degree, punishable as provided in
661 s. 775.082, s. 775.083, or s. 775.084.

662 (b) A controlled substance named or described in s.
663 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
664 (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of
665 the third degree, punishable as provided in s. 775.082, s.
666 775.083, or s. 775.084.

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668 (c) A controlled substance named or described in s.
669 893.03(5) commits a misdemeanor of the first degree, punishable
670 as provided in s. 775.082 or s. 775.083.

671 (6)(a) It is unlawful for any person to be in actual or
672 constructive possession of a controlled substance unless such
673 controlled substance was lawfully obtained from a practitioner
674 or pursuant to a valid prescription or order of a practitioner
675 while acting in the course of his or her professional practice
676 or to be in actual or constructive possession of a controlled
677 substance except as otherwise authorized by this chapter. Any
678 person who violates this provision commits a felony of the third
679 degree, punishable as provided in s. 775.082, s. 775.083, or s.
680 775.084.

681 (b) If the offense is the possession of not more than 20
682 grams of cannabis, as defined in this chapter, or 3 grams or
683 less of a controlled substance described in s. 893.03(1)(c)46.-
684 50. and 114.-142., the person commits a misdemeanor of the first
685 degree, punishable as provided in s. 775.082 or s. 775.083. For
686 the purposes of this subsection, "cannabis" does not include the
687 resin extracted from the plants of the genus *Cannabis*, or any
688 compound manufacture, salt, derivative, mixture, or preparation
689 of such resin, and a controlled substance described in s.
690 893.03(1)(c)46.-50. and 114.-142. does not include the substance
691 in a powdered form.

692 (c) Except as provided in this chapter, it is unlawful to
693 possess in excess of 10 grams of any substance named or
694 described in s. 893.03(1)(a) or (1)(b), or any combination
695 thereof, or any mixture containing any such substance. Any
696 person who violates this paragraph commits a felony of the first

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697 degree, punishable as provided in s. 775.082, s. 775.083, or s.
698 775.084.

699 (d) Notwithstanding any provision to the contrary of the
700 laws of this state relating to arrest, a law enforcement officer
701 may arrest without warrant any person who the officer has
702 probable cause to believe is violating the provisions of this
703 chapter relating to possession of cannabis.

704 Section 5. For the purpose of incorporating the amendment
705 made by this act to section 893.03, Florida Statutes, in a
706 reference thereto, paragraphs (b), (c), (d), and (e) of
707 subsection (3) of section 921.0022, Florida Statutes, are
708 reenacted to read:

709 921.0022 Criminal Punishment Code; offense severity ranking
710 chart.-

711 (3) OFFENSE SEVERITY RANKING CHART

712 (b) LEVEL 2

713

Florida Statute	Felony Degree	Description
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714

379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
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715

379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
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716

403.413(5)(c)	3rd	Dumps waste litter exceeding 500 lbs. in
---------------	-----	--

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717 weight or 100 cubic feet in volume or
any quantity for commercial purposes, or
hazardous waste.

517.07(2) 3rd Failure to furnish a prospectus meeting requirements.

718

590.28(1) 3rd Intentional burning of lands.

719

784.05(3) 3rd Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.

720

787.04(1) 3rd In violation of court order, take, entice, etc., minor beyond state limits.

721

806.13(1)(b)3. 3rd Criminal mischief; damage \$1,000 or more to public communication or any other public service.

722

810.061(2) 3rd Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.

723

810.09(2)(e) 3rd Trespassing on posted commercial horticulture property.

724

812.014(2)(c)1. 3rd Grand theft, 3rd degree; \$300 or more but less than \$5,000.

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725 812.014(2)(d) 3rd Grand theft, 3rd degree; \$100 or more
but less than \$300, taken from
unenclosed curtilage of dwelling.

726 812.015(7) 3rd Possession, use, or attempted use of an
antishoplifting or inventory control
device countermeasure.

727 817.234(1)(a)2. 3rd False statement in support of insurance
claim.

728 817.481(3)(a) 3rd Obtain credit or purchase with false,
expired, counterfeit, etc., credit card,
value over \$300.

729 817.52(3) 3rd Failure to redeliver hired vehicle.

730 817.54 3rd With intent to defraud, obtain mortgage
note, etc., by false representation.

731 817.60(5) 3rd Dealing in credit cards of another.

732 817.60(6)(a) 3rd Forgery; purchase goods, services with
false card.

733 817.61 3rd Fraudulent use of credit cards over \$100
or more within 6 months.

734

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826.04 3rd Knowingly marries or has sexual
intercourse with person to whom related.

735 831.01 3rd Forgery.

736 831.02 3rd Uttering forged instrument; utters or
publishes alteration with intent to
defraud.

737 831.07 3rd Forging bank bills, checks, drafts, or
promissory notes.

738 831.08 3rd Possessing 10 or more forged notes,
bills, checks, or drafts.

739 831.09 3rd Uttering forged notes, bills, checks,
drafts, or promissory notes.

740 831.11 3rd Bringing into the state forged bank
bills, checks, drafts, or notes.

741 832.05(3)(a) 3rd Cashing or depositing item with intent
to defraud.

742 843.08 3rd Falsely impersonating an officer.

743 893.13(2)(a)2. 3rd Purchase of any s. 893.03(1)(c),
(2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9.,

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 (3), or (4) drugs other than cannabis.

744 893.147(2) 3rd Manufacture or delivery of drug
 paraphernalia.

745 (c) LEVEL 3

746 Florida Felony

747 Statute Degree Description

748 119.10(2)(b) 3rd Unlawful use of confidential information
 from police reports.

749 316.066 3rd Unlawfully obtaining or using
 (3)(b)-(d) confidential crash reports.

750 316.193(2)(b) 3rd Felony DUI, 3rd conviction.

751 316.1935(2) 3rd Fleeing or attempting to elude law
 enforcement officer in patrol vehicle
 with siren and lights activated.

752 319.30(4) 3rd Possession by junkyard of motor vehicle
 with identification number plate
 removed.

753 319.33(1)(a) 3rd Alter or forge any certificate of title
 to a motor vehicle or mobile home.

754

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755 319.33(1)(c) 3rd Procure or pass title on stolen vehicle.

319.33(4) 3rd With intent to defraud, possess, sell,
 etc., a blank, forged, or unlawfully
 obtained title or registration.

756 327.35(2)(b) 3rd Felony BUI.

757 328.05(2) 3rd Possess, sell, or counterfeit
 fictitious, stolen, or fraudulent titles
 or bills of sale of vessels.

758 328.07(4) 3rd Manufacture, exchange, or possess vessel
 with counterfeit or wrong ID number.

759 376.302(5) 3rd Fraud related to reimbursement for
 cleanup expenses under the Inland
 Protection Trust Fund.

760 379.2431 3rd Taking, disturbing, mutilating,
 (1)(e)5. destroying, causing to be destroyed,
 transferring, selling, offering to sell,
 molesting, or harassing marine turtles,
 marine turtle eggs, or marine turtle
 nests in violation of the Marine Turtle
 Protection Act.

761 379.2431 3rd Soliciting to commit or conspiring to
 (1)(e)6. commit a violation of the Marine Turtle

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 762 Protection Act.
 400.9935(4) 3rd Operating a clinic without a license or
 filing false license application or
 763 other required information.
 440.1051(3) 3rd False report of workers' compensation
 fraud or retaliation for making such a
 764 report.
 501.001(2)(b) 2nd Tamper with a consumer product or the
 container using materially
 765 false/misleading information.
 624.401(4)(a) 3rd Transacting insurance without a
 certificate of authority.
 766 624.401(4)(b)1. 3rd Transacting insurance without a
 certificate of authority; premium
 collected less than \$20,000.
 767 626.902(1)(a) & 3rd Representing an unauthorized insurer.
 (b)
 768 697.08 3rd Equity skimming.
 769 790.15(3) 3rd Person directs another to discharge
 770 firearm from a vehicle.

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 771 796.05(1) 3rd Live on earnings of a prostitute.
 806.10(1) 3rd Maliciously injure, destroy, or
 interfere with vehicles or equipment
 772 used in firefighting.
 806.10(2) 3rd Interferes with or assaults firefighter
 in performance of duty.
 773 810.09(2)(c) 3rd Trespass on property other than
 structure or conveyance armed with
 774 firearm or dangerous weapon.
 812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but less
 than \$10,000.
 775 812.0145(2)(c) 3rd Theft from person 65 years of age or
 older; \$300 or more but less than
 776 \$10,000.
 815.04(4)(b) 2nd Computer offense devised to defraud or
 obtain property.
 777 817.034(4)(a)3. 3rd Engages in scheme to defraud (Florida
 Communications Fraud Act), property
 valued at less than \$20,000.
 778 817.233 3rd Burning to defraud insurer.
 779

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780	817.234	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.	
	(8) (b) - (c)			
781	817.234(11) (a)	3rd	Insurance fraud; property value less than \$20,000.	
782	817.236	3rd	Filing a false motor vehicle insurance application.	
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
783	817.413(2)	3rd	Sale of used goods as new.	
784	817.505(4)	3rd	Patient brokering.	
785	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.	
786	831.28(2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.	
787	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.	
788				

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789	838.021(3) (b)	3rd	Threatens unlawful harm to public servant.	
	843.19	3rd	Injure, disable, or kill police dog or horse.	
790	860.15(3)	3rd	Overcharging for repairs and parts.	
791	870.01(2)	3rd	Riot; inciting or encouraging.	
792	893.13(1) (a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) drugs).	
793	893.13(1) (d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) drugs within 1,000 feet of university.	
794	893.13(1) (f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) drugs within 1,000 feet of public housing facility.	
795				

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893.13(6)(a) 3rd Possession of any controlled substance other than felony possession of cannabis.

796 893.13(7)(a)8. 3rd Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

797 893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

798 893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.

799 893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.

800 893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

801 893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an

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802 animal in obtaining a controlled substance.

803 893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

804 893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

805 918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence.

806 944.47 3rd Introduce contraband to correctional facility.

(1)(a)1.-2.

807 944.47(1)(c) 2nd Possess contraband while upon the grounds of a correctional institution.

808 985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

809 (d) LEVEL 4

810

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	Florida Statute	Felony Degree		Description
811	316.1935(3)(a)	2nd		Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
812	499.0051(1)	3rd		Failure to maintain or deliver pedigree papers.
813	499.0051(2)	3rd		Failure to authenticate pedigree papers.
814	499.0051(6)	2nd		Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
815	517.07(1)	3rd		Failure to register securities.
816	517.12(1)	3rd		Failure of dealer, associated person, or issuer of securities to register.
817	784.07(2)(b)	3rd		Battery of law enforcement officer, firefighter, etc.
818	784.074(1)(c)	3rd		Battery of sexually violent predators facility staff.
819				

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820	784.075	3rd		Battery on detention or commitment facility staff.
821	784.078	3rd		Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
822	784.08(2)(c)	3rd		Battery on a person 65 years of age or older.
823	784.081(3)	3rd		Battery on specified official or employee.
824	784.082(3)	3rd		Battery by detained person on visitor or other detainee.
825	784.083(3)	3rd		Battery on code inspector.
826	784.085	3rd		Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
827	787.03(1)	3rd		Interference with custody; wrongly takes minor from appointed guardian.
828	787.04(2)	3rd		Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.

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829 787.04 (3) 3rd Carrying child beyond state lines with
criminal intent to avoid producing child
at custody hearing or delivering to
designated person.

830 787.07 3rd Human smuggling.

831 790.115 (1) 3rd Exhibiting firearm or weapon within
1,000 feet of a school.

832 790.115 (2) (b) 3rd Possessing electric weapon or device,
destructive device, or other weapon on
school property.

833 790.115 (2) (c) 3rd Possessing firearm on school property.

834 800.04 (7) (c) 3rd Lewd or lascivious exhibition; offender
less than 18 years.

835 810.02 (4) (a) 3rd Burglary, or attempted burglary, of an
unoccupied structure; unarmed; no
assault or battery.

836 810.02 (4) (b) 3rd Burglary, or attempted burglary, of an
unoccupied conveyance; unarmed; no
assault or battery.

837 810.06 3rd Burglary; possession of tools.

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838 810.08 (2) (c) 3rd Trespass on property, armed with firearm
or dangerous weapon.

839 812.014 (2) (c) 3. 3rd Grand theft, 3rd degree \$10,000 or more
but less than \$20,000.

840 812.014 3rd Grand theft, 3rd degree, a will,
(2) (c) 4.-10. firearm, motor vehicle, livestock, etc.

841 812.0195 (2) 3rd Dealing in stolen property by use of the
Internet; property stolen \$300 or more.

842 817.563 (1) 3rd Sell or deliver substance other than
controlled substance agreed upon,
excluding s. 893.03(5) drugs.

843 817.568 (2) (a) 3rd Fraudulent use of personal
identification information.

844 817.625 (2) (a) 3rd Fraudulent use of scanning device or
reencoder.

845 828.125 (1) 2nd Kill, maim, or cause great bodily harm
or permanent breeding disability to any
registered horse or cattle.

846 837.02 (1) 3rd Perjury in official proceedings.

837.021 (1) 3rd Make contradictory statements in

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 official proceedings.
 847 838.022 3rd Official misconduct.
 848 839.13(2)(a) 3rd Falsifying records of an individual in
 the care and custody of a state agency.
 849 839.13(2)(c) 3rd Falsifying records of the Department of
 Children and Family Services.
 850 843.021 3rd Possession of a concealed handcuff key
 by a person in custody.
 851 843.025 3rd Deprive law enforcement, correctional,
 or correctional probation officer of
 means of protection or communication.
 852 843.15(1)(a) 3rd Failure to appear while on bail for
 felony (bond estreature or bond
 jumping).
 853 847.0135(5)(c) 3rd Lewd or lascivious exhibition using
 computer; offender less than 18 years.
 854 874.05(1) 3rd Encouraging or recruiting another to
 join a criminal gang.
 855 893.13(2)(a)1. 2nd Purchase of cocaine (or other s.
 893.03(1)(a), (b), or (d), (2)(a),

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 (2)(b), or (2)(c)4. drugs).
 856 914.14(2) 3rd Witnesses accepting bribes.
 857 914.22(1) 3rd Force, threaten, etc., witness, victim,
 or informant.
 858 914.23(2) 3rd Retaliation against a witness, victim,
 or informant, no bodily injury.
 859 918.12 3rd Tampering with jurors.
 860 934.215 3rd Use of two-way communications device to
 facilitate commission of a crime.
 861
 862 (e) LEVEL 5
 863
 Florida Felony
 Statute Degree Description
 864 316.027(1)(a) 3rd Accidents involving personal injuries,
 failure to stop; leaving scene.
 865 316.1935(4)(a) 2nd Aggravated fleeing or eluding.
 866 322.34(6) 3rd Careless operation of motor vehicle
 with suspended license, resulting in
 death or serious bodily injury.
 867

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 327.30 (5) 3rd Vessel accidents involving personal
 injury; leaving scene.
 868
 379.367 (4) 3rd Willful molestation of a commercial
 harvester's spiny lobster trap, line,
 or buoy.
 869
 379.3671 (2) (c) 3. 3rd Willful molestation, possession, or
 removal of a commercial harvester's
 trap contents or trap gear by another
 harvester.
 870
 381.0041 (11) (b) 3rd Donate blood, plasma, or organs knowing
 HIV positive.
 871
 440.10 (1) (g) 2nd Failure to obtain workers' compensation
 coverage.
 872
 440.105 (5) 2nd Unlawful solicitation for the purpose
 of making workers' compensation claims.
 873
 440.381 (2) 2nd Submission of false, misleading, or
 incomplete information with the purpose
 of avoiding or reducing workers'
 compensation premiums.
 874
 624.401 (4) (b) 2. 2nd Transacting insurance without a
 certificate or authority; premium
 collected \$20,000 or more but less than

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 \$100,000.
 875
 626.902 (1) (c) 2nd Representing an unauthorized insurer;
 repeat offender.
 876
 790.01 (2) 3rd Carrying a concealed firearm.
 877
 790.162 2nd Threat to throw or discharge
 destructive device.
 878
 790.163 (1) 2nd False report of deadly explosive or
 weapon of mass destruction.
 879
 790.221 (1) 2nd Possession of short-barreled shotgun or
 machine gun.
 880
 790.23 2nd Felons in possession of firearms,
 ammunition, or electronic weapons or
 devices.
 881
 800.04 (6) (c) 3rd Lewd or lascivious conduct; offender
 less than 18 years.
 882
 800.04 (7) (b) 2nd Lewd or lascivious exhibition; offender
 18 years or older.
 883
 806.111 (1) 3rd Possess, manufacture, or dispense fire
 bomb with intent to damage any
 structure or property.

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884 812.0145(2)(b) 2nd Theft from person 65 years of age or
older; \$10,000 or more but less than
\$50,000.

885 812.015(8) 3rd Retail theft; property stolen is valued
at \$300 or more and one or more
specified acts.

886 812.019(1) 2nd Stolen property; dealing in or
trafficking in.

887 812.131(2)(b) 3rd Robbery by sudden snatching.

888 812.16(2) 3rd Owning, operating, or conducting a chop
shop.

889 817.034(4)(a)2. 2nd Communications fraud, value \$20,000 to
\$50,000.

890 817.234(11)(b) 2nd Insurance fraud; property value \$20,000
or more but less than \$100,000.

891 817.2341(1), 3rd Filing false financial statements,
(2)(a) & (3)(a) making false entries of material fact
or false statements regarding property
values relating to the solvency of an
insuring entity.

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893 817.568(2)(b) 2nd Fraudulent use of personal
identification information; value of
benefit, services received, payment
avoided, or amount of injury or fraud,
\$5,000 or more or use of personal
identification information of 10 or
more individuals.

894 817.625(2)(b) 2nd Second or subsequent fraudulent use of
scanning device or reencoder.

895 825.1025(4) 3rd Lewd or lascivious exhibition in the
presence of an elderly person or
disabled adult.

896 827.071(4) 2nd Possess with intent to promote any
photographic material, motion picture,
etc., which includes sexual conduct by
a child.

897 827.071(5) 3rd Possess, control, or intentionally view
any photographic material, motion
picture, etc., which includes sexual
conduct by a child.

898 839.13(2)(b) 2nd Falsifying records of an individual in
the care and custody of a state agency
involving great bodily harm or death.

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843.01 3rd Resist officer with violence to person;
resist arrest with violence.

899 847.0135(5)(b) 2nd Lewd or lascivious exhibition using
computer; offender 18 years or older.

900 847.0137 3rd Transmission of pornography by
(2) & (3) electronic device or equipment.

901 847.0138 3rd Transmission of material harmful to
(2) & (3) minors to a minor by electronic device
or equipment.

902 874.05(2) 2nd Encouraging or recruiting another to
join a criminal gang; second or
subsequent offense.

903 893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or (2)(c)4.
drugs).

904 893.13(1)(c)2. 2nd Sell, manufacture, or deliver cannabis
(or other s. 893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
(2)(c)7., (2)(c)8., (2)(c)9., (3), or
(4) drugs) within 1,000 feet of a child
care facility, school, or state,
county, or municipal park or publicly

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owned recreational facility or
community center.

905 893.13(1)(d)1. 1st Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of university.

906 893.13(1)(e)2. 2nd Sell, manufacture, or deliver cannabis
or other drug prohibited under s.
893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4) within
1,000 feet of property used for
religious services or a specified
business site.

907 893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine
(or other s. 893.03(1)(a), (1)(b),
(1)(d), or (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of public
housing facility.

908 893.13(4)(b) 2nd Deliver to minor cannabis (or other s.
893.03(1)(c), (2)(c)1., (2)(c)2.,
(2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
(2)(c)8., (2)(c)9., (3), or (4) drugs).

909 893.1351(1) 3rd Ownership, lease, or rental for

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trafficking in or manufacturing of
controlled substance.

