

Tab 1	SB 298 by Rouson ; (Similar to H 06517) Relief of Reginald Jackson by the City of Lakeland						
714770	A	S	RCS	JU, Rouson	Delete L.67 - 68:	03/23 08:31 AM	
Tab 2	SB 300 by Torres ; (Similar to CS/H 06509) Relief of Robert Allan Smith by Orange County						
807320	D	S	RCS	JU, Torres	Delete everything after	03/23 08:31 AM	
Tab 3	SB 226 by Artiles ; (Compare to CS/H 00289) Property Taxes						
246674	A	S	RCS	JU, Artiles	Delete L.71 - 546:	03/23 08:39 AM	
241760	A	S	WD	JU, Powell	Delete L.507 - 546.	03/23 08:39 AM	
Tab 4	CS/SB 498 by CM, Young ; (Similar to CS/H 00467) Department of Agriculture and Consumer Services						
346068	A	S	RCS	JU, Young	Delete L.484 - 586.	03/23 08:39 AM	
225104	A	S	RCS	JU, Young	Delete L.619 - 620:	03/23 08:39 AM	
549670	A	S	RCS	JU, Young	btw L.1273 - 1274:	03/23 08:39 AM	
Tab 5	SB 1554 by Young ; (Similar to CS/H 00481) Trusts						
508936	A	S	RCS	JU, Young	Delete L.216 - 395:	03/23 08:42 AM	
Tab 6	CS/SB 660 by BI, Passidomo ; (Similar to CS/H 00471) Bankruptcy Matters in Foreclosure Proceedings						
619668	A	S	RCS	JU, Passidomo	Delete L.22 - 34:	03/23 08:39 AM	
Tab 7	SB 954 by Passidomo (CO-INTRODUCERS) Braynon, Gibson, Powell ; (Compare to CS/H 00105) Canvassing of Vote-by-mail Ballots						
Tab 8	SB 672 by Bean ; (Similar to CS/H 00101) Certificates of Nonviable Birth						
Tab 9	SB 680 by Baxley (CO-INTRODUCERS) Garcia ; (Similar to CS/H 00361) Bail Bonds						
725954	D	S	RCS	JU, Baxley	Delete everything after	03/23 08:39 AM	
Tab 10	CS/SB 818 by RI, Hutson ; (Similar to H 00829) Timeshares						
Tab 11	SB 894 by Simmons ; (Identical to H 01091) Arrest Warrants for State Prisoners						
Tab 12	SB 1052 by Simmons ; (Identical to H 00677) Justifiable Use of Force						
882434	D	S	RCS	JU, Simmons	Delete everything after	03/23 08:39 AM	
244652	A	S	WD	JU, Simmons	Delete L.24 - 32:	03/23 08:39 AM	
Tab 13	SCR 920 by Farmer ; (Similar to H 00631) Groveland Four						
Tab 14	SB 1320 by Stargel ; (Compare to H 01123) Tax Administration						
Tab 15	SB 1330 by Stargel ; Weapons and Firearms						
701632	D	S	RCS	JU, Stargel	Delete everything after	03/23 08:39 AM	
Tab 16	SB 612 by Gibson ; (Identical to H 00417) Federal Matching Funds Information						

Tab 17	CS/SB 852 by CJ, Garcia (CO-INTRODUCERS) Benacquisto, Flores, Campbell; (Similar to CS/H 01383) Human Trafficking					
Tab 18	SB 1682 by Garcia (CO-INTRODUCERS) Rodriguez; (Similar to CS/H 01237) Condominiums					
Tab 19	SB 262 by Steube; (Identical to H 00675) Health Insurance					
Tab 20	CS/SB 624 by CJ, Steube; (Similar to CS/H 00305) Body Cameras					
230698	A	S	RCS	JU, Steube	Delete L.31 - 34:	03/23 08:39 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Wednesday, March 22, 2017

TIME: 4:00—6:00 p.m.

PLACE: Toni Jennings Committee Room, 110 Senate Office Building

MEMBERS: Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 298 Rouson (Similar H 6517)	Relief of Reginald Jackson by the City of Lakeland; Providing for the relief of Reginald Jackson by the City of Lakeland; providing an appropriation to compensate Reginald Jackson for injuries and damages sustained as a result of the negligence of Mike Cochran, a police officer for the Lakeland Police Department; providing a limitation on the payment of fees and costs, etc. SM JU 03/22/2017 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0
2	SB 300 Torres (Similar CS/H 6509)	Relief of Robert Allan Smith by Orange County; Providing for the relief of Robert Allan Smith by Orange County; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of Orange County, etc. SM JU 03/22/2017 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0
3	SB 226 Artiles (Compare CS/H 289)	Property Taxes; Providing that a possessor of real property for 7 years must pay all delinquent taxes prior to claiming adverse possession; providing criteria under which a property appraiser may waive unpaid penalties and interest for improper nonpayment or reduction payment of ad valorem taxes by certain property owners claiming a homestead exemption; revising a provision authorizing a property appraiser to exempt certain tangible personal property from ad valorem taxation without filing an initial return, etc. JU 02/07/2017 Temporarily Postponed JU 03/22/2017 Fav/CS AFT AP	Fav/CS Yeas 7 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 22, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 498 Commerce and Tourism / Young (Similar CS/H 467, Compare H 1161, S 1452)	Department of Agriculture and Consumer Services; Specifying that applications for funding for certain agriculture education and promotion facilities must be postmarked or electronically submitted by a certain date; revising the standards for when an applicant is eligible to take the licensure examination to practice as a surveyor and mapper; repealing provisions relating to maximum permit fees for taximeters; revising the requirements to obtain a license to carry a concealed weapon or firearm, etc. CM 03/06/2017 Fav/CS JU 03/22/2017 Fav/CS AP	Fav/CS Yeas 8 Nays 0
5	SB 1554 Young (Similar CS/H 481, Compare CS/H 1379, S 1626)	Trusts; Deleting a requirement that a trust be for the benefit of the trust's beneficiaries; revising provisions relating to notice or sending of electronic trust documents; providing that the Attorney General has standing to assert certain rights in certain proceedings; deleting a restriction on the purpose for which a trust is created, etc. JU 03/22/2017 Fav/CS BI RC	Fav/CS Yeas 8 Nays 0
6	CS/SB 660 Banking and Insurance / Passidomo (Similar CS/H 471)	Bankruptcy Matters in Foreclosure Proceedings ; Authorizing lienholders to use certain documents as an admission in an action to foreclose a mortgage; authorizing lienholders to make a request for judicial notice of final orders entered in bankruptcy cases, etc. BI 03/06/2017 Fav/CS JU 03/22/2017 Fav/CS RC	Fav/CS Yeas 8 Nays 0
7	SB 954 Passidomo (Compare CS/H 105, H 733, H 1325, S 544, S 598, S 1160)	Canvassing of Vote-by-mail Ballots; Authorizing use of the vote-by-mail ballot cure affidavit if an elector's signature does not match the signature in the registration books or precinct register; requiring the supervisor of elections to immediately notify an elector upon receipt of a vote-by-mail ballot with a missing or mismatched signature; specifying that a Florida driver license or Florida identification card are acceptable forms of identification for purposes of curing a vote-by-mail ballot, etc. EE 03/07/2017 Favorable JU 03/22/2017 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 22, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 672 Bean (Similar CS/H 101, Compare H 103, Linked CS/S 674)	Certificates of Nonviable Birth; Creating the "Grieving Families Act"; requiring certain health care practitioners and health care facilities to electronically file a registration of nonviable birth within a specified timeframe; requiring the Department of Health to issue a certificate of nonviable birth within a specified timeframe upon the request of a parent, etc. HP 03/14/2017 Favorable JU 03/22/2017 Favorable AP	Favorable Yeas 8 Nays 0
9	SB 680 Baxley (Similar CS/H 361)	Bail Bonds; Revising legislative intent concerning the obligations of a bail bond agent; specifying that a defendant's failure to appear before the court in a proceeding for which the surety bond was posted requires the bond and any bonds or money deposited as bail to be forfeited; specifying that certain provisions concerning the cancellation of a bond do not apply if the bond is forfeited within a specified period after it has been posted, etc. JU 03/22/2017 Fav/CS BI CJ RC	Fav/CS Yeas 8 Nays 0
10	CS/SB 818 Regulated Industries / Hutson (Similar H 829)	Timeshares; Revising the definition of the term "interestholder" to clarify that the term does not include certain parties to a certain multisite timeshare plan; revising requirements for the termination of a timeshare plan; specifying the percentage of votes required to extend the term of a timeshare plan under certain circumstances, etc. RI 03/08/2017 Fav/CS JU 03/22/2017 Favorable RC	Favorable Yeas 8 Nays 0
11	SB 894 Simmons (Identical H 1091)	Arrest Warrants for State Prisoners; Authorizing a prisoner in a state prison who has an unserved violation of probation or an unserved violation of community control warrant to file a notice of unserved warrant in the circuit court where the warrant was issued; requiring the court to send the order to the county sheriff, etc. CJ 03/13/2017 Favorable JU 03/22/2017 Favorable AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 22, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1052 Simmons (Identical H 677)	Justifiable Use of Force; Specifying that a person who is attacked or threatened with the use of force in a dwelling, residence, or vehicle in which the person has the right to be has no duty to retreat and has the right to stand his or her ground by using or threatening to use force upon a reasonable belief of necessity to prevent imminent death, great bodily harm, or a forcible felony, etc. JU 03/14/2017 Temporarily Postponed JU 03/22/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 2
13	SCR 920 Farmer (Similar HCR 631)	Groveland Four; Acknowledging the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the "Groveland Four," exonerating the four men, offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee, etc. CJ 03/06/2017 Favorable JU 03/22/2017 Favorable RC	Favorable Yeas 7 Nays 0
14	SB 1320 Stargel (Compare H 1123, S 1442)	Tax Administration; Deleting a requirement for circuit judges to monthly report certain information to the Department of Revenue relating to the estates of certain decedents; deleting requirements to pay license taxes for a terminal supplier license, an importer, exporter, or blender of motor fuels license, or a wholesaler of motor fuel license; deleting a requirement for the department to deduct a specified fee from certain motor fuel refund claims, etc. JU 03/22/2017 Favorable AFT AP	Favorable Yeas 9 Nays 0
15	SB 1330 Stargel	Weapons and Firearms; Revising provisions prohibiting possession and discharge of weapons or firearms during school-sanctioned activities or on school property, etc. JU 03/22/2017 Fav/CS ED RC	Fav/CS Yeas 5 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 22, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	SB 612 Gibson (Identical H 417)	Federal Matching Funds Information; Requiring each state agency and the judicial branch to provide, as a part of the legislative budget request, specified information concerning federal programs, etc GO 03/06/2017 Favorable JU 03/22/2017 Favorable AP	Favorable Yeas 8 Nays 0
17	CS/SB 852 Criminal Justice / Garcia (Similar CS/H 1383)	Human Trafficking; Requiring the Department of Children and Families or a sheriff's office to conduct a multidisciplinary staffing on child victims of commercial sexual exploitation to determine the child's service and placement needs; defining the term "commercial sexual exploitation"; adding human trafficking to the list of crimes requiring pretrial detention of the defendant, etc. CJ 03/13/2017 Fav/CS JU 03/22/2017 Favorable AP	Favorable Yeas 8 Nays 0
18	SB 1682 Garcia (Similar CS/H 1237)	Condominiums; Prohibiting an attorney from representing a board under certain conditions; providing board member term limits; authorizing, rather than requiring, the division to employ full-time attorneys to conduct certain arbitration hearings; providing that certain activities constitute fraudulent voting activities related to association elections, etc. JU 03/22/2017 Favorable RI RC	Favorable Yeas 8 Nays 0
19	SB 262 Steube (Identical H 675)	Health Insurance; Deleting a provision that provides that health maintenance organizations are not vicariously liable for certain medical negligence except under certain circumstances; authorizing specified persons to bring a civil action against a health maintenance organization for certain violations; specifying a health maintenance organization's liability for such violations, etc. BI 02/21/2017 Favorable JU 03/07/2017 Temporarily Postponed JU 03/14/2017 Temporarily Postponed JU 03/22/2017 Temporarily Postponed RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, March 22, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	CS/SB 624 Criminal Justice / Steube (Similar CS/H 305)	Body Cameras; Requiring law enforcement agencies that permit law enforcement officers to wear body cameras to establish policies and procedures that include a provision permitting a law enforcement officer using a body camera to review body camera footage before taking certain actions, etc. CJ 03/06/2017 Fav/CS JU 03/22/2017 Fav/CS RC	Fav/CS Yeas 7 Nays 0

Other Related Meeting Documents



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
1/29/17	SM	Favorable
03/22/17	JU	Fav/CS
	CA	
	RC	

March 16, 2017

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

Re: **CS/SB 298** – Judiciary Committee and Senator Darryl Rouson
HB 6517 – Representative Ramon Alexander
Relief of Reginald Jackson

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$312,500 BASED ON A JURY AWARD FOR THE CLAIMANT REGINALD JACKSON AND AGAINST THE CITY OF LAKELAND FOR INJURIES SUSTAINED BY THE CLAIMANT WHEN HE WAS SHOT IN THE NECK BY A LAKELAND POLICE OFFICER AFTER A TRAFFIC STOP.

CURRENT STATUS:

This claim bill was previously filed with the Legislature for the 2010 Legislative Session. At that time, it was heard by Bram D. E. Canter, an administrative law judge from the Division of Administrative Hearings, serving as a Senate Special Master. After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported FAVORABLY. Judge Canter's special master report from SB 66 (2010), the latest report available, is attached.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include limits on the amount of lobbying fees, costs, and similar expenses that may be paid from the proceeds of the bill.



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/04/09	SM	Favorable

December 4, 2009

The Honorable Jeff Atwater
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 66 (2010)** – Senator Chris Smith
Relief of Reginald Jackson

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$312,500 BASED ON A JURY AWARD FOR THE CLAIMANT REGINALD JACKSON AND AGAINST THE CITY OF LAKELAND FOR INJURIES SUSTAINED BY THE CLAIMANT WHEN HE WAS SHOT IN THE NECK BY A LAKELAND POLICE OFFICER AFTER A TRAFFIC STOP.

FINDINGS OF FACT:

On October 18, 2001, around midnight, Reginald Jackson, then 24 years old, was driving home on Memorial Boulevard in Lakeland after picking up his girlfriend's 18-month-old brother from a relative's house. Officer Michael Cochran of the Lakeland Police Department was behind Jackson in a marked patrol car. Officer Cochran entered Jackson's tag number in his computer which indicated that there was a discrepancy. Officer Cochran turned on his flashing lights and pulled Jackson over. Officer Cochran asked Jackson for his license and vehicle registration. When Jackson's registration looked in order, Officer Cochran returned to his patrol car and ran the tag number again. There was no problem with Jackson's vehicle tag. Officer Cochran realized that he had initially entered the wrong tag number.

However, Officer Cochran had observed that Jackson had a child in the front passenger seat who was not in a child car seat. Officer Cochran proceeded to write Jackson a citation for transporting a child without a car seat. He told Jackson that Jackson could not drive home without a car seat and would have to get someone to bring a car seat for the child. Jackson asked Officer Cochran if he could follow the officer to Jackson's home, which was nearby, but Officer Cochran declined. Officer Cochran then drove away.

Jackson tried to use a pay phone close to where his car had been pulled over, but the phone was not working. Jackson saw another pay phone in the parking lot of a lounge a block away, so he got back into his car and drove to the lounge. Meanwhile, Officer Cochran had lingered nearby in an alleyway, apparently to observe Jackson because Officer Cochran suspected that Jackson would not obey the instruction not to drive anywhere unless the child was in a car seat. When Officer Cochran saw Jackson drive away, he immediately followed Jackson and pulled into the parking lot of the lounge with the intent to arrest Jackson.

Officer Cochran exited his patrol car and approached Jackson, who was at or near the pay phone, telling Jackson that he was under arrest. Jackson replied that he was just using the pay phone and he walked quickly to his car, got in, started it up, backed up a short distance, and then put the vehicle in "drive" with the intent to drive away. Jackson explained his reaction as caused by his being startled and confused. It was also asserted by his attorneys that, because Jackson is an African American and Officer Cochran is white, Jackson believed that Officer Cochran was acting out of racism. Jackson did not say that he feared he would be physically harmed by Officer Cochran.

Officer Cochran drew his handgun and positioned himself in front of Jackson's car, on the driver's side, with his body to the side of the front right tire and his left hand on the fender of the car. As Jackson slowly moved the car forward, Officer Cochran was yelling for Jackson to "stop or I'll shoot." Officer Cochran then shot through the windshield, striking Jackson in the neck. The bullet passed through Jackson's neck and came out of his back. The shot fired by Officer Cochran was reasonably calculated to kill Jackson. Jackson momentarily lost consciousness and his car continued forward and crossed

all lanes of Memorial Boulevard. Jackson regained consciousness in time to apply the brakes and prevent the car from crashing into a storefront.

The written policies of the Lakeland Police Department regarding the use of firearms by police officers state that their use “shall be limited to those situations in which lethal defensive action is warranted,” and firearms are not to be drawn or displayed unless there is a “reasonable suspicion of a threat of death or great bodily harm to an officer or another person.”

Officer Cochran claimed that he feared for his life because he believed Jackson was attempting to run him over with the car. The more persuasive evidence indicates that, if Officer Cochran feared for his life, it was an unreasonable fear. The car was rolling forward slowly. The evidence is ambiguous as to whether Officer Cochran was positioned to the side of the car or slightly in front of the car. However, even if he was positioned slightly in front of the car, the more persuasive evidence indicates he could have side-stepped or dodged the car by moving to his right. His decision to end the “threat” by shooting to kill Jackson was not a reasonable act. Although Jackson’s actions in returning to his car and beginning to drive away indicated that he was going to resist arrest and flee, his actions did not give rise to a reasonable belief that he intended to kill or cause serious bodily harm to Officer Cochran.

The gunshot wound left Jackson with a permanent brachial plexus injury which is an injury to nerves that control shoulder, arm, and hand movements. There is no surgery or treatment that can repair the damage. As a result of the injury, Jackson has intermittent pain, numbness, or tingling in his right arm and hand. His right arm is also weaker.

LITIGATION HISTORY:

Jackson filed a lawsuit in 2005 against the City in the circuit court for Polk County. Following a three-day trial, the jury determined that the City was 75 percent at fault and Jackson was 25 percent at fault. The jury verdict was \$550,000. Applying the 75/25 split, the circuit court issued a final judgment against the City for \$412,500. The City paid the sovereign immunity limit of \$100,000, leaving a balance of \$312,500 to seek through a claim bill.

CLAIMANT'S POSITION:

Officer Cochran was negligent in the use of his firearm and the jury award is fair and reasonable.

THE CITY'S POSITION:

Officer Cochran's actions were reasonable under the circumstances. Jackson is solely responsible for his injury.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether the City is liable in negligence for the injuries suffered by Jackson and, if so, whether the amount of the claim is reasonable.

It was claimed that Officer Cochran violated Police Department policy when he first drew his firearm. However, because Jackson quickly returned to his car when he was told he was under arrest, Jackson created a reasonable suspicion in the mind of Officer Cochran that Jackson might be going to get a weapon. Therefore, Officer Cochran did not violate Police Department policy when he drew his firearm. Thereafter, however, it was apparent to Officer Cochran that Jackson had not returned to the car to get a weapon and that Jackson did not have a weapon. Officer Cochran was not justified in shooting Jackson for resisting and fleeing from an attempted arrest for transporting a child without a car seat. See Light v. State, 796 So. 2d 610 (Fla. 2d DCA 2001)(police officers had no authority to use deadly force to arrest a person who had committed only a misdemeanor).

To state a claim for negligence under Florida law, a plaintiff must allege that the defendant owed the plaintiff a duty of care, that the defendant breached the duty, and that the breach caused the plaintiff to suffer damages. Paterson v. Deeb, 472 So. 2d 1210, 1214 (Fla. 1985).

Although the decision to make an arrest is a discretionary governmental function which does not give rise to a duty of care that can be breached, the actions of law enforcement officers in conducting an arrest can create a duty to exercise reasonable care. See, generally, Wallace v. Dean, 3 So. 3d 1035 (Fla. 2009). In Lewis v. City of St. Petersburg, 260 F. 3d 1260 (11th Cir. 2001), it was held that when a police officer draws his or her firearm, the officer owes a duty to act with reasonable care to all persons that are within the zone of risk associated with the discharge of the firearm. The court stated that Florida law clearly recognizes a cause of action for the

negligent handling of a firearm and the negligent decision to use a firearm.

In City of Miami v. Sanders, 672 So. 2d 46 (Fla. 3d DCA 1996), the appellate court reversed the trial court's judgment for the plaintiff for negligent use of excessive force by a police officer during an arrest, stating that "there is no such thing as a negligent commission of an intentional tort." The court stated that the proper action would be for the intentional tort of battery in which the analysis would focus on whether the force used was reasonable under the circumstances. The court went on to say that there can be a distinct cause of action for negligence brought against a police officer separate from the claim of excessive force, but "the negligence component must pertain to something other than the actual application of force during the course of the arrest." Id., at 48.

Ansley v. Heinrich, 925 F. 2d 1339 (11th Cir. 1991) involved several claims against two deputy sheriffs for shooting a man who was carrying a handgun, but had not been observed to have committed a crime. The appellate court did not address the negligence claim, but mentioned that the trial court entered a judgment against the Hillsborough County Sheriff for negligence. Mazzilli v. Doud, 485 So. 2d 477 (Fla. 3d DCA 1986) involved the review of a trial court's judgment against the City of Hialeah for assault and battery and negligence by a Hialeah police officer who shot a federal drug enforcement officer, believing that the federal officer was a felon. The appellate court found "ample evidence" to support the jury's conclusion that the police officer was negligent. These cases do not remove all doubt about the proper application of the law of negligence to a law enforcement officer's use of his or her firearm, but these cases along with the Jackson case make three known cases where a judgment of negligence was entered. Accordingly, my recommendation is based on the premise that negligence is a proper cause of action.

Jackson was within the zone of risk created when Officer Cochran drew his weapon and, therefore, Officer Cochran owed Jackson a duty to act with reasonable care. Officer Cochran did not act with reasonable care when he fired his weapon. Contributing to the finding that Officer Cochran did not act with reasonable care is the fact that the discharge of his firearm endangered the life of the child sitting next to Jackson. Officer Cochran breached his duty to Jackson and

the breach was the proximate cause of Jackson's injuries. Officer Cochran was acting within the course and scope of his employment at the time of the incident. Therefore, the City, as his employer, is be liable for Officer Cochran's negligence and the damages that resulted.

The jury award is reasonable for the injuries that Jackson suffered.

ATTORNEY'S FEES AND
LOBBYIST'S FEES:

In compliance with s. 768.28(8), F.S. Jackson's attorneys agreed to limit their fees to 25 percent of any amount awarded by the Legislature. They have not acknowledged the requirement of the claim bill that costs and lobbyist's fees be included in the 25 percent figure.

LEGISLATIVE HISTORY:

This is the first claim bill filed for Reginald Jackson.

RECOMMENDATION:

For the reasons set forth above, I recommend that Senate Bill 66 (2010) be reported FAVORABLY.

Respectfully submitted,

Bram D. E. Canter
Senate Special Master

cc: Senator Chris Smith
R. Philip Twogood, Secretary of the Senate
Counsel of Record



714770

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 67 - 68
and insert:
this act. The total amount paid for attorney fees relating
to this claim

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

And the title is amended as follows:

Delete line 7
and insert:



714770

12

a limitation on the payment of fees



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 9, 2017

I respectfully request that **Senate Bill #298**, relating to Relief of Reginald Jackson by the City of Lakeland, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in cursive script that reads "Darryl Rouson".

Senator Darryl Rouson
Florida Senate, District 19

Cc: Sen. Lizbeth Benacquisto, VC; Tom Cibula, SD; Joyce Butler, AA

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

SB 298

Bill Number (if applicable)

Topic Relief Reginald Jackson

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739

Phone 863 581-4250

Street

Lakeland

State

FL

Zip

33802

Email sheppe.sosstrategy.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing City of Lakeland

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-17
Meeting Date

SB 298
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Daryl Parks

Job Title _____

Address 240 N. Magnolia Dr.
Street
Tallahassee FL
City State Zip

Phone 850-251-6400

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Reginald Jackson, Chairman

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
2/24/17	SM	Fav/1 amendment
03/22/17	JU	Fav/CS
	CA	
	RC	

February 24, 2017

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

Re: **CS/SB 300** – Judiciary Committee and Senator Victor Torres
HB 6509 – Civil Justice and Claims Subcommittee
Relief of Robert Allan Smith by Orange County

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED CLAIM IN THE AMOUNT OF \$2,813,536 AGAINST ORANGE COUNTY FOR INJURIES AND DAMAGES SUFFERED BY MR. SMITH WHEN THE MOTORCYCLE HE WAS DRIVING WAS STRUCK BY AN ORANGE COUNTY VEHICLE ON SEPTEMBER 7, 2006.

FINDINGS OF FACT:

This claim arises out of a motor vehicle crash involving a motorcycle and a county-owned van which occurred on September 7, 2006, in Orlando, Florida, at the intersection of DePauw Avenue and Orlando Street. The intersection has a stop sign posted for vehicles traveling on Orlando Street. There is no stop sign on DePauw Avenue, which is a residential cross-street. The speed limit on both streets is 25 miles per hour.

The Accident

The accident occurred at approximately 1:43 p.m. Mr. Smith was driving his motorcycle from his residence on DePauw Avenue northbound toward Orlando Street. While at the same time, an Orange County employee, Mr. Godden, was traveling westbound on Orlando Street toward DePauw Avenue. Upon approaching DePauw Avenue, Mr. Godden stopped at the stop sign and looked to the left and to the right on DePauw

Avenue. Mr. Smith testified that he visibly saw the van slow down as it approached the stop sign and, therefore, believed that it was safe to travel through the intersection. Mr. Godden proceeded from the stop sign into the intersection and the front of the van collided with the right side of the motorcycle.

At the time of the accident there were two properly parked vehicles on DePauw Avenue; these cars may have obstructed the view of Mr. Godden and Mr. Smith, and possibly caused Mr. Smith to travel down the center of the lane on DePauw Avenue.

The crash was witnessed primarily by one individual, Mr. Dean. Mr. Dean was outside in close proximity to the accident, but his sight of the impact was obstructed by a large tree. Mr. Dean testified that he had witnessed the motorcycle traveling northbound on DePauw Avenue and the van stopped on Orlando Street. Mr. Dean testified that he watched as the van proceeded straight into the intersection and witnessed Mr. Smith attempt to avoid the van by swerving into the left side of the road. While his vision was obstructed, Mr. Dean heard the sound of the impact.

The van hit Mr. Smith on the right side, causing his right leg to be partially torn from his body. On impact, Mr. Smith was not ejected from the motorcycle, but rather, remained on the motorcycle. The force of the impact shifted the motorcycle to the left, and the left peg of the motorcycle was damaged and the motorcycle continued forward until it made impact with a curb. Upon impact with the curb, Mr. Smith was ejected from the motorcycle and landed in the grass between the sidewalk and the curb.

Mr. Smith suffered extensive injuries including:

- A right leg above-the-knee amputation;
- A left leg dislocation and fracture;
- Lacerations on his face and right hand;
- A broken pelvis and sacrum; and
- Damage to his rectum and internal organs.

At the time of the accident, Mr. Smith was a motorcycle mechanic at Harley Davidson. Since the accident, Mr. Smith has received a bachelor's degree in computer design. He has been looking for employment, but has been unable to secure

a full-time position, in large part, due to his physical impairments as a result of the accident.

Traffic Citation

Mr. Godden was cited with a violation of s. 316.123(2), F.S., for failure to yield from a stop sign. A violation of which is a noncriminal infraction, punishable as a moving violation. The citation, however, was subsequently dismissed.

Civil Suit

The case was first tried in November of 2011, but a mistrial was declared because of issues relating to the jury. The case was retried in July of 2012, and the jury returned a verdict in favor of Mr. Smith for damages totaling \$4,814,785.37.

However, the jury found Mr. Smith to be comparatively negligent. Mr. Smith was found to be 33 percent at fault and Mr. Godden to be 67 percent at fault for the accident, so the damages were reduced accordingly. The verdict amount was also reduced due to collateral sources, which left a net verdict of \$2,913,536.09.

Section 768.28, F.S., limits the amount of damages that can be collected from a local government as a result of its negligence or the negligence of its employees. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, Mr. Smith will not receive the full amount of the judgement unless the Legislature approves this claim bill authorizing the additional payment.

CLAIMANT'S ARGUMENTS:

Mr. Smith argues that Orange County is liable for the negligence of its employee, Mr. Godden, when he failed to yield at a stop sign in violation of s. 316.123(2), F.S.

RESPONDENT'S ARGUMENTS:

Orange County argues that Mr. Smith was driving his motorcycle at speeds in excess of the posted speed limit. Therefore, Orange County argues that the claim bill should be denied because Mr. Smith's comparative fault for the accident was greater than Mr. Godden's.

CONCLUSIONS OF LAW:

The claim bill hearing was a *de novo* proceeding to determine whether Orange County is liable in negligence for damages suffered by the Claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence

presented to the Special Master prior to, during, and after the hearing.

In a negligence action, a plaintiff bears the burden of proof to establish the four elements of negligence: duty, breach, causation, and damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010).

Mr. Godden, as an operator of a motor vehicle, had a reasonable duty of care to operate his vehicle at all times with proper care. A motorist's duty to use reasonable care includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

Section 316.23, F.S. requires drivers after having stopped at a stop sign to yield the right-of-way to any vehicle which is approaching so closely as to constitute an immediate hazard during the time when the driver is moving across or within the intersection. While a violation of a statute governing motor vehicles does not constitute negligence per se, it does constitute prima facie evidence of negligence. *Gudath v. Culp Lumber Co.*, 81 So. 2d 742, 53 (Fla. 1955).

Where a statute governing motor vehicles prohibits specific conduct that likely to cause harm to others and the same conduct is alleged in a civil action as negligent conduct causing injury to another, the statute becomes a minimum standard of care as to that conduct, and a violation of such constitutes some evidence of negligence. *Estate of Wallace v. Fisher*, 567 So. 2d 505 (Fla. 5th DCA 1990).

Mr. Godden was acting within the course and scope of his employment with Orange County at the time of the accident. Orange County, as the employer of Mr. Godden, is liable for his negligent actions. See *Mercury Motors Express v. Smith*, 393 So. 2d 545, 549 (Fla. 1981).

Based on a preponderance of the evidence, it is established that Mr. Godden breached his duty to exercise reasonable care by failing to yield the right-of-way after having stopped at the stop sign in violation of s. 316.123(2), F.S. Mr. Godden by accelerating into the intersection before making sure it was safe to proceed breached his duty of care.

Mr. Smith's extensive injuries, including the loss of his right leg, were a natural and direct consequence of Mr. Godden's negligence. See *Railway Exp. Agency v. Brabham*, 62 So. 2d 713 (Fla. 1952). The accident would not have occurred but for Mr. Godden's negligence.

As a result of Mr. Godden's negligence, Mr. Smith suffered bodily injury and resulting pain and suffering, impairment, disability, mental anguish, and loss of earnings.

Collateral Sources

Under s. 768.76, F.S., damages owed by a tortfeasor can be reduced by the amount of collateral sources which have been paid to compensate the claimant. In this case, the jury's award was reduced by \$55,638 due to past Social Security Disability Income benefits and by \$325,865.58 due to amounts received by the Florida Department of Education, Medicaid, and the Veteran's Administration.

Comparative Negligence

Section 768.81, F.S., Florida's comparative negligence statute, applies to this case because both Mr. Godden and Mr. Smith were at fault in the accident.

Mr. Godden's Negligence

A stop sign that is established and maintained by lawful authority at an intersection of a street represents a proclamation of danger and imposes upon the motorist the duty to stop and look before proceeding into the intersection. *Tooley v. Marquillies*, 79 So. 2d 421, 22 (Fla. 1955).

The proximate cause of the accident was Mr. Godden's negligence in proceeding into the intersection in front of Mr. Smith's approaching motorcycle at such a time where it may have been impossible for Mr. Smith to avoid the collision.

Mr. Smith's Negligence

Mr. Smith as an operator of a motor vehicle also has the duty to exercise reasonable care. Such duty includes a responsibility to enter intersections only upon a determination that it is safe to do so under the prevailing conditions. *Williams v. Davis*, 974 So. 2d 1052, 63 (Fla. 2007).

The verdict amount after the reduction of collateral sources and the reduction of \$84,720 in future medical expenses which was agreed to by the parties is \$4,348,561.79. This adjusted verdict amount was further reduced due to the jury's assessment of comparative negligence against Mr. Smith. The jury in the civil suit found Mr. Godden 67 percent at fault and Mr. Smith 33 percent at fault. Therefore, the net verdict is \$2,913,536.09.

Orange County has paid the \$100,000 statutory cap on liability. Mr. Smith requests that the remaining sum of \$2,813,536.09 be approved in this claim bill.

After consideration of all the facts presented in this case, I conclude that the amount of this claim bill is appropriate.

LEGISLATIVE HISTORY:

This is the first claim bill presented to the Senate on this matter.

ATTORNEY FEES:

Mr. Smith's attorney has agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. The bill provides that the total amount paid for lobbying fees, costs, and other similar expenses relating to the claim are included in the 25 percent limit.