910

911

Section 6. This act shall take effect upon becoming a law.

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 294
FINAL ACTION: Favorable
MEETING DATE: Wednesday, March 6, 2013
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
X		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
9	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13

Meeting Date

Topic SB 294

Bill Number 294
(if applicable)

Name Casey Cook

Amendment Barcode _____
(if applicable)

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 850 701 3701

Tallahassee FL 32302
City State Zip

E-mail ccook@flcitrus.com

Speaking: For Against Information

Representing Florida League of Citrus

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/12/13

Meeting Date

Topic

Controlled Substances

Bill Number

294

(if applicable)

Name

Lisa Hurley

Amendment Barcode

(if applicable)

Job Title

Address

100 S. Monroe

Street

Lakeland FL 32301

City

State

Zip

Phone

850.922.4300

E-mail

lhurley@flcounties.com

Speaking:

For

Against

Information

Representing

FL Assoc. of Counties

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

16 March 2013

Meeting Date

Topic Controlled Substances Bath Salts

Bill Number SB 5914
(if applicable)

Name Jill Gran

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 2868 Mahan Dr
Street
Tallahassee FL - 04
City State Zip

Phone 251-8988

E-mail jill@fadaa.org

Speaking: For Against Information

Representing Florida Alcohol + Drug Abuse Association Waive in Support

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.10.13
Meeting Date

Topic Synthetic Drugs

Bill Number SB294
(if applicable)

Name Samah Camell

Amendment Barcode _____
(if applicable)

Job Title Asst Executive Director

Address 2017 Mahan Dr

Phone 877-2165

TLH FL 32308
Street City State Zip

E-mail scamoll@flsheriffs.org

Speaking: For Against Information

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Synthetic Drugs

Bill Number 294
(if applicable)

Name Andrew Fay

Amendment Barcode _____
(if applicable)

Job Title Assistant Attorney General

Address PL 02

Phone 850-245-0155

Street
Tallahassee FL
City State Zip

E-mail _____

Speaking: For Against Information

Representing Office of the Attorney General

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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 556

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Clerks of the Court

DATE: March 7, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			GO	
3.			AFT	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 556 makes numerous changes to laws relating to clerks of circuit courts.

The bill authorizes or requires a clerk to electronically perform existing duties. Specifically, the bill:

- Requires the clerk to maintain electronic filings.
- Authorizes a clerk to charge for services rendered electronically.
- Authorizes the clerk to affix electronically a date and time stamp to filings.
- Authorizes the clerk to provide public records electronically.

The bill makes other changes as follows:

- Requires a county recorder to remove recorded court documents from the Official Records pursuant to a sealing or expunction order.
- Increases to \$10 from \$5 the threshold requirement for which a clerk must refund an overpayment.

- Clarifies which public entities are not required to pay for access to public records maintained by the clerk.
- Requires requests for maintenance of a public records exemption to include the document type, name, identification number, and page number of the court record or official record that contains the exempt information.
- During an administrative review of property taxes, requires a property appraiser, rather than a clerk, to provide a copy of a property record card to a petitioner upon receipt of the petition from the clerk.
- Clarifies that governmental entities do not have to pay fees to enforce judgments for court costs and fines in criminal cases.

This bill substantially amends the following sections of the Florida Statutes: 28.13, 28.222, 28.24, 28.244, 28.345, 57.081, 57.082, 101.151, 119.0714, 194.032, and 938.30.

II. Present Situation:

Filings

The clerk of the circuit court is required to keep all papers with the maximum care and security, arranged in appropriate files.¹ The clerk is also required to ensure that the papers do not leave the office without permission from the court.²

Clerk as County Recorder

Pursuant to statute, the clerk of the circuit court generally acts as the county recorder.³ Current law does not require a clerk to remove recorded court documents from the Official Records pursuant to a sealing or expunction order as part of his or her duties.

Refunds

If a clerk of court determines that an overpayment is made, the clerk must make a refund if the overpayment exceeds \$5.⁴ If the amount of the overpayment is \$5 or less, the clerk need only refund the amount if the person who made the overpayment submits a written request.⁵

Fee Exemption

Certain individuals and groups, such as judges, state attorneys, and public defenders, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts, when acting in their official capacity.⁶ State agencies are also exempt from all court-related fees and charges assessed by the clerks.⁷

¹ Section 28.13, F.S.

² *Id.*

³ Section 28.222(1), F.S.

⁴ Section 28.244, F.S.

⁵ *Id.*

⁶ Section 28.345, F.S.

⁷ *Id.*

Public Records

A clerk of court is a custodian of public records. As custodian, clerks are required to provide access and copies of public records, if the requesting party is entitled by law to view a given record. Certain records are confidential or exempt from disclosure under public records laws, including personal information of certain individuals such as law enforcement personnel, firefighters, justices and judges, state attorneys, magistrates, and others as specified by statute.⁸ An individual whose information is exempt must submit a written request for exemption with any agency that holds an exempt record.⁹

III. Effect of Proposed Changes:

This bill revises the responsibilities of the clerks of court.

Electronic Filings and Communications

This bill:

- Updates the law requiring the clerk of courts to maintain paper filings by adding electronic filings.
- Authorizes the clerk to affix electronic, rather than just ink, time and date stamps to filings.
- Authorizes clerks to render services electronically and charge for those services.

Other Duties of the Clerk

This bill:

- Requires county recorders to remove recorded court documents from the Official Records when a sealing or expunction order is issued.
- Requires requests for maintenance of public records exemptions to specifically include the document type, name, identification number, and page number of the court record or official record where the exempt information appears.
- During a challenge to a property assessment or the denial of a property tax exemption, the property appraiser must give the petitioner a copy of the property record card at the time that the appraiser receives the petition from the clerk, regardless of whether the petitioner has initiated an evidence exchange.
- Appears to make an indigent person responsible for paying the costs of the service of a summons by a sheriff and to reimburse the clerk for filing fees.
- Clarifies that public entities are not required to pay statutory fees associated with the enforcement of financial obligations in criminal cases.

The bill takes effect July 1, 2013.

⁸ Section 119.071(4)(d), F.S.

⁹ Section 119.071(4)(d)2., 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 amendment of s. 57.081(1), F.S., appears to make an indigent person responsible for paying the costs of the service of a summons by a sheriff. The changes to s. 57.082(6), F.S., by the bill appear to require that an indigent person reimburse the clerk for filing fees.

C. Government Sector Impact:

The clerks of courts expect an indeterminate fiscal impact associated with the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on March 6, 2013:**

The CS:

- Removes from the bill all references to the tax lien process.
- Deletes from the bill a provision that allowed the Florida Rules of Judicial Administration to specify entities authorized to access public records that are exempt or confidential.

B. Amendments:

None.

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

By Senator Ring

29-00363A-13

2013556__

1 A bill to be entitled
 2 An act relating to clerks of the court; amending s.
 3 28.13, F.S.; providing requirements for the storage of
 4 papers and electronic filings and requiring that they
 5 be stamped with the date and time of submission;
 6 requiring the clerk to retain control and custody of
 7 filed documents; amending s. 28.222, F.S.; authorizing
 8 the clerk to remove certain court records from the
 9 Official Records; amending s. 28.24, F.S.; deleting
 10 provisions exempting specified persons from service
 11 fees; amending s. 28.244, F.S.; increasing the
 12 threshold amount for automatic repayment of
 13 overpayments; amending s. 28.345, F.S.; requiring that
 14 the clerk provide access to public records without
 15 charge to certain persons, subject to a limitation and
 16 an exception; authorizing the clerk to provide public
 17 records in an electronic format under certain
 18 circumstances; amending s. 57.081, F.S.; clarifying
 19 that, with the exception of charges for issuance of a
 20 summons, the prepayment of costs is not required upon
 21 a certification of indigence; amending s. 57.082,
 22 F.S.; providing for the inclusion of certain filing
 23 fees in payment plans; amending s. 101.151, F.S.;
 24 clarifying when the office title "Clerk of the Circuit
 25 Court and Comptroller" may be used; amending s.
 26 119.0714, F.S.; requiring that certain requests for
 27 maintenance of a public record exemption specify
 28 certain information; amending s. 194.032, F.S.;
 29 requiring that the property appraiser, rather than the

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

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30 clerk, provide the property record card to a
 31 petitioner regardless of whether the petitioner
 32 initiates evidence exchange; amending s. 197.502,
 33 F.S.; providing for the payment of fees for initial
 34 and subsequent title searches and specifying that they
 35 must be added to the opening bid; specifying that the
 36 opening bid on an individual certificate must include
 37 accrued delinquent taxes; specifying that the opening
 38 bid on a county-held or individual certificate must
 39 include interest and costs related to service of
 40 notice; authorizing the clerk to collect from the
 41 certificateholder all amounts included in the opening
 42 bid before the sale, subject to certain exceptions;
 43 providing for the accrual of interest and for
 44 calculation of the opening bid for individual
 45 certificates placed on the list of lands available for
 46 taxes; deleting a requirement that fees collected be
 47 refunded to the certificateholder if a tax deed sale
 48 is canceled; making technical changes; amending s.
 49 197.542, F.S.; specifying the bid process for tax deed
 50 sales at public auction; providing for the accrual of
 51 interest and calculation of the opening bid; requiring
 52 the clerk to notify the certificateholder of any
 53 amounts that must be paid; requiring the
 54 certificateholder to remit payment within a specified
 55 time; authorizing the clerk to issue a refund to the
 56 depositor if a property is redeemed before the clerk
 57 receives full payment for the issuance of a tax deed;
 58 providing for cancelation of a tax deed application

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59 within a specified timeframe; amending s. 197.582,
60 F.S.; providing a procedure for the disbursement of
61 proceeds from a tax deed sale if delinquent or current
62 taxes are due; amending s. 938.30, F.S.; providing
63 that the state is not required to pay fees to enforce
64 judgment for costs and fines; providing an effective
65 date.

66
67 Be It Enacted by the Legislature of the State of Florida:

68
69 Section 1. Section 28.13, Florida Statutes, is amended to
70 read:

71 28.13 ~~To keep~~ Papers and electronic filings.—The clerk of
72 the circuit court must maintain ~~shall keep~~ all papers and
73 electronic filings ~~filed~~ in the clerk's office with the utmost
74 care and security, storing them with related case arranged in
75 appropriate files and affixing a stamp, which may be electronic,
76 to each submission indicating ~~(endorsing upon each the date and~~
77 ~~time that when the submission same was filed. The clerk may),~~
78 and shall not permit any attorney or other person to remove
79 filed documents from the control or custody ~~take papers once~~
80 ~~filed out of the office~~ of the clerk without leave of the court,
81 except as otherwise ~~is hereinafter~~ provided by law.

82 Section 2. Present subsections (4) through (6) of section
83 28.222, Florida Statutes, are renumbered as subsections (5)
84 through (7), respectively, and a new subsection (4) is added to
85 that section to read:

86 28.222 Clerk to be county recorder.—

87 (4) The county recorder shall remove recorded court

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88 documents from the Official Records pursuant to a sealing or
89 expunction order.

90 Section 3. Section 28.24, Florida Statutes, is amended to
91 read:

92 28.24 Service charges ~~by clerk of the circuit court.~~—The
93 clerk of the circuit court shall charge for services rendered
94 manually or electronically by the clerk's office in recording
95 documents and instruments and in performing other specified the
96 duties. These charges may enumerated in amounts not to exceed
97 those specified in this section, except as provided in s.
98 28.345. Notwithstanding any other provision of this section, the
99 clerk of the circuit court shall provide without charge to the
100 state attorney, public defender, guardian ad litem, public
101 guardian, attorney ad litem, criminal conflict and civil
102 regional counsel, and private court-appointed counsel paid by
103 the state, and to the authorized staff acting on behalf of each,
104 access to and a copy of any public record, if the requesting
105 party is entitled by law to view the exempt or confidential
106 record, as maintained by and in the custody of the clerk of the
107 circuit court as provided in general law and the Florida Rules
108 of Judicial Administration. The clerk of the circuit court may
109 provide the requested public record in an electronic format in
110 lieu of a paper format when capable of being accessed by the
111 requesting entity.

Charges

112
113
114
115 (1) For examining, comparing, correcting, verifying, and
116 certifying transcripts of record in appellate proceedings,

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117 prepared by attorney for appellant or someone else other than
 118 clerk, per page.....5.00

119 (2) For preparing, numbering, and indexing an original
 120 record of appellate proceedings, per instrument.....3.50

121 (3) For certifying copies of any instrument in the public
 122 records.....2.00

123 (4) For verifying any instrument presented for
 124 certification prepared by someone other than clerk, per page.3.50

125 (5) (a) For making copies by photographic process of any
 126 instrument in the public records consisting of pages of not more
 127 than 14 inches by 8 1/2 inches, per page.....1.00

128 (b) For making copies by photographic process of any
 129 instrument in the public records of more than 14 inches by 8 1/2
 130 inches, per page.....5.00

131 (6) For making microfilm copies of any public records:

132 (a) 16 mm 100' microfilm roll.....42.00

133 (b) 35 mm 100' microfilm roll.....60.00

134 (c) Microfiche, per fiche.....3.50

135 (7) For copying any instrument in the public records by
 136 other than photographic process, per page.....6.00

137 (8) For writing any paper other than herein specifically
 138 mentioned, same as for copying, including signing and sealing7.00

139 (9) For indexing each entry not recorded.....1.00

140 (10) For receiving money into the registry of court:

141 (a)1. First \$500, percent.....3

142 2. Each subsequent \$100, percent.....1.5

143 (b) Eminent domain actions, per deposit.....170.00

144 (11) For examining, certifying, and recording plats and for
 145 recording condominium exhibits larger than 14 inches by 8 1/2

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146 inches:

147 (a) First page.....30.00

148 (b) Each additional page.....15.00

149 (12) For recording, indexing, and filing any instrument not
 150 more than 14 inches by 8 1/2 inches, including required notice
 151 to property appraiser where applicable:

152 (a) First page or fraction thereof.....5.00

153 (b) Each additional page or fraction thereof.....4.00

154 (c) For indexing instruments recorded in the official
 155 records which contain more than four names, per additional name1.00

156 (d) An additional service charge must ~~shall~~ be paid to the
 157 clerk of the circuit court to be deposited in the Public Records
 158 Modernization Trust Fund for each instrument listed in s.
 159 28.222, except judgments received from the courts and notices of
 160 lis pendens, recorded in the official records:

161 1. First page.....1.00

162 2. Each additional page.....0.50

163

164 Said fund must ~~shall~~ be held in trust by the clerk and used
 165 exclusively for equipment and maintenance of equipment,
 166 personnel training, and technical assistance in modernizing the
 167 public records system of the office. In a county where the duty
 168 of maintaining official records exists in an office other than
 169 the office of the clerk of the circuit court, the clerk of the
 170 circuit court is entitled to 25 percent of the moneys deposited
 171 into the trust fund for equipment, maintenance of equipment,
 172 training, and technical assistance in modernizing the system for
 173 storing records in the office of the clerk of the circuit court.
 174 The fund may not be used for the payment of travel expenses,

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175 membership dues, bank charges, staff-recruitment costs, salaries
 176 or benefits of employees, construction costs, general operating
 177 expenses, or other costs not directly related to obtaining and
 178 maintaining equipment for public records systems or for the
 179 purchase of furniture or office supplies and equipment not
 180 related to the storage of records. On or before December 1,
 181 1995, and on or before December 1 of each year immediately
 182 preceding each year during which the trust fund is scheduled for
 183 legislative review under s. 19(f)(2), Art. III of the State
 184 Constitution, each clerk of the circuit court shall file a
 185 report on the Public Records Modernization Trust Fund with the
 186 President of the Senate and the Speaker of the House of
 187 Representatives. The report must itemize each expenditure made
 188 from the trust fund since the last report was filed; each
 189 obligation payable from the trust fund on that date; and the
 190 percentage of funds expended for each of the following:
 191 equipment, maintenance of equipment, personnel training, and
 192 technical assistance. The report must indicate the nature of the
 193 system each clerk uses to store, maintain, and retrieve public
 194 records and the degree to which the system has been upgraded
 195 since the creation of the trust fund.

196 (e) An additional service charge of \$4 per page shall be
 197 paid to the clerk of the circuit court for each instrument
 198 listed in s. 28.222, except judgments received from the courts
 199 and notices of lis pendens, recorded in the official records.
 200 From the additional \$4 service charge collected:

201 1. If the counties maintain legal responsibility for the
 202 costs of the court-related technology needs as defined in s.
 203 29.008(1)(f)2. and (h), 10 cents shall be distributed to the

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204 Florida Association of Court Clerks and Comptrollers, Inc., for
 205 the cost of development, implementation, operation, and
 206 maintenance of the clerks' Comprehensive Case Information
 207 System; \$1.90 shall be retained by the clerk to be deposited in
 208 the Public Records Modernization Trust Fund and used exclusively
 209 for funding court-related technology needs of the clerk as
 210 defined in s. 29.008(1)(f)2. and (h); and \$2 shall be
 211 distributed to the board of county commissioners to be used
 212 exclusively to fund court-related technology, and court
 213 technology needs as defined in s. 29.008(1)(f)2. and (h) for the
 214 state trial courts, state attorney, public defender, and
 215 criminal conflict and civil regional counsel in that county. If
 216 the counties maintain legal responsibility for the costs of the
 217 court-related technology needs as defined in s. 29.008(1)(f)2.
 218 and (h), notwithstanding any other provision of law, the county
 219 is not required to provide additional funding beyond that
 220 provided herein for the court-related technology needs of the
 221 clerk as defined in s. 29.008(1)(f)2. and (h). All court records
 222 and official records are the property of the State of Florida,
 223 including any records generated as part of the Comprehensive
 224 Case Information System funded pursuant to this paragraph and
 225 the clerk of court is designated as the custodian of such
 226 records, except in a county where the duty of maintaining
 227 official records exists in a county office other than the clerk
 228 of court or comptroller, such county office is designated the
 229 custodian of all official records, and the clerk of court is
 230 designated the custodian of all court records. The clerk of
 231 court or any entity acting on behalf of the clerk of court,
 232 including an association, ~~may shall~~ not charge a fee to any

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233 agency as defined in s. 119.011, the Legislature, or the State
 234 Court System for copies of records generated by the
 235 Comprehensive Case Information System or held by the clerk of
 236 court or any entity acting on behalf of the clerk of court,
 237 including an association.

238 2. If the state becomes legally responsible for the costs
 239 of court-related technology needs as defined in s.
 240 29.008(1)(f)2. and (h), whether by operation of general law or
 241 by court order, \$4 shall be remitted to the Department of
 242 Revenue for deposit into the General Revenue Fund.

243 (13) Oath, administering, attesting, and sealing, not
 244 otherwise provided for herein.....3.50

245 (14) For validating certificates, any authorized bonds,
 246 each.....3.50

247 (15) For preparing affidavit of domicile.....5.00

248 (16) For exemplified certificates, including signing and
 249 sealing.....7.00

250 (17) For authenticated certificates, including signing and
 251 sealing.....7.00

252 (18) (a) For issuing and filing a subpoena for a witness,
 253 not otherwise provided for herein (includes writing, preparing,
 254 signing, and sealing).....7.00

255 (b) For signing and sealing only.....2.00

256 (19) For approving bond.....8.50

257 (20) For searching of records, for each year's search...2.00

258 (21) For processing an application for a tax deed sale
 259 (includes application, sale, issuance, and preparation of tax
 260 deed, and disbursement of proceeds of sale), other than excess
 261 proceeds.....60.00

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262 (22) For disbursement of excess proceeds of tax deed sale,
 263 first \$100 or fraction thereof.....10.00

264 (23) Upon receipt of an application for a marriage license,
 265 for preparing and administering of oath; issuing, sealing, and
 266 recording of the marriage license; and providing a certified
 267 copy.....30.00

268 (24) For solemnizing matrimony.....30.00

269 (25) For sealing any court file or expungement of any
 270 record.....42.00

271 (26) (a) For receiving and disbursing all restitution
 272 payments, per payment.....3.50

273 (b) For receiving and disbursing all partial payments,
 274 other than restitution payments, for which an administrative
 275 processing service charge is not imposed pursuant to s. 28.246,
 276 per month.....5.00

277 (c) For setting up a payment plan, a one-time
 278 administrative processing charge in lieu of a per month charge
 279 under paragraph (b).....25.00

280 (27) Postal charges incurred by the clerk of the circuit
 281 court in any mailing by certified or registered mail must ~~shall~~
 282 be paid by the party at whose instance the mailing is made.