OTHER FEES:

The bill essentially requires that expenses for lobbying fees, costs, and similar expenses be deducted from the funds that may be used to pay attorney fees. However, a recent opinion of the Florida Supreme Court limits the authority of the Legislature to restrict fees beyond the restrictions in s. 768.28, F.S.¹ As such, the bill should be amended to remove these fee limits in conformity with the Court's opinion.

FISCAL IMPACT:

Orange County at the time of the accident maintained a self-insured retention in the amount of \$1,000,000 with a \$10,000,000 excess liability policy. Orange County has stated that if the county is required to pay out any amount of this claim bill, there will be adverse impacts to the county's financial position as the funds would come from charge backs to various departments and, thereby, restrict each department's ability to provide services and conduct programs.

¹ *Searcy, Denney, Scarola, Barnhart & Shipley v. State*, 2017 Fla. LEXIS 234 (Fla. 2017).

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 300 (2017) be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Ashley Istler
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute provides for the payment of outstanding Medicaid liens, makes a minor change to the facts stated in the whereas clauses of the bill, and does not include limits on the amount of lobbying fees, costs, and similar expenses which may be paid from the proceeds of the bill.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Torres) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

Section 2. Orange County is authorized and directed to
appropriate from funds not otherwise encumbered and to draw a
warrant in the sum of \$2,813,536.09 payable to Robert Allan
Smith as compensation for injuries and damages sustained as a
result of the negligence of an employee of Orange County.



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Section 3. The governmental entity responsible for payment of the warrant shall pay to the Agency for Health Care Administration the amount due under s. 409.910, Florida Statutes, before disbursing any funds to the claimant. The amount due to the agency shall be equal to all unreimbursed medical payments paid by Medicaid up to the date upon which this act becomes a law.

Section 4. The amount paid by Orange County pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Robert Allan Smith. The total amount of attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

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

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act for the relief of Robert Allan Smith by Orange County; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of Orange County; providing for repayment of Medicaid liens; providing a limitation on the payment of fees and costs; providing an effective date.



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41
42 WHEREAS, at 1:43 p.m. on September 7, 2006, Robert Allan
43 Smith was driving his motorcycle north on DePauw Avenue in
44 Orlando, the quiet residential street he lived on, within 300
45 feet of his home, within the 25 mph posted speed limit, and with
46 headlights on in clear, dry weather, and

47 WHEREAS, as Robert Allan Smith approached the intersection
48 of DePauw Avenue and Orlando Street, at which stop signs are
49 posted for vehicles traveling on Orlando Street, an Orange
50 County work van driven by Orange County employee Lynn Lawrence
51 Godden, which was traveling west on Orlando Street, negligently
52 pulled away from the stop sign, colliding with Mr. Smith, and

53 WHEREAS, Robert Allan Smith said that he saw the driver of
54 the Orange County van visibly slow down as he approached the
55 stop sign, having observed Mr. Smith approaching on his
56 motorcycle, but that the driver drove through the stop sign and
57 into Mr. Smith's path and Mr. Smith was unable to avoid a
58 collision, and

59 WHEREAS, the front of the Orange County van struck Robert
60 Allan Smith, causing severe and life-threatening injuries and
61 necessitating surgical procedures, including a traumatic
62 amputation of his right leg above his knee, and

63 WHEREAS, Robert Allan Smith also suffered a badly fractured
64 lower left leg with internal fixation, a broken pelvis and
65 sacrum with internal fixation, and damage to the rectum and
66 internal organs, which required a laparotomy, and

67 WHEREAS, the Orange County employee testified that he
68 observed Robert Allan Smith's motorcycle as he approached the
69 intersection, but he erroneously believed that it was heading



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away from him, though there was no evidence to support this claim, and that he was looking to his right, away from Mr. Smith, when he entered the intersection, and

WHEREAS, the Orange County employee was issued a citation by the Orlando Police Department for failure to yield from a stop sign, and

WHEREAS, after finding for Robert Allan Smith and against Orange County in a civil jury trial, the jury in the case determined that Mr. Smith's future medical expenses totaled \$2.376 million over 40 years and that his past medical expenses and lost wages totaled \$688,807.37, and awarded him \$1,749,978 in damages for past and future pain and suffering, for a total award of \$4,814,785.37, and

WHEREAS, after the total award was reduced by amounts for comparative negligence and Medicaid and Veteran's Administration setoffs, a final judgment was entered against Orange County on November 27, 2012, in the amount of \$2,913,536.09, and

WHEREAS, Orange County has paid Robert Allan Smith \$100,000 pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, which were in effect at the time that Mr. Smith's claim arose, leaving a remaining unpaid balance of \$2,813,536.09, NOW, THEREFORE,



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Children, Families, and Elder Affairs, *Vice Chair*
Appropriations Subcommittee on General
Government
Ethics and Elections
Military and Veterans Affairs, Space, and
Domestic Security

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR VICTOR M. TORRES, JR.
15th District

March 8, 2017

Senator Greg Steube
326 Senate Office Building
404 S Monroe St
Tallahassee, FL 32399-1100

Dear Chairman Steube:

Please accept this letter as a formal request to schedule SB 300, a claims bill for Relief of Robert Allan Smith by Orange County, for the next available meeting of the Judiciary Committee. Please let me know if you have any questions or need additional information. Thank you, in advance, for your favorable consideration of this request.

Respectfully,

A handwritten signature in dark ink, appearing to read "Victor M. Torres, Jr.", is written over a horizontal line.

Victor M. Torres, Jr.
State Senator
District 15

c: Tom Cibula, Staff Director, Judiciary Committee
Alex Blair, Legislative Assistant

REPLY TO:

- ☐ 101 Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817
- ☐ 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-17

Meeting Date

300
~~1509~~

Bill Number (if applicable)

Topic Robert Allan Smith Claim

Amendment Barcode (if applicable)

Name Albert Balido

Job Title _____

Address 201 W. Park Ave

Phone 858 257 3440

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Robert Allan Smith

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

300

Bill Number (if applicable)

Topic Claims bill

Amendment Barcode (if applicable)

Name Kelley Teague

Job Title Legislative Affairs Director

Address 201 S. Rosalind Ave

Phone _____

Street

Orlando

FL

32801

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Orange County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 226

INTRODUCER: Judiciary Committee and Senator Artiles

SUBJECT: Property Taxes

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			AFT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 226 makes several changes related to the property tax process. Specifically, these changes:

- Require that the taxes paid as a condition of establishing title to real property by adverse possession be “delinquent” taxes instead of “outstanding” taxes;
- Require a property appraiser to waive penalties and interest when a taxpayer improperly claims an exemption under certain circumstances, unless the person claimed a homestead-related exemption, limitation, or reduction on another property;
- Authorize a petitioner to file a late-filed petition to the Value Adjustment Board (VAB) if the petitioner shows extenuating circumstances and files the petition within 60 days after the petition deadline;
- Authorize the value adjustment board to hear a petition that is filed up to 25 days after the petition deadline if the petitioner shows good cause and the county has extended the tax roll before all VAB hearings have been completed;
- Provide that “good cause” for rescheduling a value adjustment board hearing does not include being scheduled for value adjustment board hearings in different jurisdictions at the same time, unless the hearings involve the same petitioner or the petitioner and property appraiser agree to reschedule the hearing;
- Provide that an appraisal performed by a person who serves as a special magistrate for the value adjustment board may not be used in a value adjustment board hearing in the same year that the person serves as a special magistrate;

- Authorizes the property appraiser to grant the \$25,000 exemption from the tangible personal property tax even if the taxpayer has not previously filed a personal property tax return;
- Creates a rebuttable presumption, rebuttable upon a showing of clear and convincing evidence by the property appraiser that an organization meets a charitable purpose if the entity qualifies as a s. 501(c)(3) organization under the Internal Revenue Code;
- Adds to the list of educational institutions qualifying for a property exemption a nonprofit entity issuing industry certifications that is eligible for workforce education funding, and a nonprofit entity that has entered into statewide articulation agreements with the State Board of Education for articulation of postsecondary credit for approved industry certifications;
- Broadens the tax exemption on property owned by educational institutions from property used exclusively, to property used predominantly for educational purposes, and provides for the exemption to apply in proportion to the exempt use of the property;
- Increases from \$500 to \$5,000 the additional homestead exemption afforded to widows, widowers, blind persons, or totally and permanently disabled persons; and
- Limits information included in annual Truth in Millage notices to information related to the tax notice.

The Revenue Estimating Conference has not yet reviewed the bill for a fiscal impact.

II. Present Situation:

Overview of Property Taxes

Ad Valorem Process

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies applicable exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³

Each property appraiser submits the county’s tax roll to the Department of Revenue (DOR) for review by July 1 of each year for assessments as of the prior January 1.⁴ In August, the property appraiser sends a Truth in Millage (TRIM) notice to each taxpayer providing specific tax information about his or her parcel.⁵ Taxpayers who disagree with the property appraiser’s assessment or the denial of an exemption or property classification may:

¹ Both real and tangible personal property are subject to the tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the State Constitution provides otherwise. FLA. CONST. art. VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ Section 193.1142(1), F.S.

⁵ Section 200.069, F.S.

- Request an informal meeting with the property appraiser;⁶
- Appeal the assessment by filing a petition with the county value adjustment board (VAB);⁷ or
- Challenge the assessment in circuit court.⁸

Taxes become payable on November 1. However, assessments subject to VAB petitions may not become final by the November 1 deadline. If a petitioner challenges a VAB assessment, the board of county commissioners may request that the tax collector extend the tax roll⁹ prior to the completion of VAB proceedings and instruct the tax collector to begin issuing tax notices based on the property appraiser's initial tax roll. As part of extending the roll, the board may require the VAB to certify the portion of the roll that it has completed.¹⁰

Within 20 working days after receiving the certified tax roll, tax collectors send each taxpayer a tax notice.¹¹ Property taxes are delinquent if they not paid before April 1 of the year following the assessment year.¹²

The Value Adjustment Board Process

Each county has a VAB, comprised of two members of the governing body of the county, one member of the school board and two citizen members appointed by the governing body of the county.¹³ The county clerk acts as the clerk of the VAB.¹⁴ A property owner may initiate a challenge by filing a petition with the clerk of the VAB within 25 days after the mailing of the TRIM notice.¹⁵

The clerk of the VAB is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling hearings.

Petitioners before the board may be represented by:

- An employee of the taxpayer or an affiliated entity;
- An attorney who is a member of The Florida Bar;
- A licensed real estate appraiser or broker;
- A certified public accountant;
- A power of attorney; or

⁶ Section 194.011(2), F.S.

⁷ Section 194.011(3), F.S.

⁸ Section 194.171, F.S.

⁹ Extending the tax roll enables the VAB to complete its review of petitions while the local government uses the preliminary roll to establish the budget.

¹⁰ See ss. 193.122(1) and 197.323, F.S. The value adjustment board certifies each assessment roll, based on its adjustments, pursuant to an order by the board of county commissioners, and then again after all hearings have been held. Certificates are attached to each roll. Unless the board of county commissioners extends the roll, the VAB must complete all hearings and certify the roll to the property appraiser by June 1 following the assessment year.

¹¹ Section 197.322, F.S.

¹² Section 197.333, F.S.

¹³ Section 194.015, F.S.

¹⁴ *Id.*

¹⁵ Section 194.011(3)(d), F.S.

- A person having written authorization to act on the taxpayer's behalf without compensation.¹⁶

Current law requires VABs to render a written decision within 20 calendar days after the last day the board is in session.¹⁷ The decision of the VAB must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser.¹⁸ If a special magistrate has been appointed, the recommendations of the special magistrate must be considered by the VAB.¹⁹ The clerk of the VAB, upon issuance of a decision, must notify each taxpayer and the property appraiser of the decision of the VAB.

Additional information regarding the present situation is included in the discussion of the Effect of Proposed Changes below.

III. Effect of Proposed Changes:

Section 1 - Adverse Possession Based on Payment of Taxes

Present situation: Adverse possession of property requires a hostile, actual, and visible appropriation of property for a specified number of years, determined in statute.²⁰ In Florida, an intended adverse possessor must continuously occupy the land for a period of 7 years.²¹ The use of the property by the adverse possessor must be inconsistent with the use of the land by the owner.²² For example, the court upheld as an inconsistent use of property the person's alteration of land by fencing it, farming on it, and raising animals on it.²³ Adverse possession may be with or without color of title. Adverse possession without color of title occurs when a person otherwise meets the requirements of adverse possession but does so without the benefit of a written instrument, judgment, or decree.²⁴

To be valid as an adverse possession without color of title, a person must have paid all outstanding taxes and matured installments of special improvement liens levied by the government within a year after entering possession.²⁵ Taxes are payable at the end of November, but they are not delinquent until April 1 of the following year.²⁶

Proposed change: The bill requires a person who is seeking to establish title to real property by adverse possession to pay the "delinquent" taxes instead of the "outstanding" taxes on the real property. This change will give the owner of title to the property a few more months to defeat an attempt at adverse possession by paying the outstanding taxes that have not become delinquent.

¹⁶ Section 194.034(1)(a), (b), and (c), F.S.

¹⁷ Section 194.034(2), F.S.

¹⁸ *Id.*; See also Rules 12D-9.030, 12D-9.032, and 12D-10.003(3), F.A.C.

¹⁹ Section 194.034(2), F.S.

²⁰ BALLENTINE'S LAW DICTIONARY (3d ed. 2010).

²¹ Sections 95.16(1) and 95.18(1), F.S.

²² 2 FLA JUR ADVERSE POSSESSION AND PRESCRIPTION s. 29.

²³ *Porter v. Lorene Inv. Co.*, 297 So.2d 622, 624-625 (Fla. 1st DCA 1974).

²⁴ Section 95.18(1), F.S.

²⁵ Section 95.18(1)(a), F.S.

²⁶ Section 197.333, F.S.

Sections 2, 3, 7, 9, and 12 - Exemptions on Homestead Property

Present situation: General Homestead Exemption – Florida exempts up to \$50,000 of the assessed value of homesteads from property tax. To qualify, the homeowner must make the homestead a permanent residence, and may claim only one homestead.²⁷ If a property appraiser determines that for any year within the last 10 years a property owner was not entitled to, but received a homestead exemption, the property appraiser must serve the owner with a notice of tax lien.²⁸ The owner is then subject to unpaid taxes, a penalty of 50 percent of the unpaid taxes for each year, and 15 percent interest per year. However, if the property appraiser granted the exemption due to a property appraiser's clerical mistake or omission, no penalty or interest is assessed.²⁹

Homestead Exemption for Living Quarters for Parents or Grandparents -- Counties may offer a discretionary reduction in assessed value to homeowners providing living quarters to a parent or grandparent.³⁰ If the county grants the reduction, to qualify, a homeowner must physically alter the property to provide the living quarters. The parent or grandparent must be at least 62 years of age and reside on the owner's homestead as a primary place of residence.³¹

If a property appraiser determines that for any year within the last 10 years a property owner was not entitled to, but received a reduction under this provision, the property appraiser will serve the owner with a notice of tax lien. The owner is then subject to unpaid taxes, a penalty of 50 percent of the unpaid taxes for each year, and 15 percent interest per year. However, if the property appraiser granted the reduction due to a property appraiser's clerical mistake or omission, no penalty or interest is assessed.³²

Additional Homestead Exemption for Persons 65 Years of Age and Older -- Counties may offer a discretionary exemption to homeowners who are at least 65 years of age with a household income of no more than \$20,000.³³

If a property appraiser determines that for any year within the last 10 years a property owner was not entitled to, but received a the exemption, the property appraiser will serve the owner with a notice of tax lien. The owner is then subject to unpaid taxes, a penalty of 50 percent of the unpaid taxes for each year, and 15 percent interest per year. However, if the property appraiser granted the exemption due to a property appraiser's clerical mistake or omission, no penalty or interest is assessed.³⁴

Additional Homestead Exemptions -- Additional homestead exemptions are available to homeowners who qualify as totally and permanently disabled veterans (s. 196.081, F.S.);

²⁷ Art. VII, Sect. 6(a) and (b), FLA. CONST.

²⁸ Section 193.155(10), F.S.

²⁹ *Id.*

³⁰ Art. VII, s. 4(f), FLA. CONST.

³¹ Section 193.703(1) and (3), F.S.

³² Section 193.703(7), F.S.

³³ Art. VII, s. 6(d), FLA. CONST.

³⁴ Section 196.075(2) and (9), F.S.

disabled veterans confined to wheelchairs (s. 196.091, F.S.); totally and permanently disabled persons (s. 196.101, F.S.); deployed service members (s. 196.173, F.S.); and widows, widowers, and blind persons (s. 196.202, F.S.)

Proposed change: For the exemptions discussed above, the bill requires a property appraiser to waive unpaid penalties and interest otherwise owed by a property owner who received an exemption that he or she was not entitled to, after the property appraiser determines that:

- The person qualified for the exemption or limitation at the time the application was filed;
- The person acted in good faith; and
- Other than the improperly received tax savings, the person did not receive any additional financial benefit, such as rental payments or other income.

However, the property appraiser may not waive penalty or interest if the person claimed a homestead-related exemption, limitation or reduction on another property.

The bill also increases from \$500 to \$5,000 the additional homestead exemption available to a widow, widower, blind person, or totally and permanently disabled person.

Section 4 – Joint VAB Petitions, Late-Filed Petitions

Present situation:

A petitioner must file his or her petition to the VAB on or before the 25th day following the Notice of Proposed Property Taxes (TRIM).³⁵ However, the VAB is not barred from considering a VAB petition that is filed after the statutory deadline.³⁶ This treatment has resulted in the VAB hearing petitions long after – sometimes months after – the initial filing deadline has passed.

Proposed change:

The bill provides that a late-filed petition to the VAB is authorized if the petitioner shows extenuating circumstances demonstrating that the petitioner was unable to file in a timely manner, but must be filed within 60 days after the 25th day after the mailing of the deadline. However, the VAB is not required to delay its proceedings for the 60-day timeframe and no late petition is authorized after the VAB has concluded its review of petitions.

Section 5 – Rescheduling Value Adjustment Board Hearings

Present situation: Petitioners and property appraisers are authorized to reschedule a hearing before a VAB a single time for good cause.³⁷ “Good cause” is defined to mean circumstances beyond the control of the person seeking to reschedule the hearing which would reasonably prevent adequate representation at the hearing.

Proposed change: The bill specifically provides that “good cause” does not include being scheduled for value adjustment board hearings in different jurisdictions at the same time or date

³⁵ Section 194.011(3)(d), F.S.

³⁶ See Rule 12D-9.015(11), Fla. Admin. Code

³⁷ Section 194.032(2)(a), F.S.

unless the hearings involve the same petitioner or unless the property appraiser and the petitioner agree to reschedule the hearing.

Additionally, the bill allows the individual, agent, or legal entity that signed the petition, and the property appraiser, to identify up to 10 business days per tax roll year that they are unavailable for hearings.

Section 6 – Use of Appraisals by Special Magistrates

Present situation: In counties having a population of more than 75,000, the VAB must appoint special magistrates to take testimony and make recommendations to the VAB.³⁸ Some of the special magistrates are themselves appraisers, which may create an appearance of impropriety in certain cases.

Proposed change: The bill prohibits a special magistrate performing appraisals for submission to the VAB in the same tax year in which the special magistrate serves the VAB.

Sections 8 and 11 – Educational Institutions and Charitable Entities

Present situation: Florida exempts property owned by educational institutions and used exclusively for educational purposes from property tax.³⁹ An educational institution is a federal, state, religious or other private school, offering education from Pre-K through 12th grade, a state college or university, a qualifying private institution of higher education, or a qualifying direct-support organization.⁴⁰ The property of an educational institution is exempt from property tax if the property is used exclusively for educational purposes.⁴¹ An exclusive use of property is a use of property solely for exempt purposes.⁴²

Proposed change: The bill expands the definition of “educational institution” to include nonprofit entities that issue industry certifications identified by the Chancellor Career and Adult Education as being eligible for workforce education funding per approval by the State Board of Education pursuant to s. 1008.44, F.S., or its successor. The bill also adds nonprofit entities that have entered into a statewide articulation agreement with the State Board of Education for articulation of postsecondary credit for related degrees for approved industry certifications.

The bill also grants the educational exemption for property used predominantly for educational purposes. For non-exclusive use, the exemption is granted in proportion to the extent of the exempt use of the property.

³⁸ Section 194.035(1), F.S.

³⁹ Section 196.198, F.S.

⁴⁰ Section 196.012(5), F.S.; Qualifying private institutions of higher education include schools accredited by the Southern Association of Colleges and Schools or the Florida Council of Independent Schools, or a nonprofit private school primarily offering courses for continuing education credit in postgraduate dental education (s. 196.012(5), F.S.)

⁴¹ Section 196.198, F.S.

⁴² Section 196.012(2), F.S.

Present situation: Florida exempts from property taxes property used exclusively for charitable purposes.⁴³ Specific exemptions are outlined for various charitable activities, including:

- Hospitals, nursing homes, and homes for special services;⁴⁴
- Property used by nonprofit homes for the aged;⁴⁵
- Affordable Housing;⁴⁶ and
- Not-for-profit sewer and water companies.⁴⁷

Proposed change: The bill provides that a nonprofit entity that receives a determination from the Internal Revenue Service that it is exempt from federal income tax under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of that code, is granted a rebuttable presumption of charitable purpose. The property appraiser must rebut the presumption of charitable purpose by clear and convincing evidence.

Section 10 – The Assessment of Tangible Personal Property

Present situation: Property tax applies not only to real property, but also to certain categories of personal property. Florida divides personal property into four categories for tax purposes: household goods, intangible personal property, inventory, and tangible personal property.⁴⁸ Household goods, inventory, and intangible personal property are exempt from the property tax.⁴⁹

Owners of taxable tangible personal property are required to file a return with the property appraiser by each April 1.⁵⁰ A single return must be filed for each site in the county where the owner of tangible personal property transacts business.⁵¹ Florida requires that a single return include all taxable property in certain instances.⁵² The first \$25,000 of value included on a tangible personal property return is exempt.⁵³

If an owner of tangible personal property fails to file a return and the property appraiser identifies the tangible personal property and includes it on the tax roll, the property appraiser may not grant the \$25,000 exemption; however, the property appraiser has the option of granting the \$25,000 exemption in subsequent years.⁵⁴

Proposed change: The bill authorizes the property appraiser to grant the \$25,000 exemption in the first year that the tangible personal property is included on the tax roll, even if the owner does not file a return.

⁴³ See generally ss. 196.195 and 196.196, F.S.

⁴⁴ Section 196.197, F.S.

⁴⁵ Section 196.1975, F.S.

⁴⁶ Section 196.1978, F.S.

⁴⁷ Section 196.2001, F.S.

⁴⁸ Section 192.001(11), F.S.

⁴⁹ See ss. 196.181 and 196.185, F.S.

⁵⁰ Section 193.062(1), F.S.

⁵¹ Section 196.183(1), F.S.

⁵² *Id.*

⁵³ Section 196.183, F.S.

⁵⁴ Section 196.183(4), F.S.

Section 13 – Truth in Millage (TRIM) Notice

Present situation: Each property appraiser submits the county's tax roll to the Department of Revenue for review by July 1 of each year for assessments as of the prior January 1.⁵⁵ In August, the property appraiser sends a Truth in Millage (TRIM) notice to all taxpayers providing specific tax information about their parcel.⁵⁶

Proposed change: This bill specifies that the TRIM notice may include only statements explaining an item on the notice. This limit on TRIM mailings may save money on mailings.

Section 14 – Effective Date

The bill takes effect July 1, 2017.

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 Revenue Estimating Conference has not yet reviewed the bill for a fiscal impact. However, the bill may result in less ad valorem revenue to counties, municipalities, and special districts due to the expanded definition of educational institution and due to the increased tax exemption for widows, widowers, blind persons, and the totally disabled.

B. Private Sector Impact:

In providing flexibility to the property appraiser to waive penalties and interest, a property owner who should not have received the benefit of a property tax exemption or limitation will benefit from a waiver.

In providing flexibility to the property appraiser to authorize the \$25,000 exemption on tangible personal property, a person who fails to file a return might still receive the exemption.

⁵⁵ Section 193.1142(1), F.S.

⁵⁶ Section 200.069, F.S.

A private entity fulfilling an educational or charitable purpose that newly qualifies for a full or partial exemption of property tax may benefit from a reduction in property taxes as a result of this bill.

A person who qualifies for the additional homestead exemption afforded to a widow, widower, blind person, or a totally and permanently disabled person may benefit from the increased exemption from \$500 to \$5,000.

C. Government Sector Impact:

The Department of Revenue indicates that it does not expect an impact from the provisions of the bill as filed.⁵⁷

The property appraiser may benefit generally from having increased flexibility in waiving penalties and allowing an exemption on tangible personal property, and having the same deadlines as a taxpayer in a legal action.

A local government subject to the notice requirement for a public hearing on a non-ad valorem assessment roll may save money on publication costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 95.18, 193.155, 193.703, 194.011, 194.032, 194.035, 196.012, 196.075, 196.183, 196.198, 196.202, and 200.069.

IX. Additional Information:

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

CS by Judiciary on March 22, 2017:

This CS:

- Creates a rebuttable presumption, rebuttable upon a showing of clear and convincing evidence by the property appraiser, that an organization meets a charitable purpose if the entity qualifies as a s. 501(c)(3) organization under the Internal Revenue Code;
- Adds to the list of educational institutions qualifying for a property exemption a nonprofit technical school awarding industry-issued certifications;

⁵⁷ Department of Revenue, *2017 Agency Legislative Bill Analysis* (Jan. 19, 2017).

- Broadens the tax exemption on property owned by educational institutions from property used exclusively, to property used predominantly for educational purposes, and provides for the exemption to apply in proportion to the exempt use of the property;
- Increases from \$500 to \$5,000 the additional homestead exemption afforded to widows, widowers, blind persons or totally and permanently disabled persons;
- Requires, rather than authorizes a property appraiser to waive unpaid penalties and interest upon a showing of good cause and after determining that the person did not intend to illegally avoid tax payments and that no benefit accrued to the property owner; and
- Removes provisions from the bill addressing the judicial review of property tax decisions made by a Value Adjustment Board, and circumstances in which a condominium association, cooperative association, or a homeowners' association may file a single joint petition on behalf of its members.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
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	.	
	.	

The Committee on Judiciary (Articles) recommended the following:

Senate Amendment (with title amendment)

Delete lines 71 - 546

and insert:

Section 2. Subsection (10) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8)



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apply.

(10) (a) If the property appraiser determines that for any year or years within the prior 10 years a person who was not entitled to the homestead property assessment limitation granted under this section was granted the homestead property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, when a person entitled to exemption pursuant to s. 196.031 inadvertently receives the limitation pursuant to this section following a change of ownership, the assessment of such property must be corrected as provided in paragraph (9) (a), and the person need not pay the unpaid taxes, penalties, or interest. The property appraiser shall waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the property assessment limitation at the time the application was filed; the person acted in good faith; and, other than the improperly received tax savings, the person did not receive any additional financial benefit, such as rental payments or other income. The property appraiser may not waive penalty or interest if the person claimed a homestead-related exemption, limitation, or reduction on another property.

(b) If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake



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41 or an omission, the person or entity improperly receiving the
42 property assessment limitation may not be assessed a penalty or
43 interest.

44 (c) Before a lien may be filed, the person or entity so
45 notified must be given 30 days to pay the taxes and any
46 applicable penalties and interest. ~~If the property appraiser~~
47 ~~improperly grants the property assessment limitation as a result~~
48 ~~of a clerical mistake or an omission, the person or entity~~
49 ~~improperly receiving the property assessment limitation may not~~
50 ~~be assessed a penalty or interest.~~

51 Section 3. Subsection (7) of section 193.703, Florida
52 Statutes, is amended to read:

53 193.703 Reduction in assessment for living quarters of
54 parents or grandparents.—

55 (7) (a) If the property appraiser determines that for any
56 year within the previous 10 years a property owner who was not
57 entitled to a reduction in assessed value under this section was
58 granted such reduction, the property appraiser shall serve on
59 the owner a notice of intent to record in the public records of
60 the county a notice of tax lien against any property owned by
61 that person in the county, and that property must be identified
62 in the notice of tax lien. Any property that is owned by that
63 person and is situated in this state is subject to the taxes
64 exempted by the improper reduction, plus a penalty of 50 percent
65 of the unpaid taxes for each year and interest at a rate of 15
66 percent per annum. The property appraiser shall waive the unpaid
67 penalties and interest if the property appraiser determines that
68 the person qualified for the reduction at the time the
69 application was filed; the person acted in good faith; and,



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other than the improperly received tax savings, the person did not receive any additional financial benefit, such as rental payments or other income. The property appraiser may not waive penalty or interest if the person claimed a homestead-related exemption, limitation, or reduction on another property.

(b) However, if a reduction is improperly granted due to a clerical mistake or an omission by the property appraiser, the person who improperly received the reduction may not be assessed a penalty or interest.

(c) Before such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. Such lien is subject to s. 196.161(3).

Section 4. Paragraph (d) of subsection (3) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer's written authorization or power of attorney, unless the person filing the petition is listed in s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a petition with a value adjustment board without the taxpayer's signature or written authorization by certifying under penalty of perjury that he or she has authorization to file the petition on behalf of the taxpayer. If a taxpayer notifies the value adjustment board that a petition has been filed for the



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taxpayer's property without his or her consent, the value adjustment board may require the person filing the petition to provide written authorization from the taxpayer authorizing the person to proceed with the appeal before a hearing is held. If the value adjustment board finds that a person listed in s. 194.034(1) (a) willfully and knowingly filed a petition that was not authorized by the taxpayer, the value adjustment board shall require such person to provide the taxpayer's written authorization for representation to the value adjustment board clerk before any petition filed by that person is heard, for 1 year after imposition of such requirement by the value adjustment board. A power of attorney or written authorization is valid for 1 assessment year, and a new power of attorney or written authorization by the taxpayer is required for each subsequent assessment year. A petition shall also describe the property by parcel number and shall be filed as follows:

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, s. 196.173, or s. 196.193 or notice by the tax collector under s. 197.2425. Upon a showing of extenuating circumstances demonstrating to the



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value adjustment board that the petitioner was unable to file a
petition in a timely manner, the petitioner may file a petition
up to 60 days after the deadline; however, the value adjustment
board is not required to delay proceedings for the 60-day
timeframe and no late petition is authorized after the value
adjustment board has concluded its review of petitions.

Section 5. Paragraph (a) of subsection (2) of section
194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2)(a) The clerk of the governing body of the county shall
prepare a schedule of appearances before the board based on
petitions timely filed with him or her. The clerk shall notify
each petitioner of the scheduled time of his or her appearance
at least 25 calendar days before the day of the scheduled
appearance. The notice must indicate whether the petition has
been scheduled to be heard at a particular time or during a
block of time. If the petition has been scheduled to be heard
within a block of time, the beginning and ending of that block
of time must be indicated on the notice; however, as provided in
paragraph (b), a petitioner may not be required to wait for more
than a reasonable time, not to exceed 2 hours, after the
beginning of the block of time. The property appraiser must
provide a copy of the property record card containing
information relevant to the computation of the current
assessment, with confidential information redacted, to the
petitioner upon receipt of the petition from the clerk
regardless of whether the petitioner initiates evidence
exchange, unless the property record card is available online
from the property appraiser, in which case the property



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appraiser must notify the petitioner that the property record card is available online. The petitioner and the property appraiser may each reschedule the hearing a single time for good cause. As used in this paragraph, the term "good cause" means circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from having adequate representation at the hearing. However, the term does not include being scheduled for two separate hearings in different jurisdictions at the same time or date, unless the hearings involve the same petitioner or the property appraiser and petitioner agree to reschedule the hearing. Before the commencement of hearings for the value adjustment board roll year, the property appraiser and the individual, agent, or legal entity that signed the petition may identify up to 10 business days per roll year in which they are unavailable for hearings. If the hearing is rescheduled by the petitioner or the property appraiser, the clerk shall notify the petitioner of the rescheduled time of his or her appearance at least 15 calendar days before the day of the rescheduled appearance, unless this notice is waived by both parties.

Section 6. Subsection (1) of section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from



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a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board or the attorney appointed to advise the value adjustment board shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). A special magistrate appointed to hear issues of exemptions, classifications, and determinations that a change of



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ownership, a change of ownership or control, or a qualifying improvement has occurred shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation. A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation. A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. An appraisal performed by a special magistrate may not be submitted as evidence to the value adjustment board in any roll year during which he or she has served that board as a special magistrate. Before appointing a special magistrate, a value adjustment board shall verify the special magistrate's qualifications. The value adjustment board shall ensure that the selection of special magistrates is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser. The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The expense of hearings before magistrates and any



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compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board. When appointing special magistrates or when scheduling special magistrates for specific hearings, the board, the board attorney, and the board clerk may not consider the dollar amount or percentage of any assessment reductions recommended by any special magistrate in the current year or in any previous year.

Section 7. Paragraph (a) of subsection (9) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(9)(a) A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for exemption of property within the county after an initial application is made and the exemption granted. The waiver under this subsection of the annual application or statement requirement applies to all exemptions under this chapter except the exemption under s. 196.1995. Notwithstanding such waiver, refiling of an application or statement shall be required when any property granted an exemption is sold or otherwise disposed of, when the ownership changes in any manner, when the applicant for homestead exemption ceases to use the property as his or her homestead, or when the status of the owner changes so as to change the exempt status of the property. In its deliberations on whether to waive the annual application or statement requirement, the governing body shall consider the possibility of fraudulent exemption claims which may occur due to the waiver of the annual application requirement. The owner of any property



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granted an exemption who is not required to file an annual application or statement shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes so as to change the exempt status of the property. If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner was not entitled to receive such exemption, the owner of the property is subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes and penalties. Such lien when filed shall attach to any property, identified in the notice of tax lien, owned by the person who illegally or improperly received the exemption. If such person no longer owns property in that county but owns property in some other county or counties in the state, the property appraiser shall record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it shall become a lien against such property in such county or counties. The property appraiser shall waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the exemption at the time the application was filed; the person acted in good faith; and, other than the improperly



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received tax savings, the person did not receive any additional financial benefit, such as rental payments or other income. The property appraiser may not waive penalty or interest if the person claimed a similar exemption, limitation, or reduction on another property, such as two homestead-related exemptions.