283 (28) For furnishing an electronic copy of information
 284 contained in a computer database: a fee as provided for in
 285 chapter 119.

286 Section 4. Section 28.244, Florida Statutes, is amended to
 287 read:

288 28.244 Refunds.—A clerk of the circuit court or a filing
 289 officer of another office where records are filed who receives
 290 payment for services provided and thereafter determines that an

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 291 overpayment has occurred shall refund to the person who made the
 292 payment the amount of any overpayment that exceeds \$10 ~~\$5~~. If
 293 the amount of the overpayment is \$10 ~~\$5~~ or less, the clerk of
 294 the circuit court or a filing officer of another office where
 295 records are filed is not required to refund the amount of the
 296 overpayment unless the person who made the overpayment makes a
 297 written request.

298 Section 5. Section 28.345, Florida Statutes, is amended to
 299 read:

300 28.345 State access to records; exemption from court-
 301 related fees and charges.-

302 (1) Notwithstanding any other provision of law, the clerk
 303 of the circuit court shall, upon request, provide access to
 304 public records without charge to the state attorney, public
 305 defender, guardian ad litem, public guardian, attorney ad litem,
 306 criminal conflict and civil regional counsel, and private court-
 307 appointed counsel paid by the state, and to authorized staff
 308 acting on their behalf. The clerk of court shall also provide a
 309 copy of a public record by facsimile, replica, photograph, or
 310 other reproduction. If the public record is exempt or
 311 confidential, the requesting party may view or copy the exempt
 312 or confidential record only if authority is provided in general
 313 law or the Florida Rules of Judicial Administration. The clerk
 314 of court may provide the requested public record in an
 315 electronic format in lieu of a paper format when the requesting
 316 entity is capable of accessing it electronically.

317 ~~(2) Notwithstanding any other provision of this chapter or~~
 318 ~~law to the contrary, judges and those court staff acting on~~
 319 ~~behalf of judges, state attorneys, guardians ad litem, public~~

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 320 guardians, attorneys ad litem, court-appointed private counsel,
 321 criminal conflict and civil regional counsel, ~~and~~ public
 322 defenders, and state agencies, while acting in their official
 323 capacity, ~~and state agencies,~~ are exempt from all court-related
 324 fees and charges assessed by the clerks of the circuit courts.

325 (3) The exemptions provided in this section apply only to
 326 state agencies and state entities and the party represented by
 327 the agency or entity. The clerk of court shall collect from all
 328 other parties the filing fees and service charges as required in
 329 this chapter.

330 Section 6. Subsection (1) of section 57.081, Florida
 331 Statutes, is amended to read:

332 57.081 Costs; right to proceed where prepayment of costs
 333 and payment of filing fees waived.-

334 (1) Any indigent person, except a prisoner as defined in s.
 335 57.085, who is a party or intervenor in any judicial or
 336 administrative agency proceeding or who initiates such
 337 proceeding shall receive the services of the courts, sheriffs,
 338 and clerks, with respect to such proceedings, despite his or her
 339 present inability to pay for these services. Such services are
 340 limited to filing fees; service of process; certified copies of
 341 orders or final judgments; a single photocopy of any court
 342 pleading, record, or instrument filed with the clerk; examining
 343 fees; mediation services and fees; private court-appointed
 344 counsel fees; subpoena fees and services; service charges for
 345 collecting and disbursing funds; and any other cost or service
 346 arising out of pending litigation. In any appeal from an
 347 administrative agency decision, for which the clerk is
 348 responsible for preparing the transcript, the clerk shall record

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349 the cost of preparing the transcripts and the cost for copies of
 350 any exhibits in the record. Prepayment of costs to any court,
 351 clerk, or sheriff is not required and payment of filing fees is
 352 not required in any action if the party has obtained in each
 353 proceeding a certification of indigence in accordance with s.
 354 27.52 or s. 57.082 ~~A party who has obtained a certification of~~
 355 ~~indigence pursuant to s. 27.52 or s. 57.082 with respect to a~~
 356 ~~proceeding is not required to prepay costs to a court, clerk, or~~
 357 ~~sheriff and is not required to pay filing fees or charges for~~
 358 ~~issuance of a summons.~~

359 Section 7. Subsection (6) of section 57.082, Florida
 360 Statutes, is amended to read:

361 57.082 Determination of civil indigent status.—

362 (6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the
 363 clerk or the court determines is indigent for civil proceedings
 364 under this section shall be enrolled in a payment plan under s.
 365 28.246 and shall be charged a one-time administrative processing
 366 charge under s. 28.24(26)(c). A monthly payment amount,
 367 calculated based upon all fees and all anticipated costs, is
 368 presumed to correspond to the person's ability to pay if it does
 369 not exceed 2 percent of the person's annual net income, as
 370 defined in subsection (1), divided by 12. The person may seek
 371 review of the clerk's decisions regarding a payment plan
 372 established under s. 28.246 in the court having jurisdiction
 373 over the matter. A case may not be impeded in any way, delayed
 374 in filing, or delayed in its progress, including the final
 375 hearing and order, due to nonpayment of any fees or costs by an
 376 indigent person. ~~Filing fees waived from payment under s. 57.081~~
 377 ~~may not be included in the calculation related to a payment plan~~

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378 ~~established under this section.~~

379 Section 8. Paragraph (a) of subsection (2) of section
 380 101.151, Florida Statutes, is amended to read:

381 101.151 Specifications for ballots.—

382 (2)(a) The ballot ~~must include~~ shall have the following
 383 office titles ~~above~~ under which shall appear the names of the
 384 candidates for the respective offices in the following order:

385 1. The office titles of President and Vice President above
 386 ~~and thereunder~~ the names of the candidates for President and
 387 Vice President of the United States nominated by the political
 388 party that received the highest vote for Governor in the last
 389 general election of the Governor in this state, followed by-
 390 ~~Then shall appear~~ the names of other candidates for President
 391 and Vice President of the United States who have been properly
 392 nominated.

393 2. The office titles of United States Senator and
 394 Representative in Congress.

395 3. The office titles of Governor and Lieutenant Governor;
 396 Attorney General; Chief Financial Officer; Commissioner of
 397 Agriculture; State Attorney, with the applicable judicial
 398 circuit; and Public Defender, with the applicable judicial
 399 circuit.

400 4. The office titles of State Senator and State
 401 Representative, with the applicable district for the office
 402 printed beneath.

403 5. The office titles of Clerk of the Circuit Court, or,
 404 when the Clerk of the Circuit Court also serves as the County
 405 Comptroller, Clerk of the Circuit Court and Comptroller,
 406 ~~(whichever is applicable and when authorized by law);~~ Clerk of

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407 the County Court, ~~when authorized by law;~~ Sheriff; Property
 408 Appraiser; Tax Collector; District Superintendent of Schools;
 409 and Supervisor of Elections.

410 6. The office titles of Board of County Commissioners, with
 411 the applicable district printed beneath each office, and such
 412 other county and district offices as are involved in the
 413 election, in the order fixed by the Department of State,
 414 followed, in the year of their election, by "Party Offices," and
 415 thereunder the offices of state and county party executive
 416 committee members.

417 Section 9. Paragraph (f) is added to subsection (2) of
 418 section 119.0714, Florida Statutes, and section (3) is amended,
 419 to read:

420 119.0714 Court files; court records; official records.—

421 (2) COURT RECORDS.—

422 (f) A request for maintenance of a public records exemption
 423 in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must
 424 specify the document type, name, identification number, and page
 425 number of the court record that contains the exempt information.

426 (3) OFFICIAL RECORDS.—

427 ~~(a) A~~ Any person who prepares or files a record for
 428 recording in the official records as provided in chapter 28 may
 429 not include in that record a social security number or a bank
 430 account, debit, charge, or credit card number unless otherwise
 431 expressly required by law.

432 (a)(b)1- If a social security number or a bank account,
 433 debit, charge, or credit card number is included in an official
 434 record, such number may be made available as part of the
 435 official records available for public inspection and copying

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436 unless redaction is requested by the holder of such number or by
 437 the holder's attorney or legal guardian.

438 1.2- If such record is in electronic format, on January 1,
 439 2011, and thereafter, the county recorder must use his or her
 440 best effort, as provided in paragraph (d)(4), to keep social
 441 security numbers confidential and exempt as provided for in s.
 442 119.071(5)(a), and to keep complete bank account, debit, charge,
 443 and credit card numbers exempt as provided for in s.
 444 119.071(5)(b), without any person having to request redaction.

445 2.3- Section 119.071(5)(a)7. and 8. does not apply to the
 446 county recorder with respect to official records.

447 (b)(e) The holder of a social security number or a bank
 448 account, debit, charge, or credit card number, or the holder's
 449 attorney or legal guardian, may request that a county recorder
 450 redact from an image or copy of an official record placed on a
 451 county recorder's publicly available Internet website or on a
 452 publicly available Internet website used by a county recorder to
 453 display public records, or otherwise made electronically
 454 available to the public, his or her social security number or
 455 bank account, debit, charge, or credit card number contained in
 456 that official record.

457 1.(d) A request for redaction must be a signed, legibly
 458 written request and must be delivered by mail, facsimile,
 459 electronic transmission, or in person to the county recorder.
 460 The request must specify the identification page number of the
 461 record that contains the number to be redacted.

462 2.(e) The county recorder does not have a duty to inquire
 463 beyond the written request to verify the identity of a person
 464 requesting redaction.

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465 ~~3.(f)~~ A fee may not be charged for redacting a social
466 security number or a bank account, debit, charge, or credit card
467 number.

468 ~~(c)(g)~~ A county recorder shall immediately and
469 conspicuously post signs throughout his or her offices for
470 public viewing, and shall immediately and conspicuously post on
471 any Internet website or remote electronic site made available by
472 the county recorder and used for the ordering or display of
473 official records or images or copies of official records, a
474 notice stating, in substantially similar form, the following:

475 1. On or after October 1, 2002, any person preparing or
476 filing a record for recordation in the official records may not
477 include a social security number or a bank account, debit,
478 charge, or credit card number in such document unless required
479 by law.

480 2. Any person has a right to request a county recorder to
481 remove from an image or copy of an official record placed on a
482 county recorder's publicly available Internet website or on a
483 publicly available Internet website used by a county recorder to
484 display public records, or otherwise made electronically
485 available to the general public, any social security number
486 contained in an official record. Such request must be made in
487 writing and delivered by mail, facsimile, or electronic
488 transmission, or delivered in person, to the county recorder.
489 The request must specify the identification page number that
490 contains the social security number to be redacted. A fee may
491 not be charged for the redaction of a social security number
492 pursuant to such a request.

493 ~~(d)(h)~~ If the county recorder accepts or stores official

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494 records in an electronic format, the county recorder must use
495 his or her best efforts to redact all social security numbers
496 and bank account, debit, charge, or credit card numbers from
497 electronic copies of the official record. The use of an
498 automated program for redaction ~~is shall be~~ deemed to be the
499 best effort in performing the redaction and ~~is shall be~~ deemed
500 in compliance with the requirements of this subsection.

501 ~~(e)(i)~~ The county recorder is not liable for the
502 inadvertent release of social security numbers, or bank account,
503 debit, charge, or credit card numbers, filed with the county
504 recorder.

505 (f) A request for maintenance of a public records exemption
506 in s. 119.071(4)(d)2. made pursuant to s. 119.071(4)(d)3. must
507 specify the document type, name, identification number, and page
508 number of the official record that contains the exempt
509 information.

510 Section 10. Paragraph (a) of subsection (2) of section
511 194.032, Florida Statutes, is amended to read:

512 194.032 Hearing purposes; timetable.—

513 (2) (a) The clerk of the governing body of the county shall
514 prepare a schedule of appearances before the board based on
515 petitions timely filed with him or her. The clerk shall notify
516 each petitioner of the scheduled time of his or her appearance
517 at least 25 calendar days before the day of the scheduled
518 appearance. The notice ~~must shall~~ indicate whether the petition
519 has been scheduled to be heard at a particular time or during a
520 block of time. If the petition has been scheduled to be heard
521 within a block of time, the beginning and ending of that block
522 of time ~~must shall~~ be indicated on the notice; however, as

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523 provided in paragraph (b), a petitioner may not be required to
 524 wait for more than a reasonable time, not to exceed 2 hours,
 525 after the beginning of the block of time. If the petitioner
 526 checked the appropriate box on the petition form to request a
 527 copy of the property record card containing relevant information
 528 used in computing the current assessment, the property appraiser
 529 must provide the copy to the petitioner upon receipt of the
 530 petition from the clerk regardless of whether the petitioner
 531 initiates evidence exchange ~~clerk shall provide the copy of the~~
 532 ~~card along with the notice.~~ Upon receipt of the notice, the
 533 petitioner may reschedule the hearing a single time by
 534 submitting to the clerk a written request to reschedule, at
 535 least 5 calendar days before the day of the originally scheduled
 536 hearing.

537 Section 11. Subsections (5) through (10) of section
 538 197.502, Florida Statutes, are amended, and a new subsection (7)
 539 is added to that section, to read:

540 197.502 Application for obtaining tax deed by holder of tax
 541 sale certificate; fees.—

542 (5) (a) The tax collector may contract with a title company
 543 or an abstract company to provide the minimum information
 544 required in subsection (4), consistent with rules adopted by the
 545 department. If additional information is required, the tax
 546 collector must make a written request to the title or abstract
 547 company stating the additional requirements. The tax collector
 548 may select any title or abstract company, regardless of its
 549 location, as long as the fee is reasonable, the minimum
 550 information is submitted, and the title or abstract company is
 551 authorized to do business in this state. The tax collector may

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552 advertise and accept bids for the title or abstract company if
 553 he or she considers it appropriate to do so.

554 1. The ownership and encumbrance report must include the
 555 letterhead of the person, firm, or company that makes the
 556 search, and the signature of the individual who makes the search
 557 or of an officer of the firm. The tax collector is not liable
 558 for payment to the firm unless these requirements are met. The
 559 report may be submitted to the tax collector in an electronic
 560 format.

561 2. The tax collector may not accept or pay for any title
 562 search or abstract if financial responsibility is not assumed
 563 for the search. However, reasonable restrictions as to the
 564 liability or responsibility of the title or abstract company are
 565 acceptable. Notwithstanding s. 627.7843(3), the tax collector
 566 may contract for higher maximum liability limits.

567 3. In order to establish uniform prices for ownership and
 568 encumbrance reports within the county, the tax collector must
 569 ensure that the contract for ownership and encumbrance reports
 570 include all requests for title searches or abstracts for a given
 571 period of time.

572 (b) ~~The fee~~ ~~Any fee paid~~ for an initial a title search or
 573 abstract must be collected at the time of application under
 574 subsection (1), ~~and the amount of the fee~~ must be added to the
 575 opening bid. The certificateholder shall pay for additional
 576 requested title searches that were not paid for at the time of
 577 application, and this amount shall be added to the opening bid.

578 (c) The clerk shall advertise and administer the sale and
 579 receive such fees for the issuance of the deed and sale of the
 580 property as provided in s. 28.24.

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581 (6) The opening bid:

582 (a) On county-held certificates on nonhomestead property is
583 ~~shall be~~ the sum of the value of all outstanding certificates
584 against the property, plus omitted years' taxes, delinquent
585 taxes, interest, and all costs and fees paid by the county.

586 (b) On an individual certificate must include, in addition
587 to the amount of money paid to the tax collector by the
588 certificateholder at the time of application, the amount
589 required to redeem the applicant's tax certificate and all other
590 costs and fees paid by the applicant, plus all tax certificates
591 that were sold or delinquent taxes that accrued subsequent to
592 the filing of the tax deed application and omitted taxes, if
593 any.

594 (c) On a county-held or individual certificate must include
595 interest at the rate of 1.5 percent per month for the period
596 running from the month after the date of application for the
597 deed through the month of sale, and costs incurred for the
598 service of notice provided for in s. 197.522(2).

599 (d)(e) On property assessed on the latest tax roll open for
600 collection under s. 197.322 as homestead property must shall
601 include, in addition to the amount of money required for an
602 opening bid on nonhomestead property, an amount equal to one-
603 half of the latest assessed value of the homestead.

604 (7) In advance of the sale, the clerk may collect from the
605 certificateholder all amounts included in the opening bid,
606 including all costs and fees related to the sale and any tax
607 certificates or delinquent taxes accrued subsequent to the tax
608 deed application, but excluding interest and funds to cover the
609 one-half value of the homestead. Documentary stamp taxes and

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610 recording fees collected before the sale do not accrue interest
611 as provided in paragraph (6) (c).

612 (8)(7) On county-held certificates for which there are no
613 bidders at the public sale, the clerk shall enter the land on a
614 list entitled "lands available for taxes" and shall immediately
615 notify the county commission and any all other persons holding
616 certificates against the property that the property is
617 available. During the first 90 days after the property is placed
618 on the list, the county may purchase the land for the opening
619 bid or may waive its rights to purchase the property.
620 Thereafter, any person, the county, or any other governmental
621 unit may purchase the property from the clerk, without further
622 notice or advertising, for the opening bid, except that if the
623 county or other governmental unit is the purchaser for its own
624 use, the board of county commissioners may cancel omitted years'
625 taxes, as provided under s. 197.447. If the county does not
626 elect to purchase the property, the county must notify each
627 legal titleholder of property contiguous to the property
628 available for taxes, as provided in paragraph (4) (h), before
629 expiration of the 90-day period. Interest on the opening bid on
630 county-held certificates continues to accrue through the month
631 of sale that the property is on the list of lands available for
632 taxes, as prescribed in paragraph (6) (c) by s. 197.542. For
633 individual certificates placed on the list of lands available
634 for taxes in accordance with s. 197.542, interest accrues at the
635 interest rate bid for the certificate upon which the tax deed
636 application was made for the period running from the month after
637 the property is placed on the list of lands available for taxes
638 through the month of sale that it is purchased off the list of

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 639 lands available for taxes. When calculating the opening bid for
 640 purchase of property that is on the list of lands available for
 641 taxes, the bid amount must reflect the homestead status of the
 642 property on the latest tax roll open for collection under s.
 643 197.322. If a property is purchased by the titleholder when the
 644 property is on the list of lands available for taxes, the
 645 opening bid may not include the amount for one-half value of the
 646 homestead specified in paragraph (6) (d), regardless of the
 647 homestead status of the property.

648 (9)(8) Taxes may not be extended against parcels listed as
 649 lands available for taxes, but in each year the taxes that would
 650 have been due ~~must shall~~ be treated as omitted years and added
 651 to the required opening minimum bid. Unless purchased from the
 652 list of lands available for taxes, the land escheats to the
 653 county in which it is located, free and clear, 3 Three years
 654 after the day the land was offered for public sale, ~~the land~~
 655 ~~shall escheat to the county in which it is located, free and~~
 656 ~~clear.~~ All tax certificates, accrued taxes, and liens of any
 657 nature against the property shall be deemed canceled as a matter
 658 of law and of no further legal force and effect, and the clerk
 659 shall execute an escheatment tax deed vesting title in the board
 660 of county commissioners of the county in which the land is
 661 located.