Section 8. Subsections (5) and (7) of section 196.012, Florida Statutes, are amended to read:

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(5) "Educational institution" means a federal, state, parochial, church, or private school, college, or university conducting regular classes and courses of study required for eligibility to certification by, accreditation to, or membership in the State Department of Education of Florida, Southern Association of Colleges and Schools, or the Florida Council of Independent Schools; a nonprofit private school the principal activity of which is conducting regular classes and courses of study accepted for continuing postgraduate dental education credit by a board of the Division of Medical Quality Assurance; educational direct-support organizations created pursuant to ss. 1001.24, 1004.28, and 1004.70; a nonprofit entity that issues industry certifications identified by the Chancellor of Career and Adult Education as being eligible for workforce education funding per approval by the State Board of Education pursuant to s. 1008.44 or its successor; a nonprofit entity that has entered into statewide articulation agreements with the State Board of Education for articulation of postsecondary credit for related degrees for approved industry certifications; facilities located



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on the property of eligible entities which will become owned by those entities on a date certain; and institutions of higher education, as defined under and participating in the Higher Educational Facilities Financing Act.

(7) "Charitable purpose" means a function or service that ~~which~~ is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or service. It is not necessary that public funds be allocated for such function or service but only that any such allocation would be legal. If a nonprofit entity receives a determination from the Internal Revenue Service that it is exempt from federal income tax under s. 501(a) of the Internal Revenue Code as an organization described in s. 501(c)(3) of that code, a rebuttable presumption of charitable purpose exists for purposes of this chapter. The presumption may be rebutted by the property appraiser with clear and convincing evidence.

Section 9. Subsection (9) of section 196.075, Florida Statutes, is amended to read:

196.075 Additional homestead exemption for persons 65 and older.—

(9) (a) If the property appraiser determines that for any year within the immediately previous 10 years a person who was not entitled to the additional homestead exemption under this section was granted such an exemption, the property appraiser shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that



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is owned by the taxpayer and is situated in this state is subject to the taxes exempted by the improper homestead exemption, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. The property appraiser shall waive the unpaid penalties and interest if the property appraiser determines that the person qualified for the exemption at the time the application was filed; the person acted in good faith; and, other than the improperly received tax savings, the person did not receive any additional financial benefit, such as rental payments or other income. The property appraiser may not waive penalty or interest if the person claimed a homestead-related exemption, limitation, or reduction on another property.

(b) However, if such an exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person who improperly received the exemption may not be assessed a penalty and interest.

(c) Before any such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. Such a lien is subject to the procedures and provisions set forth in s. 196.161(3).

Section 10. Subsection (4) of section 196.183, Florida Statutes, is amended to read:

196.183 Exemption for tangible personal property.—

(4) Owners of property ~~previously~~ assessed by the property appraiser without a return being filed may, at the option of the property appraiser, qualify for the exemption under this section without filing an initial return.

Section 11. Section 196.198, Florida Statutes, is amended



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to read:

196.198 Educational property exemption.—Educational institutions within this state and their property used by them or by any other exempt entity or educational institution predominantly or exclusively for educational purposes are exempt from taxation in proportion to the extent of the exempt use of property, as defined in s. 196.012. Sheltered workshops providing rehabilitation and retraining of individuals who have disabilities and exempted by a certificate under s. (d) of the federal Fair Labor Standards Act of 1938, as amended, are declared wholly educational in purpose and are exempt from certification, accreditation, and membership requirements set forth in s. 196.012. Those portions of property of college fraternities and sororities certified by the president of the college or university to the appropriate property appraiser as being essential to the educational process are exempt from ad valorem taxation. The use of property by public fairs and expositions chartered by chapter 616 is presumed to be an educational use of such property and is exempt from ad valorem taxation to the extent of such use. Property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the educational institution is owned by the identical persons who own the property, or if the entity owning 100 percent of the educational institution and the entity owning the property are owned by the identical natural persons. Land, buildings, and other improvements to real property used exclusively for educational purposes shall be deemed owned by an educational institution if the entity owning 100 percent of the land is a nonprofit entity



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and the land is used, under a ground lease or other contractual arrangement, by an educational institution that owns the buildings and other improvements to the real property, is a nonprofit entity under s. 501(c)(3) of the Internal Revenue Code, and provides education limited to students in prekindergarten through grade 8. If legal title to property is held by a governmental agency that leases the property to a lessee, the property shall be deemed to be owned by the governmental agency and used exclusively for educational purposes if the governmental agency continues to use such property exclusively for educational purposes pursuant to a sublease or other contractual agreement with that lessee. If the title to land is held by the trustee of an irrevocable inter vivos trust and if the trust grantor owns 100 percent of the entity that owns an educational institution that is using the land exclusively for educational purposes, the land is deemed to be property owned by the educational institution for purposes of this exemption. Property owned by an educational institution shall be deemed to be used for an educational purpose if the institution has taken affirmative steps to prepare the property for educational use. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate commitment of the property to an educational use.

Section 12. Subsection (1) of section 196.202, Florida Statutes, is amended to read:

196.202 Property of widows, widowers, blind persons, and



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persons totally and permanently disabled.—

(1) Property to the value of \$5,000 ~~\$500~~ of every widow, widower, blind person, or totally and permanently disabled person who is a bona fide resident of this state is exempt from taxation. As used in this section, the term "totally and permanently disabled person" means a person who is currently certified by a physician licensed in this state, by the United States Department of Veterans Affairs or its predecessor, or by the Social Security Administration to be totally and permanently disabled.

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

And the title is amended as follows:

Delete lines 5 - 39

and insert:

claiming adverse possession; amending ss. 193.155, 193.703, 196.011, and 196.075, F.S.; providing criteria under which a property appraiser must waive unpaid penalties and interest for improper nonpayment or reduction payment of ad valorem taxes by certain property owners claiming a homestead exemption; prohibiting such waiver under certain circumstances; amending s. 194.011, F.S.; authorizing petitioners, upon a certain showing of extenuating circumstances, to file petitions with value adjustment boards within a specified timeframe after certain deadlines, subject to certain limitations; amending s. 194.032, F.S.; providing construction relating to the rescheduling of certain hearings for good cause; authorizing property



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appraisers and certain entities to identify a
specified number of days per roll year in which they
are unavailable for hearings; amending s. 194.035,
F.S.; specifying the circumstances under which a
special magistrate's appraisal may not be submitted as
evidence to a value adjustment board; 196.012, F.S.;
redefining the terms "educational institution" and
"charitable purpose"; amending s. 196.183, F.S.;
providing that property owners assessed, rather than
previously assessed, by property appraisers without a
certain return filed may qualify for an exemption for
tangible personal property under certain
circumstances; amending s. 196.198, F.S.; revising a
tax exemption for educational institutions to provide
that property used predominantly for educational
purposes is exempt from taxation in proportion to the
extent of such use; amending s. 196.202, F.S.;
revising the value of property of widows, widowers,
blind persons, and persons totally and permanently
disabled which is exempt from taxation; amending s.
200.069, F.S.;



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Powell) recommended the following:

Senate Amendment (with title amendment)

Delete lines 507 - 546.

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

And the title is amended as follows:

Delete lines 36 - 39

and insert:

return; amending s. 200.069, F.S.;

By Senator Artiles

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1 A bill to be entitled
 2 An act relating to property taxes; amending s. 95.18,
 3 F.S.; providing that a possessor of real property for
 4 7 years must pay all delinquent taxes prior to
 5 claiming adverse possession; amending s. 192.0105,
 6 F.S.; conforming a cross-reference; amending s.
 7 193.122, F.S.; revising the time period that certain
 8 appeals of property assessments may be made; amending
 9 ss. 193.155, 193.703, 196.011, 196.075, and 196.161,
 10 F.S.; providing criteria under which a property
 11 appraiser may waive unpaid penalties and interest for
 12 improper nonpayment or reduction payment of ad valorem
 13 taxes by certain property owners claiming a homestead
 14 exemption; amending s. 194.011, F.S.; providing that
 15 certain unit owners must opt in, rather than opt out,
 16 of a certain joint petition before the value
 17 adjustment board; providing circumstances and
 18 timeframes under which a person may file a petition
 19 late to a value adjustment board; defining the term
 20 "good cause"; amending s. 194.032, F.S.; specifying
 21 situations under which the term "good cause" does not
 22 apply in rescheduling a hearing before a value
 23 adjustment board; amending s. 194.035, F.S.;
 24 specifying the circumstances under which a special
 25 magistrate's appraisal may not be submitted as
 26 evidence to a value adjustment board; amending s.
 27 194.036, F.S.; specifying how an assessment limitation
 28 must be corrected in situations where a property
 29 appraiser appeals the decision of the value adjustment
 30 board; amending s. 194.171, F.S.; specifying the
 31 timeframe under which counterclaims of certain appeals
 32 of tax assessments may be made; amending s. 196.183,

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33 F.S.; revising a provision authorizing a property
 34 appraiser to exempt certain tangible personal property
 35 from ad valorem taxation without filing an initial
 36 return; amending s. 197.3632, F.S.; providing
 37 requirements for a local government's mailed notice of
 38 certain public hearings in lieu of publishing the
 39 notice in a newspaper; amending s. 200.069, F.S.;
 40 requiring property appraisers to include only certain
 41 statements in certain mailed notices; providing an
 42 effective date.

43
 44 Be It Enacted by the Legislature of the State of Florida:
 45

46 Section 1. Subsection (1) of section 95.18, Florida
 47 Statutes, is amended to read:

48 95.18 Real property actions; adverse possession without
 49 color of title.—

50 (1) When a ~~the~~ possessor has been in actual continued
 51 possession of real property for 7 years under a claim of title
 52 exclusive of any other right, but not founded on a written
 53 instrument, judgment, or decree, or when those under whom the
 54 possessor claims meet these criteria, the property actually
 55 possessed is held adversely if the person claiming adverse
 56 possession:

57 (a) Paid, subject to s. 197.3335, all delinquent
 58 ~~outstanding~~ taxes and matured installments of special
 59 improvement liens levied against the property by the state,
 60 county, and municipality within 1 year after entering into
 61 possession;

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(b) Made a return, as required under subsection (3), of the property by proper legal description to the property appraiser of the county where it is located within 30 days after complying with paragraph (a); and

(c) Has subsequently paid, subject to s. 197.3335, all taxes and matured installments of special improvement liens levied against the property by the state, county, and municipality for all remaining years necessary to establish a claim of adverse possession.

Section 2. Paragraph (i) of subsection (2) of section 192.0105, Florida Statutes, is amended to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the

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departmental rules include:

(2) THE RIGHT TO DUE PROCESS.—

(i) The right to bring action in circuit court to contest a tax assessment or appeal value adjustment board decisions to disapprove exemption or deny tax deferral (see ss. 194.036(1)(c) and (3) (2), 194.171, 196.151, and 197.2425).

Section 3. Subsection (4) of section 193.122, Florida Statutes, is amended to read:

193.122 Certificates of value adjustment board and property appraiser; extensions on the assessment rolls.—

(4) An appeal of a value adjustment board decision pursuant to s. 194.036(1)(a) or (b) by the property appraiser shall be filed prior to extension of the tax roll under subsection (2) or, if the roll was extended pursuant to s. 197.323, within the time period provided in s. 194.171(2) ~~30 days of recertification under subsection (3)~~. The roll may be certified by the property appraiser prior to an appeal being filed pursuant to s. 194.036(1)(c), but such appeal shall be filed within 20 days after receipt of the decision of the department relative to further judicial proceedings.

Section 4. Subsection (10) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(10) (a) If the property appraiser determines that for any

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year or years within the prior 10 years a person who was not entitled to the homestead property assessment limitation granted under this section was granted the homestead property assessment limitation, the property appraiser making such determination shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property must be identified in the notice of tax lien. Such property that is situated in this state is subject to the unpaid taxes, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. However, when a person entitled to exemption pursuant to s. 196.031 inadvertently receives the limitation pursuant to this section following a change of ownership, the assessment of such property must be corrected as provided in paragraph (9)(a), and the person need not pay the unpaid taxes, penalties, or interest. The property appraiser may waive the unpaid penalties and interest upon good cause shown and after determining that:

1. There was no intent to illegally avoid the payment of lawful taxes.

2. There was no benefit to the property owner.

(b) If the property appraiser improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.

(c) Before a lien may be filed, the person or entity so notified must be given 30 days to pay the taxes and any applicable penalties and interest. If the property appraiser

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~~improperly grants the property assessment limitation as a result of a clerical mistake or an omission, the person or entity improperly receiving the property assessment limitation may not be assessed a penalty or interest.~~

Section 5. Subsection (7) of section 193.703, Florida Statutes, is amended to read:

193.703 Reduction in assessment for living quarters of parents or grandparents.—

(7)(a) If the property appraiser determines that for any year within the previous 10 years a property owner who was not entitled to a reduction in assessed value under this section was granted such reduction, the property appraiser shall serve on the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that is owned by that person and is situated in this state is subject to the taxes exempted by the improper reduction, plus a penalty of 50 percent of the unpaid taxes for each year and interest at a rate of 15 percent per annum. The property appraiser may waive the unpaid penalties and interest upon good cause shown and after determining that:

1. There was no intent to illegally avoid the payment of lawful taxes.

2. There was no benefit to the property owner.

(b) However, if a reduction is improperly granted due to a clerical mistake or an omission by the property appraiser, the person who improperly received the reduction may not be assessed a penalty or interest.

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178 (c) Before such lien may be filed, the owner must be given
 179 30 days within which to pay the taxes, penalties, and interest.
 180 Such lien is subject to s. 196.161(3).

181 Section 6. Paragraph (e) of subsection (3) of section
 182 194.011, Florida Statutes, is amended, present paragraph (h) of
 183 that subsection is redesignated as paragraph (i), and a new
 184 paragraph (h) is added to that subsection, to read:

185 194.011 Assessment notice; objections to assessments.—

186 (3) A petition to the value adjustment board must be in
 187 substantially the form prescribed by the department.
 188 Notwithstanding s. 195.022, a county officer may not refuse to
 189 accept a form provided by the department for this purpose if the
 190 taxpayer chooses to use it. A petition to the value adjustment
 191 board must be signed by the taxpayer or be accompanied at the
 192 time of filing by the taxpayer's written authorization or power
 193 of attorney, unless the person filing the petition is listed in
 194 s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a
 195 petition with a value adjustment board without the taxpayer's
 196 signature or written authorization by certifying under penalty
 197 of perjury that he or she has authorization to file the petition
 198 on behalf of the taxpayer. If a taxpayer notifies the value
 199 adjustment board that a petition has been filed for the
 200 taxpayer's property without his or her consent, the value
 201 adjustment board may require the person filing the petition to
 202 provide written authorization from the taxpayer authorizing the
 203 person to proceed with the appeal before a hearing is held. If
 204 the value adjustment board finds that a person listed in s.
 205 194.034(1)(a) willfully and knowingly filed a petition that was
 206 not authorized by the taxpayer, the value adjustment board shall

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207 require such person to provide the taxpayer's written
 208 authorization for representation to the value adjustment board
 209 clerk before any petition filed by that person is heard, for 1
 210 year after imposition of such requirement by the value
 211 adjustment board. A power of attorney or written authorization
 212 is valid for 1 assessment year, and a new power of attorney or
 213 written authorization by the taxpayer is required for each
 214 subsequent assessment year. A petition shall also describe the
 215 property by parcel number and shall be filed as follows:

216 (e) A condominium association, cooperative association, or
 217 any homeowners' association as defined in s. 723.075, with
 218 approval of its board of administration or directors, may file
 219 with the value adjustment board a single joint petition on
 220 behalf of any association members who own parcels of property
 221 which the property appraiser determines are substantially
 222 similar with respect to location, proximity to amenities, number
 223 of rooms, living area, and condition. The condominium
 224 association, cooperative association, or homeowners' association
 225 as defined in s. 723.075 shall provide the unit owners with
 226 notice of its intent to petition the value adjustment board and
 227 shall provide at least 20 days for a unit owner to elect, in
 228 writing, that his or her unit ~~not~~ be included in the petition.

229 (h) For good cause shown, a person may file a petition late
 230 if the county has voted favorably to extend the roll under s.
 231 197.323(1). As used in this paragraph, "good cause" means
 232 circumstances beyond the control of the person seeking to file
 233 the petition late. Late filed petitions must be filed within 30
 234 days after the 25th day following the mailing of the notice by
 235 the property appraiser.

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Section 7. Paragraph (a) of subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2) (a) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance at least 25 calendar days before the day of the scheduled appearance. The notice must indicate whether the petition has been scheduled to be heard at a particular time or during a block of time. If the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time must be indicated on the notice; however, as provided in paragraph (b), a petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the beginning of the block of time. The property appraiser must provide a copy of the property record card containing information relevant to the computation of the current assessment, with confidential information redacted, to the petitioner upon receipt of the petition from the clerk regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser, in which case the property appraiser must notify the petitioner that the property record card is available online. The petitioner and the property appraiser may each reschedule the hearing a single time for good cause. As used in this paragraph, the term "good cause" means circumstances beyond the control of the person seeking to reschedule the hearing which reasonably prevent the party from

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having adequate representation at the hearing. Good cause does not include being scheduled in different jurisdictions at the same time or date. If the hearing is rescheduled by the petitioner or the property appraiser, the clerk shall notify the petitioner of the rescheduled time of his or her appearance at least 15 calendar days before the day of the rescheduled appearance, unless this notice is waived by both parties.

Section 8. Subsection (1) of section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The

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294 department shall establish a reasonable range for payments per
 295 case to special magistrates based on such payments in other
 296 counties. Requests for reimbursement of payments outside this
 297 range shall be justified by the county. If the total of all
 298 requests for reimbursement in any year exceeds the amount
 299 available pursuant to this section, payments to all counties
 300 shall be prorated accordingly. If a county having a population
 301 less than 75,000 does not appoint a special magistrate to hear
 302 each petition, the person or persons designated to hear
 303 petitions before the value adjustment board or the attorney
 304 appointed to advise the value adjustment board shall attend the
 305 training provided pursuant to subsection (3), regardless of
 306 whether the person would otherwise be required to attend, but
 307 shall not be required to pay the tuition fee specified in
 308 subsection (3). A special magistrate appointed to hear issues of
 309 exemptions, classifications, and determinations that a change of
 310 ownership, a change of ownership or control, or a qualifying
 311 improvement has occurred shall be a member of The Florida Bar
 312 with no less than 5 years' experience in the area of ad valorem
 313 taxation. A special magistrate appointed to hear issues
 314 regarding the valuation of real estate shall be a state
 315 certified real estate appraiser with not less than 5 years'
 316 experience in real property valuation. A special magistrate
 317 appointed to hear issues regarding the valuation of tangible
 318 personal property shall be a designated member of a nationally
 319 recognized appraiser's organization with not less than 5 years'
 320 experience in tangible personal property valuation. A special
 321 magistrate need not be a resident of the county in which he or
 322 she serves. A special magistrate may not represent a person

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323 before the board in any tax year during which he or she has
 324 served that board as a special magistrate. An appraisal
 325 performed by a special magistrate may not be submitted as
 326 evidence to the value adjustment board in any tax year during
 327 which he or she has served that board as a special magistrate.
 328 Before appointing a special magistrate, a value adjustment board
 329 shall verify the special magistrate's qualifications. The value
 330 adjustment board shall ensure that the selection of special
 331 magistrates is based solely upon the experience and
 332 qualifications of the special magistrate and is not influenced
 333 by the property appraiser. The special magistrate shall
 334 accurately and completely preserve all testimony and, in making
 335 recommendations to the value adjustment board, shall include
 336 proposed findings of fact, conclusions of law, and reasons for
 337 upholding or overturning the determination of the property
 338 appraiser. The expense of hearings before magistrates and any
 339 compensation of special magistrates shall be borne three-fifths
 340 by the board of county commissioners and two-fifths by the
 341 school board. When appointing special magistrates or when
 342 scheduling special magistrates for specific hearings, the board,
 343 the board attorney, and the board clerk may not consider the
 344 dollar amount or percentage of any assessment reductions
 345 recommended by any special magistrate in the current year or in
 346 any previous year.

347 Section 9. Present subsections (2) and (3) of section
 348 194.036, Florida Statutes, are renumbered as subsections (3) and
 349 (4), respectively, and a new subsection (2) is added to that
 350 section, to read:
 351 194.036 Appeals.—Appeals of the decisions of the board

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shall be as follows:

(2) If the property appraiser appeals the decision of the board as set forth in subsection (1), the assessment limitation in the following year may not be based on the decision by the value adjustment board but shall be the initial assessment. Once the court issues its order, the assessment limitation must be recalculated and corrected as set forth in the court order for all subsequent years.

Section 10. Subsection (2) of section 194.171, Florida Statutes, is amended to read:

194.171 Circuit court to have original jurisdiction in tax cases.—

(2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2), or after 60 days from the date a decision is rendered concerning such assessment by the value adjustment board if a petition contesting the assessment had not received final action by the value adjustment board prior to extension of the roll under s. 197.323. If an appeal is filed under this section, each party has 30 days from the date of the original complaint to file a counterclaim.

Section 11. Paragraph (a) of subsection (9) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(9)(a) A county may, at the request of the property appraiser and by a majority vote of its governing body, waive the requirement that an annual application or statement be made for exemption of property within the county after an initial application is made and the exemption granted. The waiver under

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this subsection of the annual application or statement requirement applies to all exemptions under this chapter except the exemption under s. 196.1995. Notwithstanding such waiver, refiling of an application or statement shall be required when any property granted an exemption is sold or otherwise disposed of, when the ownership changes in any manner, when the applicant for homestead exemption ceases to use the property as his or her homestead, or when the status of the owner changes so as to change the exempt status of the property. In its deliberations on whether to waive the annual application or statement requirement, the governing body shall consider the possibility of fraudulent exemption claims which may occur due to the waiver of the annual application requirement. The owner of any property granted an exemption who is not required to file an annual application or statement shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes so as to change the exempt status of the property. If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner was not entitled to receive such exemption, the owner of the property is subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes

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and penalties. Such lien when filed shall attach to any property, identified in the notice of tax lien, owned by the person who illegally or improperly received the exemption. If such person no longer owns property in that county but owns property in some other county or counties in the state, the property appraiser shall record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it shall become a lien against such property in such county or counties. The property appraiser may waive the unpaid penalties and interest upon good cause shown and after determining that:

1. There was no intent to illegally avoid the payment of lawful taxes.

2. There was no benefit to the property owner.

Section 12. Subsection (9) of section 196.075, Florida Statutes, is amended to read:

196.075 Additional homestead exemption for persons 65 and older.—

(9) (a) If the property appraiser determines that for any year within the immediately previous 10 years a person who was not entitled to the additional homestead exemption under this section was granted such an exemption, the property appraiser shall serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and that property must be identified in the notice of tax lien. Any property that is owned by the taxpayer and is situated in this state is subject to the taxes exempted by the improper homestead exemption, plus a penalty of 50 percent of the unpaid taxes for

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each year and interest at a rate of 15 percent per annum. The property appraiser may waive the unpaid penalties and interest upon good cause shown and after determining that:

1. There was no intent to illegally avoid the payment of lawful taxes.

2. There was no benefit to the property owner.

(b) However, if such an exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the person who improperly received the exemption may not be assessed a penalty and interest.

(c) Before any such lien may be filed, the owner must be given 30 days within which to pay the taxes, penalties, and interest. Such a lien is subject to the procedures and provisions set forth in s. 196.161(3).

Section 13. Subsection (1) of section 196.161, Florida Statutes, is amended to read:

196.161 Homestead exemptions; lien imposed on property of person claiming exemption although not a permanent resident.—

(1) (a) When the estate of any person is being probated or administered in another state under an allegation that such person was a resident of that state and the estate of such person contains real property situate in this state upon which homestead exemption has been allowed pursuant to s. 196.031 for any year or years within 10 years immediately prior to the death of the deceased, then within 3 years after the death of such person the property appraiser of the county where the real property is located shall, upon knowledge of such fact, record a notice of tax lien against the property among the public records of that county, and the property shall be subject to the payment

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468 of all taxes exempt thereunder, a penalty of 50 percent of the
 469 unpaid taxes for each year, plus 15 percent interest per year,
 470 unless the circuit court having jurisdiction over the ancillary
 471 administration in this state determines that the decedent was a
 472 permanent resident of this state during the year or years an
 473 exemption was allowed, whereupon the lien shall not be filed or,
 474 if filed, shall be canceled of record by the property appraiser
 475 of the county where the real estate is located.

476 (b) In addition, upon determination by the property
 477 appraiser that for any year or years within the prior 10 years a
 478 person who was not entitled to a homestead exemption was granted
 479 a homestead exemption from ad valorem taxes, it shall be the
 480 duty of the property appraiser making such determination to
 481 serve upon the owner a notice of intent to record in the public
 482 records of the county a notice of tax lien against any property
 483 owned by that person in the county, and such property shall be
 484 identified in the notice of tax lien. Such property which is
 485 situated in this state shall be subject to the taxes exempted
 486 thereby, plus a penalty of 50 percent of the unpaid taxes for
 487 each year and 15 percent interest per annum. The property
 488 appraiser may waive the unpaid penalties and interest upon good
 489 cause shown and after determining that:

490 1. There was no intent by the property owner to illegally
 491 avoid the payment of lawful taxes.

492 2. There was no benefit to the property owner.

493 (c) However, if a homestead exemption is improperly granted
 494 as a result of a clerical mistake or an omission by the property
 495 appraiser, the person improperly receiving the exemption may
 496 ~~shall~~ not be assessed penalty and interest.

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497 (d) Before any such lien may be filed, the owner so
 498 notified must be given 30 days to pay the taxes, penalties, and
 499 interest.

500 Section 14. Subsection (4) of section 196.183, Florida
 501 Statutes, is amended to read:

502 196.183 Exemption for tangible personal property.—

503 (4) Owners of property ~~previously~~ assessed by the property
 504 appraiser without a return being filed may, at the option of the
 505 property appraiser, qualify for the exemption under this section
 506 without filing an initial return.

507 Section 15. Paragraph (b) of subsection (4) of section
 508 197.3632, Florida Statutes, is amended to read:

509 197.3632 Uniform method for the levy, collection, and
 510 enforcement of non-ad valorem assessments.—

511 (4)

512 (b) At least 20 days prior to the public hearing, the local
 513 government shall notice the hearing by first-class United States
 514 mail and by publication in a newspaper generally circulated
 515 within each county contained in the boundaries of the local
 516 government. The notice by mail shall be sent to each person
 517 owning property subject to the assessment and shall include the
 518 following information: the purpose of the assessment; the total
 519 amount to be levied against each parcel; the unit of measurement
 520 to be applied against each parcel to determine the assessment;
 521 the number of such units contained within each parcel; the total
 522 revenue the local government will collect by the assessment; a
 523 statement that failure to pay the assessment will cause a tax
 524 certificate to be issued against the property which may result
 525 in a loss of title; a statement that all affected property

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owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and the date, time, and place of the hearing. However, notice by mail shall not be required if notice by mail is otherwise required by general or special law governing a taxing authority and such notice is served at least 30 days prior to the authority's public hearing on adoption of a new or amended non-ad valorem assessment roll. The published notice shall contain at least the following information: the name of the local governing board; a geographic depiction of the property subject to the assessment; the proposed schedule of the assessment; the fact that the assessment will be collected by the tax collector; and a statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice. In lieu of publishing notice in a newspaper, the local government may include, in the notice by mail, the name of the local government board, the date and location of the public hearing, and an easily accessible website address that contains the additional information otherwise required to be given in the notice by mail.

Section 16. Section 200.069, Florida Statutes, is amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.—Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be

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listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. In addition, the property appraiser may only include in the mailing of the notice of ad valorem taxes and non-ad valorem assessments additional statements explaining any item on the notice. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director.

(1) The first page of the notice shall read:

NOTICE OF PROPOSED PROPERTY TAXES

DO NOT PAY—THIS IS NOT A BILL

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584 The taxing authorities which levy property taxes against
 585 your property will soon hold PUBLIC HEARINGS to adopt budgets
 586 and tax rates for the next year.

587 The purpose of these PUBLIC HEARINGS is to receive opinions
 588 from the general public and to answer questions on the proposed
 589 tax change and budget PRIOR TO TAKING FINAL ACTION.

590 Each taxing authority may AMEND OR ALTER its proposals at
 591 the hearing.

592 (2) (a) The notice shall include a brief legal description
 593 of the property, the name and mailing address of the owner of
 594 record, and the tax information applicable to the specific
 595 parcel in question. The information shall be in columnar form.
 596 There shall be seven column headings which shall read: "Taxing
 597 Authority," "Your Property Taxes Last Year," "Last Year's
 598 Adjusted Tax Rate (Millage)," "Your Taxes This Year IF NO Budget
 599 Change Is Adopted," "Tax Rate This Year IF PROPOSED Budget Is
 600 Adopted (Millage)," "Your Taxes This Year IF PROPOSED Budget
 601 Change Is Adopted," and "A Public Hearing on the Proposed Taxes
 602 and Budget Will Be Held:."

603 (b) As used in this section, the term "last year's adjusted
 604 tax rate" means the rolled-back rate calculated pursuant to s.
 605 200.065(1).

606 (3) There shall be under each column heading an entry for
 607 the county; the school district levy required pursuant to s.
 608 1011.60(6); other operating school levies; the municipality or
 609 municipal service taxing unit or units in which the parcel lies,
 610 if any; the water management district levying pursuant to s.
 611 373.503; the independent special districts in which the parcel
 612 lies, if any; and for all voted levies for debt service

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613 applicable to the parcel, if any.

614 (4) For each entry listed in subsection (3), there shall
 615 appear on the notice the following:

616 (a) In the first column, a brief, commonly used name for
 617 the taxing authority or its governing body. The entry in the
 618 first column for the levy required pursuant to s. 1011.60(6)
 619 shall be "By State Law." The entry for other operating school
 620 district levies shall be "By Local Board." Both school levy
 621 entries shall be indented and preceded by the notation "Public
 622 Schools:". For each voted levy for debt service, the entry shall
 623 be "Voter Approved Debt Payments."

624 (b) In the second column, the gross amount of ad valorem
 625 taxes levied against the parcel in the previous year. If the
 626 parcel did not exist in the previous year, the second column
 627 shall be blank.

628 (c) In the third column, last year's adjusted tax rate or,
 629 in the case of voted levies for debt service, the tax rate
 630 previously authorized by referendum.

631 (d) In the fourth column, the gross amount of ad valorem
 632 taxes which will apply to the parcel in the current year if each
 633 taxing authority levies last year's adjusted tax rate or, in the
 634 case of voted levies for debt service, the amount previously
 635 authorized by referendum.

636 (e) In the fifth column, the tax rate that each taxing
 637 authority must levy against the parcel to fund the proposed
 638 budget or, in the case of voted levies for debt service, the tax
 639 rate previously authorized by referendum.

640 (f) In the sixth column, the gross amount of ad valorem
 641 taxes that must be levied in the current year if the proposed

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642 budget is adopted.

643 (g) In the seventh column, the date, the time, and a brief

644 description of the location of the public hearing required

645 pursuant to s. 200.065(2)(c).

646 (5) Following the entries for each taxing authority, a

647 final entry shall show: in the first column, the words "Total

648 Property Taxes:" and in the second, fourth, and sixth columns,

649 the sum of the entries for each of the individual taxing

650 authorities. The second, fourth, and sixth columns shall,

651 immediately below said entries, be labeled Column 1, Column 2,

652 and Column 3, respectively. Below these labels shall appear, in

653 boldfaced type, the statement: SEE REVERSE SIDE FOR EXPLANATION.

654 (6) (a) The second page of the notice shall state the

655 parcel's market value and for each taxing authority that levies

656 an ad valorem tax against the parcel:

657 1. The assessed value, value of exemptions, and taxable

658 value for the previous year and the current year.

659 2. Each assessment reduction and exemption applicable to

660 the property, including the value of the assessment reduction or

661 exemption and tax levies to which they apply.

662 (b) The reverse side of the second page shall contain

663 definitions and explanations for the values included on the

664 front side.

665 (7) The following statement shall appear after the values

666 listed on the front of the second page:

667 If you feel that the market value of your property is

668 inaccurate or does not reflect fair market value, or if you are

669 entitled to an exemption or classification that is not reflected

670 above, contact your county property appraiser at ...(phone

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671 number)... or ...(location)....

672 If the property appraiser's office is unable to resolve the

673 matter as to market value, classification, or an exemption, you

674 may file a petition for adjustment with the Value Adjustment

675 Board. Petition forms are available from the county property

676 appraiser and must be filed ON OR BEFORE ...(date)....

677 (8) The reverse side of the first page of the form shall

678 read:

679 EXPLANATION

680 *COLUMN 1—"YOUR PROPERTY TAXES LAST YEAR"

681 This column shows the taxes that applied last year to your

682 property. These amounts were based on budgets adopted last year

683 and your property's previous taxable value.