662 (a) When a property escheats to the county under this
 663 subsection, the county is not subject to any liability imposed
 664 by chapter 376 or chapter 403 for preexisting soil or
 665 groundwater contamination due solely to its ownership. However,
 666 this subsection does not affect the rights or liabilities of any
 667 past or future owners of the escheated property and does not

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 668 affect the liability of any governmental entity for the results
 669 of its actions that create or exacerbate a pollution source.

670 (b) The county and the Department of Environmental
 671 Protection may enter into a written agreement for the
 672 performance, funding, and reimbursement of the investigative and
 673 remedial acts necessary for a property that escheats to the
 674 county.

675 (10)(9) Consolidated applications on more than one tax
 676 certificate are allowed, but a separate statement shall be
 677 issued pursuant to subsection (4), and a separate tax deed shall
 678 be issued pursuant to s. 197.552, for each parcel of property
 679 shown on the tax certificate.

680 ~~(10) Any fees collected pursuant to this section shall be~~
 681 ~~refunded to the certificateholder in the event that the tax deed~~
 682 ~~sale is canceled for any reason.~~

683 Section 12. Section 197.542, Florida Statutes, is amended
 684 to read:

685 197.542 Sale at public auction.—

686 (1) Real property advertised for sale to the highest bidder
 687 as a result of an application filed under s. 197.502 shall be
 688 sold at public auction by the clerk of the circuit court, or his
 689 or her deputy, of the county where the property is located on
 690 the date, at the time, and at the location as set forth in the
 691 published notice, which must be during the regular hours the
 692 clerk's office is open. The opening bid described in s.
 693 197.502(6) must amount required to redeem the tax certificate,
 694 ~~plus the amounts paid by the holder to the clerk in charges for~~
 695 ~~costs of sale, redemption of other tax certificates on the same~~
 696 ~~property, and all other costs to the applicant for tax deed,~~

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697 ~~plus interest at the rate of 1.5 percent per month for the~~
 698 ~~period running from the month after the date of application for~~
 699 ~~the deed through the month of sale and costs incurred for the~~
 700 ~~service of notice provided for in s. 197.522(2), shall be the~~
 701 ~~bid of the certificateholder for the property. If tax~~
 702 ~~certificates exist or if delinquent taxes accrued subsequent to~~
 703 ~~the filing of the tax deed application, the amount required to~~
 704 ~~redeem such tax certificates or pay such delinquent taxes must~~
 705 ~~be included in the minimum bid. However, if the land to be sold~~
 706 ~~is assessed on the latest tax roll as homestead property, the~~
 707 ~~bid of the certificateholder must be increased to include an~~
 708 ~~amount equal to one-half of the assessed value of the homestead~~
 709 ~~property as required by s. 197.502. If there are no higher bids,~~
 710 ~~the property shall be struck off and sold to the~~
 711 ~~certificateholder, who shall pay to the clerk the documentary~~
 712 ~~stamp tax, recording fees due, and any unpaid amounts included~~
 713 ~~in the opening minimum bid, excluding interest, the documentary~~
 714 ~~stamp tax, and recording fees due. The clerk shall notify the~~
 715 ~~certificateholder of any amounts that must be paid so that the~~
 716 ~~clerk may strike off the property and sell it to the~~
 717 ~~certificateholder. The certificateholder shall remit payment of~~
 718 ~~such amount within 7 business days of the date on the~~
 719 ~~notification.~~ Upon payment, a tax deed shall be issued and
 720 recorded by the clerk.

721 (2) The certificateholder has the right to bid as others
 722 present may bid, and the property shall be struck off and sold
 723 to the highest bidder. The high bidder shall post with the clerk
 724 a nonrefundable deposit of 5 percent of the bid or \$200,
 725 whichever is greater, at the time of the sale, to be applied to

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726 the sale price at the time of full payment. Notice of the
 727 deposit requirement must be posted at the auction site, and the
 728 clerk may require bidders to show their willingness and ability
 729 to post the deposit. If full payment of the final bid and of
 730 documentary stamp tax and recording fees is not made by the high
 731 bidder within 24 hours, excluding weekends and legal holidays,
 732 the clerk shall cancel all bids, readvertise the sale as
 733 provided in this section, and pay all costs of the sale from the
 734 deposit. Any remaining funds must be applied toward the opening
 735 bid. If the property is redeemed before the clerk receives full
 736 payment for the issuance of a tax deed, the high bidder must
 737 submit to the clerk a written request for a refund of the
 738 deposit. Upon receipt of the refund request, the clerk shall
 739 refund the cash deposit. The clerk may refuse to recognize the
 740 bid of any person who has previously bid and refused, for any
 741 reason, to honor such bid.

742 (3) A certificateholder may request in writing that the tax
 743 collector cancel his or her tax deed application up to 2
 744 business days before the scheduled sale date and, upon receipt,
 745 the tax collector shall cancel the application and consider it
 746 abandoned. The clerk shall cancel the tax deed sale upon
 747 notification from the tax collector.

748 ~~(4)(3)~~ If the sale is canceled for any reason, or the high
 749 bidder ~~buyer~~ fails to make full payment within the time
 750 required, the clerk shall immediately readvertise the sale to be
 751 held within 30 days after the date the sale was canceled. Only
 752 one advertisement is necessary. If it is not possible to
 753 reschedule the sale within 30 days, the clerk must follow the
 754 standard notice provisions specified in s. 197.522. The

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755 certificateholder shall promptly pay to the clerk, upon request,
 756 additional costs for such rescheduled sale, including any fees
 757 for additional title searches. If fees for additional title
 758 searches are required, the clerk must remit such fees to the tax
 759 collector upon receipt.

760 (a) The amount of the opening bid shall be increased by the
 761 cost of advertising, additional clerk's fees as provided for in
 762 s. 28.24(21), and interest as provided for in s. 197.502(6) (c)
 763 subsection (1). This process must be repeated until the property
 764 is sold and the clerk receives full payment from the high bidder
 765 or the clerk does not receive any bids other than the bid of the
 766 certificateholder. The clerk must receive full payment before
 767 the issuance of the tax deed.

768 (b) If there are no higher bids than the opening bid and
 769 the certificateholder fails to pay any additional amounts
 770 required within 7 business days of notification of the amount
 771 due, the sale must be canceled and the property must be
 772 readvertised for sale within 30 days as provided in this
 773 section. The certificateholder is responsible for payment of any
 774 additional costs relating to the resale, as determined by the
 775 clerk.

776 (c) If there are no bidders at the subsequent sale and the
 777 certificateholder refuses to pay the one-half value of the
 778 homestead, the clerk may not advertise the sale again and must
 779 place the property on the list of lands available for taxes.

780 (d) If there are no bidders after the subsequent sale and
 781 the certificateholder refuses to pay any amounts due other than
 782 the one-half value of the homestead, the clerk may not advertise
 783 the sale again, must consider the tax deed application

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784 abandoned, and must notify the tax collector to cancel the
 785 application.

786 (e) If the certificateholder refuses to pay to the tax
 787 collector or clerk any fees or costs required to bring the
 788 application to sale or resale, the tax collector must cancel the
 789 application and consider it abandoned.

790 (5) (a) ~~(4) (a)~~ A clerk may conduct electronic tax deed sales
 791 in lieu of public outcry. The clerk must comply with the
 792 procedures provided in this chapter, except that electronic
 793 proxy bidding shall be allowed and the clerk may require bidders
 794 to advance sufficient funds to pay the deposit required by
 795 subsection (2). The clerk shall provide access to the electronic
 796 sale by computer terminals open to the public at a designated
 797 location. A clerk who conducts such electronic sales may receive
 798 electronic deposits and payments related to the sale. Upon
 799 acceptance of the winning bid, the portion of an advance deposit
 800 from a winning bidder required by subsection (2) is shall, upon
 801 acceptance of the winning bid, be subject to the fee specified
 802 in ~~under~~ s. 28.24(10).

803 (b) This subsection does not restrict or limit the
 804 authority of a charter county to conduct electronic tax deed
 805 sales. In a charter county where the clerk of the circuit court
 806 does not conduct all electronic sales, the charter county shall
 807 be permitted to receive electronic deposits and payments related
 808 to sales it conducts, as well as to subject the winning bidder
 809 to a fee, consistent with the schedule in s. 28.24(10).

810 (c) The costs of electronic tax deed sales shall be added
 811 to the charges for the costs of sale ~~under subsection (1)~~ and
 812 paid by the certificateholder when filing an application for a

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813 tax deed.

814 Section 13. Subsection (2) of section 197.582, Florida
815 Statutes, is amended to read:

816 197.582 Disbursement of proceeds of sale.—

817 (2) If the opening bid includes an amount for redemption of
818 tax certificates or payment of delinquent taxes or omitted taxes
819 accrued subsequent to the filing of the tax deed application,
820 that amount must be paid in full to the tax collector before the
821 distribution of any excess. If current taxes are due on the date
822 of sale, the high bidder takes title subject to such current
823 taxes. Excess funds may not be distributed to the tax collector
824 for the payment of current taxes due at the time of the tax deed
825 sale. If the property is purchased for an amount in excess of
826 the opening statutory bid of the certificateholder, the excess
827 must be paid over and disbursed by the clerk. If the property
828 purchased is homestead property and the opening statutory bid
829 includes an amount equal to at least one-half of the assessed
830 value of the homestead, that amount must be treated as excess
831 and distributed in the same manner. The clerk shall distribute
832 the excess to the governmental units for the payment of any lien
833 of record held by a governmental unit against the property,
834 ~~including any tax certificates not incorporated in the tax deed~~
835 ~~application and omitted taxes, if any.~~ If the excess is not
836 sufficient to pay all of such liens in full, the excess shall be
837 paid to each governmental unit pro rata. If, after all liens of
838 governmental units are paid in full, there remains a balance of
839 undistributed funds, the balance shall be retained by the clerk
840 for the benefit of persons described in s. 197.522(1)(a), except
841 those persons described in s. 197.502(4)(h), as their interests

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

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842 may appear. The clerk shall mail notices to such persons
843 notifying them of the funds held for their benefit. Any service
844 charges, at the rate prescribed in s. 28.24(10), and costs of
845 mailing notices shall be paid out of the excess balance held by
846 the clerk. Excess proceeds shall be held and disbursed in the
847 same manner as unclaimed redemption moneys in s. 197.473. If
848 excess proceeds are not sufficient to cover the service charges
849 and mailing costs, the clerk shall receive the total amount of
850 excess proceeds as a service charge.

851 Section 14. Subsections (2) and (6) of section 938.30,
852 Florida Statutes, are amended to read:

853 938.30 Financial obligations in criminal cases;
854 supplementary proceedings.—

855 (2) The court may require a person liable for payment of an
856 obligation to appear and be examined under oath concerning the
857 person's financial ability to pay the obligation. The judge may
858 convert the statutory financial obligation into a court-ordered
859 obligation to perform community service, subject to the
860 provisions of s. 318.18(8), after examining a person under oath
861 and determining the ~~a~~ person's inability to pay. Any person who
862 fails failing to attend a hearing may be arrested on warrant or
863 ~~capias which may be~~ issued by the clerk upon order of the court.

864 (6) If judgment has not been previously entered on any
865 court-imposed financial obligation, the court may enter judgment
866 thereon and issue any writ necessary to enforce the judgment in
867 the manner allowed in civil cases. Any judgment issued under
868 this section constitutes a civil lien against the judgment
869 debtor's presently owned or after-acquired property, when
870 recorded pursuant to s. 55.10. Supplementary proceedings

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

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871 undertaken by any governmental entity to satisfy a judgment
872 imposed pursuant to this section may proceed without bond and
873 without the payment of statutory fees associated with judgment
874 enforcement.

875 Section 15. This act shall take effect July 1, 2013.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment

Delete lines 308 - 329

and insert:

acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

(2) Notwithstanding any other provision of this chapter or law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, criminal conflict and civil regional counsel, ~~and~~ public



14 defenders, and state agencies, while acting in their official
 15 capacity, ~~and state agencies,~~ are exempt from all court-related
 16 fees and charges assessed by the clerks of the circuit courts.
 17 (3) The exemptions from fees or charges provided in this
 18 section apply only to state agencies and state entities and the
 19 party represented by the agency or entity.



655398

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 537 - 850.

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

And the title is amended as follows:

Delete lines 32 - 62

and insert:

initiates evidence exchange; amending s. 938.30, F.S.;

providing

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 166

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Richter

SUBJECT: Annuities

DATE: March 7, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	Fav/CS
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/CS/SB 166 substantially revises Florida consumer protection laws relating to sales of annuities by incorporating the 2010 National Association of Insurance Commissioners (NAIC) model regulation on annuity protections.¹ The bill expands the scope of the consumer protection laws to generally include all consumers purchasing annuities. Current law only applies the protections to consumers aged 65 and older. The bill also retains current law limiting the surrender charges and deferred sales charges that may be imposed upon senior consumers.

The primary consumer protections contained in the bill:

Suitability of Annuities – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer’s

¹ The National Association of Insurance Commissioners established the model act to better protect consumers from inappropriate and abusive marketing practices. The model act of 2010 represents a revision of the original 2003 act, initially revised in 2006. The NAIC website is available at: <http://naic.org/>. A press release on the model act of 2010 is available at: http://www.naic.org/Releases/2010_docs/annuity_marketing_protections.htm. (last visited March 1, 2013).

suitability information. The bill imposes additional duties on insurers and insurance agents when a transaction involves the exchange or replacement of an annuity.

Documentation of Sales Transaction – The bill requires agents and agent representatives to record recommendations made to a consumer.

Prohibitions on Agents – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer's request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

Unconditional Refund Period – The bill expands to 21 from 14 days the unconditional refund period for all purchasers of fixed and variable annuities.

Limit on Surrender Charges – The bill retains the prohibition against surrender charges or deferred sales charges in annuity contracts issued to a senior consumer exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.

Penalties – Authorizes the imposition of corrective action, appropriate penalties, and sanctions on insurers, agents, managing general agencies, or insurance agencies that violate the requirements of s. 627.4554, F.S. An insurance agent must pay restitution to a consumer whose money the agent misappropriates, converts, or unlawfully withholds.

This bill substantially amends sections 627.4554 and 626.99, Florida Statutes.

II. Present Situation:

Annuities

An annuity is a contract between a consumer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer. In return, the insurer agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities are available in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for a lifetime. For a deferred annuity, premiums are usually either paid in a lump sum or through a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments.

Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred. Both deferred and immediate annuities are long-term contracts that typically restrict an investor's ability to access money placed in the annuity. Restricted access may make these annuities unsuitable for some consumers.

Fixed vs. Variable Annuities

The fixed annuity and the variable annuity are the two basic annuity types. A fixed annuity guarantees fixed payments to the annuitant. During the accumulation phase, the insurance company agrees to pay no less than a specified rate of interest. The insurance company also agrees that during the annuitization phase periodic payments will be a specific amount. These periodic payments may last for a definite period, such as 20 years, or a lifetime. Licensed life insurance and annuity agents sell fixed annuities, considered insurance products.

A variable annuity provides a rate of return that is not guaranteed and is based on the success of the investment option that underlies the annuity. In a variable annuity, premium dollars are placed into a variety of investments known as subaccounts. The performance of the investments (usually stocks, bonds, or money market instruments) in the subaccounts determines the performance of the annuity. Variable annuities offer a wide range of subaccount investment options with varying degrees of risk. Variable annuities are considered investment products and are regulated by both securities regulators and state insurance departments. Agents selling this type of annuity must hold a variable annuity license from the state insurance regulator, a securities license and an active securities registration with a broker/dealer. Variable annuity sales are subject to the suitability standards contained in Financial Industry Regulatory Authority (FINRA) Rule 2330.²

Equity Indexed Annuities

Equity indexed annuities are defined and regulated as fixed annuity products, but operate as more of a hybrid of a fixed and variable annuity. Equity indexed annuities provide a “minimum guaranteed” interest rate in combination with an index-linked component. In contrast, a traditional fixed annuity provides a specific guaranteed rate of interest.

The investment industry often aggressively markets equity indexed annuities to seniors in Florida. The products are touted as a vehicle for investors to realize gains similar to those in the stock market without the corresponding risk. However, such annuities rarely provide returns that are the equivalent of a stock market index. Additionally, even with a guaranteed minimum interest rate, investors may still lose money on an equity indexed annuity if the rate is less than the premium or initial payment. Investors who need to cancel an annuity to access funds prior to the maturity of the contract may lose principal through surrender charges.

Equity indexed annuities are complex and can contain many detrimental features such as hidden penalties, fees, and large multi-year surrender charges. The federal Securities and Exchange Commission does not require these annuities to be registered as they do variable annuities, as equity indexed annuities are not securities. As a result, the law does not require a prospectus that

² Financial Industry Regulatory Authority, Regulatory Notice 10-05: Deferred Variable Annuities (Jan. 2010) available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120756.pdf>. The Financial Industry Regulatory Authority (FINRA) is an independent regulator for all securities firms operating in the United States. FINRA's mission is to protect U.S. investors by ensuring fair and honest operation by the securities industry. FINRA oversees about 4,275 brokerage firms, about 161,495 branch offices and approximately 630,010 registered securities representatives. Read more at: <http://www.finra.org/AboutFINRA/> (last visited March 1, 2013).

discloses possible risks to accompany equity indexed annuities. Additionally, unlike variable annuity products that may only be sold by agents holding securities and insurance licenses, agents holding just an insurance license may sell equity indexed annuities.

Equity based annuities have several unique factors used to calculate interest that may affect potential return.

- **Interest Rate Caps** – A maximum rate of interest that an investor will receive, even if the underlying stock market index performs well. For example, if an equity indexed annuity has a cap of 6 percent the investor is limited to a 6 percent return even if the underlying investment index earns a much higher percentage.
- **Participation Rates** – A participation rate determines how much of the increase or return of the underlying stock market index will be used to calculate the annuity's return on investment. For example, if the participation rate is 70 percent, and the index increases by 20 percent as a multiplier, the return credited to the equity indexed annuity will be only 14 percent.
- **Index Crediting Methods** – An index crediting method permits investors to choose how interest is credited to equity indexed annuities. For instance, the annual ratchet method usually credits an amount of interest based on the increase (if any) in value of the underlying index from the beginning to the end of the year. The point-to-point method credits an amount of interest based on any increase in the value of the underlying index from the beginning to the end of a specific period of time, sometimes based on the contract date.

Equity indexed annuities often have various fees and charges. These include:

- **Surrender Charges** – These vary dramatically among annuities and can be as high as 25 percent and be valid for up to 20 years.
- **Administrative Fees or Margins** – The fees in some equity indexed annuities amount to the difference between the percentage gain in the index and the actual amount credited to the investor. These fees or “margins” are not always disclosed clearly in marketing materials or contracts.
- **Market Value Adjustments** – These typically function to alter or reduce the cash value of an annuity dependent on changes in the interest rate since the contract's issue. Such adjustments may result in a loss of previously credited bonuses or interest credits.
- **Asset Fees** – These fees are charged by the company, based upon a percentage of the value of the annuity, sometimes subject to change annually.

It is important to note that whether an annuity is fixed, variable or equity indexed, the industry does not require that the annuity contract be provided to the consumer prior to or at the time of purchase. Thus, the consumer must rely on the representations of the agent. Florida requires that contracts contain a free look provision that allows consumers to read and review their contracts and request cancellation within 10 days after receiving the contract.

Common Types of Annuity and Life Insurance Fraud

When unsuitable annuities are sold to consumers, the transaction commonly involves inappropriate conduct by the agent such as misrepresentations and material omissions designed

to hide the fact that the product is not suitable to meet the consumer's needs. Forgery is commonplace. Annuity or life insurance transactions involving misrepresentations or material omissions are administratively prosecutable under the Unfair Insurance Trade Practices Act in chapter 626, F.S.