684 *COLUMN 2—"YOUR TAXES IF NO BUDGET CHANGE IS ADOPTED"

685 This column shows what your taxes will be this year IF EACH

686 TAXING AUTHORITY DOES NOT CHANGE ITS PROPERTY TAX LEVY. These

687 amounts are based on last year's budgets and your current

688 assessment.

689 *COLUMN 3—"YOUR TAXES IF PROPOSED BUDGET CHANGE IS ADOPTED"

690 This column shows what your taxes will be this year under the

691 BUDGET ACTUALLY PROPOSED by each local taxing authority. The

692 proposal is NOT final and may be amended at the public hearings

693 shown on the front side of this notice. The difference between

694 columns 2 and 3 is the tax change proposed by each local taxing

695 authority and is NOT the result of higher assessments.

696 *Note: Amounts shown on this form do NOT reflect early payment

697 discounts you may have received or may be eligible to receive.

698 (Discounts are a maximum of 4 percent of the amounts shown on

699 this form.)

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(9) The bottom portion of the notice shall further read in bold, conspicuous print:

"Your final tax bill may contain non-ad valorem assessments which may not be reflected on this notice such as assessments for roads, fire, garbage, lighting, drainage, water, sewer, or other governmental services and facilities which may be levied by your county, city, or any special district."

(10) (a) If requested by the local governing board levying non-ad valorem assessments and agreed to by the property appraiser, the notice specified in this section may contain a notice of proposed or adopted non-ad valorem assessments. If so agreed, the notice shall be titled:

NOTICE OF PROPOSED PROPERTY TAXES

AND PROPOSED OR ADOPTED

NON-AD VALOREM ASSESSMENTS

DO NOT PAY-THIS IS NOT A BILL

There must be a clear partition between the notice of proposed property taxes and the notice of proposed or adopted non-ad valorem assessments. The partition must be a bold, horizontal line approximately 1/8-inch thick. By rule, the department shall provide a format for the form of the notice of proposed or adopted non-ad valorem assessments which meets the following minimum requirements:

1. There must be subheading for columns listing the levying local governing board, with corresponding assessment rates expressed in dollars and cents per unit of assessment, and the associated assessment amount.

2. The purpose of each assessment must also be listed in the column listing the levying local governing board if the

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

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purpose is not clearly indicated by the name of the board.

3. Each non-ad valorem assessment for each levying local governing board must be listed separately.

4. If a county has too many municipal service benefit units or assessments to be listed separately, it shall combine them by function.

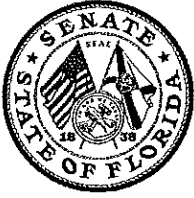
5. A brief statement outlining the responsibility of the tax collector and each levying local governing board as to any non-ad valorem assessment must be provided on the form, accompanied by directions as to which office to contact for particular questions or problems.

(b) If the notice includes all adopted non-ad valorem assessments, the provisions contained in subsection (9) shall not be placed on the notice.

Section 17. This act shall take effect July 1, 2017.

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



The Florida Senate

Committee Agenda Request


To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 10, 2017

I respectfully request that **Senate Bill #226**, relating to Property Taxes, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.



Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

226
Bill Number (if applicable)

Topic SB 226 Property Taxes

Amendment Barcode (if applicable)

Name Martha Cleaver

Job Title Consultant

Address P.O. Box 11275

Phone 850 491-1945

Tallahassee, FL
City State

32302
Zip

Email marthacleaver@fapa.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Assoc. of Property Appraisers, 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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

SB 226

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Loren Levy

Job Title General Counsel, Property Appraisers' Assn of Florida

Address 1828 Riggins Rd Phone _____

Street

Tallahassee

FL

33208

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Property Appraisers' Assn of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.22.17

Meeting Date

226

Bill Number (if applicable)

Topic SB 226

Amendment Barcode (if applicable)

Name Angela Dempsey

Job Title VP, Poole McKinley

Address 106 E. College Avenue Suite 1100

Phone 850.681.1980

Street

Lallahamsee FL 32301

City

State

Zip

Email angela@poolemckinley.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Miami-Dade County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Mar. 22, 2017
Meeting Date

226
Bill Number (if applicable)

Topic Property Taxes

Amendment Barcode (if applicable)

Name Phil Leary

Job Title Lobbyist

Address 240 S Arabella Way
Street

Phone 386-937-7829

Saint Johns FL 32259
City State Zip

Email pleary@learygmc.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Nation Center for Construction Education

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 498

INTRODUCER: Judiciary Committee; Commerce and Tourism Committee; and Senator Young

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.	Stallard	Cibula	JU	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 498 modifies various areas of law that relate to the authority of the Department of Agriculture and Consumer Services. These areas include private investigative, security, and repossession services and personnel; surveying and mapping; aquaculture; agriculture; concealed weapons and firearms licensing; and taxi services. These modifications include:

Allowing private investigative agency managers to manage multiple agencies or branches;

- Making substantial changes to regulations of surveyors and mappers;
- Clarifying fingerprint retention policies for specific partners and corporate officers of ch. 493, F.S., licensees;
- Removing inconsistent language regarding the terms of renewals for licensure under ch. 493, F.S.;
- Permitting the Florida Department of Law Enforcement to share mental health and substance abuse data from its Mental Competency database with the Department for the purposes of determining eligibility of Class “G” and “K” applicants and licensees;
- Requiring ch. 493, F.S., licensees to reveal if they have been arrested to their employer within 3 days of the arrest, and granting the Department authority to discipline licensees who fail to do so;
- Mandating that statewide firearm licensees complete training for each type of firearm carried in the course of his or her licensed duties;
- Creating a temporary suspension process for Class “G” or “K” licensees who are arrested for or formally charged with a firearms-related crime; and for ch. 493, F.S., licensees who are arrested for or formally charged with a forcible felony;

- Updating the Florida Do Not Call Program to make subscriptions indefinite, rather than for 5 years;
- Creating consistent penalties against intrastate household movers for failure to maintain motor vehicle and liability insurance;
- Exempting company gyms from registration as a health studio with the Department;
- Removing taximeters and digital networks from the definition of a weight and measure, thereby reducing the Department's regulatory authority over taximeters;
- Deleting fees for the registration of a livestock mark or brand, and increasing the term of registration for such marks or brands from 5 to 10 years;
- Repealing a requirement that individuals re-mark or rebrand recently purchased cattle;
- Providing an exemption from registration for agricultural dealers who pay for their purchases with a credit card;
- Allowing the Department to grant concealed weapon or firearm licenses to persons who have been granted relief from firearms disabilities;
- Reducing the concealed weapon or firearm license and renewal fees by five dollars; and
- Making technical changes and deleting of outdated language.

II. Present Situation:

The Department of Agriculture and Consumer Services (Department) has numerous and varied responsibilities, including safeguarding the public from unsafe or defective products and deceptive business practices, protecting the environment, supporting Florida's agricultural economy, and administering this state's firearms licensing scheme. And these varied responsibilities are spread among the Department's twelve divisions and six offices.¹

The present situation relative to each section of the bill is discussed in the Effect of Proposed Changes section of this bill analysis. Generally, there will be a heading or subheading, then a discussion of the present situation, then a discussion of the effect of the proposed changes.

III. Effect of Proposed Changes:

Agriculture Education and Promotion Facility Grant

An agriculture education and promotion facility is an exhibition hall, arena, civic center, exposition center, or other capital project or facility that can be used for agricultural education, exhibitions, civic, and other events.² In 2002, the Legislature gave the Department authority to evaluate applications for grants for the construction or renovation of these facilities.³ These grants are funded through the General Appropriations Act, which is passed each legislative session.⁴

¹ Florida Department of Agriculture and Consumer Services, *Divisions and Offices*. <http://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 7, 2017).

² Section 288.1175(3), F.S.

³ Ch. 2002-301, Laws of Fla.

⁴ Section 288.1175(8), F.S.

Section 1 amends the statute regulating agriculture education and promotion facility grants⁵ to require that applications for a facility grant be *postmarked, or electronically submitted*, by October 1 of each year. Current law is less precise, merely stating that the application must be “submitted” by October 1.

Division of Agricultural Environmental Services

The Division of Agricultural Environmental Services supports state and federal regulatory programs regarding pesticide registration, testing, and regulation, and other related environmental and consumer protection issues.⁶ The U.S. Environmental Protection Agency’s (EPA) labeling requirements for pesticides and devices⁷ and its Worker Protection Standard⁸ provide a minimum standard on which the Division must base certain regulations.⁹ Accordingly, the Department maintains rules on these topics.¹⁰

Section 9 deletes an outdated reference to the Department’s adoption of rules “. . . during the 1995-1996 fiscal year . . .” to reflect the EPA’s labeling requirement for pesticides and devices, and the EPA’s worker protection standard. This change does not alter the Department’s duties or authority.

Division of Licensing

The Department’s Division of Licensing is responsible for protecting the public from unethical business practices by persons providing private security, private investigative, and recovery services. This Division seeks to accomplish this through licensure and regulation of these industries.¹¹ Additionally, the division is administers this state’s concealed weapons and firearms licensing scheme.¹²

The Department’s Division of Licensing is responsible for investigating and issuing licenses to conduct private security, private investigative, and recovery services pursuant to ch. 493, F.S. The Division of Licensing also issues concealed weapon or firearm licenses pursuant to s. 790.06, F.S. As of February 28, 2017, there were 1,910,038 holders of Department-issued licenses. Of these, 1,733,487 were concealed weapons and firearms licensees.¹³

⁵ Section 288.1175, F.S.

⁶ Florida Department of Agriculture and Consumer Services, *Division of Agricultural Environmental Services*, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Environmental-Services> (last visited Mar. 15, 2017).

⁷ 40 C.F.R., Pt. 156

⁸ 40 C.F.R., Pt. 170

⁹ See 487.2041, F.S.

¹⁰ See rules 5E-2.041, F.A.C., *Pesticides: Materials Incorporated by Reference*, 5E-2.011, F.A.C., *Pesticides: General Labeling Requirements for Pesticides*.

¹¹ This regulation is conducted pursuant to ch. 493, F.S.

¹² Florida Department of Agriculture and Consumer Services, *Division of Licensing*, <http://www.freshfromflorida.com/Divisions-Offices/Licensing> (last visited Mar. 16, 2017). Florida’s concealed weapons and firearms licensing scheme is set forth at s. 790.06, F.S.

¹³ Florida Department of Agriculture and Consumer Services, Division of Licensing, *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited Mar. 15, 2017).

Licensure and Discipline of Private Investigators, Security Officers, Recovery Agents, and Related Licenses

Section 10 amends s. 493.6101, F.S., to expressly authorize a licensed manager of a private investigative agency—a “Class ‘M’” licensee—to manage up to three offices within a 150-mile radius of the location listed on the agency’s Class “A” license. However, these offices must consist of the location listed on the Agency’s Class “A” license and up to two branch offices, or these offices must consist of no more than three branch offices. In contrast, current law strongly implies that these licensees are limited to oversight of only one investigative agency or branch office at a time.¹⁴

Currently, the Department requires applicants for licensure under ch. 493, F.S., to submit a full set of fingerprints, a fingerprint-processing fee, and a fingerprint retention fee with their initial application.¹⁵ With this information, the Department conducts an initial background check through the Federal Bureau of Investigation (FBI) and the Florida Department of Law Enforcement (FDLE). The Department also retains the applicants’ fingerprints in the statewide-automated biometric identification system¹⁶ and in the national retained print arrest notification program for ongoing updates on arrests of its licensees.¹⁷ The Department may discipline a licensee based on his or her plea to, or conviction of, certain crimes.¹⁸

All licenses granted under ch. 493, F.S., are subject to renewal. Although a corporate officer or partner of, for example, a Private Investigative Agency, is required to file a complete initial application *for his or her agency’s licensure*, the corporate officer or partner is not granted a license as a result of his or her application. Instead, it is the *agency* that is granted the license. Therefore, though each corporate officer and partner are required to apply for an application for their company’s licensure, they do not obtain individual licenses.¹⁹

Section 11 clarifies that partners and corporate officers who do not also possess a ch. 493, F.S., license subject to renewal²⁰ are exempt from participation in the fingerprint retention requirements imposed on ch. 493, F.S., licensees.

Notifications

Section 13 amends s. 493.6108(5), F.S., to require that ch. 493, F.S., licensees notify their employer within three calendar days if they are arrested for any offense.

¹⁴ Section 493.6101, F.S.

¹⁵ Section 493.6105(3)(j), F.S.

¹⁶ *See*, s. 943.05(2)(b), F.S.

¹⁷ *See*, s. 493.6108(4)(b), F.S. To be precise, “[w]hen [FDLE] begins participation in the Federal Bureau of Investigation’s national retained print arrest notification program, [it is then required to] enroll such fingerprints in the program.”

¹⁸ Section 493.6118, F.S.

¹⁹ To be clear, an officer or partner could also apply for an individual license.

²⁰ Section 493.6113, F.S., subjects all licenses granted under ch. 493, F.S., to renewal. Although a corporate officer or partner of—for example, a Private Investigative Agency—is required to file a complete initial application, the corporate officer or partner is not granted a license as a result of his or her application (but his or her agency is). Therefore, corporate officers and partners are not required to renew a license that does not exist under ch. 493, F.S.

Section 17 amends s. 493.6118, F.S., to allow the Department to take administrative action against its ch. 493, F.S., licensees for their failure to notify their employer within three calendar days if they are arrested for any offense.

Section 14 deletes a requirement in s. 493.6112, F.S., that Security Officer and Recovery Agent Schools licensed by the Department under ch. 493, F.S., notify the Department of any hiring, termination, withdrawal, removal, replacement, or addition of the School's partners, officers, or employees. These schools are currently required to provide the Department with information on their instructors, school facilities, and curricula elsewhere in statute.²¹

This section also clarifies that ch. 493, F.S., agency licensees are required to notify the Department of a change in their employment rolls *within 15 calendar days* by a form submitted electronically to the Department. Section 493.6112, F.S., currently requires that licensees notify the Department "immediately" of such changes; according to the Department, this requirement proves vague in practice and results in varying compliance.²²

Mental Health History

The Department has a duty to investigate whether any ch. 493, F.S., applicant has been adjudicated incompetent under ch. 744, F.S.,²³ or has been committed to a mental institution under the Florida Mental Health Act, ch. 394, F.S.^{24, 25} The Department may deny an application for licensure based on an applicant's:²⁶

- Adjudication of incapacitation, unless the applicant's capacity has been judicially restored;
- Placement in a treatment facility for the mentally ill under ch. 394, F.S., or similar law in another state, unless the applicant's competency has been judicially restored;
- Diagnosis of an incapacitating mental illness, unless a Florida-licensed psychologist or psychiatrist certifies that the applicant does not currently suffer from mental illness;
- Chronic and habitual use of alcoholic beverages to the extent that his or her normal faculties are impaired;
- Commitment to a treatment facility for substance abuse;
- Being subject to a finding by a court that she or he is an habitual offender of disorderly intoxication;
- Convictions of driving under the influence, within the 3-year period immediately preceding the application, unless the applicant can prove that she or he is not currently impaired and has successfully completed a rehabilitation course; or

²¹ See ss. 493.6304 and 493.6406, F.S.

²² Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 5 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

²³ A court may grant a petition to determine incapacity that is filed by an adult; the petition must include allegations of the individual's incapacity and facts in support thereof. See s. 744.3201(1), F.S.

²⁴ Section 493.6108(1)(b), F.S.

²⁵ A commitment to an institution under ch. 394, F.S., may be voluntary or involuntary based on mental illness. A voluntary commitment requires the patient's consent, and an involuntary commitment requires a finding that the patient is likely to suffer harm to himself or herself, or that he or she poses a real and present threat of substantial harm to his or her well-being, or the well-being of others. Sections 394.462-.463, F.S.

²⁶ Section 493.6106, F.S.

- Having been found guilty of a controlled substance-related crime, unless the applicant establishes that she or he is not currently abusing any controlled substance and has successfully completed a rehabilitation course.

The Department must further investigate the general mental history and current mental and emotional fitness, including drug or alcohol abuse, of any Statewide Firearms License (Class “G”) or Firearms Instructor (Class “K”) licensee.²⁷ The Department may deny an application for licensure to a Class “G” or “K” applicant based on a history of mental illness or drug or alcohol abuse.

These investigations into mental health and substance abuse are largely limited to an inquiry by the Department on the application for licensure; records of commitment under ch. 394, F.S., are confidential and exempt unless the applicant authorizes the release of the documentation.²⁸

Currently, the Department can access FDLE and clerks of courts records of individuals who are or were committed under chs. 394, 397, or 744, F.S., for the purpose of reviewing the fitness of applicants for concealed weapons licenses under ch. 790, F.S.²⁹ The FDLE maintains the Mental Competency Database (MECOM), which lists the names and related data of persons who are prohibited from purchasing a firearm based on adjudication of mental defectiveness (total mental incapacity) or commitment to mental institutions because of mental illness or substance abuse.³⁰ An individual may be removed from MECOM if he or she receives a relief from firearm disabilities under s. 790.065(2)(a)4.d., F.S.

Section 13 grants the FDLE authority to share data from the MECOM database with the Department for the limited purpose of determining eligibility of Class “G” and “K” applicants and licensees.

Actions Against Licensees

Section 16 requires the Department to review mental health and substance abuse data provided by the FDLE as part of its case-by-case determination whether a temporary Class “G” applicant is prohibited from licensure.

The Department may pursue disciplinary administrative action against a current ch. 493, F.S., licensee based on a finding that he or she committed any of the acts prohibited in s. 493.6118, F.S., including:

- Being found guilty of, or entering a plea of guilty or nolo contendere to, or being convicted of, a crime that directly relates to the business for which the license is held;
- Failure to maintain required commercial general liability coverage;
- Commission of an act of violence, or use of force on any person except in the lawful protection of one’s self or another from physical harm;

²⁷ Section 493.6108(3), F.S.

²⁸ Section 394.4615, F.S.

²⁹ Sections 790.065(2)(a)4.c.(l), F.S. and 790.065(2)(a)4.f., F.S.

³⁰ Section 790.065, F.S.; Florida Department of Law Enforcement, *Mental Competency (MECOM) Database: Frequently Asked Questions* p. 5 (June 2, 2014), https://www.fdle.state.fl.us/cms/FPP/Documents/MECOMFAQs_Final_06022014.aspx (last visited Mar. 16, 2017).

- Failure to cooperate with a Department investigation; or
- Violation of any other provision of ch. 493, F.S.

Administrative disciplinary action is reviewable under ss. 120.569-.57, F.S. These types of administrative hearings generally permit the licensee to dispute the allegations made against him or her. An impartial hearing officer then makes findings of fact and findings of law, which result in a final determination of whether the Department's case against the licensee is supported by clear and convincing evidence.

The Department may also pursue an emergency suspension order under s. 120.60(6), F.S., if the Department finds that the licensee poses a serious danger to the public health, safety, or welfare.³¹ The emergency suspension order allows the Department to require the licensee to cease and desist from continuing to act under his or her license, but the Department is obligated to "promptly" institute a formal suspension or revocation proceeding pursuant to ss. 120.569-.57, F.S. The cease and desist language of the emergency suspension order remains in effect until a final order reviewing the allegations against the licensee has been issued pursuant to the hearing under either s. 120.569 or 120.57, F.S.

Section 17 requires the Department to temporarily suspend a Class "G" or "K" licensee who is arrested for or formally charged with a firearms-related crime that would disqualify him or her from licensure. This section also grants the Department authority to temporarily suspend any ch. 493, F.S., licensee who has been arrested for or formally charged with a forcible felony.³²

The proposed temporary suspension would grant the licensee a right to hearing under ch. 120, F.S., but the scope of that hearing would be limited only to a determination of whether the licensee has been arrested for or charged with a disqualifying crime. When a licensee is ultimately cleared of the allegations made in his or her underlying criminal case, the Department is required to lift the temporary suspension. When, however, the criminal case results in a disqualifying disposition, the temporary suspension will remain in effect and the Department is required to bring an administrative case under ch. 120, F.S., against the licensee to attempt to revoke his or her license.

Training and Certification for Ch. 493, F.S., Licensees

Applicants for licensure as a firearms instructor (Class "K") must undergo training and receive certification from either:

- The National Rifle Association (NRA) Private Security Firearm Instructor Certificate Program,³³ or

³¹ See also *Allied Edu. Corp v. State, Dep't of Edu.*, 573 Sp. 2d 959, 1991 (Fla. 1st DCA 1991).

³² Section 776.08, F.S., defines a "forcible felony" as treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

³³ National Rifle Association, *Instructor Development Schools*, <http://le.nra.org/training/instructor-development-schools.aspx#schedule> (last visited Mar. 15, 2017); National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 15, 2017).

- A federal law enforcement agency's firearms instructor certificate program, e.g., through the U.S. Department of Homeland Security's Federal Law Enforcement Training Center (FLETC).³⁴

The NRA's firearm instructor certificate expires after 3 years, unless the instructor successfully completes recertification with the NRA, which requires proof of 24 hours of continuing education.³⁵ The FLETC firearm instructor certificate does not expire, but the instructor may be required to obtain recertification by the agency (such as a local police department or sheriff's office) that sponsored the original certification of the trainee by FLETC.³⁶

Section 11 of the bill also makes minor modifications to the application requirements for a firearms instructor (Class "K") license. Current law requires Class "K" applicants to submit one of a list of three certificates demonstrating competency as a firearms instructor. The bill requires two of these to be "valid" and to have been issued within three years of the submission of the application.

Sections 19 and 21 delete the requirement that private investigator interns and security officer licensees receive training in two parts and deletes out-of-date references. According to the Department, the requirement that training be provided in two parts was cumbersome to both training schools and trainees.³⁷

Currently, s. 493.6113(3)(b), F.S., requires a Class "G"³⁸ statewide firearms licensee to annually complete four hours of firearms recertification training.³⁹ The licensee must submit proof of his or her annual recertification training to the Department. If the licensee fails to provide documentation of the training by the end of the first year of the license's two-year term, the license is automatically suspended until the licensee provides proof of the training. If the licensee fails to provide such documentation by the end of his or her license's term, the Department may not renew the license until the applicant completes the initial licensing requirements, including at least 28 hours of range and classroom training.⁴⁰

Class "G" licensees are currently permitted to carry up to two of the following types of firearms during the course of their licensed duties: a .38 caliber revolver, a .380 caliber or 9 millimeter semiautomatic pistol; a .357 caliber revolver with .38 caliber ammunition; a .40 caliber handgun; or a .45 ACP handgun.⁴¹ Security officer licensees who also have a Class "G" license may only

³⁴ U.S. Department of Homeland Security, Federal Law Enforcement Training Centers, *Firearms Instructor Training Program*, <https://www.fletc.gov/training-program/firearms-instructor-training-program> (last visited Mar. 15, 2017).

³⁵ National Rifle Association, *Recertification*, <http://le.nra.org/training/recertification.aspx> (last visited Mar. 15, 2017).

³⁶ Committee staff conversation with Federal Law Enforcement Training Center ("FLETC") representative (Mar. 1, 2017).

³⁷ Florida Department of Agriculture and Consumer Services *SB 498 Agency Analysis*, p. 7 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

³⁸ A Class "G" licensee permits Class "C," "CC," "D," "M," "MA," or "MB" licensees to bear a firearm in the course of their licensed duties. Section 493.6115(2), F.S.

³⁹ The Department may waive the annual firearms recertification training for certain applicants, such as state and federal law enforcement officers and correctional officers. Section 493.6113(3)(b)1.-3., F.S.

⁴⁰ The initial training criteria for Class "G" licensees are found in s. 493.6105(5), F.S.

⁴¹ Section 493.6115(6), F.S.

carry their firearm in a concealed manner if they are performing limited, special assignment duties or are performing bodyguard services.⁴²

Section 15 amends s. 493.6113, F.S., to require statewide firearm licensees, Class “G” licensees,⁴³ to perform and successfully complete training for *each type and caliber* of firearm that they will carry in the course of their duties.

Section 16 updates an outdated cross-reference in s. 493.6115, F.S., to clarify under what circumstances security officer licensees who also have a Class “G” license may carry their authorized firearm in a concealed manner.

Under current law, recovery agents and interns (also known as Class “E” or “EE” licensees, or repossession service agents) are required to meet the basic licensure requirements in ch. 493, F.S., and complete a minimum of 40 hours of professional training at an accredited recovery agent school.⁴⁴

Section 24 requires these licensees to *submit proof of successful completion* of the professional training, and submit proof thereof to the Department. This section also deletes an outdated reference in s. 493.6403, F.S.

Concealed Weapon or Firearm Licenses

Section 39 amends the qualifications for concealed weapon or firearm licensure under ch. 790, F.S., to allow the Department to grant a concealed weapon license to applicants who have been committed for a mental health issue or abuse of a controlled substance; or adjudicated incapacitated, but have subsequently been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., or similar law. This brings the Department’s practices into line with the FDLE’s regulations on the sale of guns.⁴⁵

This section also implements a \$5 fee reduction for concealed weapon or firearm license and renewal fees.⁴⁶

Technical Changes

Section 22 makes technical changes to s. 493.6304(1), F.S.

Sections 12, 18, 20, and 23 delete erroneous references to “biennial” license fees. License renewals occur on either biennial or triennial cycles, depending on the type of license.⁴⁷ These amendments remedy inconsistency within the chapter and between the chapter and related rules.

⁴² Section 493.6305, F.S.

⁴³ Class “G” licenses are supplemental licenses that require as a prerequisite that the applicant is currently licensed with the Department as either a Class “C,” “CC,” “D,” “M,” “MA,” or “MB” licensee. *See* s. 493.6115, F.S.

⁴⁴ Section 493.6403(2), F.S.

⁴⁵ *See*, s. 790.065, F.S.

⁴⁶ A concealed weapon or firearm license fee is currently \$60; a renewal fee is \$50. Section 790.06(5)(b), F.S.

⁴⁷ *See* s. 493.6113, F.S.

Division of Consumer Services

The Department's Division of Consumer Services regulates certain businesses, including commercial weight-loss practices, telephone solicitation, pawnshops, health studios, sellers of travel, and telemarketing. The Division of Consumer Services also functions as a clearinghouse for consumer complaints.

Board of Professional Surveyors and Mappers

The Department's Board of Professional Surveyors and Mappers (board) is tasked with regulating professional surveyors and mappers, as well as businesses that offer surveying and mapping services.⁴⁸ The Board's regulatory duties include:⁴⁹

- Adopting rules detailing the review and approval of courses of study in surveying and mapping;
- Determining the moral character of applicants for licensure;
- Instituting by rule the criteria and course content for continuing education courses;
- Approving and disciplining providers of continuing education;
- Holding probable cause panel hearings to determine whether to move forward with disciplinary proceedings against a licensee; and
- Issuing final orders in disciplinary cases.

The practice of surveying and mapping, generally, is the determination of the facts of size, shape, topography, tidal datum planes, legal or geodetic location or relation, and orientation of improved or unimproved real property through the direct measurement or from certifiable measurement through photogrammetric procedures.⁵⁰

Surveyors and mappers must meet the following qualifications to be licensed by the Department:⁵¹

- Be of good moral character;
- Pass a licensure examination; and
- Meet specific education and experience requirements.

Section 2 exempts subcontractors of registered surveyors and mappers or their businesses from registration under ch. 472, F.S. The subcontractor must be subordinate to, and under the direct control and personal supervision of, a registered surveyor and mapper in order to qualify for this exemption.

Section 3 amends definitions in s. 472.005, F.S., to clarify that the practice of surveying and mapping includes the determination of the volume of bodies of water, and of the orientation of personal property that is attached to any improved or unimproved real property.

⁴⁸ Florida Department of Agriculture and Consumer Services, Board of Professional Surveyors and Mappers, *Frequently Asked Questions* (Jun. 2011), <http://www.freshfromflorida.com/content/download/21271/398679/boardFAQ.pdf> (last visited Mar. 15, 2017).

⁴⁹ See, ch. 472, F.S.

⁵⁰ Section 472.005(3), F.S.

⁵¹ Sections 472.013 and 472.015, F.S.

Section 4 broadens the prerequisite course of education for surveyor and mapper licensees to include a bachelor's degree in surveying and mapping *or any similarly titled program*. This section also permits applicants for licensure as a surveyor and mapper intern to qualify by completing 2 years of college education in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, in addition to accruing at least 2 years in work as a subordinate to a registered surveyor and mapper.

Section 5 deletes outdated language and removes the requirement that a surveyor and mapper prominently post a sign giving notice that she or he does not carry professional liability insurance. The surveyor and mapper is still required to give notice of their lack of insurance to their consumers by a written statement.⁵²

Section 6 grants the Board the power to establish the criteria for continuing education providers, and other continuing education requirements, including the method of continuing education delivery and the carry over for each license renewal. This also requires the Department to establish a system for the administration of those continuing education requirements that are adopted by the Board.

Section 7 requires registered surveyors and mappers to receive and use a seal that is approved by the Board, but deletes the requirement that the seal be an impression-type metal seal.

Surveyors and mappers are required to submit to the Department a copy of each elevation certificate that she or he completes.⁵³ **Section 8** clarifies that a surveyor and mapper may submit a copy of an elevation certificate to the Department, and the copy need not be signed and sealed. However, the surveyor and mapper must maintain the original signed and sealed copy in his or her own records.

Do Not Call List

The Department administers the Florida Do Not Call Program, which prohibits unsolicited phone calls to consumers by telephone solicitors. A consumer must request to be placed on the Department's directory of those who do not wish to be contacted, and such request lasts for five years.⁵⁴ The consumer can re-subscribe every five years. Under s. 501.059(5), F.S., a telephone solicitor is also prohibited from calling a consumer who has previously communicated to the solicitor that he or she does not wish to receive a telephone call that is:

- Made by or on behalf of the seller whose goods or services are offered; or
- Made on behalf of a charity for which a charitable contribution is solicited.

Section 26 deletes the five-year subscription duration from the Do Not Call Program, thereby making each a lifetime subscription. However, subscribers may request to be removed from the program at any time.

⁵² Section 472.015(12), F.S.

⁵³ Section 472.0366(2), F.S.

⁵⁴ Section 501.059(3)-(4), F.S.

Health Studios

The Health Studio Act, ss. 501.012-501.019, F.S., regulates health studios that enter into contracts for health studio services with consumers. “Health studios” includes, among other things, a gym that offers its members the use of weight-training and cardiovascular equipment. The act requires studios to:

- Register with the Department;
- Include specific provisions in every contract with a consumer, such as the consumer’s total payment obligations, and cancellation provisions;
- Provide a security bond, generally ranging from \$10,000 to \$25,000, depending on the value of outstanding contracts with the studio; and
- Refrain from prohibited practices, such as committing an intentional fraud.

The following health studios or health-related businesses are exempt from registration with the Department:⁵⁵

- Nonprofit organizations that have tax-exempt status with the Internal Revenue Service;
- Gymnastics schools that engage in instruction and training only;
- Golf, tennis, or racquetball clubs that do not offer physical exercise equipment;
- Country clubs that primarily provide social or recreational amenities to its members; and
- Personal trainers who do not have an established place of business and who do not accept payment for their services more than 30 days in advance.

The Department can seek an injunction or civil penalties for any violation of the act, and violations are generally misdemeanors. The Department may also institute administrative prosecution of a health studio in violation of s. 501.015 or s. 501.016, F.S.

Section 25 of the bill exempts from registration as a health studio with the Department any program or facility offered by an organization for the exclusive use of its employees and their family members, such as a gym within a corporate headquarters.

Intrastate Household Movers

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover engaged in intrastate transportation or shipment of household goods that originate and terminate in the state.⁵⁶

Section 507.04, F.S., requires movers to maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment and not less than 60 cents per pound, per article.⁵⁷ Movers who operate fewer than two vehicles are required only to carry either a performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.⁵⁸ A mover who fails to maintain the required liability insurance is subject to:

⁵⁵ Sections 501.0125-.013, F.S.

⁵⁶ Section 507.02, F.S.

⁵⁷ Section 507.04(4), F.S.

⁵⁸ Section 507.04(1)(b), F.S.

- Immediate suspension of the license by the Department;
- Immediate injunction prohibiting the mover from operating in the state; and
- Civil liability for any injuries that arise.⁵⁹

However, under current law, the Department has no similar penalties available to it in the case of a mover who fails to maintain motor vehicle insurance. The Department must wait until the mover files for renewal of his or her license with the Department to be able to take any action.⁶⁰ The Department cites this difference in penalty scheme as a procedural burden for the Department and a possible danger to consumers, who may develop an incorrect impression that a mover who lacks motor vehicle insurance is in good standing with the Department.⁶¹

Section 27 grants the Department the same penalty scheme for a mover's failure to maintain both liability and motor vehicle insurance. This will make the Department's procedures more consistent.

Bureau of Standards

The Department's Bureau of Standards is generally responsible for the inspection of weights and measures devices or instruments in Florida. This includes, but is not limited to, the prescription of the appropriate unit of weight or measurement to be used, testing of weights and measuring instruments used by any city or county, and inspection of retail scales that are used to determine the weight, measurement or total count of commodities offered for sale, such as fruit and vegetables at a grocery store. For the purpose of consumer protection, the Bureau of Standards is also empowered under s. 531.42, F.S., to enforce the proper use of weights and measuring instruments or devices and the advertisement of the correct weight or measurement on a good for sale.

A taximeter is a device that automatically calculates and indicates the charge for the hire of a vehicle, such as a taxi.⁶²

Sections 28, 29, and 30 delete the Department's authority to regulate taximeters, and remove related language. The bill also expressly frees the Department from regulating "digital networks," which may include what are effectively digital taximeters linked to servers that may be in other states. These digital networks may be used by services like Uber.

Division of Animal Industry

The Department's Division of Animal Industry safeguards animal and public health, and maintains market access for Florida's animals and animal products by surveilling the movement

⁵⁹ Section 507.04(1), F.S.

⁶⁰ Section 507.04(2)-(3), F.S.

⁶¹ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 9 (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

⁶² U.S. Department of Commerce, National Institute of Standards and Technology, *Handbook 44, Section 5.54 Taximeters* (2012), <https://www.nist.gov/sites/default/files/documents/pml/wmd/pubs/2011/10/26/5-54-12-hb44-final.pdf> (last visited Mar. 15, 2017).

of animals into and throughout the state, and monitoring any animal disease that may arise.⁶³ One estimate concludes that approximately 1.5 million cattle are currently raised in Florida.⁶⁴ These cattle must have official identification unless the cattle are:

- Moving directly to slaughter or through one approved livestock market and then directly to slaughter;
- Moving to an approved tagging site; or
- Being moved from one premises to another while remaining under common ownership as part of normal farm operations.⁶⁵

Federal law provides identification requirements for cattle that is transported across interstate lines.⁶⁶

Section 31 replaces the requirement that an application for livestock mark or brand registration be accompanied by a “facsimile” of the brand or mark, with a requirement that the application include a “detailed drawing” of the brand or mark.

Section 32 extends the term of a livestock mark or brand registration from five to ten years, and deletes the \$5 registration renewal fee.

Section 33 deletes s. 534.061, F.S., which requires a person who purchases cattle to re-mark or rebrand the cattle within 10 days. The Department states that the Division of Animal Industry does not currently regulate such transfers.⁶⁷

Division of Fruit and Vegetables

The Division of Fruit and Vegetables inspects and certifies all state and federal marketing orders—the program that collectivizes agriculture producers for the purpose of marketing and selling their products.⁶⁸ As part of the marketing order program, the Department enters into contracts to promote the agriculture producers’ products; these contracts are not subject to the competitive bidding process under s. 287.057, F.S. However, in each instance that the Division enters into a contract without competitive bidding, the director of the Division must file a report to justify the contract process with the Department’s internal auditor.⁶⁹

⁶³ Florida Department of Agriculture and Consumer Services, *Division of Animal Industry*, <http://www.freshfromflorida.com/Divisions-Offices/Animal-Industry> (last visited Mar. 16, 2017).

⁶⁴ *Id.*

⁶⁵ Florida Department of Agriculture and Consumer Services, *Summary of Cattle Traceability Requirements* (Aug. 21, 2014), <http://www.freshfromflorida.com/content/download/38829/857923/SummaryRequirements.pdf> (last visited Mar. 16, 2017). *See also*, Rule 5C-31, Fla. Admin. Code.

⁶⁶ *Id.* *See also*, Ch. 9, C.F.R., pt. 86.

⁶⁷ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (On file with the Senate Committee on Judiciary).

⁶⁸ Florida Department of Agriculture and Consumer Services, *Division of Fruits and Vegetables*, <http://www.freshfromflorida.com/Divisions-Offices/Fruit-and-Vegetables> (last visited Mar. 16, 2017).

⁶⁹ Section 573.118, F.S.

The Division of Marketing and Development supervised the marketing order process, until a recent reorganization of the Division's duties.⁷⁰

Section 35 amends s. 573.118, F.S., to require the director of the Division of Fruit and Vegetables, rather than the Division of Marketing and Development, to file each report justifying a contract or agreement entered into without competitive bidding in the marketing order process. This reflects the Division reorganization.

Florida Forest Service

The Florida Forest Service (FFS) is dedicated to management of state forests and Florida's forest resources.⁷¹ The FFS constructs structures on forest land to support its duties thereon, including wildfire, educational, camping and recreational, and law enforcement facilities. Currently, s. 590.02, F.S., grants the FFS exclusive authority to enforce the Florida Building Code relating to the wildfire and law enforcement structures the FFS builds.

Section 36 expands the grant of authority under s. 590.02, F.S., to the Department to enforce the Florida Building Code as it relates to all FFS facilities, in addition to the FFS's law enforcement and wildfire facilities.

Division of Aquaculture

Pursuant to ch. 597, F.S., the Division of Aquaculture coordinates and assists with the development of aquaculture in Florida, and regulates aquafarms to protect and conserve Florida's aquatic organisms.⁷²

The Department issues certificates of registration under s. 597.004, F.S., to aquaculture producers who must agree to submit to the Department's best management practices.⁷³ These certificates permit the aquaculture producer to sell all aquaculture products except those otherwise prohibited by law, and those for which the origin of the product is unknown.⁷⁴

Section 37 clarifies that dealers licensed pursuant to part VII of ch. 379, F.S., ("Nonrecreational Licenses") including downline sellers of aquaculture products, such as wholesale and retail saltwater products dealers and freshwater fish dealers (excepting the initial aquaculture producer sellers), are not required to be certified aquaculture producers under s. 597.004, F.S. According to the Department, the Florida Fish and Wildlife Commission requested this clarification.⁷⁵

⁷⁰ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).

⁷¹ Florida Department of Agriculture and Consumer Services, *Florida Forest Service*, <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service> (last visited Mar. 16, 2017). *See also*, s. 590.01, F.S.

⁷² Florida Department of Agriculture and Consumer Services, *Division of Aquaculture*, <http://www.freshfromflorida.com/Divisions-Offices/Aquaculture> (last visited Mar. 16, 2017).

⁷³ Section 597.004, F.S.

⁷⁴ Section 597.004(5), F.S.

⁷⁵ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis*, p. 10 (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).

Office of Agricultural Law Enforcement

The Division of Agricultural Law Enforcement (AgLaw) is the law enforcement arm of the Department. As part of its duties, AgLaw operates 23 agricultural inspection stations; investigates crimes involving agriculture, as well as unfair and deceptive trade practices; and partners with federal, state, and local law enforcement agencies to coordinate the Domestic Marijuana Eradication Task Force.⁷⁶

A dealer in agricultural products is any person, partnership, corporation, or other business entity that is engaged in the purchase, receipt, or solicitation of agricultural products from the initial producer, for the purpose of resale or processing for sale.⁷⁷ The AgLaw regulates these dealers in order to protect sellers of agricultural products (farmers). The Legislature created this duty because the recovery of agricultural products from a dealer who is ultimately unable to pay the producer for his or her products is impractical because of the quick decay or consumption of agricultural products.⁷⁸

Section 640.16, F.S. exempts certain dealers from registration as a dealer, if the dealer:

- Pays for the products in cash at the time of the purchase;
- Is a bonded licensee under the federal Packers and Stockyards Act; or
- Purchases less than \$1,000 of agricultural products during a one-month period.

Section 38 amends s. 640.16, F.S., to provide an additional exemption from registration for those dealers who pay for the products with a credit card at the time of the agricultural purchase.

Department Authority to Inspect Raw Food Facilities

Section 34 requires the Department to perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked.

Section 40 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷⁶ Florida Department of Agriculture and Consumer Services, Office of Agricultural Law Enforcement, <http://www.freshfromflorida.com/Divisions-Offices/Agricultural-Law-Enforcement> (last visited Mar. 16, 2017).

⁷⁷ Section 604.15(2), F.S.

⁷⁸ Section 604.151, F.S.

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

None.

B. Private Sector Impact:

Private investigator, or Class “M,” licensees under ch. 493, F.S., may be able to take on additional employment to supplement their income since, under the bill, they may act as a manager at multiple private investigative agencies or branches.

Those who register a livestock brand or mark will see a reduction in associated fees. Agricultural Dealers who pay for their purchases with a credit card are no longer required to pay a registration fee to the Department.

The licensure and renewal fees for concealed weapons and firearms licensees issued pursuant to s. 790.06, F.S., are reduced by \$5.

Those who operate taximeters will no longer incur registration fees and related regulations under the Department.

C. Government Sector Impact:

CS/SB 498 has a slightly negative impact on state revenues. The elimination of certain fees relating to licensure requirements under chs. 534 and 604, F.S., is estimated to reduce the Department’s revenues in the total amount of \$318,939 beginning in Fiscal Year 2017-2018.⁷⁹

The Department expects a decrease in expenditures of \$252,363 beginning in Fiscal Year 2017-2018. This reduction is the result of the elimination of four Departmental positions related to the licensure of agriculture products dealers, and of reduced background check expenditures ch. 493, F.S., agency manager licensees, who are no longer required to file multiple applications for licensure to be able to manage multiple branches or agencies.⁸⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁷⁹ Florida Department of Agriculture and Consumer Services, *SB 498 Agency Analysis* (Feb. 8, 2017) (on file with the Senate Committee on Judiciary).

⁸⁰ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 288.1175, 472.003, 472.005, 472.013, 472.015, 472.018, 472.025, 472.0366, 487.2041, 493.6101, 493.6105, 493.6107, 493.6108, 493.6112, 493.6113, 493.6115, 493.6118, 493.6202, 493.6203, 493.6302, 493.6303, 493.6304, 493.6402, 493.6403, 501.013, 501.059, 507.04, 531.37, 531.61, 531.63, 534.021, 534.041, 570.07, 573.118, 590.02, 597.004, 604.16, and 790.06.

This bill repeals section 534.061, F.S.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Judiciary on March 22, 2017:

The committee substitute:

- Requires the Department to perform food safety inspection services where raw agricultural commodities are grown, produced, harvested, held, packed, or repacked;
- Deletes Sections 8 and 9 of the underlying bill, which added language duplicating current law; and
- Limits a manager of a private investigative agency to managing three offices.

CS by Commerce and Tourism on March 6, 2017:

- Makes substantial changes to regulations and qualifications of surveyors and mappers in ch. 472, F.S.;
- Permits the use of the FDLE's MECOM database for only Class "G" and "K" applicants and licensees;
- Provides for the temporary suspension of Class "G" or "K" licensees who are arrested for or charged with a firearms-related crime, and for ch. 493, F.S. licensees who are arrested for or charged with a forcible felony;
- Exempts company gyms that are used only by employees and their families from registration as a health studio with the Department;
- Deletes the regulation of taximeters from the Department's duties, and clarifies that digital networks are not regulated by the Department;
- Allows the Department to provide a concealed weapon or firearm license to applicants who have had their firearms disabilities restored pursuant to s. 790.065(2)(a)4.d., F.S.; and
- Reduces the concealed weapon or firearm license and renewal fees by five dollars.

B. Amendments:

None.



346068

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 484 - 586.

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

And the title is amended as follows:

Delete lines 32 - 39

and insert:

impression-type metal; amending s. 472.0366, F.S.;

revising the



225104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Young) recommended the following:

Senate Amendment (with title amendment)

Delete lines 619 - 620
and insert:
investigative agency may, however, manage up to three offices
within a 150-mile radius of the location listed on the agency's
Class "A" license, provided that these three offices consist of
either:
(a) The location listed on the agency's Class "A" license
and up to two branch offices; or
(b) Up to three branch offices.



225104

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

And the title is amended as follows:

Delete lines 50 - 51

and insert:

of a private investigative agency may manage up to
three offices, subject to certain requirements;
amending s. 493.6105, F.S.; exempting certain



549670

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Young) recommended the following:

Senate Amendment (with title amendment)

Between lines 1273 and 1274
insert:

Section 36. Subsection (45) is added to section 570.07,
Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services;
functions, powers, and duties.—The department shall have and
exercise the following functions, powers, and duties:

(45) To perform food safety inspection services where raw
agricultural commodities are grown, produced, harvested, held,



549670

packed, or repacked.

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

And the title is amended as follows:

Delete line 130

and insert:

of ownership of cattle; amending s. 570.07, F.S.;
authorizing the department to perform certain food
safety inspection services relating to raw
agricultural commodities; amending s. 573.118, F.S.;

By the Committee on Commerce and Tourism; and Senator Young

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1 A bill to be entitled
 2 An act relating to the Department of Agriculture and
 3 Consumer Services; amending s. 288.1175, F.S.;
 4 specifying that applications for funding for certain
 5 agriculture education and promotion facilities must be
 6 postmarked or electronically submitted by a certain
 7 date; amending s. 472.003, F.S.; specifying that
 8 certain persons under contract with registered or
 9 certified surveyors and mappers are not subject to the
 10 provisions of ch. 472, F.S.; amending s. 472.005,
 11 F.S.; redefining the terms "practice of surveying and
 12 mapping" and "subordinate"; amending s. 472.013, F.S.;
 13 revising the standards for when an applicant is
 14 eligible to take the licensure examination to practice
 15 as a surveyor and mapper; amending s. 472.015, F.S.;
 16 revising the qualifications for licensure by
 17 endorsement; revising the requirements for a certain
 18 notice relating to insurance coverage; amending s.
 19 472.018, F.S.; revising the continuing education
 20 requirements for new licensees and license renewal;
 21 authorizing the board to provide by rule the method of
 22 delivery of, criteria for, and provisions to carryover
 23 hours for continuing education requirements; deleting
 24 a requirement that the board approve courses;
 25 requiring the board to issue cease and desist orders
 26 and enact certain penalties for continuing education
 27 providers failing to conform to board rules; requiring
 28 the department to establish a system for the
 29 administration of continuing education requirements

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30 adopted by the board; amending s. 472.025, F.S.;
 31 deleting a requirement that registrant seals be of
 32 impression-type metal; amending s. 472.033, F.S.;
 33 specifying that the department may initiate an
 34 investigation if it has reasonable cause to believe
 35 that a person is engaged in the practice of surveying
 36 and mapping without a license; amending s. 472.0351,
 37 F.S.; specifying that disciplinary actions may be
 38 taken for the unlicensed practice of surveying and
 39 mapping; amending s. 472.0366, F.S.; revising the
 40 requirements for copies of evaluation certificates
 41 that must be submitted to the Division of Emergency
 42 Management within the Executive Office of the
 43 Governor; requiring that certain copies of evaluation
 44 certificates be retained in the surveyor and mapper's
 45 records; amending s. 487.2041, F.S.; requiring the
 46 department to adopt by rule certain United States
 47 Environmental Protection Agency regulations relating
 48 to labeling requirements for pesticides and devices;
 49 amending s. 493.6101, F.S.; specifying that a manager
 50 of a private investigative agency may manage multiple
 51 offices; amending s. 493.6105, F.S.; exempting certain
 52 partners and corporate officers from fingerprint
 53 retention requirements; revising the submission
 54 requirements for applications for Class "K" licenses;
 55 amending s. 493.6107, F.S.; deleting a specification
 56 that license fees are biennial; amending s. 493.6108,
 57 F.S.; providing an authorization to the Department of
 58 Law Enforcement to release certain mental health and

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59 substance abuse history of Class "G" or Class "K"
 60 applicants and licensees for the purpose of
 61 determining licensure eligibility; requiring licensees
 62 to notify their employer of an arrest within a
 63 specified period; amending s. 493.6112, F.S.; revising
 64 the notification requirements for changes of certain
 65 partners, officers, and employees of private
 66 investigative, security, and recovery agencies;
 67 amending s. 493.6113, F.S.; specifying that Class "G"
 68 licensees must complete requalification training for
 69 each type and caliber of firearm carried in the course
 70 of performing regulated duties; conforming
 71 terminology; amending s. 493.6115, F.S.; conforming a
 72 cross-reference; revising the circumstances under
 73 which certain licensees may carry a concealed firearm;
 74 revising the conditions under which the department may
 75 issue a temporary Class "G" license; amending s.
 76 493.6118, F.S.; providing that failure of a licensee
 77 to timely notify his or her employer of an arrest is
 78 grounds for disciplinary action by the department;
 79 requiring the department to temporarily suspend
 80 specified licenses of a licensee arrested or formally
 81 charged with certain crimes until disposition of the
 82 case; requiring the department to notify a licensee of
 83 administrative hearing rights; specifying that any
 84 hearing must be limited to a determination as to
 85 whether the licensee has been arrested or charged with
 86 a disqualifying crime; providing that the suspension
 87 may be lifted under certain circumstances; requiring

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88 the department to proceed with revocation under
 89 certain circumstances; amending s. 493.6202, F.S.;
 90 deleting a specification that license fees are
 91 biennial; amending s. 493.6203, F.S.; deleting a
 92 requirement that certain training be provided in two
 93 parts; amending s. 493.6302, F.S.; deleting a
 94 specification that license fees are biennial; amending
 95 s. 493.6303, F.S.; deleting a requirement that certain
 96 training be provided in two parts; deleting obsolete
 97 provisions; making technical changes; deleting a
 98 provision requiring that if a license is suspended,
 99 revoked, or expired for at least 1 year, that the
 100 applicant must submit proof of certain training before
 101 issuance of a new license; amending s. 493.6304, F.S.;
 102 making technical changes; amending s. 493.6402, F.S.;
 103 deleting a specification that license fees are
 104 biennial; amending s. 493.6403, F.S.; requiring that
 105 applicants for Class "E" and "EE" licenses submit
 106 proof of successful completion of certain training,
 107 rather than just completion of such training; amending
 108 s. 501.013, F.S.; providing that a program or facility
 109 offered by an organization for the exclusive use of
 110 its employees and their family members is not subject
 111 to certain health studio regulations; amending s.
 112 501.059, F.S.; removing a limitation on the length of
 113 time for which the department must place certain
 114 persons on a no sales solicitation list; amending s.
 115 507.04, F.S.; making a technical change; amending s.
 116 531.37, F.S.; redefining the term "weights and

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117 measures" to exclude taximeters and digital networks;
 118 amending s. 531.61, F.S.; deleting certain taximeters
 119 from a permitting requirements for commercially
 120 operated or tested weights or measures instruments or
 121 devices; repealing s. 531.63(2)(g), F.S.; relating to
 122 maximum permit fees for taximeters; amending s.
 123 534.021, F.S.; specifying that a detailed drawing,
 124 rather than a facsimile, of a brand must accompany an
 125 application for the recording of certain marks and
 126 brands; amending s. 534.041, F.S.; extending the
 127 registration and renewal period for certain mark or
 128 brand certificates; eliminating a renewal fee;
 129 repealing s. 534.061, F.S., relating to the transfer
 130 of ownership of cattle; amending s. 573.118, F.S.;
 131 specifying that the Division of Fruit and Vegetables,
 132 rather than the Division of Marketing and Development,
 133 must file a specified certification; amending s.
 134 590.02, F.S.; specifying that the department has
 135 exclusive authority to enforce the Florida Building
 136 Code as it relates to Florida Forest Service
 137 facilities under the jurisdiction of the department;
 138 amending s. 597.004, F.S.; authorizing certain
 139 saltwater products dealers to sell certain aquaculture
 140 products without restriction under a specified
 141 circumstance; amending s. 604.16, F.S.; specifying
 142 that dealers in agricultural products who pay by
 143 credit card are exempt from certain dealer
 144 requirements; amending s. 790.06, F.S.; revising the
 145 requirements to obtain a license to carry a concealed

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146 weapon or firearm; revising the requirements of the
 147 application form; revising the license fees to obtain
 148 or renew such license; providing an effective date.
 149
 150 Be It Enacted by the Legislature of the State of Florida:
 151
 152 Section 1. Subsection (8) of section 288.1175, Florida
 153 Statutes, is amended to read:
 154 288.1175 Agriculture education and promotion facility.—
 155 (8) Applications must be postmarked or electronically
 156 submitted by October 1 of each year. The Department of
 157 Agriculture and Consumer Services may not recommend funding for
 158 less than the requested amount to any applicant certified as an
 159 agriculture education and promotion facility; however, funding
 160 of certified applicants shall be subject to the amount provided
 161 by the Legislature in the General Appropriations Act for this
 162 program.
 163 Section 2. Paragraph (d) is added to subsection (5) of
 164 section 472.003, Florida Statutes, to read:
 165 472.003 Persons not affected by ss. 472.001-472.037.—
 166 Sections 472.001-472.037 do not apply to:
 167 (5)
 168 (d) Persons who are under contract with an individual
 169 registered or legal entity certified under this chapter and who
 170 are under the supervision of and subordinate to a person in
 171 responsible charge registered under this chapter, to the extent
 172 that such supervision meets standards adopted by rule by the
 173 board, if any.
 174 Section 3. Subsections (4) and (10) of section 472.005,

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Florida Statutes, are amended to read:

472.005 Definitions.—As used in ss. 472.001-472.037:

(4) (a) "Practice of surveying and mapping" means, among other things, any professional service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence of the act of measuring, locating, establishing, or reestablishing lines, angles, elevations, natural and manmade features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surface of bodies of water, for the purpose of determining, establishing, describing, displaying, or interpreting the facts of size, volume, shape, topography, tidal datum planes, and legal or geodetic location or relocation, ~~and orientation of improved or unimproved real property and appurtenances thereto, including acreage and condominiums.~~

(b) The practice of surveying and mapping also includes, but is not limited to, photogrammetric control; orientation of improved or unimproved real property and appurtenances and personal property attached thereto, including acreage and condominiums; the monumentation and remonumentation of property boundaries and subdivisions; the measurement of and preparation of plans showing existing improvements after construction; the layout of proposed improvements; the preparation of descriptions for use in legal instruments of conveyance of real property and property rights; the preparation of subdivision planning maps and record plats, as provided for in chapter 177; the determination of, but not the design of, grades and elevations

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of roads and land in connection with subdivisions or divisions of land; and the creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them.

(10) "Subordinate" means a person ~~an employee~~ who performs work under the direction, supervision, and responsible charge of a person who is registered under this chapter.

Section 4. Subsections (2) and (3) of section 472.013, Florida Statutes, are amended to read:

472.013 Examinations, prerequisites.—

(2) An applicant shall be entitled to take the licensure examination to practice in this state as a surveyor and mapper if the applicant is of good moral character and has satisfied one of the following requirements:

(a) The applicant has received a bachelor's degree, its equivalent, or higher in surveying and mapping or a similarly titled program, including, but not limited to, geomatics, geomatics engineering, and land surveying, ~~of 4 years or more in a surveying and mapping degree program~~ from a college or university recognized by the board and has 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. ~~The completed surveying and mapping degree of 4 years or more in a surveying and mapping degree program must have included not fewer than 32 semester hours of study, or its academic equivalent, in the science of surveying and mapping or in board-~~

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~~approved surveying and mapping related courses.~~ Work experience acquired as a part of the education requirement may ~~shall~~ not be construed as experience in responsible charge.

(b) The applicant has received a bachelor's degree, its equivalent, or higher in a ~~is a graduate of a 4-year~~ course of study, other than in surveying and mapping, at an accredited college or university recognized by the board, and has 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 shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. ~~The course of study in disciplines other than surveying and mapping must have included not fewer than 32 semester hours of study or its academic equivalent.~~ The applicant must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Any of the required 25 semester hours of study completed not as a part of the bachelor's degree, its equivalent, or higher may 4-year ~~course of study shall~~ be approved at the discretion of the board. Work experience acquired as a part of the education requirement may ~~shall~~ not be construed as experience in responsible charge.

(3) A person shall be entitled to take an examination for the purpose of determining whether he or she is qualified ~~to practice in this state~~ as a surveyor and mapper intern if:

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(a) The person is in good standing in his or her final year of, or is a graduate of, a 4-year degree program of a college or university and has obtained a minimum of 25 semester hours in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, or any combination thereof. Any of the required 25 semester hours of study completed not as a part of the 4-year course of study may be approved at the discretion of the board. If the person is in his or her final academic year, a letter of good standing will be required from the advisor; or

(b) The person has completed 2 years of study in a college or university and has obtained a minimum of 15 semester hours in surveying, mapping, mathematics, photogrammetry, forestry, civil engineering, or land law and the physical sciences, or any combination thereof, and has a specific surveying and mapping experience record of 2 or more years as a subordinate to a registered surveyor and mapper. Any of the required 15 semester hours of study completed not as a part of the 2-year course of study may be approved at the discretion of the board.

This subsection may not be construed as a substitute for the degree requirement to take the exams for licensure as outlined in subsection (2) the person is in the final year, or is a graduate, of an approved surveying and mapping curriculum in a school that has been approved by the board.

Section 5. Paragraph (a) of subsection (5) and subsection (12) of section 472.015, Florida Statutes, are amended to read:
472.015 Licensure.—

(5)(a) The board shall certify as qualified for a license

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by endorsement an applicant who, at the time of application:

1. Holds a valid license to practice surveying and mapping issued ~~before~~ prior to July 1, 1999, by another state or territory of the United States; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 472.013; and has a specific experience record of at least 8 years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping, 6 years of which must be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed; or

2. Holds a valid license to practice surveying and mapping issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in Florida at the time the license was issued. ~~or~~

~~3. Is a practicing photogrammetrist who holds the Certified Photogrammetrist designation of the American Society for Photogrammetry and Remote Sensing and held such designation on or before July 1, 2005; is a graduate of a 4-year course of study at an accredited college or university; and has a specific experience record of 6 or more years as a subordinate to a Certified Photogrammetrist of the American Society for Photogrammetry and Remote Sensing in the active practice of surveying and mapping, 5 years of which shall be of a nature indicating that the applicant was in responsible charge of the accuracy and correctness of the surveying and mapping work performed. The course of study must have included not fewer than~~

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~~32 semester hours of study or its academic equivalent. The applicant must have completed a minimum of 25 semester hours from a college or university approved by the board in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Any of the required 25 semester hours of study completed not as a part of the 4-year course of study shall be approved at the discretion of the board. Work experience acquired as a part of the education requirement shall not be construed as experience in responsible charge. The applicant must have applied to the department for licensure on or before July 1, 2007.~~

(12) A licensee or business entity that meets the requirements of this section or s. 472.021 must carry professional liability insurance or provide notice to any person or entity to which surveying and mapping services are offered that the licensee or business entity does not carry professional liability insurance. The notice must consist of ~~a sign prominently displayed in the reception area and~~ written statements provided in a form and frequency as required by rule of the Board of Professional Surveyors and Mappers.

Section 6. Section 472.018, Florida Statutes, is amended to read:

472.018 Continuing education.—The department may not renew a license until the licensee submits proof satisfactory to the board that the licensee has met the continuing education requirements for renewal as established by the board and during the 2 years before her or his application for renewal the licensee has completed at least 24 hours of continuing education

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before license renewal.

(1) The board shall adopt rules to establish the criteria ~~and course content~~ for continuing education providers ~~courses~~. The rules may provide that up to a maximum of 25 percent of the required continuing education hours may be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board must require that any pro bono services be approved in advance in order to receive credit for continuing education under this section. The board shall use the standard recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services in determining indigency. The board may adopt rules that may provide that a part of the continuing education hours may be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board may adopt rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements adopted by the board.

(2) The board may provide by rule the method of delivery and criteria that ~~distance learning~~ may be used to satisfy continuing education requirements. The board may provide by rule provisions for continuing education hours carryover for each license renewal cycle.

(3) The board may prorate the required continuing education hours in the following circumstances:

(a) For new licensees:

1. By requiring half of the required continuing education

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hours for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

2. Requiring no continuing education hours until the first full renewal cycle of the licensee.

(b) When the number of hours required is increased by law or the board.

(4) Upon the request of a licensee, the provider must also furnish to the department information regarding courses completed by the licensee, in an electronic format required by rule of the department.

(5) Each continuing education provider shall retain all records relating to a licensee's completion of continuing education courses for at least 4 years after completion of a course.

(6) A continuing education provider may not be approved, and the approval may not be renewed, unless the provider agrees in writing to provide such cooperation under this section as required by the department.

(7) For the purpose of determining which persons or entities must meet the reporting, recordkeeping, and access provisions of this section, the board by rule shall adopt a definition of the term "continuing education provider" applicable to the profession's continuing education requirements. The intent of the rule is to ensure that all records and information necessary to carry out the requirements of this section are maintained and transmitted accordingly and to minimize disputes as to what person or entity is responsible

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for maintaining and reporting such records and information.

(8) The board shall approve the providers of continuing education. The approval of continuing education providers ~~and courses~~ must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect under this chapter or the rules adopted under this chapter.

(9) The department may fine, suspend, or revoke approval of any continuing education provider that fails to comply with its duties under this section. The fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted pursuant to s. 472.033.

(10) The board shall issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval of the provider previously granted by the board if the board determines that the person or entity failed to provide appropriate continuing education services that conform to board rules ~~approved course material~~. The fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted under s. 472.033.

(11) The board may establish, by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of providership of such courses. Such postlicensure education courses are subject to the reporting, monitoring, and compliance provisions of this section.

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(12) The department shall establish a system for the administration of continuing education requirements adopted by the board. The department and the board may adopt rules under ss. 120.536(1) and 120.54 to administer this section.

(13) Each continuing education provider shall provide to the department, in an electronic format determined by the department, information regarding the continuing education status of licensees which the department determines is necessary to carry out its duties under this chapter. After a licensee completes a course, the information must be submitted electronically by the continuing education provider to the department within 30 calendar days after completion. However, beginning on the 30th day before the renewal deadline or before the renewal date, whichever occurs sooner, the continuing education provider shall electronically report such information to the department within 10 business days after completion.

(14) The department shall establish a system to monitor licensee compliance with continuing education requirements and to determine the continuing education status of each licensee. As used in this subsection, the term "monitor" means the act of determining, for each licensee, whether the licensee is in full compliance with applicable continuing education requirements as of the date of the licensee's application for license renewal.

(15) The department may refuse to renew a license until the licensee has satisfied all applicable continuing education requirements. This subsection does not preclude the department or board from imposing additional penalties pursuant to this chapter or rules adopted pursuant this chapter.

Section 7. Subsection (1) of section 472.025, Florida

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Statutes, is amended to read:

472.025 Seals.—

(1) The board shall adopt, by rule, a form of seal to be used by all registrants holding valid certificates of registration, whether the registrants are corporations, partnerships, or individuals. Each registrant shall obtain ~~a an~~ ~~impression-type metal~~ seal in that form; and all final drawings, plans, specifications, plats, or reports prepared or issued by the registrant in accordance with the standards of practice established by the board shall be signed by the registrant, dated, and stamped with his or her seal. This signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. Each registrant may in addition register his or her seal electronically in accordance with ss. 668.001-668.006. Drawings, plans, specifications, reports, or documents prepared or issued by a registrant may be transmitted electronically and may be signed by the registrant, dated, and stamped electronically with such seal in accordance with ss. 668.001-668.006.

Section 8. Paragraph (a) of subsection (1) of section 472.033, Florida Statutes, is amended to read:

472.033 Disciplinary proceedings.—Disciplinary proceedings for the board shall be within the jurisdiction of the department.

(1)(a) The department shall investigate any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter or of any rule adopted by the

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department or the board has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of the board, or if it has reasonable cause to believe that a person is engaged in the unlicensed practice of surveying and mapping.

Section 9. Subsection (1) of section 472.0351, Florida Statutes, is amended to read:

472.0351 Grounds for discipline; penalties; enforcement.—

(1) The following acts constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Violation of any provision of s. 472.031 or the unlicensed practice of surveying and mapping.†

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- 523 (b) Attempting to procure a license to practice surveying
 524 and mapping by bribery or fraudulent misrepresentations.~~+~~
- 525 (c) Having a license to practice surveying and mapping
 526 revoked, suspended, or otherwise acted against, including the
 527 denial of licensure, by the licensing authority of another
 528 state, territory, or country, for a violation that constitutes a
 529 violation under the laws of this state. The acceptance of a
 530 relinquishment of licensure, stipulation, consent order, or
 531 other settlement offered in response to or in anticipation of
 532 the filing of charges against the license by a licensing
 533 authority is an action against the license.~~+~~
- 534 (d) Being convicted or found guilty of, or entering a plea
 535 of guilty, no contest, or nolo contendere to, regardless of
 536 adjudication, a crime in any jurisdiction which directly relates
 537 to the practice of surveying and mapping or the ability to
 538 practice surveying and mapping.~~+~~
- 539 (e) Making or filing a report or record that the licensee
 540 knows to be false, willfully failing to file a report or record
 541 required by state or federal law, willfully impeding or
 542 obstructing such filing, or inducing another person to impede or
 543 obstruct such filing. Such reports or records include only those
 544 that are signed in the capacity of a registered surveyor and
 545 mapper.~~+~~
- 546 (f) Advertising goods or services in a manner that is
 547 fraudulent, false, deceptive, or misleading in form or content.~~+~~
- 548 (g) Upon proof that the licensee is guilty of fraud or
 549 deceit, or of negligence, incompetency, or misconduct, in the
 550 practice of surveying and mapping.~~+~~
- 551 (h) Failing to perform a statutory or legal obligation

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- 552 placed upon a licensed surveyor and mapper; violating a
 553 provision of this chapter, a rule of the board or department, or
 554 a lawful order of the board or department; or failing to comply
 555 with a lawfully issued subpoena of the department.~~+~~
- 556 (i) Practicing on a revoked, suspended, inactive, or
 557 delinquent license.~~+~~
- 558 (j) Having been found liable in a civil proceeding for
 559 knowingly filing a false report or complaint with the department
 560 against another licensee.~~+~~
- 561 (k) Failing to report to the department any person who the
 562 licensee knows is in violation of this chapter or the rules of
 563 the department or the board.~~+~~
- 564 (l) Aiding, assisting, procuring, employing, or advising
 565 any unlicensed person or entity to practice surveying and
 566 mapping contrary to this chapter or the rules of the department
 567 or the board.~~+~~
- 568 (m) Making deceptive, untrue, or fraudulent representations
 569 in or related to the practice of professional surveying or
 570 mapping or employing a trick or scheme in or related to the
 571 practice of professional surveying or mapping.~~+~~
- 572 (n) Exercising influence on the client for the purpose of
 573 financial gain of the licensee or a third party.~~+~~
- 574 (o) Practicing or offering to practice beyond the scope
 575 permitted by law or accepting and performing professional
 576 responsibilities the licensee knows, or has reason to know, the
 577 licensee is not competent to perform.~~+~~
- 578 (p) Delegating or contracting for the performance of
 579 professional responsibilities by a person when the licensee
 580 delegating or contracting for performance of such

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581 responsibilities knows, or has reason to know, such person is
 582 not qualified by training, experience, and authorization when
 583 required to perform them.~~for~~

584 (q) Improperly interfering with an investigation or
 585 inspection authorized by statute, or with any disciplinary
 586 proceeding.