Two common unfair insurance trade practices are "twisting" and "churning." Twisting involves knowingly making misleading representations, incomplete or fraudulent comparisons, or fraudulent material omissions regarding insurance policies or insurers in an attempt to induce a customer to take an action regarding their current insurance policy or purchase a policy from another insurer.³ Churning is similar to twisting, but instead involves the surrender or withdrawal from a product to fund another product issued by the same company.⁴ Agents that engage in these practices do so to obtain additional agent commissions.

Suitability of Annuity and Life Insurance Products

In Florida, the suitability, or the appropriateness of a particular product relative to the consumer's age, investment objectives, and current and future financial need, is a primary concern with regard to transactions involving senior consumers. In 2004, the Florida Legislature enacted the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners in s. 627.4554, F.S.⁵ The 2008 Legislature subsequently passed the John and Patricia Seibel Act, which strengthened Florida's annuity standards and procedures.⁶ The 2010 Legislature further strengthened these standards.⁷

Section 627.4554, F.S., provides standards and procedures to follow when recommending the purchase of an annuity product to senior consumers (age 65 and older). The agent or insurer must make reasonable efforts to obtain information about the senior's financial status, tax status, and investment objectives before selling an annuity. The agent or insurer must have objectively reasonable grounds for recommending the annuity based on facts disclosed by the senior consumer as to current investments, other insurance products, financial situation, and needs.⁸ If an agent recommends replacing or exchanging an existing, for a new annuity, the agent must provide a written summary detailing the differences between the two products.⁹ The disclosure must provide benefits, terms, limitations, fees, and charges of each annuity, and the basis for the agent's recommendation, including all relevant information considered.¹⁰ Insurers and insurance agents are required to develop written procedures to ensure compliance with statutory disclosure requirements.

Florida law also allows consumers to obtain an unconditional refund within 14 days of entering into a fixed or variable annuity contract.¹¹ Senior consumers may obtain these refunds within 21 days. Annuity contracts issued to senior consumers cannot include a surrender or deferred sales

³ Section 626.9541(1)(l), F.S.

⁴ Section 626.9541(1)(aa), F.S.

⁵ Section 146, ch. 2004-390, L.O.F.

⁶ Section 9, ch. 2008-237, L.O.F.

⁷ Section 52, ch. 2010-175, L.O.F.

⁸ Section 627.4554(4), F.S.

⁹ Section 627.4554(4)(d), F.S.

¹⁰ The written disclosure must be made on a form developed by the Department of Financial Services.

¹¹ Section 626.99(4)(b), F.S.

charge for a withdrawal of money that exceeds 10 percent of the amount withdrawn.¹² Florida law requires surrender or deferred sales charges to expire after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.

If a senior consumer is harmed due to the failure of an insurer or insurance agent to comply with the provisions, the insurer or insurance agent may be ordered to take corrective action.¹³ The Office of Insurance Regulation (OIR) has authority to order the rescission of the annuity contract and order the refund of all premiums paid or the accumulation value of the annuity, whichever is greater. The Department of Financial Services (DFS) may order an insurance agent to provide monetary restitution of all monies misappropriated, converted, or unlawfully withheld as well as restitution of penalties and fees incurred by a senior consumer. The DFS may also require insurance agencies to take reasonably appropriate corrective action for a senior consumer harmed by an agent's noncompliance.

Unfair Insurance Trade Practices Act

Part IX of chapter 626, the Unfair Insurance Trade Practices Act specifies and prohibits practices that constitute unfair methods of competition or unfair or deceptive acts. The DFS can fine insurers, insurance agents, and any other person involved in the business of insurance for violating the act, up to \$5,000 for each non-willful violation up to an aggregate \$20,000 fine, and up to \$40,000 for each willful violation up to an aggregate \$200,000 fine. Willful violations of these provisions are also subject to criminal prosecution as a second degree misdemeanor.¹⁴ Each act is a third degree felony if committed by a person who is not licensed, authorized, or eligible to engage in business under the Florida Insurance Code.¹⁵

Further, the unfair trade practice laws authorize the OIR or the DFS to issue cease and desist orders against insurers and agents that violate those provisions.¹⁶ Violation of a cease and desist order is subject to a penalty of up to \$50,000.¹⁷ The DFS and the OIR can also suspend or revoke the license of an insurance agent that violates this section and impose an administrative penalty of up to \$500 or, for willful violations, up to \$3,500.¹⁸

Certain violations such as "twisting" and "churning" are subject to increased penalties.¹⁹ Violators can be criminally charged with first degree misdemeanors.²⁰ Each non-willful violation is subject to a \$5,000 fine up to an aggregate \$50,000 fine, while each willful violation is subject to a \$75,000 fine up to an aggregate \$250,000 fine. Willfully submitting fraudulent signatures on an application or policy-related document is a third degree felony, and is subject to an administrative fine not greater than \$5,000 for each nonwillful violation up to an aggregate fine

¹² Section 627.4554(9), F.S.

¹³ Section 627.4554(5), F.S.

¹⁴ Section 624.15(1), F.S. Section 775.082(4)(b), F.S., provides for a term of imprisonment for up to 60 days for a second-degree misdemeanor

¹⁵ Section 775.082(3)(d), F.S., provides for a term of imprisonment for up to 5 years for a third-degree felony.

¹⁶ Section 626.9581(1), F.S.

¹⁷ Section 626.9601(1), F.S.

¹⁸ Section 626.681(1), F.S.

¹⁹ Section 626.9521(3), F.S.

²⁰ Section 775.082(4)(a), F.S., provides for a term of imprisonment for up to 1 year for a first-degree misdemeanor.

of \$50,000, while each willful violation is subject to an administrative fine not greater than \$75,000 up to an aggregate fine of \$250,000.

III. Effect of Proposed Changes:

Section 1. Expands the annuity recommendation standards provided in s. 627.4554, F.S., for the protection of senior consumers to apply to all consumers. The bill incorporates the 2010 National Association of Insurance Commissioners model regulation on annuity protections, to broaden the scope of coverage to generally include all annuity transactions. Bill language also imposes additional duties on agents and insurers.²¹ The bill also retains Florida-specific consumer protections that are currently available to senior consumers, often expanding them to all consumers.

Major provisions of this section address:

Duties of Insurers and Agents

Suitability of Annuities – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer’s suitability information. The insurer or agent must also have a reasonable basis to believe that:

- The consumer has been reasonably informed of:
 - The annuity’s features such as the potential surrender period and surrender charge;
 - Potential tax penalties if the consumer sells, exchanges, surrenders, or annuitizes the annuity;
 - Mortality and expense fees;
 - Investment advisory fees;
 - Riders, their features, and potential charges;
 - Limits on interest returns;
 - Insurance and investment components; and
 - Market risk.
- The consumer will benefit from certain features of the annuity such as tax-deferred growth, annuitization, or the death or living benefit.
- The annuity and any associated subaccounts, riders, and product enhancements are suitable. If the annuity is being exchanged or replaced, the annuity must be suitable for the particular consumer based on his or her suitability information.

Before recommending products, insurance agents must obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation on a form promulgated by the DFS (DFS-H1-1980).

Suitability of the Exchange or Replacement of an Annuity – The bill imposes additional duties on insurers or insurance agents if a transaction involves the exchange or replacement of an annuity.

²¹ Unless stated otherwise, the bill expands the application of the statute to all consumers.

The bill provides criteria for determining whether the new annuity is suitable for a particular consumer. The insurer or agent must consider whether the consumer:

- Will incur a surrender charge; be subject to commencement of a new surrender period; lose existing benefits (death, living, or other contractual benefits), or be subject to increased fees (including investment advisory fees or charges for riders or other similar product enhancements).
- Will benefit from product enhancements and improvements; and
- Has had another annuity exchange or replacement, in particular within the past 36 months.

The insurer or agent must provide the consumer specified information on a DFS form (DFS-H1-1981) concerning differences between the annuity being recommended for purchase and the existing annuity that would be surrendered or replaced. Under current law, this only applies to transactions involving a senior consumer.

Requirement to Obtain Suitability Information – The bill retains the requirement in current law that the insurer or its agent use reasonable efforts to obtain a consumer’s suitability information. An insurer may not issue an annuity unless a reasonable basis exists to believe the annuity is suitable based on the consumer’s suitability information. However, the insurer or its agent are not obliged to have a reasonable basis for believing the annuity is suitable if no recommendation has been made, the recommendation was based on materially inaccurate information, the consumer refuses to provide relevant suitability information and the annuity transaction is not recommended, or the consumer decides to enter into an annuity transaction not based on a recommendation of an insurer or an agent.

Documentation of Sales Transaction – An agent or agent’s representative must record any recommendation made to a consumer. If the consumer refuses to provide suitability information, the agent or representative must obtain a signed statement from the consumer documenting the refusal. If the consumer enters into an annuity transaction that is not based on the recommendation of the insurer or insurance agent, the agent or representative must obtain a signed statement from the consumer acknowledging that the annuity transaction is not recommended.

Compliance Measures – As under current law, insurers must establish a supervision system designed to ensure insurer and agent compliance with the statute. Measures include maintaining procedures to inform agents of their legal requirements when selling annuities, providing training and training materials on annuity products, maintaining procedures for reviewing each recommendation before issuing an annuity and procedures for detecting recommendations that are not suitable, and providing an annual report to senior managers.

This bill subjects insurers to liability for violations made by contract workers. Insurers may contract with outside entities to sell products, but if an insurer does so, insurers remain subject to sanctions and penalties and must supervise the contract performance. This appears to depart from current law, which provides: “Nothing in this section shall subject an insurer to criminal or civil

liability for the acts of independent individuals not affiliated with that insurer for selling its products, when such sales are made in a way not authorized by the insurer.”²²

Prohibitions on Agents – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer’s request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

Compliance and Penalties – Insurers are responsible for compliance with this section, both with regard to the insurer and its agents. The OIR may order an insurer to take reasonably appropriate corrective action for a consumer harmed by the actions of the insurer or an insurer’s agent. The bill removes language specifying that the OIR may require the rescission of the policy, a full refund of the premiums paid, or a refund of the accumulation value. Rescission is still, however, an option available to the OIR. The DFS may order reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the consumer. The DFS must order an insurance agent to pay restitution to a consumer who is deprived of money due to the agent’s misappropriation, conversion, or unlawful withholding of moneys belonging to a consumer. The DFS also may order a managing general agency or insurance agency to take corrective action.

Insurance code penalties must be reduced or eliminated by the OIR or the DFS if corrective action for the consumer is promptly taken after the discovery of a violation.

A violation of the consumer protection standards in the bill does not create or imply the existence of a private cause of action. This limit on the effect of the bill is identical to limits on the effect of existing law.

Prohibited Sales and Surrender Charges on Senior Consumers – The bill retains the requirement in current law that an annuity contract issued to a senior consumer may not contain a surrender charge or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later. The provision contains exceptions for purchases by accredited investors and contracts used to fund specified benefit plans, personal injury litigation settlements, or prepaid funeral contracts.

Other Provisions – The bill also:

- Defines “suitability information” as information related to the consumer which is reasonably appropriate to determine the suitability of a recommendation made to the consumer.
- Requires that annuity sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions also comply with the consumer protection requirements in the bill. This requirement only applies if the FINRA broker dealer sells an annuity and the suitability and supervision is similar to those applied to variable annuity sales; the insurer monitors the FINRA member broker-dealer; and the insurer provides information to the FINRA member broker-dealer in maintaining its supervision system.

²² Section 627.4554(1)(c), F.S.

- Requires insurers and agents to retain records an annuity transaction for 5 years.
- Grants rulemaking authority to the Department of Financial Services and the Financial Services Commission to adopt rules to administer the section.

Section 2. Amends s. 626.99, F.S., to apply to all consumers the requirement that annuity policies provide an unconditional refund for at least 21 days and be equal to the surrender value of the annuity contract. Current law provides only senior consumers with a 21 day unconditional refund period; for other consumers, the unconditional refund is available for 14 days. The bill specifies disclosures required on the mandatory cover page of an annuity contract to inform consumers of the bonus feature in the contract; that purchase of a contract may restrict access to money; that interest rates may be variable; and that the insurer is required to provide a prospectus.

Section 3. The bill has an effective date of October 1, 2013.

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 consumer protections of s. 627.4554, F.S., will generally apply to all consumers purchasing annuities. To the extent that the protections provide greater transparency and protection against fraud and misrepresentation, consumers who purchase annuities should realize cost savings.

C. Government Sector Impact:

The Office of Insurance Regulation (OIR) indicates that insurers will need to file revised contract forms for approval by the OIR. The OIR can absorb the increase in workload within current resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Judiciary on March 6, 2013:

The CS revises the disclosure statement required on the cover page of an annuity contract to inform purchasers that the interest rates that apply to the annuity contract may change periodically.

CS by Banking and Insurance on February 6, 2013:

- Clarifies DFS authority to order restitution for any consumer whose money has been unlawfully misappropriated, converted, or unlawfully withheld by an agent.
- Reinstates the rulemaking authority of the Financial Services Commission.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Richter

597-01570-13

2013166c1

1 A bill to be entitled
 2 An act relating to annuities; amending s. 627.4554,
 3 F.S.; providing that recommendations relating to
 4 annuities made by an insurer or its agents apply to
 5 all consumers not just to senior consumers; revising
 6 and providing definitions; providing exemptions;
 7 revising the duties of insurers and agents; providing
 8 that recommendations must be based on consumer
 9 suitability information; revising the information
 10 relating to annuities that must be provided by the
 11 insurer or its agent to the consumer; revising the
 12 requirements for monitoring contractors that are
 13 providing certain functions for the insurer relating
 14 to the insurer's system for supervising
 15 recommendations; revising provisions relating to the
 16 relationship between this act and the federal
 17 Financial Industry Regulatory Authority; prohibiting
 18 specified charges for annuities issued to persons 65
 19 years of age or older; authorizing the Department of
 20 Financial Services and the Financial Services
 21 Commission to adopt rules; amending s. 626.99, F.S.;
 22 increasing the period of time that an unconditional
 23 refund must remain available with respect to certain
 24 annuity contracts; making such unconditional refunds
 25 available to all prospective annuity contract buyers
 26 without regard to the buyer's age; revising
 27 requirements for cover pages of annuity contracts;
 28 providing an effective date.
 29

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

31

32 Section 1. Section 627.4554, Florida Statutes, is amended
 33 to read:

34 (Substantial rewording of section. See

35 s. 627.4554, F.S., for present text.)

36 627.4554 Annuity investments.—

37 (1) PURPOSE.—The purpose of this section is to require

38 insurers to set forth standards and procedures for making

39 recommendations to consumers which result in transactions

40 involving annuity products, and to establish a system for

41 supervising such recommendations in order to ensure that the

42 insurance needs and financial objectives of consumers are

43 appropriately addressed at the time of the transaction.

44 (2) SCOPE.—This section applies to any recommendation made

45 to a consumer to purchase, exchange, or replace an annuity by an

46 insurer or its agent, and which results in the purchase,

47 exchange, or replacement recommended.

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

49 (a) "Agent" has the same meaning as provided in s. 626.015.

50 (b) "Annuity" means an insurance product under state law

51 which is individually solicited, whether classified as an

52 individual or group annuity.

53 (c) "FINRA" means the Financial Industry Regulatory

54 Authority or a succeeding agency.

55 (d) "Insurer" has the same meaning as provided in s.

56 624.03.

57 (e) "Recommendation" means advice provided by an insurer or

58 its agent to a consumer which would result in the purchase,

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59 exchange, or replacement of an annuity in accordance with that
60 advice.

61 (f) "Replacement" means a transaction in which a new policy
62 or contract is to be purchased and it is known or should be
63 known to the proposing insurer or its agent that by reason of
64 such transaction an existing policy or contract will be:

65 1. Lapsed, forfeited, surrendered or partially surrendered,
66 assigned to the replacing insurer, or otherwise terminated;

67 2. Converted to reduced paid-up insurance, continued as
68 extended term insurance, or otherwise reduced in value due to
69 the use of nonforfeiture benefits or other policy values;

70 3. Amended so as to effect a reduction in benefits or the
71 term for which coverage would otherwise remain in force or for
72 which benefits would be paid;

73 4. Reissued with a reduction in cash value; or

74 5. Used in a financed purchase.

75 (g) "Suitability information" means information related to
76 the consumer which is reasonably appropriate to determine the
77 suitability of a recommendation made to the consumer, including
78 the following:

79 1. Age;

80 2. Annual income;

81 3. Financial situation and needs, including the financial
82 resources used for funding the annuity;

83 4. Financial experience;

84 5. Financial objectives;

85 6. Intended use of the annuity;

86 7. Financial time horizon;

87 8. Existing assets, including investment and life insurance

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88 holdings;

89 9. Liquidity needs;

90 10. Liquid net worth;

91 11. Risk tolerance; and

92 12. Tax status.

93 (4) EXEMPTIONS.—This section does not apply to transactions
94 involving:

95 (a) Direct-response solicitations where there is no
96 recommendation based on information collected from the consumer
97 pursuant to this section;

98 (b) Contracts used to fund:

99 1. An employee pension or welfare benefit plan that is
100 covered by the federal Employee Retirement and Income Security
101 Act;

102 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
103 408(k), or s. 408(p) of the Internal Revenue Code, if
104 established or maintained by an employer;

105 3. A government or church plan defined in s. 414 of the
106 Internal Revenue Code, a government or church welfare benefit
107 plan, or a deferred compensation plan of a state or local
108 government or tax-exempt organization under s. 457 of the
109 Internal Revenue Code;

110 4. A nonqualified deferred compensation arrangement
111 established or maintained by an employer or plan sponsor;

112 5. Settlements or assumptions of liabilities associated
113 with personal injury litigation or a dispute or claim-resolution
114 process; or

115 6. Formal prepaid funeral contracts.

116 (5) DUTIES OF INSURERS AND AGENTS.—

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117 (a) When recommending the purchase or exchange of an
 118 annuity to a consumer which results in an insurance transaction
 119 or series of insurance transactions, the agent, or the insurer
 120 where no agent is involved, must have reasonable grounds for
 121 believing that the recommendation is suitable for the consumer,
 122 based on the consumer's suitability information, and that there
 123 is a reasonable basis to believe all of the following:

124 1. The consumer has been reasonably informed of various
 125 features of the annuity, such as the potential surrender period
 126 and surrender charge; potential tax penalty if the consumer
 127 sells, exchanges, surrenders, or annuitizes the annuity;
 128 mortality and expense fees; investment advisory fees; potential
 129 charges for and features of riders; limitations on interest
 130 returns; insurance and investment components; and market risk.

131 2. The consumer would benefit from certain features of the
 132 annuity, such as tax-deferred growth, annuitization, or the
 133 death or living benefit.

134 3. The particular annuity as a whole, the underlying
 135 subaccounts to which funds are allocated at the time of purchase
 136 or exchange of the annuity, and riders and similar product
 137 enhancements, if any, are suitable; and, in the case of an
 138 exchange or replacement, the transaction as a whole is suitable
 139 for the particular consumer based on his or her suitability
 140 information.

141 4. In the case of an exchange or replacement of an annuity,
 142 the exchange or replacement is suitable after considering
 143 whether the consumer:

144 a. Will incur a surrender charge; be subject to the
 145 commencement of a new surrender period; lose existing benefits,

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146 such as death, living, or other contractual benefits; or be
 147 subject to increased fees, investment advisory fees, or charges
 148 for riders and similar product enhancements;

149 b. Would benefit from product enhancements and
 150 improvements; and

151 c. Has had another annuity exchange or replacement,
 152 including an exchange or replacement within the preceding 36
 153 months.

154 (b) Before executing a purchase, exchange, or replacement
 155 of an annuity resulting from a recommendation, an insurer or its
 156 agent must make reasonable efforts to obtain the consumer's
 157 suitability information. The information shall be collected on
 158 form DFS-HI-1980, which is hereby incorporated by reference, and
 159 completed and signed by the applicant and agent. Questions
 160 requesting this information must be presented in at least 12-
 161 point type and be sufficiently clear so as to be readily
 162 understandable by both the agent and the consumer. A true and
 163 correct executed copy of the form must be provided by the agent
 164 to the insurer, or to the person or entity that has contracted
 165 with the insurer to perform this function as authorized by this
 166 section, within 10 days after execution of the form, and shall
 167 be provided to the consumer no later than the date of delivery
 168 of the contract or contracts.

169 (c) Except as provided under paragraph (d), an insurer may
 170 not issue an annuity recommended to a consumer unless there is a
 171 reasonable basis to believe the annuity is suitable based on the
 172 consumer's suitability information.

173 (d) An insurer's issuance of an annuity must be reasonable
 174 based on all the circumstances actually known to the insurer at

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175 the time the annuity is issued. However, an insurer or its agent
 176 does not have an obligation to a consumer related to an annuity
 177 transaction under paragraph (a) or paragraph (c) if:

- 178 1. A recommendation has not been made;
 179 2. A recommendation was made and is later found to have
 180 been based on materially inaccurate information provided by the
 181 consumer;
 182 3. A consumer refuses to provide relevant suitability
 183 information and the annuity transaction is not recommended; or
 184 4. A consumer decides to enter into an annuity transaction
 185 that is not based on a recommendation of an insurer or its
 186 agent.

187 (e) At the time of sale, the agent or the agent's
 188 representative must:

- 189 1. Make a record of any recommendation made to the consumer
 190 pursuant to paragraph (a);
 191 2. Obtain the consumer's signed statement documenting his
 192 or her refusal to provide suitability information, if
 193 applicable; and
 194 3. Obtain the consumer's signed statement acknowledging
 195 that an annuity transaction is not recommended if he or she
 196 decides to enter into an annuity transaction that is not based
 197 on the insurer's or its agent's recommendation, if applicable.

198 (f) Before executing a replacement or exchange of an
 199 annuity contract resulting from a recommendation, the agent must
 200 provide on form DFS-H1-1981, which is hereby incorporated by
 201 reference, information that compares the differences between the
 202 existing annuity contract and the annuity contract being
 203 recommended in order to determine the suitability of the

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204 recommendation and its benefit to the consumer. A true and
 205 correct executed copy of this form must be provided by the agent
 206 to the insurer, or to the person or entity that has contracted
 207 with the insurer to perform this function as authorized by this
 208 section, within 10 days after execution of the form, and must be
 209 provided to the consumer no later than the date of delivery of
 210 the contract or contracts.

211 (g) An insurer shall establish a supervision system that is
 212 reasonably designed to achieve the insurer's and its agent's
 213 compliance with this section.

214 1. Such system must include, but is not limited to:

- 215 a. Maintaining reasonable procedures to inform its agents
 216 of the requirements of this section and incorporating those
 217 requirements into relevant agent training manuals;
 218 b. Establishing standards for agent product training;
 219 c. Providing product-specific training and training
 220 materials that explain all material features of its annuity
 221 products to its agents;
 222 d. Maintaining procedures for the review of each
 223 recommendation before issuance of an annuity which are designed
 224 to ensure that there is a reasonable basis for determining that
 225 a recommendation is suitable. Such review procedures may use a
 226 screening system for identifying selected transactions for
 227 additional review and may be accomplished electronically or
 228 through other means, including physical review. Such electronic
 229 or other system may be designed to require additional review
 230 only of those transactions identified for additional review
 231 using established selection criteria;
 232 e. Maintaining reasonable procedures to detect

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233 recommendations that are not suitable, such as confirmation of
 234 consumer suitability information, systematic customer surveys,
 235 consumer interviews, confirmation letters, and internal
 236 monitoring programs. This sub-subparagraph does not prevent an
 237 insurer from using sampling procedures or from confirming
 238 suitability information after the issuance or delivery of the
 239 annuity; and

240 f. Annually providing a report to senior managers,
 241 including the senior manager who is responsible for audit
 242 functions, which details a review, along with appropriate
 243 testing, which is reasonably designed to determine the
 244 effectiveness of the supervision system, the exceptions found,
 245 and corrective action taken or recommended, if any.

246 2. An insurer is not required to include in its supervision
 247 system agent recommendations to consumers of products other than
 248 the annuities offered by the insurer.

249 3. An insurer may contract for performance of a function
 250 required under subparagraph 1.

251 a. If an insurer contracts for the performance of a
 252 function, the insurer must include the supervision of
 253 contractual performance as part of those procedures listed in
 254 subparagraph 1. These include, but are not limited to:

255 (I) Monitoring and, as appropriate, conducting audits to
 256 ensure that the contracted function is properly performed; and

257 (II) Annually obtaining a certification from a senior
 258 manager who has responsibility for the contracted function that
 259 the manager has a reasonable basis for representing that the
 260 function is being properly performed.

261 b. An insurer is responsible for taking appropriate

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262 corrective action and may be subject to sanctions and penalties
 263 pursuant to subsection (7) regardless of whether the insurer
 264 contracts for performance of a function and regardless of the
 265 insurer's compliance with sub-subparagraph a.

266 (h) An agent may not dissuade, or attempt to dissuade, a
 267 consumer from:

268 1. Truthfully responding to an insurer's request for
 269 confirmation of suitability information;

270 2. Filing a complaint; or

271 3. Cooperating with the investigation of a complaint.

272 (i) Sales made in compliance with FINRA requirements
 273 pertaining to the suitability and supervision of annuity
 274 transactions satisfy the requirements of this section. This
 275 applies to FINRA broker-dealer sales of variable annuities and
 276 fixed annuities if the suitability and supervision is similar to
 277 those applied to variable annuity sales. However, this paragraph
 278 does not limit the ability of the office or the department to
 279 enforce, including investigate, the provisions of this section.
 280 For this paragraph to apply, an insurer must:

281 1. Monitor the FINRA member broker-dealer using information
 282 collected in the normal course of an insurer's business; and

283 2. Provide to the FINRA member broker-dealer information
 284 and reports that are reasonably appropriate to assist the FINRA
 285 member broker-dealer in maintaining its supervision system.

286 (6) RECORDKEEPING.—

287 (a) Insurers and agents must maintain or be able to make
 288 available to the office or department records of the information
 289 collected from the consumer and other information used in making
 290 the recommendations that were the basis for insurance

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291 transactions for 5 years after the insurance transaction is
 292 completed by the insurer. An insurer may maintain the
 293 documentation on behalf of its agent.

294 (b) Records required to be maintained under this subsection
 295 may be maintained in paper, photographic, microprocess,
 296 magnetic, mechanical, or electronic media, or by any process
 297 that accurately reproduces the actual document.

298 (7) COMPLIANCE MITIGATION; PENALTIES.—

299 (a) An insurer is responsible for compliance with this
 300 section. If a violation occurs because of the action or inaction
 301 of the insurer or its agent which results in harm to a consumer,
 302 the office may order the insurer to take reasonably appropriate
 303 corrective action for the consumer and may impose appropriate
 304 penalties and sanctions.

305 (b) The department may order:

306 1. An insurance agent to take reasonably appropriate
 307 corrective action for a consumer harmed by a violation of this
 308 section by the insurance agent, including monetary restitution
 309 of penalties or fees incurred by the consumer, and impose
 310 appropriate penalties and sanctions.

311 2. A managing general agency or insurance agency that
 312 employs or contracts with an insurance agent to sell or solicit
 313 the sale of annuities to consumers to take reasonably
 314 appropriate corrective action for a consumer harmed by a
 315 violation of this section by the insurance agent.

316 (c) In addition to any other penalty authorized under
 317 chapter 626, the department shall order an insurance agent to
 318 pay restitution to a consumer who has been deprived of money by
 319 the agent's misappropriation, conversion, or unlawful

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320 withholding of moneys belonging to the consumer in the course of
 321 a transaction involving annuities. The amount of restitution
 322 required to be paid may not exceed the amount misappropriated,
 323 converted, or unlawfully withheld. This paragraph does not limit
 324 or restrict a person's right to seek other remedies as provided
 325 by law.

326 (d) Any applicable penalty under the Florida Insurance Code
 327 for a violation of this section shall be reduced or eliminated
 328 according to a schedule adopted by the office or the department,
 329 as appropriate, if corrective action for the consumer was taken
 330 promptly after a violation was discovered.

331 (e) A violation of this section does not create or imply a
 332 private cause of action.

333 (8) PROHIBITED CHARGES.—An annuity contract issued to a
 334 senior consumer age 65 or older may not contain a surrender or
 335 deferred sales charge for a withdrawal of money from an annuity
 336 exceeding 10 percent of the amount withdrawn. The charge shall
 337 be reduced so that no surrender or deferred sales charge exists
 338 after the end of the 10th policy year or 10 years after the date
 339 of each premium payment if multiple premiums are paid, whichever
 340 is later. This subsection does not apply to annuities purchased
 341 by an accredited investor, as defined in Regulation D as adopted
 342 by the United States Securities and Exchange Commission, or to
 343 those annuities specified in paragraph (4) (b).

344 (9) RULES.—The department and the commission may adopt
 345 rules to administer this section.

346 Section 2. Subsection (4) of section 626.99, Florida
 347 Statutes, is amended to read:

348 626.99 Life insurance solicitation.—

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349 (4) DISCLOSURE REQUIREMENTS.-

350 (a) The insurer shall provide to each prospective purchaser
351 a buyer's guide and a policy summary prior to accepting the
352 applicant's initial premium or premium deposit, unless the
353 policy for which application is made provides an unconditional
354 refund for ~~a period of~~ at least 14 days, or unless the policy
355 summary contains an offer of such an unconditional refund. In
356 these instances, the buyer's guide and policy summary must be
357 delivered with the policy or before ~~prior to~~ delivery of the
358 policy.

359 (b) With respect to fixed and variable annuities, the
360 policy must provide an unconditional refund for ~~a period of~~ at
361 least 21 ~~14~~ days. For fixed annuities, the buyer's guide must
362 ~~shall~~ be in the form ~~as~~ provided by the National Association of
363 Insurance Commissioners (NAIC) Annuity Disclosure Model
364 Regulation, until ~~such time as~~ a buyer's guide is developed by
365 the department, at which time the department guide must be used.
366 For variable annuities, a policy summary may be used, which may
367 be contained in a prospectus, until such time as a buyer's guide
368 is developed by NAIC or the department, at which time one of
369 those guides must be used. Unconditional refund means ~~If the~~
370 ~~prospective owner of an annuity contract is 65 years of age or~~
371 ~~older:~~

372 1. An unconditional refund of premiums paid for a fixed
373 annuity contract, including any contract fees or charges, must
374 be available for a period of 21 days; and

375 2. An unconditional refund for variable or market value
376 annuity contracts must be available for a period of 21 days. The
377 unconditional refund shall be equal to the cash surrender value

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378 provided in the annuity contract, plus any fees or charges
379 deducted from the premiums or imposed under the contract, or a
380 refund of all premiums paid. This subparagraph does not apply if
381 the prospective owner is an accredited investor, as defined in
382 Regulation D as adopted by the United States Securities and
383 Exchange Commission.

384 (c) The insurer shall attach a cover page to any annuity
385 contract policy informing the purchaser of the unconditional
386 refund period prescribed in paragraph (b). The cover page must
387 also provide contact information for the issuing company and the
388 selling agent, and the department's toll-free help line, ~~and any~~
389 ~~other information required by the department by rule. The cover~~
390 page must also contain the following disclosures in bold print
391 and at least 12-point type, if applicable:

392 1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY
393 CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO
394 YOUR FUNDS."

395 2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS
396 FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR POLICY FOR
397 FURTHER DETAILS."

398 3. "INTEREST RATES MAY HAVE CERTAIN LIMITATIONS. PLEASE
399 REFER TO YOUR POLICY FOR FURTHER DETAILS."

400 4. "A [PROSPECTUS AND POLICY SUMMARY] [BUYERS GUIDE] IS
401 REQUIRED TO BE GIVEN TO YOU."

402
403 The cover page is part of the policy and is subject to review by
404 the office pursuant to s. 627.410.

405 (d) The insurer shall provide a buyer's guide and a policy
406 summary to a ~~any~~ prospective purchaser upon request.

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407

Section 3. This act shall take effect October 1, 2013.



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Richter) recommended the following:

Senate Amendment

Delete lines 392 - 401
and insert:

1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO YOUR MONEY."

2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR CONTRACT FOR FURTHER DETAILS."

3. "THE INTEREST RATE APPLIED TO YOUR CONTRACT MAY BE SUBJECT TO CHANGE PERIODICALLY AND MAY INCREASE OR DECREASE, SUBJECT TO CERTAIN INTEREST RATE GUARANTEES DESCRIBED IN YOUR



14 CONTRACT."
 15 4. "A [PROSPECTUS AND CONTRACT SUMMARY] [BUYERS GUIDE] IS
 16 REQUIRED TO BE GIVEN TO YOU."

THE FLORIDA SENATE
APPEARANCE RECORD

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

6 Mar 13

Meeting Date

Topic Annuities

Bill Number 166
(if applicable)

Name Charles Milsted

Amendment Barcode _____
(if applicable)

Job Title Associate State Director

Address 200 West College Avenue

Phone 850-577-5190

Street

Tallahassee

E-mail cmilsted@aarp.org

City

State

Zip

Speaking: For Against Information

Representing AARP

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/13

Meeting Date

Topic _____

Bill Number 16L
(if applicable)

Name Paul Sanford

Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 S. Monroe St

Phone 222-7280

Street

Tallahassee, FL 32301

City

State

Zip

E-mail paulsanf@aol.com

Speaking: For Against Information

Representing ACLI, Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 736

INTRODUCER: Senator Richter

SUBJECT: Limitations Relating to Deeds and Wills

DATE: March 5, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Favorable
2.	_____	_____	CF	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 736 expands the scope of s. 95.231(1), F.S., to cure defective documents purporting to transfer title to real property. Under existing law, a 5-year limitations period acts to cure defective deeds or wills that are missing required seals or signatures of witnesses. Under the bill, the 5-year limitations period will cure such defects in any instrument, including a power of attorney,¹ used in connection with the transfer of title to real property. Additionally, the bill provides a savings clause to allow any person who is adversely affected by the bill's changes to bring a claim within the specified period of time to protect his or her interest.

This bill substantially amends section 95.231, Florida Statutes.

II. Present Situation:

In general, s. 689.01, F.S., provides the statutory requirements for the conveyance of real estate in Florida. In some instances, if an instrument such as a deed or will is not acknowledged or defectively acknowledged or is missing a required witness, the defective instrument may be cured over time.²

The Legislature may cure defective deeds or wills that have technical deficiencies by enacting curative statutes. The Florida Legislature has enacted a number of these.³ Curative statutes make

¹ "Power of attorney" means a writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing. Section 709.2102(7), F.S.

² See 1 FLA. JUR. 2D *Acknowledgments* s. 23 (2013).

³ See 19 FLA. JUR. 2D *Deeds* s. 21 (2013). See also ss. 694.01, F.S., et seq. and 1 FLA. JUR. 2D *Acknowledgments* s. 23 (2013).

the process of owning and conveying real property easier.⁴ “By a curative statute the Legislature has the power to ratify, validate and confirm any act or proceeding which it could have authorized in the first place.”⁵

Section 95.231, F.S., cures the defects of missing witnesses and defective acknowledgements” in deeds or wills conveying a fee simple interest⁶ in real estate.

The purpose of such statute is to ‘cure’ or clear an existing title to real estate or an interest in it, of formal irregularities, that is, of clouds, doubts and suspicions against the title resulting from technical defects in the form or execution of deeds and wills executed by ‘the person owning the property’ by limiting the time within which such defects can be asserted to a stated time as measured from some event, such as their recording.⁷

A person claiming an interest in the affected property has 20 years from the recording of the deed or the probate of the will to assert any claim to the property against the claimants under the deed or will.⁸ Easements, powers of attorney, restrictions, and declarations which are very common instruments do not have the benefit of s. 95.231, F.S.⁹

III. Effect of Proposed Changes:

In addition to deeds and wills, the bill expands the scope of s. 95.231(1), F.S., to include any instrument required in the conveyance of real estate in Florida (by example an easement¹⁰ or park dedication¹¹) and a power of attorney accompanying and used for such instrument. A power of attorney validated by the bill is valid only for the purpose of effectuating the instrument with which it is recorded.

A person claiming an interest in property other than a fee simple interest which was defectively conveyed before October 1, 2013, must file a claim or defense of that interest in court before

⁴ See 19 FLA. PRAC. *Florida Real Estate* s. 5:14 (2012 ed.).

⁵ *Coon v. Board of Public Instruction of Okaloosa County*, 203 So. 2d 497, 498 (1967).

⁶ An absolute or fee simple estate is one in which the owner is entitled to the entire property with the unconditional power of disposition during his life.” Henry P. Trawick Jr., *Trawick’s Florida Practice and Procedure*, s. 9:2 (2009 ed.).

⁷ *Holland v. Hattaway*, 438 So. 2d 456, 462 (5th DCA 1983). The stated time in the statute is 5 years. Section 95.231(2), F.S.

⁸ Section 95.231(2), F.S.

⁹ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: In Support of Amending Section 95.231, F.S.* (2013) (on file with the Senate Committee on Judiciary).

¹⁰ Easement means “An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). • The land benefiting from an easement is called the dominant estate; the land burdened by an easement is called the servient estate. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land. The primary recognized easements are (1) a right-of-way, (2) a right of entry for any purpose relating to the dominant estate, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to water, (6) a right to do some act that would otherwise amount to a nuisance, and (7) a right to place or keep something on the servient estate.” BLACK’S LAW DICTIONARY (9th ed. 2009).

¹¹ “A frequent method of ensuring that land is used for the purpose of a park is through a dedication of the land for that purpose, with a dedication being defined as the act of appropriating land to the public or any general or public use and specifically for that as a park.” 59 AM. JUR. 2D *Parks, Squares, and Playgrounds* s. 14 (internal citations omitted).

October 1, 2014, to have the validity of the instrument determined under existing law. Otherwise, the 5-year limitations period governing such claims and defenses will apply.

The bill takes effect October 1, 2013.

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:

Because the bill cures defects in the execution of instruments other than deeds or wills, individuals engaged in commercial real estate transactions may save legal fees and other associated costs to cure technical defects of missing witnesses and defective acknowledgements in instruments conveying real property.¹²

C. Government Sector Impact:

The Office of the State Courts Administrator completed a judicial impact statement for the bill and found that the bill may result in a possible, though likely insubstantial, near-term increase in court workload based on civil filings before the October 1, 2014, deadline for matters to be determined under current law. The fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantify the near-term impact on judicial workload.¹³

VI. Technical Deficiencies:

None.

¹² Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 9.

¹³ Office of the State Courts Administrator, *2013 Judicial Impact Statement*, SB 736 (Feb. 28, 2013) (on file with the Senate Committee on Judiciary).