587 Section 10. Subsection (2) of section 472.0366, Florida
 588 Statutes, is amended to read:

589 472.0366 Elevation certificates; requirements for surveyors
 590 and mappers.—

591 (2) Beginning January 1, 2017, a surveyor and mapper shall,
 592 within 30 days after completion, submit to the division a copy
 593 of each elevation certificate that he or she completes. The copy
 594 must be unaltered, except that the surveyor and mapper may
 595 redact the name of the property owner. The copy need not be
 596 signed and sealed when submitted to the division; however, an
 597 original signed and sealed copy must be retained in the surveyor
 598 and mapper's records as prescribed by rule of the board.

599 Section 11. Section 487.2041, Florida Statutes, is amended
 600 to read:

601 487.2041 Enforcement of federal worker protection
 602 regulations.—The department shall, to the extent that resources
 603 are available, continue to operate under the United States
 604 Environmental Protection Agency regulations regarding the
 605 Labeling Requirement for Pesticides and Devices, 40 C.F.R. part
 606 156, and the Worker Protection Standard, 40 C.F.R. part 170,
 607 which the department shall adopt ~~adopted~~ by rule ~~during the~~
 608 ~~1995-1996 fiscal year and published in the Florida~~
 609 ~~Administrative Code~~. Any provision of this part not preempted by

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610 federal law shall continue to apply.

611 Section 12. Subsection (13) of section 493.6101, Florida
 612 Statutes, is amended to read:

613 493.6101 Definitions.—

614 (13) "Manager" means any licensee who directs the
 615 activities of licensees at any agency or branch office. The
 616 manager shall be assigned to and shall primarily operate from
 617 the agency or branch office location for which he or she has
 618 been designated as manager. The manager of a private
 619 investigative agency may, however, manage multiple private
 620 investigative agencies and branch offices.

621 Section 13. Paragraph (j) of subsection (3) and paragraph
 622 (a) of subsection (6) of section 493.6105, Florida Statutes, are
 623 amended to read:

624 493.6105 Initial application for license.—

625 (3) The application must contain the following information
 626 concerning the individual signing the application:

627 (j) A full set of fingerprints, a fingerprint processing
 628 fee, and a fingerprint retention fee. The fingerprint processing
 629 and retention fees shall be established by rule of the
 630 department based upon costs determined by state and federal
 631 agency charges and department processing costs, which must
 632 include the cost of retaining the fingerprints in the statewide
 633 automated biometric identification system established in s.
 634 943.05(2)(b) and the cost of enrolling the fingerprints in the
 635 national retained print arrest notification program as required
 636 under s. 493.6108. An applicant who has, within the immediately
 637 preceding 6 months, submitted such fingerprints and fees for
 638 licensing purposes under this chapter and who still holds a

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valid license is not required to submit another set of fingerprints or another fingerprint processing fee. An applicant who holds multiple licenses issued under this chapter is required to pay only a single fingerprint retention fee. Partners and corporate officers who do not possess licenses subject to renewal under s. 493.6113 are exempt from the fingerprint retention requirements of this chapter.

(6) In addition to the requirements under subsection (3), an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. A valid The National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant's Class "K" application.

3. A valid firearms instructor certificate issued by a federal law enforcement agency not more than 3 years before the submission of the applicant's Class "K" application.

Section 14. Subsection (1) of section 493.6107, Florida Statutes, is amended to read:

493.6107 Fees.—

(1) The department shall establish by rule examination and ~~biennial~~ license fees, ~~which shall not to~~ exceed the following:

(a) Class "M" license—manager Class "AB" agency: \$75.

(b) Class "G" license—statewide firearm license: \$150.

(c) Class "K" license—firearms instructor: \$100.

(d) Fee for the examination for firearms instructor: \$75.

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Section 15. Subsections (3) and (5) of section 493.6108, Florida Statutes, are amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(3) The department must also investigate the mental history and current mental and emotional fitness of any Class "G" or Class "K" applicant and may deny a Class "G" or Class "K" license to anyone who has a history of mental illness or drug or alcohol abuse. Notwithstanding s. 790.065(2)(a)4.f., the Department of Law Enforcement may, for the limited purpose of determining eligibility of Class "G" or Class "K" applicants and licensees under this chapter, provide the department with mental health and substance abuse data of individuals who are prohibited from purchasing a firearm.

(5) A person licensed under this chapter must notify his or her employer within 3 calendar days if he or she is arrested for any offense. If the department receives information about an arrest within the state of a person who holds a valid license issued under this chapter for a crime that could potentially disqualify the person from holding such a license, the department must provide the arrest information to the agency that employs the licensee.

Section 16. Section 493.6112, Florida Statutes, is amended to read:

493.6112 Notification to Department of Agriculture and Consumer Services of changes of partner or officer or employees.—

(1) After filing the application, unless the department declines to issue the license or revokes it after issuance, an

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agency ~~or school~~ shall, within 5 working days of the withdrawal, removal, replacement, or addition of any or all partners or officers, notify and file with the department complete applications for such individuals. The agency's ~~or school's~~ good standing under this chapter shall be contingent upon the department's approval of any new partner or officer.

(2) Each agency ~~or school~~ shall, upon the employment or termination of employment of a licensee, report such employment or termination within 15 calendar days ~~immediately~~ to the department and, in the case of a termination, report the reason or reasons therefor. The report shall be submitted electronically in a manner on a form prescribed by the department.

Section 17. Paragraph (b) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification

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program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms requalification ~~recertification~~ training taught by a Class "K" licensee and has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification ~~recertification~~ training shall be submitted to the department upon completion of the training. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer

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under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; or

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6) (a) and provides proof of having completed requalification training during the previous 2 years of the licensure period.

Section 18. Subsection (4) of section 493.6115, Florida Statutes, is amended, present paragraphs (b), (c), and (d) of subsection (12) of that section are redesignated as paragraphs (c), (d), and (e), respectively, and a new paragraph (b) is added to that subsection, to read:

493.6115 Weapons and firearms.—

(4) A Class "C" or Class "CC" licensee who is 21 years of age or older and ~~who~~ has also been issued a Class "G" license may carry, in the performance of her or his duties, a concealed firearm. A Class "D" licensee who is 21 years of age or older and ~~who~~ has also been issued a Class "G" license may carry a concealed firearm in the performance of her or his duties under the conditions specified in s. 493.6305(3) or (4) 493.6305(2). The Class "G" license must ~~shall~~ clearly indicate such authority. The authority of any such licensee to carry a concealed firearm is ~~shall be~~ valid in any location throughout the state, ~~in any location~~, while performing services within the

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scope of the license.

(12) The department may issue a temporary Class "G" license, on a case-by-case basis, if:

(b) The department has reviewed the mental health and substance abuse data provided by the Department of Law Enforcement as authorized in s. 493.6108(3) and has determined the applicant is not prohibited from licensure based upon this data.

Section 19. Subsection (1) of section 493.6118, Florida Statutes, is amended, and subsections (8) and (9) are added to that section, to read:

493.6118 Grounds for disciplinary action.—

(1) The following constitute grounds for which disciplinary action specified in subsection (2) may be taken by the department against any licensee, agency, or applicant regulated by this chapter, or any unlicensed person engaged in activities regulated under this chapter:—

(a) Fraud or willful misrepresentation in applying for or obtaining a license.

(b) Use of any fictitious or assumed name by an agency unless the agency has department approval and qualifies under s. 865.09.

(c) Being found guilty of or entering a plea of guilty or nolo contendere to, regardless of adjudication, or being convicted of a crime that directly relates to the business for which the license is held or sought. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges, and the department shall allow the individual being disciplined or denied an application for a license to

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813 present any mitigating circumstances surrounding his or her
814 plea.

815 (d) A false statement by the licensee that any individual
816 is or has been in his or her employ.

817 (e) A finding that the licensee or any employee is guilty
818 of willful betrayal of a professional secret or any unauthorized
819 release of information acquired as a result of activities
820 regulated under this chapter.

821 (f) Proof that the applicant or licensee is guilty of fraud
822 or deceit, or of negligence, incompetency, or misconduct, in the
823 practice of the activities regulated under this chapter.

824 (g) Conducting activities regulated under this chapter
825 without a license or with a revoked or suspended license.

826 (h) Failure of the licensee to maintain in full force and
827 effect the commercial general liability insurance coverage
828 required by s. 493.6110.

829 (i) Impersonating, or permitting or aiding and abetting an
830 employee to impersonate, a law enforcement officer or an
831 employee of the state, the United States, or any political
832 subdivision thereof by identifying himself or herself as a
833 federal, state, county, or municipal law enforcement officer or
834 official representative, by wearing a uniform or presenting or
835 displaying a badge or credentials that would cause a reasonable
836 person to believe that he or she is a law enforcement officer or
837 that he or she has official authority, by displaying any
838 flashing or warning vehicular lights other than amber colored,
839 or by committing any act that is intended to falsely convey
840 official status.

841 (j) Commission of an act of violence or the use of force on

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842 any person except in the lawful protection of one's self or
843 another from physical harm.

844 (k) Knowingly violating, advising, encouraging, or
845 assisting the violation of any statute, court order, capias,
846 warrant, injunction, or cease and desist order, in the course of
847 business regulated under this chapter.

848 (l) Soliciting business for an attorney in return for
849 compensation.

850 (m) Transferring or attempting to transfer a license issued
851 pursuant to this chapter.

852 (n) Employing or contracting with any unlicensed or
853 improperly licensed person or agency to conduct activities
854 regulated under this chapter, or performing any act that
855 assists, aids, or abets a person or business entity in engaging
856 in unlicensed activity, when the licensure status was known or
857 could have been ascertained by reasonable inquiry.

858 (o) Failure or refusal to cooperate with or refusal of
859 access to an authorized representative of the department engaged
860 in an official investigation pursuant to this chapter.

861 (p) Failure of any partner, principal corporate officer, or
862 licensee to have his or her identification card in his or her
863 possession while on duty.

864 (q) Failure of any licensee to have his or her license in
865 his or her possession while on duty, as specified in s.
866 493.6111(1).

867 (r) Failure or refusal by a sponsor to certify a biannual
868 written report on an intern or to certify completion or
869 termination of an internship to the department within 15 working
870 days.

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871 (s) Failure to report to the department any person whom the
872 licensee knows to be in violation of this chapter or the rules
873 of the department.

874 (t) Violating any provision of this chapter.

875 (u) For a Class "G" licensee, failing to timely complete
876 regualification ~~recertification~~ training as required in s.
877 493.6113(3)(b).

878 (v) For a Class "K" licensee, failing to maintain active
879 certification specified under s. 493.6105(6).

880 (w) For a Class "G" or a Class "K" applicant or licensee,
881 being prohibited from purchasing or possessing a firearm by
882 state or federal law.

883 (x) In addition to the grounds for disciplinary action
884 prescribed in paragraphs (a)-(t), Class "R" recovery agencies,
885 Class "E" recovery agents, and Class "EE" recovery agent interns
886 are prohibited from committing the following acts:

887 1. Recovering a motor vehicle, mobile home, motorboat,
888 aircraft, personal watercraft, all-terrain vehicle, farm
889 equipment, or industrial equipment that has been sold under a
890 conditional sales agreement or under the terms of a chattel
891 mortgage before authorization has been received from the legal
892 owner or mortgagee.

893 2. Charging for expenses not actually incurred in
894 connection with the recovery, transportation, storage, or
895 disposal of repossessed property or personal property obtained
896 in a repossession.

897 3. Using any repossessed property or personal property
898 obtained in a repossession for the personal benefit of a
899 licensee or an officer, director, partner, manager, or employee

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900 of a licensee.

901 4. Selling property recovered under the provisions of this
902 chapter, except with written authorization from the legal owner
903 or the mortgagee thereof.

904 5. Failing to notify the police or sheriff's department of
905 the jurisdiction in which the repossessed property is recovered
906 within 2 hours after recovery.

907 6. Failing to remit moneys collected in lieu of recovery of
908 a motor vehicle, mobile home, motorboat, aircraft, personal
909 watercraft, all-terrain vehicle, farm equipment, or industrial
910 equipment to the client within 10 working days.

911 7. Failing to deliver to the client a negotiable instrument
912 that is payable to the client, within 10 working days after
913 receipt of such instrument.

914 8. Falsifying, altering, or failing to maintain any
915 required inventory or records regarding disposal of personal
916 property contained in or on repossessed property pursuant to s.
917 493.6404(1).

918 9. Carrying any weapon or firearm when he or she is on
919 private property and performing duties under his or her license
920 whether or not he or she is licensed pursuant to s. 790.06.

921 10. Soliciting from the legal owner the recovery of
922 property subject to repossession after such property has been
923 seen or located on public or private property if the amount
924 charged or requested for such recovery is more than the amount
925 normally charged for such a recovery.

926 11. Wearing, presenting, or displaying a badge in the
927 course of performing a repossession regulated by this chapter.

928 (y) Installation of a tracking device or tracking

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application in violation of s. 934.425.

(z) Failure of any licensee to notify his or her employer within 3 calendar days if he or she is arrested for any offense.

(8) (a) Upon notification by a law enforcement agency, a court, or the Department of Law Enforcement and upon subsequent written verification, the department shall temporarily suspend a Class "G" or Class "K" license if the licensee is arrested or charged with a firearms-related crime that would disqualify such person from licensure under this chapter. The department shall notify the licensee suspended under this section of his or her right to a hearing pursuant to chapter 120. A hearing conducted regarding this temporary suspension must be for the limited purpose of determining whether the licensee has been arrested or charged with a disqualifying firearms-related crime.

(b) If the criminal case results in a nondisqualifying disposition, the department shall issue an order lifting the suspension upon the licensee's submission of a certified copy of the final resolution.

(c) If the criminal case results in a disqualifying disposition, the suspension remains in effect and the department shall proceed with revocation proceedings pursuant to chapter 120.

(9) (a) Upon notification by a law enforcement agency, a court, or the Department of Law Enforcement and upon subsequent written verification, the department shall temporarily suspend a license if the licensee is arrested or charged with a forcible felony as defined in s. 776.08. The department shall notify the licensee suspended under this section of his or her right to a hearing pursuant to chapter 120. A hearing conducted regarding

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this temporary suspension must be for the limited purpose of determining whether the licensee has been arrested or charged with a forcible felony.

(b) If the criminal case results in a nondisqualifying disposition, the department shall issue an order lifting the suspension upon the licensee's submission to the department of a certified copy of the final resolution.

(c) If criminal case results in a disqualifying disposition, the suspension remains in effect and the department shall proceed with revocation proceedings pursuant to chapter 120.

Section 20. Subsection (1) of section 493.6202, Florida Statutes, is amended to read:

493.6202 Fees.—

(1) The department shall establish by rule examination and ~~biennial~~ license fees, which shall not to exceed the following:

(a) Class "A" license—private investigative agency: \$450.

(b) Class "AA" or "AB" license—branch office: \$125.

(c) Class "MA" license—private investigative agency manager: \$75.

(d) Class "C" license—private investigator: \$75.

(e) Class "CC" license—private investigator intern: \$60.

Section 21. Subsection (5) and paragraphs (b) and (c) of subsection (6) of section 493.6203, Florida Statutes, are amended to read:

493.6203 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency shall comply with the following additional requirements:

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987 (5) ~~Effective January 1, 2008,~~ An applicant for a Class
 988 "MA," Class "M," or Class "C" license must pass an examination
 989 that covers the provisions of this chapter and is administered
 990 by the department or by a provider approved by the department.
 991 The applicant must pass the examination before applying for
 992 licensure and must submit proof with the license application on
 993 a form approved by rule of the department that he or she has
 994 passed the examination. The administrator of the examination
 995 shall verify the identity of each applicant taking the
 996 examination.

997 (a) The examination requirement in this subsection does not
 998 apply to an individual who holds a valid Class "CC," Class "C,"
 999 Class "MA," or Class "M" license.

1000 (b) Notwithstanding the exemption provided in paragraph
 1001 (a), if the license of an applicant for relicensure has been
 1002 invalid for more than 1 year, the applicant must take and pass
 1003 the examination.

1004 (c) The department shall establish by rule the content of
 1005 the examination, the manner and procedure of its administration,
 1006 and an examination fee that may not exceed \$100.

1007 (6)

1008 (b) ~~Effective January 1, 2012,~~ Before submission of an
 1009 application to the department, the applicant for a Class "CC"
 1010 license must have completed a minimum of 40 hours of
 1011 professional training pertaining to general investigative
 1012 techniques and this chapter, which course is offered by a state
 1013 university or by a school, community college, college, or
 1014 university under the purview of the Department of Education, and
 1015 the applicant must pass an examination. ~~The training must be~~

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1016 ~~provided in two parts, one 24-hour course and one 16-hour~~
 1017 ~~course.~~ The certificate evidencing satisfactory completion of
 1018 the 40 hours of professional training must be submitted with the
 1019 application for a Class "CC" license. The training specified in
 1020 this paragraph may be provided by face-to-face presentation,
 1021 online technology, or a home study course in accordance with
 1022 rules and procedures of the Department of Education. The
 1023 administrator of the examination must verify the identity of
 1024 each applicant taking the examination.

1025 1. Upon an applicant's successful completion of each part
 1026 of the approved training and passage of any required
 1027 examination, the school, community college, college, or
 1028 university shall issue a certificate of completion to the
 1029 applicant. The certificates must be on a form established by
 1030 rule of the department.

1031 2. The department shall establish by rule the general
 1032 content of the professional training and the examination
 1033 criteria.

1034 3. If the license of an applicant for relicensure is
 1035 invalid for more than 1 year, the applicant must complete the
 1036 required training and pass any required examination.

1037 (c) ~~An individual who submits an application for a Class~~
 1038 ~~"CC" license on or after September 1, 2008, through December 31,~~
 1039 ~~2011, who has not completed the 16-hour course must submit proof~~
 1040 ~~of successful completion of the course within 180 days after the~~
 1041 ~~date the application is submitted. If documentation of~~
 1042 ~~completion of the required training is not submitted by that~~
 1043 ~~date, the individual's license shall be automatically suspended~~
 1044 ~~until proof of the required training is submitted to the~~

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department. An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.

Section 22. Subsection (1) of section 493.6302, Florida Statutes, is amended to read:

493.6302 Fees.—

(1) The department shall establish by rule ~~biennial~~ license fees, ~~which shall not to~~ exceed the following:

(a) Class "B" license—security agency: \$450.

(b) Class "BB" or Class "AB" license—branch office: \$125.

(c) Class "MB" license—security agency manager: \$75.

(d) Class "D" license—security officer: \$45.

(e) Class "DS" license—security officer school or training facility: \$60.

(f) Class "DI" license—security officer school or training facility instructor: \$60.

Section 23. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4) ~~(a) Effective January 1, 2012,~~ An applicant for a Class "D" license must submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by the department. ~~The training must be provided in two parts, one 24-hour course and one 16-hour~~

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course. The department shall by rule establish the general content and number of hours of each subject area to be taught.

~~(b) An individual who submits an application for a Class "D" license on or after January 1, 2007, through December 31, 2011, who has not completed the 16-hour course must submit proof of successful completion of the course within 180 days after the date the application is submitted. If documentation of completion of the required training is not submitted by that date, the individual's license shall be automatically suspended until proof of the required training is submitted to the department. A person licensed before January 1, 2007, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.~~

~~(c) An individual whose license is suspended or revoked pursuant to paragraph (b), or is expired for at least 1 year, is considered, upon reapplication for a license, an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as provided in paragraph (a) before a license is issued.~~

Section 24. Subsection (1) of section 493.6304, Florida Statutes, is amended to read:

493.6304 Security officer school or training facility.—

(1) Any school, training facility, or instructor who offers the training specified ~~outlined~~ in s. 493.6303(4) for Class "D" applicants shall, before licensure of such school, training facility, or instructor, file with the department an application

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1103 accompanied by an application fee in an amount to be determined
 1104 by rule, not to exceed \$60. The fee ~~is shall~~ not be refundable.
 1105 Section 25. Subsection (1) of section 493.6402, Florida
 1106 Statutes, is amended to read:
 1107 493.6402 Fees.—
 1108 (1) The department shall establish by rule ~~biennial~~ license
 1109 fees, ~~that shall~~ not ~~to~~ exceed the following:
 1110 (a) Class "R" license—recovery agency: \$450.
 1111 (b) Class "RR" license—branch office: \$125.
 1112 (c) Class "MR" license—recovery agency manager: \$75.
 1113 (d) Class "E" license—recovery agent: \$75.
 1114 (e) Class "EE" license—recovery agent intern: \$60.
 1115 (f) Class "RS" license—recovery agent school or training
 1116 facility: \$60.
 1117 (g) Class "RI" license—recovery agent school or training
 1118 facility instructor: \$60.
 1119 Section 26. Subsection (2) of section 493.6403, Florida
 1120 Statutes, is amended to read:
 1121 493.6403 License requirements.—
 1122 (2) ~~Beginning October 1, 1994,~~ An applicant for a Class "E"
 1123 or a Class "EE" license must submit proof of successful
 1124 completion ~~have completed a minimum~~ of 40 hours of professional
 1125 training at a school or training facility licensed by the
 1126 department. The department shall by rule establish the general
 1127 content for the training.
 1128 Section 27. Subsection (6) is added to section 501.013,
 1129 Florida Statutes, to read:
 1130 501.013 Health studios; exemptions.—The following
 1131 businesses or activities may be declared exempt from the

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1132 provisions of ss. 501.012-501.019 upon the filing of an
 1133 affidavit with the department establishing that the stated
 1134 qualifications are met:
 1135 (6) A program or facility offered by an organization for
 1136 the exclusive use of its employees and their family members.
 1137 Section 28. Paragraph (a) of subsection (3) of section
 1138 501.059, Florida Statutes, is amended to read:
 1139 501.059 Telephone solicitation.—
 1140 (3)(a) If any residential, mobile, or telephonic paging
 1141 device telephone subscriber notifies the department of his or
 1142 her desire to be placed on a "no sales solicitation calls"
 1143 listing indicating that the subscriber does not wish to receive
 1144 unsolicited telephonic sales calls, the department shall place
 1145 the subscriber on that listing ~~for 5 years~~.
 1146 Section 29. Paragraph (a) of subsection (1) and subsection
 1147 (3) of section 507.04, Florida Statutes, are amended to read:
 1148 507.04 Required insurance coverages; liability limitations;
 1149 valuation coverage.—
 1150 (1) LIABILITY INSURANCE.—
 1151 (a)1. Except as provided in paragraph (b), each mover
 1152 operating in this state must maintain current and valid
 1153 liability insurance coverage of at least \$10,000 per shipment
 1154 for the loss or damage of household goods resulting from the
 1155 negligence of the mover or its employees or agents.
 1156 2. The mover must provide the department with evidence of
 1157 liability insurance coverage before the mover is registered with
 1158 the department under s. 507.03. All insurance coverage
 1159 maintained by a mover must remain in effect throughout the
 1160 mover's registration period. A mover's failure to maintain

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1161 insurance coverage in accordance with this paragraph constitutes
 1162 an immediate threat to the public health, safety, and welfare.
 1163 ~~If a mover fails to maintain insurance coverage, the department~~
 1164 ~~may immediately suspend the mover's registration or eligibility~~
 1165 ~~for registration, and the mover must immediately cease operating~~
 1166 ~~as a mover in this state. In addition, and notwithstanding the~~
 1167 ~~availability of any administrative relief pursuant to chapter~~
 1168 ~~120, the department may seek from the appropriate circuit court~~
 1169 ~~an immediate injunction prohibiting the mover from operating in~~
 1170 ~~this state until the mover complies with this paragraph, a civil~~
 1171 ~~penalty not to exceed \$5,000, and court costs.~~

1172 (3) INSURANCE COVERAGES.—The insurance coverages required
 1173 under paragraph (1) (a) and subsection (2) must be issued by an
 1174 insurance company or carrier licensed to transact business in
 1175 this state under the Florida Insurance Code as designated in s.
 1176 624.01. The department shall require a mover to present a
 1177 certificate of insurance of the required coverages before
 1178 issuance or renewal of a registration certificate under s.
 1179 507.03. The department shall be named as a certificateholder in
 1180 the certificate and must be notified at least 10 days before
 1181 cancellation of insurance coverage. If a mover fails to maintain
 1182 insurance coverage, the department may immediately suspend the
 1183 mover's registration or eligibility for registration, and the
 1184 mover must immediately cease operating as a mover in this state.
 1185 In addition, and notwithstanding the availability of any
 1186 administrative relief pursuant to chapter 120, the department
 1187 may seek from the appropriate circuit court an immediate
 1188 injunction prohibiting the mover from operating in this state
 1189 until the mover complies with this section, a civil penalty not

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1190 to exceed \$5,000, and court costs.

1191 Section 30. Subsection (1) of section 531.37, Florida
 1192 Statutes, is amended to read:

1193 531.37 Definitions.—As used in this chapter:

1194 (1) "Weights and measures" means all weights and measures
 1195 of every kind, instruments, and devices for weighing and
 1196 measuring, and any appliance and accessories associated with any
 1197 or all such instruments and devices, excluding taximeters,
 1198 digital networks, and those weights and measures used for the
 1199 purpose of inspecting the accuracy of devices used in
 1200 conjunction with aviation fuel.

1201 Section 31. Section 531.61, Florida Statutes, is amended to
 1202 read:

1203 531.61 Exemptions from permit requirement.—Commercial
 1204 weights or measures instruments or devices are exempt from the
 1205 requirements of ss. 531.60-531.66 if:

1206 (1) ~~The device is a taximeter that is licensed, permitted,~~
 1207 ~~or registered by a municipality, county, or other local~~
 1208 ~~government and is tested for accuracy and compliance with state~~
 1209 ~~standards by the local government in cooperation with the state~~
 1210 ~~as authorized in s. 531.421.~~

1211 ~~(2)~~ The device is used exclusively for weighing railroad
 1212 cars and is tested for accuracy and compliance with state
 1213 standards by a private testing agency.

1214 ~~(2)~~ ~~(3)~~ The device is used exclusively for measuring
 1215 aviation fuel or petroleum products inspected under chapter 525.

1216 Section 32. Paragraph (g) of subsection (2) of section
 1217 531.63, Florida Statutes, is repealed.

1218 Section 33. Section 534.021, Florida Statutes, is amended

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1219 to read:

1220 534.021 Recording of marks or brands.—The department shall
 1221 be the recorder of livestock marks or brands, and the marks or
 1222 brands may not be recorded elsewhere in the state. Any livestock
 1223 owner who uses a mark or brand to identify her or his livestock
 1224 must register the mark or brand by applying to the department.
 1225 The application must be made on a form prescribed by the
 1226 department and must be accompanied by a detailed drawing
 1227 ~~facsimile~~ of the brand applied for and a statement identifying
 1228 the county in which the applicant has or expects to have
 1229 livestock bearing the mark or brand to be recorded. The
 1230 department shall, upon its satisfaction that the application
 1231 meets the requirements of this chapter, record the mark or brand
 1232 for exclusive statewide use by the applicant. If an application
 1233 is made to record a mark or brand previously recorded, the
 1234 department shall determine whether the county in which the mark
 1235 or brand will be used is near enough to another county in which
 1236 the previously recorded mark or brand is used to cause confusion
 1237 or to aid theft or dishonesty, and if so, the department must
 1238 decline to admit to record the mark or brand. If a conflict
 1239 arises between the owner of any recorded mark or brand and
 1240 another claiming the right to record the same mark or brand, the
 1241 department must give preference to the present owner. The
 1242 department shall charge and collect at the time of recording a
 1243 fee of \$10 for each mark or brand. A person may not use any mark
 1244 or brand to which another has a prior right of record. It is
 1245 unlawful to brand any animal with a brand not registered with
 1246 the department.

1247 Section 34. Section 534.041, Florida Statutes, is amended

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1248 to read:

1249 534.041 Renewal of certificate of mark or brand.—The
 1250 registration of a mark or brand entitles the registered owner to
 1251 exclusive ownership and use of the mark or brand for a period
 1252 ending at midnight on the last day of the month 10 ~~5~~ years from
 1253 the date of registration. Upon application, registration may be
 1254 renewed, ~~upon application and payment of a renewal fee of \$5,~~
 1255 for successive 10-year ~~5-year~~ periods, each ending at midnight
 1256 on the last day of the month 10 ~~5~~ years from the date of
 1257 renewal. At least 60 days before ~~prior to~~ the expiration of a
 1258 registration, the department shall notify by letter the
 1259 registered owner of the mark or brand that, upon application for
 1260 renewal and payment of the renewal fee, the department will
 1261 issue a renewal certificate granting the registered owner
 1262 exclusive ownership and use of the mark or brand for another 10-
 1263 year ~~5-year~~ period ending at midnight on the last day of the
 1264 month 10 ~~5~~ years from the date of renewal. Failure to make
 1265 application for renewal within the month of expiration of a
 1266 registration will cause the department to send a second notice
 1267 to the registered owner by mail at her or his last known
 1268 address. Failure of the registered owner to make application for
 1269 renewal within 30 days after receipt of the second notice will
 1270 cause the owner's mark or brand to be placed on an inactive list
 1271 for a period of 12 months, after which it will be canceled and
 1272 become subject to registration by another person.

1273 Section 35. Section 534.061, Florida Statutes, is repealed.

1274 Section 36. Subsection (1) of section 573.118, Florida
 1275 Statutes, is amended to read:

1276 573.118 Assessment; funds; review of accounts; loans.—

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1277 (1) To provide funds to defray the necessary expenses
 1278 incurred by the department in the formulation, issuance,
 1279 administration, and enforcement of any marketing order, every
 1280 person engaged in the production, distributing, or handling of
 1281 agricultural commodities within this state, and directly
 1282 affected by any marketing order, shall pay to the department, at
 1283 such times and in such installments as the department may
 1284 prescribe, such person's pro rata share of necessary expenses.
 1285 Each person's share of expenses shall be that proportion which
 1286 the total volume of agricultural commodities produced,
 1287 distributed, or handled by the person during the current
 1288 marketing season, or part thereof covered by such marketing
 1289 order, is of the total volume of the commodities produced,
 1290 distributed, or handled by all such persons during the same
 1291 current marketing season or part thereof. The department, after
 1292 receiving the recommendations of the advisory council, shall fix
 1293 the rate of assessment on the volume of agricultural commodities
 1294 sold or some other equitable basis. For convenience of
 1295 collection, upon request of the department, handlers of the
 1296 commodities shall pay any producer assessments. Handlers paying
 1297 assessments for and on behalf of any producers may collect the
 1298 producer assessments from any moneys owed by the handlers to the
 1299 producers. The collected assessments shall be deposited into the
 1300 appropriate trust fund and used for the sole purpose of
 1301 implementing the marketing order for which the assessment was
 1302 collected. The department is not subject to s. 287.057 in the
 1303 expenditure of these funds. However, the director of the
 1304 Division of Fruit and Vegetables Marketing and Development shall
 1305 file with the internal auditor of the department a certification

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1306 of conditions and circumstances justifying each contract or
 1307 agreement entered into without competitive bidding.
 1308 Section 37. Paragraph (b) of subsection (4) of section
 1309 590.02, Florida Statutes, is amended to read:
 1310 590.02 Florida Forest Service; powers, authority, and
 1311 duties; liability; building structures; Withlacoochee Training
 1312 Center.—
 1313 (4)
 1314 (b) Notwithstanding s. 553.80(1), the department shall
 1315 exclusively enforce the Florida Building Code as it pertains to
 1316 wildfire, ~~and~~ law enforcement, and other Florida Forest Service
 1317 facilities under the jurisdiction of the department.
 1318 Section 38. Paragraph (a) of subsection (5) of section
 1319 597.004, Florida Statutes, is amended to read:
 1320 597.004 Aquaculture certificate of registration.—
 1321 (5) SALE OF AQUACULTURE PRODUCTS.—
 1322 (a) Aquaculture products, except shellfish, snook, and any
 1323 fish of the genus *Micropterus*, and prohibited and restricted
 1324 freshwater and marine species identified by rules of the Fish
 1325 and Wildlife Conservation Commission, may be sold by an
 1326 aquaculture producer certified pursuant to this section or by a
 1327 dealer licensed pursuant to part VII of chapter 379 without
 1328 restriction so long as the product origin can be identified.
 1329 Section 39. Subsection (2) of section 604.16, Florida
 1330 Statutes, is amended to read:
 1331 604.16 Exceptions to provisions of ss. 604.15-604.34.—
 1332 Except for s. 604.22(2), the provisions of ss. 604.15-604.34 do
 1333 not apply to:
 1334 (2) A dealer in agricultural products who pays at the time

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of purchase with United States cash currency or a cash equivalent, such as a money order, cashier's check, wire transfer, electronic funds transfer, or PIN-based debit transaction, or who pays with a credit card as defined in s. 658.995(2)(a).