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

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

By Senator Richter

23-00649-13

2013736__

1 A bill to be entitled
 2 An act relating to limitations relating to deeds and
 3 wills; amending s. 95.231, F.S.; providing for
 4 limitations of actions when a deed or will is on
 5 record; providing that a person claiming an interest
 6 in real property affected by amendments made in the
 7 act has until a specified date to file a claim or
 8 defense in court to determine the validity of the
 9 instrument; providing that if a claim or defense is
 10 filed within the specified period, the validity of the
 11 instrument is determined without regard to these
 12 amendments; providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Section 95.231, Florida Statutes, is amended to
 17 read:
 18 95.231 Limitations where deed or will on record.—
 19 (1) Five years after the recording of an instrument
 20 required to be executed in accordance with s. 689.01; 5 years
 21 after the recording of a power of attorney accompanying and used
 22 for an instrument required to be executed in accordance with s.
 23 689.01; or 5 years after a deed or the probate of a will
 24 purporting to convey real property, from which it appears that
 25 the person owning the property attempted to convey, affect, or
 26 devise it, the instrument, power of attorney, deed or will shall
 27 be held to have its purported effect ~~authorize the conveyance or~~
 28 ~~devise of, or~~ to convey, affect, or devise, the ~~fee simple~~ title
 29 to the real property, ~~or any interest in it,~~ of the person

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23-00649-13

2013736__

30 signing the instrument, as if there had been no lack of seal or
 31 seals, witness or witnesses, defect in acknowledgment or
 32 relinquishment of dower, in the absence of fraud, adverse
 33 possession, or pending litigation. The instrument ~~is shall be~~
 34 admissible in evidence. A power of attorney validated under this
 35 subsection shall be valid only for the purpose of effectuating
 36 the instrument with which it was recorded.
 37 (2) After 20 years from the recording of a deed or the
 38 probate of a will purporting to convey real property, no person
 39 shall assert any claim to the property against the claimants
 40 under the deed or will or their successors in title.
 41 (3) This law is cumulative to all laws on the subject
 42 matter.
 43 Section 2. A person claiming an interest in real property
 44 affected by the amendments to s. 95.231, Florida Statutes, in
 45 this act has until October 1, 2014, to file a claim or defense
 46 in court to determine the validity of an instrument that may be
 47 affected by the amendments. If a claim or defense is filed
 48 before October 1, 2014, the validity of the instrument shall be
 49 determined without regard to these amendments.
 50 Section 3. This act shall take effect October 1, 2013.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13
Meeting Date

Topic Limitations relating to deeds/wills

Bill Number 736
(if applicable)

Name Josh Aubuchan

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 215 S. Monroe St., Suite 200
Street

Phone 222-3533

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Real Property, Probate, and Trust Law Section, Florida Bar ("Reptiles")

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.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 832

INTRODUCER: Senator Joyner

SUBJECT: Power of Attorney

DATE: March 7, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 832 makes a number of changes to chapter 709, F.S., concerning powers of attorney which were recommended by the Real Property, Probate, and Trust Law Section of The Florida Bar. These changes:

- Make provisions of chapter 709, F.S., which apply to financial institutions expressly applicable to broker-dealers.
- Specifies three powers given by a principal to an agent in which the laws governing powers of attorney, chapter 709, F.S., do not apply.
- Allow a notary public to sign the principal’s name on a power of attorney document if the principal is physically unable to sign.
- Allow a third party to require an original power of attorney be provided for recording in official records if the power of attorney is relied on to transfer real property.
- Allow an agent with a power of attorney to delegate authority to a third person using a prescribed government form if the delegation is for a governmental purpose.
- Provide a standard for a court to award attorney fees in litigation involving a power of attorney.
- Allow a third party to require that an agent provide an affidavit stating whether the agent’s authority has been terminated by the filing of an action for dissolution of marriage of the agent and principal.
- Clarify when a rejection of a power of attorney by a third party must be in writing.
- Clarify that the default cap in existing law on the amount of gifts that an agent may give under a power of attorney applies to gifts given in a single a calendar year.

This bill substantially amends the following sections of the Florida Statutes: 709.2102, 709.2103, 709.2105, 709.2106, 709.2114, 709.2116, 709.2119, 709.2120, 709.2121, 709.2202, and 709.2208.

II. Present Situation:

Broker-dealers

Certain provisions of chapter 709, F.S., apply specifically to financial institutions:

- A written notice relating to the validity of a power of attorney to a financial institution must include the name, address, and last four digits of the principal's taxpayer identification number and be delivered to an officer or director of the financial institution.¹
- A power of attorney that includes the statement that the agent has "authority to conduct investment transactions as provided in section 709.2208(2), Florida Statutes" grants general authority for a financial institution to handle, buy, and sell investment instruments.²
- A financial institution has 4-day limit on what is considered a reasonable time for it to reject or accept a power of attorney provided by an agent.³

A broker-dealer is an entity that is registered with the United States Securities and Exchange Commission or the Commodity Futures Trading Commission.⁴ These entities act similarly to financial institutions in the handling, buying, and selling of investment instruments, but chapter 709, F.S., does not specifically address whether the same provisions that apply to financial institutions also apply to broker-dealers.

Exceptions to when Powers of Attorney Apply

Section 709.2103, F.S., provides for four exceptions where chapter 709, F.S., does not apply to certain powers given by a principal to an agent that are encountered in common commercial contexts:

- A power created by an entity.
- A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.
- A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.⁵

¹ Section 709.2121(3), F.S.

² Section 709.2208(2), F.S.

³ Section 709.2120(1)(b), F.S.

⁴U.S. Securities and Exchange Commission, *Guide to Broker-Dealer Registration*, <http://www.sec.gov/divisions/marketreg/bdguide.htm> (last visited Mar. 1, 2013).

⁵ Section 709.2103, F.S.

Execution Requirements

Under s. 709.2105, F.S., a power of attorney must be signed by the principal. The statutes do not accommodate a person who is unable to sign his or her name due to a physical disability, but who otherwise has the capacity to execute a power of attorney.⁶

Validity of Power of Attorney

Section 709.2106(5), F.S., allows a copy of a power of attorney to have the same effect as the original.⁷ However, title insurance agents are concerned that an original copy of the power of attorney must be recorded in the public records when real estate transfers are completed via a power of attorney.⁸ Section 709.2106, F.S., prevents title agents from requiring an original.

Delegation of Agent's Duties

Currently, an agent with a power of attorney is only allowed to delegate authority to act under the power of attorney to a third person for purposes of managing financial investments.⁹

Awarding Attorney Fees

Section 709.2116(3), F.S., allows a court to award attorney fees in proceedings involving disputes over a power of attorney. However, it does not provide guidance for a court to apply if making such an award.

Reliance on a Power of Attorney

Currently, before relying on a power of attorney, a third party may request that an agent provide an affidavit as to the validity of the power of attorney. The third party may require that the affidavit state, among other things, where the principal is domiciled, that the principal is not deceased and that there has been no suspension of powers of attorney by the initiation of proceedings to determine incapacity.¹⁰ However, whether the agent's authority has been terminated by the filing of an action for dissolution of marriage between the agent and principal is not among the items a third party may require in an affidavit from an agent.

Refusal to Accept a Power of Attorney

Section 709.2120, F.S., identifies certain situations in which a third party may reject a power of a power of attorney.¹¹ It also requires that any such rejection must be in writing and state the reason for rejection of the power of attorney.¹² However, s. 709.2120(2), F.S., enumerates the situations in which a third party may reject a power of an attorney. Based on the wording of

⁶ Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper Chapter 709 "Glitch" Bill* (2013) (on file with the Senate Committee on Judiciary).

⁷ Section 709.2106(5), F.S.

⁸ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.

⁹ Sections 709.2114 F.S., and 518.112, F.S.

¹⁰ Section 709.2119, F.S.

¹¹ Section 709.2120, F.S.

¹² *Id.*

s. 709.2120, F.S., the statute does not clearly indicate whether the requirement that the rejection be in writing apply to any of those situations.¹³ This leads to a possible interpretation that a written rejection is not required if a valid reason for rejection exists.

Authority to Make Gifts

A power of attorney may grant an agent the authority to make a gift of the principal's property to another individual. Unless the power of attorney otherwise provides, the agent's ability to make a gift of the principal's property is limited by a default amount equal to the annual exclusion amount for federal gift tax purposes.¹⁴

III. Effect of Proposed Changes:

Broker-dealers

The bill amends s. 709.2102, F.S., to define the term "broker-dealer." The bill also amends ss. 709.2120, 709.2121, and 709.2208, F.S., to clarify that those sections apply to both financial institutions and broker-dealers.

Exceptions to when Powers of Attorney Apply

The bill amends s. 709.2103, F.S., creating three additional powers that chapter 709, F.S., does not apply to:

- A power given to a transfer agent to facilitate a specific transfer of stocks, bonds, or other financial instrument.
- A power authorizing a financial institution or broker-dealer to act as agent for the account owner in executing transfers of cash, securities, commodities, or other financial assets.
- A delegation of powers by a trustee as regulated by chapter 736, F.S., the Florida Trust Code.

Execution Requirements

The bill amends ss. 703.2105 and 709.2202, F.S., to allow a notary public to sign a principal's name on a power of attorney document if the principal is physically unable to sign as long as the requirements for a notary providing services under s. 117.05(14), F.S., are met. These requirements include:

- The person with a disability directs the notary to sign in his or her presence.
- The document signing is witnessed by two disinterested persons.
- The notary writes below the signature the following statement: "Signature affixed by notary, pursuant to s. 117.05(14), Florida Statutes," and states the circumstances of the signing in the notarial certificate.¹⁵

¹³ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.

¹⁴ Section 709.2202(3), F.S.

¹⁵ Section 117.05(14), F.S.

Validity of Power of Attorney

The bill amends s. 709.2106, F.S., to allow a third party to require an original power of attorney be provided for recording in official records if the power of attorney is relied on to transfer real property. The bill specifies the process by which a power of attorney can be recorded by the clerk of courts.

Delegation of Agent's Duties

The bill amends s. 709.2114, F.S., to allow an agent with power of attorney to delegate authority to a third person using a prescribed government form if the delegation is for a governmental purpose. An example is the appointment of an agent for communication with the Internal Revenue Service using IRS Form 2848.¹⁶

Awarding Attorney Fees

The bill amends s. 709.2116(3), F.S., to provide a standard for awarding attorney fees as in a chancery action. This standard provides that “a court of equity may, as justice requires, order that costs follow the result of the suit, apportion the costs between the parties, or require all costs be paid by the prevailing party.”¹⁷ This standard gives a court full discretion in determining whether to make an award.

Reliance on a Power of Attorney

The bill amends s. 709.2119, F.S., to allow a third party, relying on a power of attorney, to require an affidavit from an agent stating whether the agent's authority has been terminated by the filing of an action for dissolution or annulment of marriage of the agent and principal.

Refusal to Accept a Power of Attorney

The bill amends s. 709.2120, F.S., clarifying that written notice of rejection is not required when the third person would not otherwise be required to engage in a transaction with the principal in the same circumstances and that written notice is required in all other circumstances.

Authority to Make Gifts

The bill amends s. 709.2202, F.S., to clarify that the default cap amount of gifts is measured on a calendar year basis, the same as it is measured for federal gift tax purposes.¹⁸

Effective Date

The bill takes effect upon becoming law.

¹⁶ Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 6.

¹⁷ *Dayton v. Conger*, 448 So. 2d 609, 612 (Fla. 3d DCA 1984).

¹⁸ American Taxpayer Relief Act of 2012, Pub. Law No. 112-240, H.R. 8, 112th Cong. (Jan. 2, 2013).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.

By Senator Joyner

19-00525A-13

2013832__

1 A bill to be entitled
 2 An act relating to powers of attorney; amending s.
 3 709.2102, F.S.; adding definitions; revising the
 4 definition of "sign"; amending s. 709.2103, F.S.;
 5 adding certain powers of attorney to which this part
 6 does not apply; amending s. 709.2105, F.S.;
 7 authorizing a notary public to sign the principal's
 8 name to the power of attorney under certain
 9 circumstances; amending s. 709.2106, F.S.; clarifying
 10 and revising language; providing that an original
 11 power of attorney, rather than a photocopy or
 12 electronic copy, may be required under certain
 13 circumstances; providing that an original power of
 14 attorney may be presented for recording in the
 15 official records for a fee; amending s. 709.2114,
 16 F.S.; adding exceptions to a provision that prohibits
 17 an agent who has accepted appointment from delegating
 18 authority to a third person; amending s. 709.2116,
 19 F.S.; providing for attorney fees and costs as in
 20 chancery actions; amending s. 709.2119, F.S.;
 21 authorizing a third person to require an agent to
 22 execute an affidavit stating that the agent's
 23 authority was not terminated because of certain
 24 circumstances; revising a sample form of an affidavit;
 25 revising a cross-reference; amending s. 709.2120,
 26 F.S.; revising language; providing a presumption of
 27 reasonable time to accept or reject a power of
 28 attorney for a broker-dealer; requiring a third person
 29 who rejects a power of attorney to state the reason in

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30 writing unless a certain circumstance applies;
 31 amending s. 709.2121, F.S.; providing for notice to a
 32 broker-dealer; amending s. 709.2202, F.S.; conforming
 33 a cross-reference; authorizing a notary public to sign
 34 the principal's name to documents, other than the
 35 power of attorney, under certain circumstances;
 36 clarifying that certain gift amounts are based on the
 37 calendar year; specifying that a broker-dealer does
 38 not have a duty to inquire into certain actions by an
 39 agent and is not liable for relying in good faith on
 40 an agent's actions; amending s. 709.2208, F.S.;
 41 providing that an agent acquires general authority
 42 regarding securities held by a broker-dealer under
 43 certain circumstances; providing an effective date.
 44
 45 Be It Enacted by the Legislature of the State of Florida:
 46
 47 Section 1. Present subsections (2) through (12) of section
 48 709.2102, Florida Statutes, are redesignated as subsections (3)
 49 through (13), respectively, present subsection (13) of that
 50 section is redesignated as subsection (15), a new subsection (2)
 51 and a new subsection (14) are added to that section, and present
 52 subsection (12) of that section is amended to read:
 53 709.2102 Definitions.—As used in this part, the term:
 54 (2) "Broker-dealer" means a broker-dealer registered with
 55 the United States Securities and Exchange Commission or the
 56 Commodity Futures Trading Commission if the broker-dealer is
 57 acting in that capacity.
 58 (13)(12) "Sign" means having present intent to authenticate

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59 or adopt a record to:

60 (a) Execute by signature or mark ~~adopt a tangible symbol~~;

61 or

62 (b) Attach to, or logically associate with the record an

63 electronic sound, symbol, or process.

64 (14) "Another state" means a state of the United States,

65 the District of Columbia, Puerto Rico, the United States Virgin

66 Islands, or any territory or insular possession subject to the

67 jurisdiction of the United States.

68 Section 2. Section 709.2103, Florida Statutes, is amended

69 to read:

70 709.2103 Applicability.—This part applies to all powers of

71 attorney except:

72 (1) A proxy or other delegation to exercise voting rights

73 or management rights with respect to an entity;

74 (2) A power created on a form prescribed by a government or

75 governmental subdivision, agency, or instrumentality for a

76 governmental purpose;

77 (3) A power to the extent it is coupled with an interest in

78 the subject of the power, including a power given to or for the

79 benefit of a creditor in connection with a credit transaction;

80 ~~and~~

81 (4) A power created by a person other than an individual;

82 (5) A power given to a transfer agent to facilitate a

83 specific transfer or disposition of one or more identified

84 stocks, bonds, or other financial instruments;

85 (6) A power authorizing a financial institution or broker-

86 dealer, or an employee of the financial institution or broker-

87 dealer, to act as agent for the account owner in executing

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88 trades or transfers of cash, securities, commodities, or other

89 financial assets in the regular course of business; and

90 (7) A delegation of powers by a trustee in accordance with

91 s. 736.0807.

92 Section 3. Subsection (3) is added to section 709.2105,

93 Florida Statutes, to read:

94 709.2105 Qualifications of agent; execution of power of

95 attorney.—

96 (3) If the principal is physically unable to sign the power

97 of attorney, the notary public before whom the principal's oath

98 or acknowledgment is made may sign the principal's name on the

99 power of attorney pursuant to s. 117.05(14).

100 Section 4. Subsections (3) and (5) of section 709.2106,

101 Florida Statutes, are amended, and subsection (6) is added to

102 that section, to read:

103 709.2106 Validity of power of attorney.—

104 (3) A power of attorney executed in another state which

105 does not comply with the execution requirements of this part is

106 valid in this state if, when the power of attorney was executed,

107 the power of attorney and its execution complied with the law of

108 the state of execution. A third person who is requested to

109 accept a power of attorney that is valid in this state solely

110 because of this subsection may in good faith request, and rely

111 upon, without further investigation, an opinion of counsel as to

112 any matter of law concerning the power of attorney, including

113 the due execution and validity of the power of attorney. An

114 opinion of counsel requested under this subsection must be

115 provided at the principal's expense. A third person may reject

116 ~~accept~~ a power of attorney that is valid in this state solely

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117 because of this subsection if the agent does not provide the
 118 requested opinion of counsel, and in such case, a third person
 119 has no liability for ~~rejecting~~ ~~refusing to accept~~ the power of
 120 attorney. This subsection does not affect any other rights of a
 121 third person who is requested to accept the power of attorney
 122 under this part, or any other provisions of applicable law.

123 (5) Except as otherwise provided in the power of attorney,
 124 a photocopy or electronically transmitted copy of an original
 125 power of attorney has the same effect as the original.
 126 Notwithstanding the provisions of this subsection, an original
 127 power of attorney that is relied upon to affect the title to
 128 real property may be required for recording in the official
 129 records.

130 (6) An original of a properly executed power of attorney
 131 may be presented to the clerk of the circuit court for recording
 132 in the official records, as provided under s. 28.222, upon
 133 payment of a service charge, as provided under s. 28.24.

134 Section 5. Subsection (1) of section 709.2114, Florida
 135 Statutes, is amended to read:

136 709.2114 Agent's duties.—

137 (1) An agent is a fiduciary. Notwithstanding the provisions
 138 in the power of attorney, an agent who has accepted appointment:

139 (a) Must act only within the scope of authority granted in
 140 the power of attorney. In exercising that authority, the agent:

141 1. May not act contrary to the principal's reasonable
 142 expectations actually known by the agent;

143 2. Must act in good faith;

144 3. May not act in a manner that is contrary to the
 145 principal's best interest, except as provided in paragraph

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146 (2) (d) and s. 709.2202; and

147 4. Must attempt to preserve the principal's estate plan, to
 148 the extent actually known by the agent, if preserving the plan
 149 is consistent with the principal's best interest based on all
 150 relevant factors, including:

151 a. The value and nature of the principal's property;

152 b. The principal's foreseeable obligations and need for
 153 maintenance;

154 c. Minimization of taxes, including income, estate,
 155 inheritance, generation-skipping transfer, and gift taxes;

156 d. Eligibility for a benefit, a program, or assistance
 157 under a statute or rule; and

158 e. The principal's personal history of making or joining in
 159 making gifts;

160 (b) May not delegate authority to a third person except as
 161 authorized under ~~provided in~~ s. 518.112 or this part, or by
 162 executing a power of attorney on a form prescribed by a
 163 government or governmental subdivision, agency, or
 164 instrumentality for a governmental purpose;

165 (c) Must keep a record of all receipts, disbursements, and
 166 transactions made on behalf of the principal; and

167 (d) Must create and maintain an accurate inventory each
 168 time the agent accesses the principal's safe-deposit box, if the
 169 power of attorney authorizes the agent to access the box.

170 Section 6. Subsection (3) of section 709.2116, Florida
 171 Statutes, is amended to read:

172 709.2116 Judicial relief; conflicts of interests.—

173 (3) In any proceeding commenced by filing a petition under
 174 this section, including, but not limited to, the unreasonable

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175 refusal of a third person to allow an agent to act pursuant to
176 the power of attorney, and in challenges to the proper exercise
177 of authority by the agent, the court shall award reasonable
178 attorney ~~attorney's~~ fees and costs as in chancery actions.

179 Section 7. Subsections (2) and (3) of section 709.2119,
180 Florida Statutes, are amended to read:

181 709.2119 Acceptance of and reliance upon power of
182 attorney.—

183 (2) A third person may require:

184 (a) An agent to execute an affidavit stating where the
185 principal is domiciled; that the principal is not deceased; that
186 there has been no revocation, or partial or complete termination
187 by adjudication of incapacity or by the occurrence of an event
188 referenced in the power of attorney; that there has been no
189 suspension by initiation of proceedings to determine incapacity,
190 or to appoint a guardian, of the principal; that the agent's
191 authority has not been terminated by the filing of an action for
192 dissolution or annulment of marriage, or legal separation of the
193 agent and principal; and, if the affiant is a successor agent,
194 the reasons for the unavailability of the predecessor agents, if
195 any, at the time the authority is exercised.