Section 40. Subsections (2) and (4), and paragraph (b) of subsection (5) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(2) The Department of Agriculture and Consumer Services shall issue a license if the applicant:

(a) Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;

(b) Is 21 years of age or older;

(c) Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;

(d) Is not ineligible to possess a firearm pursuant to s. 790.23 by virtue of having been convicted of a felony;

(e) Has not been: ~~committed for the abuse of a controlled substance or been~~

1. Found guilty of a crime under the provisions of chapter 893 or similar laws of any other state relating to controlled substances within a 3-year period immediately preceding the date

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on which the application is submitted; or

2. Committed for the abuse of a controlled substance under chapter 397 or under the provisions of former chapter 396 or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state where the commitment occurred is deemed not to be committed for the abuse of a controlled substance under this subparagraph;

(f) Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired. It shall be presumed that an applicant chronically and habitually uses alcoholic beverages or other substances to the extent that his or her normal faculties are impaired if the applicant has been ~~committed under chapter 397 or under the provisions of former chapter 396 or has been~~ convicted under s. 790.151 or has been deemed a habitual offender under s. 856.011(3), or has had two or more convictions under s. 316.193 or similar laws of any other state, within the 3-year period immediately preceding the date on which the application is submitted;

(g) Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;

(h) Demonstrates competence with a firearm by any one of the following:

1. Completion of any hunter education or hunter safety course approved by the Fish and Wildlife Conservation Commission or a similar agency of another state;

2. Completion of any National Rifle Association firearms safety or training course;

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3. Completion of any firearms safety or training course or class available to the general public offered by a law enforcement agency, junior college, college, or private or public institution or organization or firearms training school, using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department of Agriculture and Consumer Services;

4. Completion of any law enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement agency or security enforcement;

5. Presents evidence of equivalent experience with a firearm through participation in organized shooting competition or military service;

6. Is licensed or has been licensed to carry a firearm in this state or a county or municipality of this state, unless such license has been revoked for cause; or

7. Completion of any firearms training or safety course or class conducted by a state-certified or National Rifle Association certified firearms instructor;

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this paragraph. A person who conducts a course pursuant to

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subparagraph 2., subparagraph 3., or subparagraph 7., or who, as an instructor, attests to the completion of such courses, must maintain records certifying that he or she observed the student safely handle and discharge the firearm in his or her physical presence and that the discharge of the firearm included live fire using a firearm and ammunition as defined in s. 790.001;

(i) Has not been adjudicated an incapacitated person under s. 744.331, or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state where the adjudication occurred is deemed not to have been adjudicated an incapacitated person under this paragraph, unless 5 years have elapsed since the applicant's restoration to capacity by court order;

(j) Has not been committed to a mental institution under chapter 394, or similar laws of any other state. An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d. or pursuant to the law of the state where the commitment occurred is deemed not to have been committed in a mental institution under this paragraph, unless the applicant produces a certificate from a licensed psychiatrist that he or she has not suffered from disability for at least 5 years before the date of submission of the application;

(k) Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;

(l) Has not had adjudication of guilt withheld or

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imposition of sentence suspended on any misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;

(m) Has not been issued an injunction that is currently in force and effect and that restrains the applicant from committing acts of domestic violence or acts of repeat violence; and

(n) Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

(4) The application shall be completed, under oath, on a form adopted by the Department of Agriculture and Consumer Services and shall include:

(a) The name, address, place of birth, date of birth, and race of the applicant;

(b) A statement that the applicant is in compliance with criteria contained within subsections (2) and (3);

(c) A statement that the applicant has been furnished a copy of or a website link to this chapter and is knowledgeable of its provisions;

(d) A conspicuous warning that the application is executed under oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under s. 837.06;

(e) A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense; and

(f) Directions for an applicant who is a servicemember, as defined in s. 250.01, or a veteran, as defined in s. 1.01, to

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request expedited processing of his or her application.

(5) The applicant shall submit to the Department of Agriculture and Consumer Services or an approved tax collector pursuant to s. 790.0625:

(b) A nonrefundable license fee of up to ~~\$55~~ ~~\$60~~ if he or she has not previously been issued a statewide license or of up to ~~\$45~~ ~~\$50~~ for renewal of a statewide license. The cost of processing fingerprints as required in paragraph (c) shall be borne by the applicant. However, an individual holding an active certification from the Criminal Justice Standards and Training Commission as a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9) is exempt from the licensing requirements of this section. If such individual wishes to receive a concealed weapon or firearm license, he or she is exempt from the background investigation and all background investigation fees but must pay the current license fees regularly required to be paid by nonexempt applicants. Further, a law enforcement officer, a correctional officer, or a correctional probation officer as defined in s. 943.10(1), (2), or (3) is exempt from the required fees and background investigation for 1 year after his or her retirement.

Section 41. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

March 16, 2017

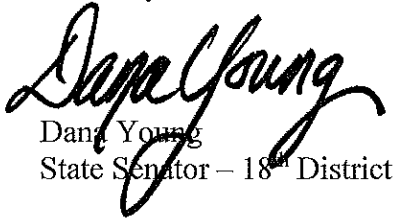
Senator Greg Steube, Chair
Criminal Justice Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Steube,

My Senate Bill 498, Department of Agriculture and Consumer Services has been referred to your committee for a hearing. I respectfully request that this bill be placed on the next available agenda.

If I may provide any additional information, please do not hesitate to contact me.

Sincerely,


Dana Young
State Senator – 18th District

DY:mfh

cc: Tom Cibula, Staff Director – Judiciary Committee

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2011

Meeting Date

Topic DACS department bill

Bill Number 498
(if applicable)

Name Grace Lovett

Amendment Barcode _____
(if applicable)

Job Title Dir. Legislative Affairs

Address PL 10 The Capitol

Phone 850.617.7700

Tallahassee FL 32312
City State Zip

E-mail grace.lovett@freshfromflorida.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Dept. of Agriculture & Consumer Services

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: CS/SB 1554

INTRODUCER: Judiciary Committee and Senator Young

SUBJECT: Trusts

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Fav/CS
2.			BI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1554 amends the Florida Trust Code to protect the trust creator's intent as paramount in trust interpretation, expressly permit co-trustees to be compensated in a manner that is aggregately more than would be permissible for each individually, and to expand certain trustees' ability to place the principal of the "first trust" into one or more second trusts in order to protect and maximize the beneficiaries' interests.

Additionally, the bill addresses current case law which some believe to have misconstrued the timeframes in which a beneficiary may bring an action against a trustee that fails deliver a trust accounting.

II. Present Situation:

Trusts in General

A trust is a legal instrument, into which a "settlor" places property in the care of a "trustee," who administers the property according to the terms of the trust and for the benefit of one or more "beneficiaries." For example, a father might place \$100,000 in trust for the benefit of his children, the proceeds to be used only for their education, and appoint the father's certified financial planner as the trustee.

Guiding Interpretive Principles of Trusts

A trust, like any other legal document, may be ambiguous at one or more points. And ambiguous trust language can lead to lawsuits where two persons with an interest in the trust would like the language interpreted in different ways. In resolving the meaning of ambiguous trust language in these cases, it is a settled matter of this state's case law that "the polestar of trust interpretation is the settlors' intent."¹

However, some argue that this guiding principal should be significantly tempered by, or even replaced by, the "benefit of the beneficiaries" standard. Were this standard to replace the settlors' intent standard in interpreting a trust, a court would ask how a given ambiguous term could be interpreted to benefit the beneficiaries, rather than how it could be interpreted to effectuate the settlor's intent.

There is even some concern that an *unambiguous* trust term that a court determines is not in the best interest of the beneficiaries could effectively be undone by a court. This concern is bolstered some of the language in this state's trust statute.

For instance, s. 736.0105, F.S., sets forth default and mandatory rules for trusts. The mandatory rules include a requirement that a "trust and its terms be for the *benefit of the trust's beneficiaries*"² Also, the statute governing trust purposes requires that a trust and its terms be "for the benefit of its beneficiaries."³

Trustee Compensation

A trustee is entitled to compensation for his or her efforts, either as specified in the trust or in an amount that is reasonable under the circumstances.⁴ However, even when the trust specifies the trustee's compensation, a court may adjust it up or down if the trustee's duties are substantially different than contemplated at the trust's creation or if the specified compensation is unreasonably low or high.⁵ Thus, one could say that a trustee is entitled to compensation that is reasonable under the circumstances, regardless of the terms of the trust.

Sometimes, however, trusts are administered by co-trustees. And the Florida Statutes are not perfectly clear as to whether these co-trustees may be compensated, in the aggregate, in an amount that would be impermissibly high for a sole trustee.

Trust "Decanting"

Under certain circumstances, a trustee may invade the corpus, or principal, of a trust to make distributions to a person. Under certain circumstances, a trustee may instead place trust principal

¹ E.g., *L'Argent v. Barnett Bank, N.A.*, 730 So. 2d 395, 397 (Fla. 2d DCA 1999).

² Section 736.0105, F.S. Emphasis added.

³ Section 736.040, F.S.

⁴ Section 736.0708(1), F.S.

⁵ Section 736.0708(2), F.S.

into another trust; this is often called “decanting.”⁶ If a trust grants a trustee the “absolute power”⁷ to invade the principal of a trust (the “first trust”) in order to give it to one or more persons, the trustee may instead take the trust principal and put it into another trust (the “second trust”), if:⁸

- The beneficiaries of the second trust are only those of the first trust; and
- The second trust does not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust.

Additionally, if any contributions to the first trust qualified for a specified deduction for certain federal tax purposes, the trustee may only decant if the second trust does not contain any provision that, if contained in the first trust, would have prevented it from qualifying for the reduction, or would have decreased the size of the deduction.⁹

Several of the key aspects of the current decanting statute that are modified by the bill are discussed in more detail in the Effect of Proposed Changes section of this analysis.

Charitable Trusts

A charitable trust is a trust, or portion of a trust, created for a charitable purpose.¹⁰ These purposes include, but are not limited to, the relief of poverty; the advancement of the arts, sciences, education, or religion; and the promotion of health, governmental, or municipal purposes.¹¹ As such, charitable trusts are said to be for the benefit of the community or the public, instead of for the benefit of one or more individuals.

One of the unique characteristics of a charitable trust is the way in which it involves the local state attorney’s office.¹² For instance, regarding private foundation trusts, the trustee may amend the trust instrument to permit him or her to make certain mandatory distributions only with the consent of a state attorney.¹³

Another way that the state attorney may be involved in charitable trust administration is through the process of a trustee’s release of the trustee’s power to select charitable donees. One way that this release may be accomplished is by specifying a charitable organization as the sole beneficiary of a trust. In order to accomplish this, the trustee must file with the state attorney proof of the consent of the organization to this arrangement.¹⁴

⁶ Decanting is a word commonly used in relation to wine to describe the act of pouring wine from its bottle into another container before service.

⁷ This term is not defined in the Florida Statutes.

⁸ Section 736.04117(1)(a), F.S.

⁹ Section 736.04117(1)(a)3., F.S.

¹⁰ Section 736.0103(5), F.S.

¹¹ Section 736.0405(1), F.S.

¹² By *local* state attorney’s office, it is meant the state attorney’s office for the judicial circuit of the principal place of administration of the trust

¹³ Section 736.1206(2), F.S.

¹⁴ See ss. 736.1208(5) and 736.1209, F.S.

Statute of Limitations on Actions Against Trustee

The law requires a trustee to give accounting for the trust to the beneficiaries.¹⁵ Failure to give an accounting constitutes an actionable breach of trust.¹⁶ Current law is not perfectly clear as to when the statute of limitations begins to run on a claim for a failure to account.

Providing Documents and Notices Electronically

The Florida Trust Code requires trustees and others to provide each other several documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special regulation under the law.¹⁷

III. Effect of Proposed Changes:

Protecting Settlor's Intent

The bill removes three provisions of the Florida Trust Code that require that every trust and trust term be for the “benefit of the trust’s beneficiaries.” This is intended to ensure that this state’s statutes are consistent with settled case law that provides that the settlor’s intent is paramount in interpreting ambiguous trust terms. It is also intended to ensure that a settlor’s express, unambiguous desires as set forth in a trust instrument are not undone by a court that determines that these terms do not (optimally) benefit the trust’s beneficiaries.

Aggregate Co-Trustee Compensation May Exceed Maximum Solo Trustee Compensation

The Florida Statutes currently entitle a trustee to compensation that is reasonable under the circumstances. However, the compensation statute is written in the singular (“a trustee”), and thus is not as clear as it could be about co-trustee compensation. Particularly, after reading this statute, one could reasonably ask whether co-trustees may be compensated in an aggregate amount that would be impermissibly high for a sole trustee. The bill clarifies that each co-trustee is entitled to compensation that is reasonable under the circumstances, even if the aggregated amount would be too much to pay a sole trustee.

Charitable Trusts Involve the Attorney General instead of the State Attorney

Under current law, the state attorney’s office in the judicial circuit where a charitable trust is administered is involved in the administration of the trust. Under the bill, the state Attorney General’s Office fulfills the responsibilities currently fulfilled by the state attorneys’ offices.

¹⁵ Section 736.0813, F.S.

¹⁶ See ss. 735.1001(1)-(2), F.S.

¹⁷ See s. 736.0109(3), F.S.

Trust “Decanting”

The bill extensively amends s. 736.04117, F.S., pertaining to the decanting of trusts. Decanting a trust, very generally, involves a trustee taking the principal of a trust and putting it into one or more other trusts.

“Absolute Power” Not Necessary to Decant

Under current law this may only be done by one who is expressly given “absolute power” in the first trust. Under the bill, this grant of authority is sufficient, but not always necessary.

The bill creates a new type of trustee, called an “authorized trustee,” who may invade trust assets under the conditions set forth in the bill.

General Authority of Authorized Trustee to Decant

An authorized trustee who has non-absolute power under the first trust to distribute trust principal to a beneficiary may instead distribute that principal to one or more second trusts. However, if an authorized trustee exercises this power:

- The second trusts, in the aggregate, must grant each beneficiary of the first trust substantially similar interests as they had under the first trust; and
- The term of the second trust may extend beyond the term of the first trust.

Authority of Authorized Trustee to Decant to Special Needs Trust

Even if an authorized trustee does not have absolute authority or does not have general authority to decant, the authorized trustee may be able to decant trust principal to a special needs trust. A special needs trust, very generally, is a one into which money can be placed for the benefit of a disabled person, permitting the person to maintain welfare eligibility, which might be lost if he or she were to hold the money outright.

Notice of Decanting

As under current law, a trustee who intends to decant must first give notice to the persons specified in statute. However, under the bill, this notice must include a copy of the trust document for any second trust into which the principal from the first trust is to be placed.

Statute of Limitations on Actions Against Trustee

The law requires a trustee to give accounting for the trust to the beneficiaries.¹⁸ Failure to give an account constitutes an actionable breach of trust.¹⁹ One of the remedies that a court may award on this action is to force the trustee to give an account.²⁰ Current law is not perfectly clear as to when the statute of limitations begins to run on a claim for a failure to account. A recent case found that an action for a trustee’s failure to account was subject to the general limitations statute, and could not be brought for a failure occurring more than 4 years before the date the action was filed.²¹ Some take issue with the reasoning of this case.

¹⁸ Section 736.0813, F.S.

¹⁹ See Section 736.1001(1)-(2), F.S.

²⁰ *Id.*

²¹ See *Corya v. Sanders*, 155 So. 3d 1279 (Fla. 4th DCA 2009)

To clarify the matter the bill expressly states that a failure to account, and even the beneficiary's knowledge of the failure, does not cause a 4-year clock to run on the beneficiary's time to file suit. Additionally, the bill expressly states that the action is not subject to the general limitations statute. As a result, the limitation on bringing this action appears to be 10, 20, or 40 years, depending on the circumstances of a given case.²²

Providing Documents and Notices Electronically

The Florida Trust Code requires trustees and others to provide each other various documents. For example, trustees must provide trust accounting documents to beneficiaries. One permissible method of sending these documents is by posting them to a secure electronic account or website. This method of sending, posting, and sharing of documents is subject to special regulation under the law.²³ The bill amends the requirements as to documents that are provided to recipients *solely* through electronic posting and deemed sent for the purposes of the statute regulating methods of notice and waiver.²⁴

Under the bill, the recipient must be able to access and print or download these documents until the earlier of:

- The date on which the recipient's access is terminated;²⁵ or
- Four years after the date on which the document is deemed received.

Also, if any recipient's access to the electronic account or website is terminated by the sender less than 4 years after the date the document was deemed received, the specified limitations periods in the trust limitations statute²⁶ that are still open are tolled as set forth in the bill.

Effective Date

The bill takes effect July 1, 2017.

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.

²² See s. 736.1008(6), F.S.

²³ See s. 736.0109(3), F.S.

²⁴ Section 736.0109, F.S.

²⁵ The termination of access does not invalidate the notice of sending of any document previously posted in accordance with s. 736.0109, F.S.

²⁶ Section 736.1008(1),(2), F.S.

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 Trust Code requires the sending of several documents and notices. And these documents may be sent to a recipient by posting them to an electronic account or website accessible by the recipient. The committee substitute authorizes a recipient who has received a document in this manner, but who has been given notice that their electronic access was terminated, to request that any documents sent during the prior 4 years solely through electronic posting be provided to him or her by other means at no cost. The bill does not clarify from what date the prior 4 years is to be calculated. Moreover, the sub-sub-subparagraph in question—new s. 736.0109(3)(g)3.a.(I), F.S.—and the one following it do not seem compatible. The Legislature may wish to amend the bill to clarify and simplify these provisions.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 736.0103, 736.0105, 736.0109, 736.0110, 736.0404, 736.04117, 736.0708, 736.08135, 736.1008, 736.1201, 736.1205, 736.1206, 736.1207, 736.1208, and 736.1209.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on March 22, 2017:

The CS includes several technical wording changes that were made to the underlying bill.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Young) recommended the following:

Senate Amendment

Delete lines 216 - 395
and insert:
website is terminated by the sender before the time period set forth in sub-subparagraph 1.b., any applicable limitations period set forth in s. 736.1008(1) or (2) which is still open is tolled for any information adequately disclosed in such document as follows:

a. From the date on which the recipient's access to the electronic account or website is terminated by the sender until



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45 days after the date on which the sender provides notification of such termination to the recipient by means other than electronic posting, and:

(I) The recipient may request that any documents sent during the prior 4 years solely through electronic posting be provided to him or her by other means at no cost; or

(II) The recipient's access to the electronic account or website is restored; and

b. From the date on which any request is made pursuant to sub-sub-subparagraph 3.a.(I) until 20 days after the date on which the requested documents are provided to the recipient by means other than electronic posting.

(h) For purposes of this subsection, access to an electronic account or website is terminated by the sender when the sender unilaterally terminates the recipient's ability to access the electronic website or account or download or print any document posted on such website or account. Access is not terminated by the sender when access is terminated by an action of the recipient or by an action of the sender in response to the recipient's request to terminate access. The recipient's revocation of authorization pursuant to paragraph (f) is not considered a request to terminate access ~~To be effective, the posting of a document to an electronic account or website must be done in accordance with this subsection. The sender has the burden of establishing compliance with this subsection.~~

(i) This subsection does not affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810 or affect or alter the time periods for which the trustee must maintain such records ~~preclude the sending of a~~



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~~document by other means.~~

(j) This subsection governs the posting of a document solely for the purpose of giving notice under this code or the sending of a document to a person under this code and does not prohibit or otherwise apply to the posting of a document to an electronic account or website for any other purpose or preclude the sending of a document by any other means.

Section 4. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

Section 5. Section 736.0404, Florida Statutes, is amended to read:

736.0404 Trust purposes.—A trust may be created only to the extent the purposes of the trust are lawful, not contrary to public policy, and possible to achieve. ~~A trust and its terms must be for the benefit of its beneficiaries.~~

Section 6. Effective upon becoming a law, section 736.04117, Florida Statutes, is amended to read:

736.04117 Trustee's power to invade principal in trust.—

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

(a) "Absolute power" means ~~Unless the trust instrument expressly provides otherwise, a trustee who has absolute power under the terms of a trust to invade the principal of the trust, referred to in this section as the "first trust," to make~~



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~~distributions to or for the benefit of one or more persons may instead exercise the power by appointing all or part of the principal of the trust subject to the power in favor of a trustee of another trust, referred to in this section as the "second trust," for the current benefit of one or more of such persons under the same trust instrument or under a different trust instrument; provided:~~

~~1. The beneficiaries of the second trust may include only beneficiaries of the first trust;~~

~~2. The second trust may not reduce any fixed income, annuity, or unitrust interest in the assets of the first trust; and~~

~~3. If any contribution to the first trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code of 1986, as amended, the second trust shall not contain any provision which, if included in the first trust, would have prevented the first trust from qualifying for such a deduction or would have reduced the amount of such deduction.~~

~~(b) For purposes of this subsection, an absolute power to invade principal shall include a power to invade principal that is not limited to specific or ascertainable purposes, such as health, education, maintenance, and support, regardless of whether or not the term "absolute" is used. A power to invade principal for purposes such as best interests, welfare, comfort, or happiness constitutes shall constitute an absolute power not limited to specific or ascertainable purposes.~~

(b) "Authorized trustee" means a trustee, other than the settlor or a beneficiary, who has the power to invade the



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principal of a trust.

(c) "Beneficiary with a disability" means a beneficiary of the first trust who the authorized trustee believes may qualify for governmental benefits based on disability, regardless of whether the beneficiary currently receives those benefits or has been adjudicated incapacitated.

(d) "Current beneficiary" means a beneficiary who, on the date his or her qualification is determined, is a distributee or permissible distributee of trust income or principal. The term includes the holder of a presently exercisable general power of appointment but does not include a person who is a beneficiary only because he or she holds another power of appointment.

(e) "Governmental benefits" means financial aid or services from any state, federal, or other public agency.

(f) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

(g) "Power of appointment" has the same meaning as provided in s. 731.201(30).

(h) "Presently exercisable general power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

1. Includes a power of appointment that is exercisable only after the occurrence of a specified event or that is subject to a specified restriction, but only after the event has occurred or the restriction has been satisfied.

2. Does not include a power exercisable only upon the powerholder's death.

(i) "Substantially similar" means that there is no material change in a beneficiary's beneficial interests or in the power



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to make distributions and that the power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to the power under the first trust to make a distribution directly to the beneficiary. A distribution is deemed to be for the benefit of a beneficiary if:

1. The distribution is applied for the benefit of a beneficiary;

2. The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this code; or

3. The distribution is made as permitted under the terms of the first trust instrument and the second trust instrument for the benefit of the beneficiary.

(j) "Supplemental needs trust" means a trust that the authorized trustee believes would not be considered a resource for purposes of determining whether the beneficiary who has a disability is eligible for governmental benefits.

(k) "Vested interest" means a current unconditional right to receive a mandatory distribution of income, a specified dollar amount, or a percentage of value of a trust, or a current unconditional right to withdraw income, a specified dollar amount, or a percentage of value of a trust, which right is not subject to the occurrence of a specified event, the passage of a specified time, or the exercise of discretion.

1. The term includes a presently exercisable general power of appointment.

2. The term does not include a beneficiary's interest in a trust if the trustee has discretion to make a distribution of



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trust property to a person other than such beneficiary.

(2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN
AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

(a) Unless a trust instrument expressly provides otherwise,
an authorized trustee who has absolute power under the terms of
the trust to invade its principal, referred to in this section
as the "first trust," to make current distributions to or for
the benefit of one or more beneficiaries may instead exercise
such power by appointing all or part of the principal of the
trust subject to such power in favor of a trustee of one or more
other trusts, whether created under the same trust instrument as
the first trust or a different trust instrument, including a
trust instrument created for the purposes of exercising the
power granted by this section, each referred to in this section
as the "second trust," for the current benefit of one or more of
such beneficiaries only if:

1. The beneficiaries of the second trust include only
beneficiaries of the first trust; and

2. The second trust does not reduce any vested interest.

(b) In an exercise of absolute power, the second trust may:

1. Retain a power of appointment granted in the first
trust;

2. Omit a power of appointment granted in the first trust,
other than a presently exercisable general power of appointment;

3. Create or modify a power of appointment if the
powerholder is a current beneficiary of the first trust;

4. Create or modify a power of appointment if the
powerholder is a beneficiary of the first trust who is not a

By Senator Young

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1 A bill to be entitled
 2 An act relating to trusts; amending s. 736.0103, F.S.;
 3 redefining the term "interests of the beneficiaries";
 4 amending s. 736.0105, F.S.; deleting a requirement
 5 that a trust be for the benefit of the trust's
 6 beneficiaries; amending s. 736.0109, F.S.; revising
 7 provisions relating to notice or sending of electronic
 8 trust documents; providing requirements for such
 9 documents to be deemed sent; requiring a certain
 10 authorization to specify documents subject to
 11 electronic posting; revising requirements for a
 12 recipient to electronically access such documents;
 13 prohibiting the termination of a recipient's
 14 electronic access to such documents from invalidating
 15 certain notice or sending of electronic trust
 16 documents; tolling specified limitations periods under
 17 certain circumstances; providing requirements for
 18 electronic access to such documents to be deemed
 19 terminated by a sender; providing applicability;
 20 amending s. 736.0110, F.S.; providing that the
 21 Attorney General has standing to assert certain rights
 22 in certain proceedings; amending s. 736.0404, F.S.;
 23 deleting a restriction on the purpose for which a
 24 trust is created; amending s. 736.04117, F.S.;
 25 defining and redefining terms; authorizing an
 26 authorized trustee to appoint all or part of the
 27 principal of a trust to a second trust under certain
 28 circumstances; providing requirements for the second
 29 trust and its beneficiaries; providing that the second

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

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30 trust may retain, omit, or create specified powers;
 31 authorizing the term of the second trust to extend
 32 beyond the term of the first trust; providing
 33 requirements for distributions to a second trust when
 34 the authorized trustee does not have absolute power;
 35 providing requirements for such second trust;
 36 providing requirements for grants of power by the
 37 second trust; authorizing a second trust created by an
 38 authorized trustee without absolute power to grant
 39 absolute power to the second trust's trustee;
 40 authorizing an authorized trustee to appoint the
 41 principal of a first trust to a supplemental needs
 42 trust under certain circumstances; providing
 43 requirements for such supplemental needs trust;
 44 prohibiting an authorized trustee from distributing
 45 the principal of a trust in a manner that would reduce
 46 specified tax benefits; prohibiting the distribution
 47 of S corporation stock from a first trust to a second
 48 trust under certain circumstances; prohibiting a
 49 settlor from being treated as the owner of a second
 50 trust if he or she was not treated as the owner of the
 51 first trust; prohibiting an authorized trustee from
 52 distributing a trust's interest in property to a
 53 second trust if it is subject to specified rules of
 54 the Internal Revenue Code; prohibiting the exercise of
 55 power to invade a trust's principal to increase an
 56 authorized trustee's compensation or relieve him or
 57 her from certain liability; specifying who an
 58 authorized trustee must notify when he or she

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59 exercises his or her power to invade the trust's
 60 principal; specifying the documents that the
 61 authorized trustee must provide with such notice;
 62 amending s. 736.0708, F.S.; providing that a cotrustee
 63 is entitled to reasonable compensation when the trust
 64 does not specify compensation; providing that
 65 reasonable compensation may be greater for multiple
 66 trustees than for a single trustee; amending s.
 67 736.08135, F.S.; revising applicability; amending s.
 68 736.1008, F.S.; clarifying that certain knowledge by a
 69 beneficiary does not cause a claim for breach of trust
 70 or commence the running of a period of limitations or
 71 laches; providing intent; providing for retroactive
 72 application; amending s. 736.1201, F.S.; defining the
 73 term "delivery of notice"; conforming a provision to
 74 changes made by the act; amending s. 736.1205, F.S.;
 75 requiring an authorized trustee to provide certain
 76 notice to the Attorney General rather than the state
 77 attorney; amending ss. 736.1206, 736.1207, 736.1208,
 78 and 736.1209, F.S.; conforming provisions; providing
 79 effective dates.

80

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

82

83 Section 1. Subsection (11) of section 736.0103, Florida
 84 Statutes, is amended to read:

85 736.0103 Definitions.—Unless the context otherwise
 86 requires, in this code:

87 (11) "Interests of the beneficiaries" means the beneficial

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88 interests intended by the settlor as provided in the terms of a
 89 ~~the~~ trust.

90 Section 2. Paragraph (c) of subsection (2) of section
 91 736.0105, Florida Statutes, is amended to read:

92 736.0105 Default and mandatory rules.—

93 (2) The terms of a trust prevail over any provision of this
 94 code except:

95 (c) The requirement that a trust ~~and its terms be for the~~
 96 ~~benefit of the trust's beneficiaries, and that the trust~~ have a
 97 purpose that is lawful, not contrary to public policy, and
 98 possible to achieve.

99 Section 3. Subsections (1) and (3) of section 736.0109,
 100 Florida Statutes, are amended to read:

101 736.0109 Methods and waiver of notice.—

102 (1) Notice to a person under this code or the sending of a
 103 document to a person under this code must be accomplished in a
 104 manner reasonably suitable under the circumstances and likely to
 105 result in receipt of the notice or document. Permissible methods
 106 of notice or for sending a document include first-class mail,
 107 personal delivery, delivery to the person's last known place of
 108 residence or place of business, ~~or~~ a properly directed facsimile
 109 or other electronic message, or posting to a secure electronic
 110 account or website in accordance with subsection (3).

111 (3) A document that is sent solely by posting to an
 112 electronic account or website is not deemed sent for purposes of
 113 this section unless the sender complies with this subsection.
 114 The sender has the burden of proving compliance with this
 115 subsection ~~In addition to the methods listed in subsection (1)~~
 116 ~~for sending a document, a sender may post a document to a secure~~

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117 ~~electronic account or website where the document can be~~
 118 ~~accessed.~~

119 (a) ~~Before a document may be posted to an electronic~~
 120 ~~account or website,~~ The recipient must sign a separate written
 121 authorization solely for the purpose of authorizing the sender
 122 to post documents on an electronic account or website before
 123 such posting. The written authorization must:

124 1. Specifically indicate whether a trust accounting, trust
 125 disclosure document, or limitation notice, as those terms are
 126 defined in s. 736.1008(4), will be posted in this manner, and
 127 generally enumerate the other types of documents that may be
 128 posted in this manner.

129 2. Contain specific instructions for accessing the
 130 electronic account or website, including the security procedures
 131 required to access the electronic account or website, such as a
 132 username and password.

133 3. Advise the recipient that a separate notice will be sent
 134 when a document is posted to the electronic account or website
 135 and the manner in which the separate notice will be sent.

136 4. Advise the recipient that the authorization to receive
 137 documents by electronic posting may be amended or revoked at any
 138 time and include specific instructions for revoking or amending
 139 the authorization, including the address designated for the
 140 purpose of receiving notice of the revocation or amendment.

141 5. Advise the recipient that posting a document on the
 142 electronic account or website may commence a limitations period
 143 as short as 6 months even if the recipient never actually
 144 accesses the electronic account, electronic website, or ~~the~~
 145 document.

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146 (b) Once the recipient signs the written authorization, the
 147 sender must provide a separate notice to the recipient when a
 148 document is posted to the electronic account or website. As used
 149 in this subsection, the term "separate notice" means a notice
 150 sent to the recipient by means other than electronic posting,
 151 which identifies each document posted to the electronic account
 152 or website and provides instructions for accessing the ~~posted~~
 153 document. The separate notice requirement is deemed satisfied if
 154 the recipient accesses the document on the electronic account or
 155 website.

156 (c) A document sent by electronic posting is deemed
 157 received by the recipient on the earlier of the date on which
 158 ~~that~~ the separate notice is received or the date on which ~~that~~
 159 the recipient accesses the document on the electronic account or
 160 website.

161 (d) At least annually after a recipient signs a written
 162 authorization, a sender shall send a notice advising recipients
 163 who have authorized one or more documents to be posted to an
 164 electronic account or website that such posting may commence a
 165 limitations period as short as 6 months even if the recipient
 166 never accesses the electronic account or website or the document
 167 and that authority to receive documents by electronic posting
 168 may be amended or revoked at any time. This notice must be given
 169 by means other than electronic posting and may not be
 170 accompanied by any other written communication. Failure to
 171 provide such notice within 380 days after the last notice is
 172 deemed to automatically revoke the authorization to receive
 173 documents in the manner permitted under this subsection 380 days
 174 after the last notice is sent.

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(e) The notice required in paragraph (d) may be in substantially the following form: "You have authorized the receipt of documents through posting to an electronic account or website ~~on which where~~ the documents can be accessed. This notice is being sent to advise you that a limitations period, which may be as short as 6 months, may be running as to matters disclosed in a trust accounting or other written report of a trustee posted to the electronic account or website even if you never actually access the electronic account or website or the documents. You may amend or revoke the authorization to receive documents by electronic posting at any time. If you have any questions, please consult your attorney."

(f) A sender may rely on the recipient's authorization until the recipient amends or revokes the authorization by sending a notice to the address designated for that purpose in the authorization or in the manner specified on the electronic account or website. The recipient, at any time, may amend or revoke an authorization to have documents posted on the electronic account or website.

(g) If a document is provided to a recipient solely through electronic posting and is deemed sent for purposes of this section:

1. The recipient must be able to access and print or download the document until the earlier of:

a. The date on which the recipient's access to the electronic account or website is terminated for any reason; or

b. ~~Four must remain accessible to the recipient on the electronic account or website for at least 4~~ years after the date ~~on which that~~ the document is deemed received by the

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recipient.