196 (b) An officer of a financial institution acting as agent
197 to execute a separate affidavit, or include in the form of the
198 affidavit, the officer's title and a statement that the officer
199 has full authority to perform all acts and enter into all
200 transactions authorized by the power of attorney for and on
201 behalf of the financial institution in its capacity as agent.

202 (c) A written affidavit executed by the agent under this
203 subsection may, but need not, be in the following form:

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204
205 STATE OF.....
206 COUNTY OF.....
207

208 Before me, the undersigned authority, personally appeared
209 ~~...(agent)-(attorney in fact)...~~ ("Affiant"), who swore or
210 affirmed that:

211 1. Affiant is the agent ~~attorney in fact~~ named in the
212 ~~Durable~~ Power of Attorney executed by ...(principal)...
213 ("Principal") on ...(date)....

214 2. This Power of Attorney is currently exercisable by
215 Affiant. The principal is domiciled in ...(insert name of state,
216 territory, or foreign country)....

217 3. To the best of Affiant's knowledge after diligent search
218 and inquiry:

219 a. The Principal is not deceased;

220 b. Affiant's authority has not been suspended by initiation
221 of proceedings to determine incapacity or to appoint a guardian
222 or a guardian advocate;

223 c. Affiant's authority has not been terminated by the
224 filing of an action for dissolution or annulment of Affiant's
225 marriage to the principal, or their legal separation; and

226 ~~d.e-~~ There has been no revocation, or partial or complete
227 termination, of the power of attorney or of Affiant's authority.

228 4. Affiant is acting within the scope of authority granted
229 in the power of attorney.

230 5. Affiant is the successor to ...(insert name of
231 predecessor agent)..., who has resigned, died, become
232 incapacitated, is no longer qualified to serve, has declined to

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233 serve as agent, or is otherwise unable to act, if applicable.
 234 6. Affiant agrees not to exercise any powers granted by the
 235 ~~Durable~~ Power of Attorney if Affiant attains knowledge that the
 236 power of attorney ~~it~~ has been revoked, has been partially or
 237 completely terminated or suspended, or is no longer valid
 238 because of the death or adjudication of incapacity of the
 239 Principal.

240
 241
 242 ... (Affiant) ...

243
 244 Sworn to (or affirmed) and subscribed before me this
 245 day of ...(month)..., ...(year)..., by ...(name of person making
 246 statement) ...

247
 248 ...(Signature of Notary Public-State of Florida) ...
 249
 250 ...(Print, Type, or Stamp Commissioned Name of Notary Public) ...
 251
 252 Personally Known OR Produced Identification
 253 ...(Type of Identification Produced) ...

254
 255 (3) A third person who is asked to accept a power of
 256 attorney that appears to be executed in accordance with s.
 257 709.2105 ~~s. 709.2103~~ may in good faith request, and rely upon,
 258 without further investigation:
 259 (a) A certified ~~verified~~ English translation of the power
 260 of attorney if the power of attorney contains, in whole or in
 261 part, language other than English;

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262 (b) An opinion of counsel as to any matter of law
 263 concerning the power of attorney if the third person making the
 264 request provides in a writing or other record the reason for the
 265 request; or
 266 (c) The affidavit described in subsection (2).
 267 Section 8. Section 709.2120, Florida Statutes, is amended
 268 to read:
 269 709.2120 Rejecting a Refusal to accept power of attorney.-
 270 (1) ~~Except as provided in subsection (2):~~
 271 ~~(a)~~ A third person must accept or reject a power of
 272 attorney within a reasonable time. ~~A third person who rejects a~~
 273 ~~power of attorney must state in writing the reason for the~~
 274 ~~rejection.~~
 275 ~~(b)~~ Four days, excluding Saturdays, Sundays, and legal
 276 holidays, are presumed to be a reasonable time for a financial
 277 institution or broker-dealer to accept or reject a power of
 278 attorney with respect to:
 279 (a) ~~1-~~ A banking transaction, if the power of attorney
 280 expressly contains authority to conduct banking transactions
 281 pursuant to s. 709.2208(1); or
 282 (b) ~~2-~~ An investment ~~A security~~ transaction, if the power of
 283 attorney expressly contains authority to conduct investment
 284 ~~security~~ transactions pursuant to s. 709.2208(2).
 285 (2) ~~(c)~~ A third person may not require an additional or
 286 different form of power of attorney for authority granted in the
 287 power of attorney presented.
 288 (3) A third person who rejects a power of attorney for any
 289 reason other than as provided in paragraph (4)(a) must state in
 290 writing the reason for the rejection.

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291 ~~(4)(2)~~ A third person is not required to accept a power of
292 attorney if:

293 (a) The third person is not otherwise required to engage in
294 a transaction with the principal in the same circumstances;

295 (b) The third person has knowledge of the termination or
296 suspension of the agent's authority or of the power of attorney
297 before exercising the power;

298 (c) A timely request by the third person for an affidavit,
299 English translation, or opinion of counsel under s. 709.2119(4)
300 is refused by the agent;

301 (d) Except as provided in paragraph (b), the third person
302 believes in good faith that the power is not valid or that the
303 agent does not have authority to perform the act requested; or

304 (e) The third person makes, or has knowledge that another
305 person has made, a report to the local adult protective services
306 office stating a good faith belief that the principal may be
307 subject to physical or financial abuse, neglect, exploitation,
308 or abandonment by the agent or a person acting for or with the
309 agent.

310 ~~(5)(3)~~ A third person who, in violation of this section,
311 ~~rejects~~ ~~refuses to accept~~ a power of attorney is subject to:

312 (a) A court order mandating acceptance of the power of
313 attorney; and

314 (b) Liability for damages, including reasonable attorney's
315 fees and costs, incurred in any action or proceeding that
316 confirms, for the purpose tendered, the validity of the power of
317 attorney or mandates acceptance of the power of attorney.

318 Section 9. Subsection (3) of section 709.2121, Florida
319 Statutes, is amended to read:

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

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320 709.2121 Notice.—

321 (3) Notice to a financial institution or broker-dealer must
322 contain the name, address, and the last four digits of the
323 principal's taxpayer identification number and be directed to an
324 officer or a manager of the financial institution or broker-
325 dealer in this state.

326 Section 10. Present subsections (2) through (5) of section
327 709.2202, Florida Statutes, are redesignated as subsections (3)
328 through (6), respectively, a new subsection (2) is added to that
329 section, and present subsections (1), (3), and (4) of that
330 section are amended to read:

331 709.2202 Authority that requires separate signed
332 enumeration.—

333 (1) Notwithstanding s. 709.2201, an agent may exercise the
334 following authority only if the principal signed or initialed
335 next to each specific enumeration of the authority, the exercise
336 of the authority is consistent with the agent's duties under s.
337 709.2114, and the exercise is not otherwise prohibited by
338 another agreement or instrument:

339 (a) Create an inter vivos trust;

340 (b) With respect to a trust created by or on behalf of the
341 principal, amend, modify, revoke, or terminate the trust, but
342 only if the trust instrument explicitly provides for amendment,
343 modification, revocation, or termination by the settlor's agent;

344 (c) Make a gift, subject to subsection ~~(4)(3)~~;

345 (d) Create or change rights of survivorship;

346 (e) Create or change a beneficiary designation;

347 (f) Waive the principal's right to be a beneficiary of a
348 joint and survivor annuity, including a survivor benefit under a

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349 retirement plan; or

350 (g) Disclaim property and powers of appointment.

351 (2) In addition to signing the power of attorney on behalf

352 of the principal pursuant to s. 709.2105(3), if the principal is

353 physically unable to sign or initial next to any enumerated

354 authority for which subsection (1) requires the principal to

355 sign or initial, the notary public before whom the principal's

356 oath or acknowledgment is made may sign the principal's name or

357 initials if:

358 (a) The principal directs the notary to sign the

359 principal's name or initials on the power of attorney next to

360 any enumerated authority for which subsection (1) requires the

361 principal to sign or initial;

362 (b) The signing or initialing by the notary is done in the

363 presence of the principal and witnessed by two disinterested

364 subscribing witnesses; and

365 (c) The notary writes the statement "Signature or initials

366 affixed by notary, pursuant to s. 709.2202(2), Florida Statutes"

367 below each signature or initial that the notary writes on behalf

368 of the principal. Only one notarial certificate, in

369 substantially the same form as provided in s. 117.05(14), which

370 states the circumstances of all signatures and initials written

371 by the notary public, is required to be completed by the notary

372 public.

373 (4)(3) Unless the power of attorney otherwise provides, a

374 provision in a power of attorney granting general authority with

375 respect to gifts authorizes the agent to only:

376 (a) Make outright to, or for the benefit of, a person a

377 gift of any of the principal's property, including by the

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378 exercise of a presently exercisable general power of appointment

379 held by the principal, in an amount per donee per calendar year,

380 not to exceed the annual dollar limits of the federal gift tax

381 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard

382 to whether the federal gift tax exclusion applies to the gift,

383 or if the principal's spouse agrees to consent to a split gift

384 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per

385 donee per calendar year, not to exceed twice the annual federal

386 gift tax exclusion limit; and

387 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to

388 the splitting of a gift made by the principal's spouse in an

389 amount per donee per calendar year, not to exceed the aggregate

390 annual gift tax exclusions for both spouses.

391 (5)(4) Notwithstanding subsection (1), if a power of

392 attorney is otherwise sufficient to grant an agent authority to

393 conduct banking transactions, as provided in s. 709.2208(1),

394 conduct investment transactions as provided in s. 709.2208(2),

395 or otherwise make additions to or withdrawals from an account of

396 the principal, making a deposit to or withdrawal from an

397 insurance policy, retirement account, individual retirement

398 account, benefit plan, bank account, or any other account held

399 jointly or otherwise held in survivorship or payable on death,

400 is not considered to be a change to the survivorship feature or

401 beneficiary designation, and no further specific authority is

402 required for the agent to exercise such authority. A ~~bank or~~

403 ~~other~~ financial institution or broker-dealer does not have a

404 duty to inquire as to the appropriateness of the agent's

405 exercise of that authority and is not liable to the principal or

406 any other person for actions taken in good faith reliance on the

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 407 appropriateness of the agent's actions. This subsection does not
 408 eliminate the agent's fiduciary duties to the principal with
 409 respect to any exercise of the power of attorney.

410 Section 11. Subsection (2) of section 709.2208, Florida
 411 Statutes, is amended to read:

412 709.2208 Banks and other financial institutions.—

413 (2) A power of attorney that specifically includes the
 414 statement that the agent has "authority to conduct investment
 415 transactions as provided in section 709.2208(2), Florida
 416 Statutes" grants general authority to the agent with respect to
 417 securities held by financial institutions or broker-dealers to
 418 take the following actions without additional specific
 419 enumeration in the power of attorney:

420 (a) Buy, sell, and exchange investment instruments.

421 (b) Establish, continue, modify, or terminate an account
 422 with respect to investment instruments.

423 (c) Pledge investment instruments as security to borrow,
 424 pay, renew, or extend the time of payment of a debt of the
 425 principal.

426 (d) Receive certificates and other evidences of ownership
 427 with respect to investment instruments.

428 (e) Exercise voting rights with respect to investment
 429 instruments in person or by proxy, enter into voting trusts, and
 430 consent to limitations on the right to vote.

431 (f) Sell commodity futures contracts and call and put
 432 options on stocks and stock indexes.

433
 434 For purposes of this subsection, the term "investment
 435 instruments" means stocks, bonds, mutual funds, and all other

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 436 types of securities and financial instruments, whether held
 437 directly, indirectly, or in any other manner, including shares
 438 or interests in a private investment fund, including, but not
 439 limited to, a private investment fund organized as a limited
 440 partnership, a limited liability company, a statutory or common
 441 law business trust, a statutory trust, or a real estate
 442 investment trust, joint venture, or any other general or limited
 443 partnership; derivatives or other interests of any nature in
 444 securities such as options, options on futures, and variable
 445 forward contracts; mutual funds; common trust funds; money
 446 market funds; hedge funds; private equity or venture capital
 447 funds; insurance contracts; and other entities or vehicles
 448 investing in securities or interests in securities whether
 449 registered or otherwise, except commodity futures contracts and
 450 call and put options on stocks and stock indexes.

451 Section 12. 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)

3-6-13

Meeting Date

Topic _____

Bill Number 832
(if applicable)

Name Martha Edenfield

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address PO Box 10095

Phone 850-222-3533

Street

Tallahassee

FL

32302

E-mail martha@penningtonlaw.com

City

State

Zip

Speaking: For Against Information Support the bill

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

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/6/13
Meeting Date

Topic Power of Attorney Bill Number SB 832
(if applicable)

Name Kenneth Pratt Amendment Barcode _____
(if applicable)

Job Title VP of Government Affairs, Florida Bankers Assn.

Address 1001 Thomasville Rd. Ste. 201 Phone 850-224-2265
Street

Tallahassee FL 32303
City State Zip

E-mail kpratt@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers Association

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

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

March 5, 2013

Senator Tom Lee
418 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Lee:

Please accept this email as notification that my Legislative Aide, Kathy Galea will be presenting SB 592, Garnishment, scheduled for a hearing in the Committee on Judiciary on March 6, 2013.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Galvano

A handwritten signature in cursive script, likely belonging to Tom Lee.

cc: Tom Cibula
Shirley Proctor

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: EL 110
Caption: Committee on Judiciary

Case:
Judge:

Type:

Started: 3/6/2013 14:06:13
Ends: 3/6/2013 15:56:03 Length: 01:49:51

14:06:16 Meeting Call to Order
14:06:24 Roll Call by CAA
14:06:56 SB 286 by Senator Negron
14:09:24 Senator Negron explains SB 286
14:10:20 Question: Senator Joyner
14:11:28 Response: by Senator Negron
14:14:07 Question: Senator Soto
14:14:35 Response: Senator Negron
14:17:05 Question: Senator Thrasher
14:17:38 Response: Senator Negron
14:18:00 Question: Senator Bradley
14:18:14 Response: Senator Negron
14:18:52 Question: Senator Lee
14:19:32 Response: Senator Negron
14:20:01 A519266 by Thrasher - Replace by SA428046
14:20:27 SA428046 by Thrasher
14:20:57 SA428046 - Favorable
14:21:04 LFA122190 by Latvala
14:21:54 Question: Senator Ring
14:21:59 Question: Senator Latvala
14:22:37 Question: Senator Joyner
14:22:54 Response: Senator Latvala
14:23:19 Philip Leary - FANG Limited Liability
14:23:55 Question: Senator Joyner
14:24:00 Response: Philip Leary
14:27:17 LFA122190 - Favorable
14:27:23 LFA877038 by Latvala
14:27:54 LFA877038 - Favorable
14:28:47 Travis Moore - Against
14:30:03 Paul Jess, Design Professionals Florida Justice Association
14:30:30 Paul Jess - Against
14:34:39 Mike Huey, Design Professionals, Florida Assn. of the American Institute of Architects
14:37:54 Question: Senator Soto
14:38:04 Mr. Huey
14:40:10 Mr. Brian Pitts, Justice-2-Jesus
14:43:43 Senator Soto debate on the bill
14:44:15 Debate: Senator Joyner
14:46:08 Senator Negron - Closing Remarks
14:47:12 Roll Call for SB 286
14:47:37 SB 286 by Senator Negron - Favorable as a CS
14:47:58 SB 112 by Senator Dean
14:48:23 A943938 by Latvala
14:48:45 A943938 - Presented
14:50:02 Question:
14:50:02 A943938 - Favorable
14:50:08 Senator Dean - Waive Closing
14:50:19 Question: Senator Joyner
14:50:36 Roll Call for SB 112
14:50:47 SB 112 by Senator Dean - Favorable as a CS
14:50:59 SB 58 by Senator Hays
14:51:44 Senator Hays - Explanation of SB 58
14:52:18 A137308 by Senator Gardiner

14:52:31 Senator Hays - Explanation of A137308
14:52:51 A137308 - Favorable
14:52:56 A343598 by Senator Gardiner
14:53:08 Senator Hays - Explanation of A343598
14:53:22 A343598 - Favorable
14:53:55 Ms. Raquel Rodriguez, Attorney for, Applicable of Foreign Law, Administrative Consultants, LLC
14:58:07 Dr. Manal Fakhouny
15:01:13 Question: Senator Latvala
15:01:38 Dr. Fakhouny
15:03:37 Question: Senator Thrasher
15:04:20 Question: Senator Lee
15:05:03 Rabbi Zeev Harari
15:07:03 Amed Bedier, President - United Voices
15:20:04 Ron Bilbao, ACLU of Florida
15:20:57 Question: Senator Soto
15:21:42 Ron Bilbao
15:22:18 Carlos Osorio, Attorney, International Law Section of Florida Bar
15:23:22 He is against the bill
15:30:07 Maj. Gen. John Cleland, US Army Retired
15:30:39 Maj. Gen. Cleland - Against
15:34:03 Mr. Brian Pitts, Justice-2-Jesus
15:35:16 Brian Pitts - Information Only
15:37:56 Senator Hays - Closing for SB 58
15:38:49 Motion for CS - Senator Gardiner
15:39:02 Roll Call for SB 58
15:39:12 SB 58 by Senator Hays - Favorable as a CS
15:39:29 Senator Ring - Motion to vote No on CS/SB 286 and Yea on CS/SB 112
15:40:29 SB 404 by Senator Stargel - Chris Dowdy, LA
15:41:47 A620140 by Senator Gardiner
15:42:17 Chris Dowdy - Explain A620140
15:42:51 Roll Call for SB 404
15:43:05 SB 404 by Senator Stargel - Favorable as a CS
15:43:09 SB 746 by Senator Stargel - Chris Dowdy, LA
15:44:03 Roll Call for SB 746
15:44:11 SB 746 by Senator Stargel - Favorable
15:44:34 SB 592 by Senator Galvano - Ms. Galea, LA
15:45:39 Question: Senator Soto
15:45:47 Question: Senator Lee
15:46:14 SB 592 by Senator Galvano - Waive close
15:46:25 Roll Call for SB 592
15:46:35 SB 592 by Senator Galvano - Favorable
15:46:39 SB 294 by Senator Bradley
15:46:51 Senator Bradley - Explain SB 294
15:48:03 Question: Senator Thrasher
15:48:18 Response: Senator Bradley
15:49:18 SB 294 by Senator Bradley - Waive Close
15:49:27 Roll Call for SB 294
15:49:35 SB 294 by Senator Bradley - Favorable
15:49:39 SB 556 by Senator Ring
15:50:28 A103936 by Senator Ring
15:50:49 A103936 - Favorable
15:50:56 A655398 by Senator Ring
15:51:10 Senator Ring - Explain A655398
15:51:17 A655398 - Favorable
15:51:31 Comment: Senator Soto
15:51:48 Senator Ring - Waive Closed
15:51:58 Roll Call for SB 556
15:52:09 SB 556 by Senator Ring - Favorable as a CS
15:52:12 CS/SB 166 by Senator Richter
15:52:41 A463986 by Senator Richter
15:52:56 A463986 - Favorable
15:53:08 Senator Richter - Waive Close

15:53:17 Roll Call for CS/SB 166
15:53:30 CS/SB 166 by Senator Richter - Favorable as a CS
15:53:32 SB 736 by Senator Richter
15:54:09 Senator Richter - Waive Close
15:54:24 Roll Call for SB 736
15:54:33 SB 736 by Senator Richter - Favorable
15:54:35 SB 832 by Senator Joyner
15:55:21 Senator Joyner - Waive Close
15:55:32 SB 832 by Senator Joyner - Favorable
15:55:40 Senator Thrasher Motion to Adjourn