2. If the recipient's access to the electronic account or website is terminated for any reason, such termination does not invalidate the notice or sending of any document previously posted on the electronic account or website in accordance with this subsection. ~~The electronic account or website must allow the recipient to download or print the document. This subsection does not affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810 or affect or alter the time periods for which the trustee must maintain those records.~~

3. If the recipient's access to the electronic account or website is terminated by the sender before the time limit set forth in sub-subparagraph 1.b., any applicable limitations period set forth in s. 736.1008(1) or (2) which is still open is tolled for any information adequately disclosed in such document as follows:

a. From the date on which the recipient's access to the electronic account or website is terminated by the sender until 45 days after the date on which the sender provides notification of such termination to the recipient by means other than electronic posting, and:

(I) The recipient requests that any documents sent during the prior 4 years solely through electronic posting be provided to him or her by other means at no cost; or

(II) The recipient's access to the electronic account or website is restored; and

b. From the date on which any request is made pursuant to sub-sub-subparagraph 3.a.(I) until 20 days after the date on

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which the requested documents are provided to the recipient by means other than electronic posting.

(h) For purposes of this subsection, access to an electronic account or website is terminated by the sender when the sender unilaterally terminates the recipient's ability to access the electronic website or account or download or print any document posted on such website or account. Access is not terminated by the sender when access is terminated by an action of the recipient or by an action of the sender in response to the recipient's request to terminate access. The recipient's revocation of authorization pursuant to paragraph (f) is not considered a request to terminate access. ~~To be effective, the posting of a document to an electronic account or website must be done in accordance with this subsection. The sender has the burden of establishing compliance with this subsection.~~

(i) This subsection does not affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810 or affect or alter the periods for which the trustee must maintain such records ~~preclude the sending of a document by other means.~~

(j) This subsection governs the posting of a document solely for the purpose of giving notice under this code or the sending of a document to a person under this code and does not prohibit or otherwise apply to the posting of a document to an electronic account or website for any other purpose or preclude the sending of a document by any other means.

Section 4. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

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(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

Section 5. Section 736.0404, Florida Statutes, is amended to read:

736.0404 Trust purposes.—A trust may be created only to the extent the purposes of the trust are lawful, not contrary to public policy, and possible to achieve. ~~A trust and its terms must be for the benefit of its beneficiaries.~~

Section 6. Effective upon becoming a law, section 736.04117, Florida Statutes, is amended to read:

736.04117 Trustee's power to invade principal in trust.—

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

(a) "Absolute power" means ~~Unless the trust instrument expressly provides otherwise, a trustee who has absolute power under the terms of a trust to invade the principal of the trust, referred to in this section as the "first trust," to make distributions to or for the benefit of one or more persons may instead exercise the power by appointing all or part of the principal of the trust subject to the power in favor of a trustee of another trust, referred to in this section as the "second trust," for the current benefit of one or more of such persons under the same trust instrument or under a different trust instrument; provided:~~

~~1. The beneficiaries of the second trust may include only beneficiaries of the first trust;~~

~~2. The second trust may not reduce any fixed income;~~

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291 ~~annuity, or unitrust interest in the assets of the first trust,~~
 292 ~~and~~

293 ~~3. If any contribution to the first trust qualified for a~~
 294 ~~marital or charitable deduction for federal income, gift, or~~
 295 ~~estate tax purposes under the Internal Revenue Code of 1986, as~~
 296 ~~amended, the second trust shall not contain any provision which,~~
 297 ~~if included in the first trust, would have prevented the first~~
 298 ~~trust from qualifying for such a deduction or would have reduced~~
 299 ~~the amount of such deduction.~~

300 ~~(b) For purposes of this subsection, an absolute power to~~
 301 ~~invade principal shall include a power to invade principal that~~
 302 ~~is not limited to specific or ascertainable purposes, such as~~
 303 ~~health, education, maintenance, and support, regardless of~~
 304 ~~whether or not the term "absolute" is used. A power to invade~~
 305 ~~principal for purposes such as best interests, welfare, comfort,~~
 306 ~~or happiness constitutes shall constitute an absolute power not~~
 307 ~~limited to specific or ascertainable purposes.~~

308 ~~(b) "Authorized trustee" means a trustee, other than the~~
 309 ~~settlor or a beneficiary, who has the power to invade the~~
 310 ~~principal of a trust.~~

311 ~~(c) "Beneficiary with a disability" means a beneficiary of~~
 312 ~~the first trust who the authorized trustee believes may qualify~~
 313 ~~for governmental benefits based on disability, regardless of~~
 314 ~~whether the beneficiary currently receives those benefits or has~~
 315 ~~been adjudicated incapacitated.~~

316 ~~(d) "Current beneficiary" means a beneficiary who, on the~~
 317 ~~date his or her qualification is determined, is a distributee or~~
 318 ~~permissible distributee of trust income or principal. The term~~
 319 ~~includes the holder of a presently exercisable general power of~~

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320 appointment but does not include a person who is a beneficiary
 321 only because he or she holds another power of appointment.

322 (e) "Governmental benefits" means financial aid or services
 323 from any state, federal, or other public agency.

324 (f) "Internal Revenue Code" means the Internal Revenue Code
 325 of 1986, as amended.

326 (g) "Power of appointment" has the same meaning as in s.
 327 731.201(30).

328 (h) "Presently exercisable general power of appointment"
 329 means a power of appointment exercisable by the powerholder at
 330 the relevant time. The term:

331 1. Includes a power of appointment that is exercisable only
 332 after the occurrence of a specified event or that is subject to
 333 a specified restriction, but only after the event has occurred
 334 or the restriction has been satisfied.

335 2. Does not include a power exercisable only upon the
 336 powerholder's death.

337 (i) "Substantially similar" means that there is no material
 338 change in a beneficiary's beneficial interests or in the power
 339 to make distributions and that the power to make a distribution
 340 under a second trust for the benefit of a beneficiary who is an
 341 individual is substantially similar to the power under the first
 342 trust to make a distribution directly to the beneficiary. A
 343 distribution is deemed to be for the benefit of a beneficiary
 344 if:

345 1. The distribution is applied for the benefit of a
 346 beneficiary;

347 2. The beneficiary is under a legal disability or the
 348 trustee reasonably believes the beneficiary is incapacitated,

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and the distribution is made as permitted under this code; or

3. The distribution is made as permitted under the terms of the first trust instrument and the second trust instrument for the benefit of the beneficiary.

(j) "Supplemental needs trust" means a trust that the authorized trustee believes would not be considered a resource for purposes of determining whether the beneficiary who has a disability is eligible for governmental benefits.

(k) "Vested interest" means a current unconditional right to receive a mandatory distribution of income, a specified dollar amount, or a percentage of value of a trust, or a current unconditional right to withdraw income, a specified dollar amount, or a percentage of value of a trust, which right is not subject to the occurrence of a specified event, the passage of a specified time, or the exercise of discretion.

1. The term includes a presently exercisable general power of appointment.

2. The term does not include a beneficiary's interest in a trust if the trustee has discretion to make a distribution of trust property to a person other than such beneficiary.

(2) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE HAS ABSOLUTE POWER TO INVADE.—

(a) Unless a trust instrument expressly provides otherwise, an authorized trustee who has absolute power under the terms of the trust to invade its principal, referred to in this section as the "first trust," to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by appointing all or part of the principal of the trust subject to such power in favor of a trustee of one or more

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other trusts, whether created under the same trust instrument as the first trust or a different trust instrument, including a trust instrument created for the purposes of exercising the power granted by this section, each referred to in this section as the "second trust," for the current benefit of one or more of such beneficiaries only if:

1. The beneficiaries of the second trust include only beneficiaries of the first trust; and

2. The second trust does not reduce any vested interest.

(b) In an exercise of absolute power, the second trust may:

1. Retain a power of appointment granted in the first trust;

2. Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

3. Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust;

4. Create or modify a power of appointment if the powerholder is a beneficiary of the first trust and not a current beneficiary, but the exercise of the power of appointment may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary of the first trust; and

5. Extend the term of the second trust beyond the term of the first trust.

(c) The class of permissible appointees in favor of which a created or modified power of appointment may be exercised may differ from the class identified in the first trust.

(3) DISTRIBUTION FROM FIRST TRUST TO SECOND TRUST WHEN AUTHORIZED TRUSTEE DOES NOT HAVE ABSOLUTE POWER TO INVADE.—

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Unless the trust instrument expressly provides otherwise, an authorized trustee who has a power, other than an absolute power, under the terms of a first trust to invade principal to make current distributions to or for the benefit of one or more beneficiaries may instead exercise such power by appointing all or part of the principal of the first trust subject to such power in favor of a trustee of one or more second trusts. If the authorized trustee exercises such power:

(a) The second trusts, in the aggregate, shall grant each beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(b) If the first trust grants a power of appointment to a beneficiary of the first trust, the second trust shall grant such power of appointment in the second trust to such beneficiary, and the class of permissible appointees shall be the same as in the first trust.

(c) If the first trust does not grant a power of appointment to a beneficiary of the first trust, then the second trust may not grant a power of appointment in the second trust to such beneficiary.

(d) Notwithstanding paragraphs (a), (b), and (c), the term of the second trust may extend beyond the term of the first trust, and, for any period after the first trust would have otherwise terminated, in whole or in part, under the provisions of the first trust, the trust instrument of the second trust may, with respect to property subject to such extended term:

1. Include language providing the trustee with the absolute power to invade the principal of the second trust during such

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extended term; and

2. Create a power of appointment, if the powerholder is a current beneficiary of the first trust, or expand the class of permissible appointees in favor of which a power of appointment may be exercised.

(4) DISTRIBUTION FROM FIRST TRUST TO SUPPLEMENTAL NEEDS TRUST.—

(a) Notwithstanding subsections (2) and (3), unless the trust instrument expressly provides otherwise, an authorized trustee who has the power under the terms of a first trust to invade the principal of the first trust to make current distributions to or for the benefit of a beneficiary with a disability may instead exercise such power by appointing all or part of the principal of the first trust in favor of a trustee of a second trust that is a supplemental needs trust if:

1. The supplemental needs trust benefits the beneficiary with a disability;

2. The beneficiaries of the second trust include only beneficiaries of the first trust; and

3. The authorized trustee determines that the exercise of such power will further the purposes of the first trust.

(b) Except as affected by any change to the interests of the beneficiary with a disability, the second trusts, in the aggregate, shall grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to such beneficiary's beneficial interests in the first trust.

(5) PROHIBITED DISTRIBUTIONS.—

(a) An authorized trustee may not distribute the principal

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of a trust under this section in a manner that would prevent a contribution to that trust from qualifying for, or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed or could have been claimed for, that contribution, including:

1. The exclusions under s. 2503(b) or s. 2503(c) of the Internal Revenue Code;
2. A marital deduction under s. 2056, s. 2056A, or s. 2523 of the Internal Revenue Code;
3. A charitable deduction under s. 170(a), s. 642(c), s. 2055(a), or s. 2522(a) of the Internal Revenue Code;
4. Direct skip treatment under s. 2642(c) of the Internal Revenue Code; or
5. Any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code.

(b) If S corporation stock is held in the first trust, an authorized trustee may not distribute all or part of that stock to a second trust that is not a permitted shareholder under s. 1361(c)(2) of the Internal Revenue Code. If the first trust holds stock in an S corporation and is, or but for provisions of paragraphs (a), (c), and (d) would be, a qualified subchapter S trust within the meaning of s. 1361(d) of the Internal Revenue Code, the second trust instrument may not include or omit a term that prevents it from qualifying as a qualified subchapter S trust.

(c) Except as provided in paragraphs (a), (b), and (d), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated

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as the owner of either trust under ss. 671-679 of the Internal Revenue Code; however, if the settlor is not treated as the owner of the first trust, he or she may not be treated as the owner of the second trust unless he or she at all times has the power to cause the second trust to cease being treated as if it were owned by the settlor.

(d) If an interest in property which is subject to the minimum distribution rules of s. 401(a)(9) of the Internal Revenue Code is held in trust, an authorized trustee may not distribute such an interest to a second trust under subsection (2), subsection (3), or subsection (4) if the distribution would shorten the otherwise applicable maximum distribution period.

(6) EXERCISE BY WRITING.—The exercise of a power to invade principal under subsection (2), subsection (3), or subsection (4) must ~~The exercise of a power to invade principal under subsection (1) shall~~ be by a written ~~an~~ instrument ~~in writing,~~ signed and acknowledged by the authorized trustee, and filed with the records of the first trust.

(7)~~(3)~~ RESTRICTIONS ON EXERCISE OF POWER.—The exercise of a power to invade principal under subsection (2), subsection (3), or subsection (4):

(a) ~~Is (1) shall be~~ considered the exercise of a power of appointment, ~~excluding other than~~ a power to appoint to the authorized trustee, the authorized trustee's creditors, the authorized trustee's estate, or the creditors of the authorized trustee's estate.

(b) ~~Is, and shall be~~ subject to the provisions of s. 689.225 covering the time at which the permissible period of the rule against perpetuities begins and the law that determines the

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523 permissible period of the rule against perpetuities of the first
 524 trust.

525 (c) May be to a second trust created or administered under
 526 the law of any jurisdiction.

527 (d) May not:

528 1. Increase the authorized trustee's compensation beyond
 529 the compensation specified in the first trust instrument; or

530 2. Relieve the authorized trustee from liability for breach
 531 of trust or provide for indemnification of the authorized
 532 trustee for any liability or claim to a greater extent than the
 533 first trust instrument; however, the exercise of the power may
 534 divide and reallocate fiduciary powers among fiduciaries and
 535 relieve a fiduciary from liability for an act or failure to act
 536 of another fiduciary as otherwise allowed under law or common
 537 law.

538 (8) NOTICE.—

539 (a)(4) The authorized trustee shall provide written
 540 notification of the manner in which he or she intends to
 541 exercise his or her power to invade principal to notify all
 542 qualified beneficiaries of the following parties first trust, in
 543 writing, at least 60 days before prior to the effective date of
 544 the authorized trustee's exercise of such power the trustee's
 545 power to invade principal pursuant to subsection (2), subsection
 546 (3), or subsection (4): (1), of the manner in which the trustee
 547 intends to exercise the power.

548 1. All qualified beneficiaries of the first trust;

549 2. If paragraph (5)(c) applies, the settlor of the first
 550 trust;

551 3. All trustees of the first trust; and

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552 4. Any person who has the power to remove or replace the
 553 authorized trustee of the first trust.

554 (b) The authorized A copy of the proposed instrument
 555 exercising the power shall satisfy the trustee's notice
 556 obligation to provide notice under this subsection is satisfied
 557 when he or she provides copies of the proposed instrument
 558 exercising the power, the trust instrument of the first trust,
 559 and the proposed trust instrument of the second trust.

560 (c) If all of those required to be notified qualified
 561 beneficiaries waive the notice period by signed written
 562 instrument delivered to the authorized trustee, the authorized
 563 trustee's power to invade principal shall be exercisable
 564 immediately.

565 (d) The authorized trustee's notice under this subsection
 566 does shall not limit the right of any beneficiary to object to
 567 the exercise of the authorized trustee's power to invade
 568 principal except as otherwise provided in other applicable
 569 provisions of this code.

570 (9)(5) INAPPLICABILITY OF SPENDTHRIFT CLAUSE OR OTHER
 571 PROHIBITION.—The exercise of the power to invade principal under
 572 subsection (2), subsection (3), or subsection (4) (1) is not
 573 prohibited by a spendthrift clause or by a provision in the
 574 trust instrument that prohibits amendment or revocation of the
 575 trust.

576 (10)(6) NO DUTY TO EXERCISE.—Nothing in this section is
 577 intended to create or imply a duty to exercise a power to invade
 578 principal, and no inference of impropriety may shall be made as
 579 a result of an authorized trustee's failure to exercise a
 580 trustee not exercising the power to invade principal conferred

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under subsections (2), (3), and (4) ~~subsection (1)~~.

~~(11)(7) NO ABRIDGEMENT OF COMMON LAW RIGHTS. The provisions of This section may shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust that arises under the terms of the first trust or under any other section of this code or under another provision of law or under common law.~~

Section 7. Subsection (1) of section 736.0708, Florida Statutes, is amended to read:

736.0708 Compensation of trustee.—

(1) If the terms of a trust do not specify a the trustee's compensation, the a trustee, including each cotrustee, is entitled to compensation that is reasonable under the circumstances. In the aggregate, the reasonable compensation for multiple trustees may be greater than for a single trustee.

Section 8. Subsection (3) of section 736.08135, Florida Statutes, is amended to read:

736.08135 Trust accountings.—

(3) Subsections (1) and (2) govern the form and content of This section applies to all trust accountings rendered for any accounting periods beginning on or after January 1, 2003, and all trust accountings rendered on or after July 1, 2017. This subsection does not affect the beginning period from which a trustee is required to render a trust accounting.

Section 9. Subsection (3) of section 736.1008, Florida Statutes, is amended to read:

736.1008 Limitations on proceedings against trustees.—

(3) When a trustee has not issued a final trust accounting or has not given written notice to the beneficiary of the

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availability of the trust records for examination and that claims with respect to matters not adequately disclosed may be barred, a claim against the trustee for breach of trust based on a matter not adequately disclosed in a trust disclosure document is barred as provided in chapter 95 and accrues when the beneficiary has actual knowledge of:

(a) The facts upon which the claim is based, if such actual knowledge is established by clear and convincing evidence; or

(b) The trustee's repudiation of the trust or adverse possession of trust assets.

Paragraph (a) applies to claims based upon acts or omissions occurring on or after July 1, 2008. A beneficiary's actual knowledge that he or she has not received a trust accounting does not cause a claim to accrue against the trustee for breach of trust based upon the failure to provide a trust accounting required by s. 736.0813 or former s. 737.303 and does not commence the running of any period of limitations or laches for such a claim, and paragraph (a) and chapter 95 do not bar any such claim.

Section 10. The changes to ss. 736.08135 and 736.1008, Florida Statutes, made by this act are intended to clarify existing law, are remedial in nature, and apply retroactively to all cases pending or commenced on or after July 1, 2017.

Section 11. Present subsections (2), (3), and (4) of section 736.1201, Florida Statutes, are redesignated as subsections (3), (4), and (5), respectively, present subsection (5) of that section is amended, and a new subsection (2) is added to that section, to read:

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639 736.1201 Definitions.—As used in this part:

640 (2) "Delivery of notice" means delivery of a written notice
 641 required under this part using any commercial delivery service
 642 requiring a signed receipt or by any form of mail requiring a
 643 signed receipt.

644 ~~(5) "State attorney" means the state attorney for the~~
 645 ~~judicial circuit of the principal place of administration of the~~
 646 ~~trust pursuant to s. 736.0108.~~

647 Section 12. Section 736.1205, Florida Statutes, is amended
 648 to read:

649 736.1205 Notice that this part does not apply.—In the case
 650 of a power to make distributions, if the trustee determines that
 651 the governing instrument contains provisions that are more
 652 restrictive than s. 736.1204(2), or if the trust contains other
 653 powers, inconsistent with the provisions of s. 736.1204(3) that
 654 specifically direct acts by the trustee, the trustee shall
 655 notify the ~~state~~ Attorney General by delivery of notice when the
 656 trust becomes subject to this part. Section 736.1204 does not
 657 apply to any trust for which notice has been given pursuant to
 658 this section unless the trust is amended to comply with the
 659 terms of this part.

660 Section 13. Subsection (2) of section 736.1206, Florida
 661 Statutes, is amended to read:

662 736.1206 Power to amend trust instrument.—

663 (2) In the case of a charitable trust that is not subject
 664 to ~~the provisions of~~ subsection (1), the trustee may amend the
 665 governing instrument to comply with ~~the provisions of~~ s.
 666 736.1204(2) after delivery of notice to, and with the consent
 667 of, the ~~state~~ Attorney General.

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668 Section 14. Section 736.1207, Florida Statutes, is amended
 669 to read:

670 736.1207 Power of court to permit deviation.—This part does
 671 not affect the power of a court to relieve a trustee from any
 672 restrictions on the powers and duties that are placed on the
 673 trustee by the governing instrument or applicable law for cause
 674 shown and on complaint of the trustee, ~~the state~~ Attorney
 675 General, or an affected beneficiary and notice to the affected
 676 parties.

677 Section 15. Paragraph (b) of subsection (4) of section
 678 736.1208, Florida Statutes, is amended to read:

679 736.1208 Release; property and persons affected; manner of
 680 effecting.—

681 (4) Delivery of a release shall be accomplished as follows:

682 (b) If the release is accomplished by reducing the class of
 683 permissible charitable organizations, by delivery of notice a
 684 copy of the release to the ~~state~~ Attorney General, including a
 685 copy of the release.

686 Section 16. Section 736.1209, Florida Statutes, is amended
 687 to read:

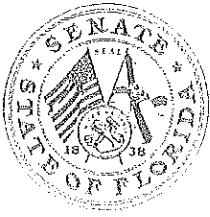
688 736.1209 Election to come under this part.—With the consent
 689 of that organization or organizations, a trustee of a trust for
 690 the benefit of a public charitable organization or organizations
 691 may come under s. 736.1208(5) by delivery of notice to filing
 692 ~~with the state~~ Attorney General of the ~~an~~ election, accompanied
 693 by the proof of required consent. Thereafter the trust shall be
 694 subject to s. 736.1208(5).

695 Section 17. Except as otherwise provided in this act and
 696 except for this section, which shall take effect upon becoming a

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697 law, this act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

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

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG
18th District

March 14, 2017

Senator Greg Steube, Chair
Senate Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Steube,

My Senate Bill 1554, Trusts has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dana Young".

Dana Young
State Senator – 18th District

cc: Tom Cibula, Staff Director – Senate Judiciary Committee

REPLY TO:

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

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/23/17

Meeting Date

SB 1554

Bill Number (if applicable)

Topic Trusts

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP- FL Bankers

Address 1001 Thomasville Rd Ste 201

Phone 850-224-2265

Street

Tallahassee

FL

32301

City

State

Zip

Email kpratt@floridabankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Bankers 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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.22.17

Meeting Date

SB 1554

Bill Number (if applicable)

Topic TRUSTS

Amendment Barcode (if applicable)

Name Sarah Butters

Job Title Attorney

Address 315 S. Calhoun Street Suite 600
Street

Phone 850.425.5648

Tallahassee
City

FL
State

32301
Zip

Email Sarah.butters@hk1aw.com

Speaking: ☐ For ☐ Against ☐ Information

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

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 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 660

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Passidomo

SUBJECT: Bankruptcy Matters in Foreclosure Proceedings

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 660 allows for documents filed in a bankruptcy case that show a debtor's intention to surrender property to then be filed in a mortgage foreclosure proceeding as admissions against the debtor/mortgagor. A mortgage foreclosure is a legal action by a lender against a debtor to force the sale of real property that secures a defaulted-upon loan. The proceeds of the sale are used to repay the debt. Often, a debtor subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action and a discharge of the mortgage debt.

In bankruptcy, a debtor must file a statement under penalty of perjury stating his or her intent to retain, redeem, or surrender any property securing a debt. The debtor is supposed to act on that decision as a condition of obtaining a discharge of his or her debts. In some cases, debtors have stated an intention to surrender real property in bankruptcy proceedings, but later have actively contested the completion of a foreclosure proceeding regarding the property in state court.

This bill provides that a lender may use certain documents filed in a bankruptcy case as an admission by the defendant in a foreclosure case. To qualify, these documents must:

- Evidence intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Not have been withdrawn by the defendant; and
- Be submitted together with a final bankruptcy order that discharges the defendant's debts or confirms the defendant's repayment plan.

Submitting a document meeting these criteria creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure.

The bill also requires a court in foreclosure proceeding, upon the request of a lienholder, to take judicial notice of any order entered in a bankruptcy case. Lastly, regarding the document that evidenced the defendant's intention to surrender the mortgaged property to the lienholder, the defendant is expressly guaranteed the authority to raise a defense in the foreclosure case based upon the lienholders' action or inaction subsequent to the document's filing.

II. Present Situation:

Bankruptcy Proceedings

In general, the two purposes of bankruptcy are to convert the debtor's non-exempt assets—his or her “estate”—into cash and distribute it among creditors, and to give the debtor a fresh start with those exemptions and rights as the bankruptcy statute leaves untouched.¹ The filing of a bankruptcy petition operates as an automatic stay on most legal actions against a debtor, including foreclosure.² The automatic stay is in effect from the time the petition is filed until discharge of the debtor, unless sooner lifted by the bankruptcy court.

For individuals, there are two primary forms of bankruptcy, often referred to by the respective chapters in the United States Bankruptcy Code that govern them—Chapter 7 and Chapter 13. A petition filed pursuant to Chapter 7 of the bankruptcy code is used when the rehabilitative chapters of the code would not be applicable, such as when there is no non-exempt property to protect.³ A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.⁴

In a Chapter 7 bankruptcy, the debtor must express his or her intent regarding secured property. The statement of intention must declare an intent to do one of four things:

- Declare the secured property is exempt;
- Surrender the property and be discharged of the debt;
- Reaffirm the debt, meaning the debtor keeps the property but is liable for the debt in the future (the debt is not discharged by bankruptcy); or
- Redeem the property by paying cash to pay off the security interest.⁵

The statement of intent must be made under penalty of perjury. The debtor must file the statement of intent within 30 days after the filing of the Chapter 7 petition or on or before the date of the meeting of the creditors to appoint a trustee for the estate, whichever date is earlier.⁶ Within 30 days after the first set date for the meeting of the creditors, the debtor must perform his intention with respect to each piece of secured property.⁷

¹ 9 Am Jur 2d Bankruptcy Section 5.

² 11 U.S.C. 362(a)(4).

³ 9 Am Jur 2d Bankruptcy Section 68.

⁴ 9 Am Jur 2d Bankruptcy Section 72.

⁵ *In re Failla*, 838 F. 3d 1170, 1175 (11th Cir. 2016).

⁶ 9 Am Jur 2d Bankruptcy Section 72.

⁷ 11 U.S.C. 521(2)(B).

In Chapter 13 filings, the debtor must create a plan to restructure and repay his or her debt.⁸ For this plan to be confirmed by the court, it must describe how the debtor is responding to each secured claim.⁹ The debtor must make a plan for the secured property that the holder of the claim accepts or the debtor surrenders the property securing the claim to the claim holder.¹⁰

After the debtor has fulfilled his or her duties to the bankruptcy estate, the court must grant the debtor a discharge, unless the debtor acts wrongfully in one of the list of ways set forth in statute.¹¹ As a general matter, this discharge voids any dischargeable debt of the debtor.¹²

Mortgage Foreclosure

A mortgage creates a specific lien, held by the lender or servicer (the “mortgagee”) on the mortgaged property, such as a house.¹³ Mortgages commonly include an “acceleration clause,” which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default of the borrower, who is called the mortgagor. Thus, when a mortgagor fails to meet the terms of the mortgage, such as by missing a payment, the mortgagee has a right to payment of the entire balance of the loan. The legal action taken to obtain this payment is called a foreclosure. And the primary purpose of a foreclosure action is compel the sale of the property, with the sale proceeds going toward payment of the loan balance.¹⁴

The following is a general outline of the judicial foreclosure process:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint;¹⁵
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings;¹⁶
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant;¹⁷
- If an answer is filed, the plaintiff may then file for a motion of summary judgment or proceed to trial; however, the vast majority of plaintiffs file a motion for summary judgment;¹⁸
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and renders a final judgment if he or she finds in the favor of the plaintiff;¹⁹
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury;²⁰

⁸ See 11 U.S.C. 1321 and 1322.

⁹ 11 U.S.C. 1325(a)(5).

¹⁰ 11 U.S.C. 1325(a)(5).

¹¹ 11 U.S.C. 727(a).

¹² 11 U.S.C. 727(b).

¹³ *Cukierman v. BankAtlantic*, 89 So. 3d 250, 251 (Fla. 3d DCA 2012).

¹⁴ See, *Gonzalez v. Chase Home Fin. LLC*, 37 So. 3d 955, 957 (Fla. 3d DCA 2010).

¹⁵ Fla.R.Civ.P. Form 1.944.

¹⁶ Fla.R.Civ.P. 1.070(j).

¹⁷ Fla.R.Civ.P. 1.500.

¹⁸ Fla.R.Civ.P. 1.510(a).

¹⁹ Section 45.031, F.S.

²⁰ Section 702.01, F.S.

- If the plaintiff prevails, the court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment;²¹
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least 5 days prior to the sale;²²
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale;²³
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure;²⁴
- After the 10 days have expired with no objection, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed, and the court may, in its discretion, enter a deficiency decree for the difference between the fair market value of the security received and the amount of the debt;²⁵ and
- The clerk may issue a writ of possession giving possession of the real property to the purchaser and directing the sheriff to assist that purchaser with obtaining possession. Up to the point that a writ of possession is served on the property, the debtor who was foreclosed has the legal right to stay in possession of the real property.

Florida Evidence Code

The Florida Evidence Code governs what evidence may be admitted this state's courts.²⁶ Sections 90.201 and 90.202, F.S., authorize courts to take "judicial notice" of certain facts. Judicial notice is ". . . the cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already know them."²⁷ In other words, if the court takes judicial notice of something, a party need not admit evidence to establish that thing as true. Among several other things, a court may take judicial notice of records of any court of this state or any court of record of the United States.²⁸

The Florida Evidence Code generally prohibits the admission of hearsay evidence.²⁹ Hearsay is an out of court statement admitted to prove the truth of the matter asserted in the statement.³⁰ The general prohibition on the admission of hearsay is subject to many exceptions, including a written admission of an opposing party.³¹

Recent Cases Involving the Problem Addressed by the Bill

In several recent cases, debtors in federal bankruptcy proceedings have agreed to surrender property, and yet continued to fight liquidation of the same property in state foreclosure

²¹ Section 45.031(1)(a), F.S.

²² Section 45.031(2), F.S.

²³ Section 45.031(8), F.S.

²⁴ Section 45.031(8), F.S.

²⁵ Section 702.06, F.S.

²⁶ Section 90.103, F.S.

²⁷ *Mitchum v. State*, 251 So. 2d 298, 300 (Fla. 4th DCA 1972).

²⁸ Section 90.202(6), F.S.

²⁹ Section 90.802, F.S.

³⁰ Section 90.801(1)(c), F.S.

³¹ Section 90.803(18), F.S.

proceedings.³² In *In re Failla*,³³ the debtors filed for bankruptcy in 2011. They admitted that they owned the home, that the home was collateral for the mortgage, and that the mortgage was valid. They filed a statement of their intention to surrender the home in the bankruptcy proceedings. After the filing of their intention to surrender, the debtors continued to live in the home and defend against the creditor's ongoing foreclosure action in state court. The debtors argued that the effect of the surrender was simply to lift the automatic stay and allow the creditor to proceed with a foreclosure action in state court.³⁴ The court held that stating an intention to surrender in bankruptcy court meant that the debtors could not contest the foreclosure action in state court.³⁵

III. Effect of Proposed Changes:

The bill addresses the problem of a debtor in a bankruptcy action declaring his or her intention to give up property, then litigating to keep the property in a foreclosure action.

The bill allows for a certain documents that were filed in a bankruptcy case and that show a debtor's intention to surrender property to be filed subsequently in a mortgage foreclosure proceeding as admissions against a debtor/mortgagor. A mortgage foreclosure is a legal action by a lender against a debtor to force the sale of real property that secures a defaulted-upon loan. The proceeds of the sale are used to repay the debt. Often, a debtor subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action plus a discharge of the mortgage debt.

In bankruptcy, a debtor must file a statement under penalty of perjury stating his or her intent to retain, redeem, or surrender any property securing a debt. The debtor is supposed to act on that decision as a condition of obtaining a discharge of his or her debts. In some cases, debtors have stated an intention to surrender real property in bankruptcy proceedings, but later have actively contested the completion of a foreclosure proceeding regarding the property in state court.

This bill provides that a lender may use certain documents filed in a bankruptcy case as an admission by the defendant in a foreclosure case. To qualify, these documents must:

- Evidence intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Not have been withdrawn by the defendant; and
- Be submitted together with a final bankruptcy order that discharges the defendant's debts or confirms the defendant's repayment plan.

And submitting a document meeting these criteria creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure.

The bill also requires the court in a foreclosure case to take judicial notice, pursuant to s. 90.203, F.S., of any order entered in a bankruptcy case upon the request of a lienholder. Lastly, regarding the document that evidenced the defendant's intention to surrender the mortgaged property to the

³² See, e.g., *Green Tree Servicing v. Hardmon*, Case No. 162012-CA-13629-FC-E (Fla. 4th Judicial Circuit November 13, 2015); *In re Guerra*, 544 B.R. 707 (Bankr. M.D. Fla. 2016); *In re Metzler*, 530 B.R. 894 (Bankr. M.D. Fla. 2015).

³³ *In re Failla*, 838 F.3d 1170 (11th Cir. 2016).

³⁴ *In re Failla*, 838 F.3d at 1173-1175.

³⁵ *In re Failla*, 838 F.3d at 1178.

lienholder, the defendant is expressly guaranteed the authority to raise a defense in the foreclosure case based upon the lienholders' action or inaction subsequent to the document's filing.

The bill takes effect on October 1, 2017, and applies to foreclosure actions filed on or after that date.

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 expedite some foreclosure cases, thus decreasing the cost of these proceedings.

C. Government Sector Impact:

The bill may expedite some foreclosure cases, thus decreasing costs to the court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 702.12, Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on March 22, 2017:

The committee substitute requires a court in foreclosure proceeding to, upon the request of a lienholder, take judicial notice of any order entered in a bankruptcy case, pursuant to s. 90.203, F.S.

CS by Banking and Insurance on March 6, 2017:

The CS makes stylistic changes to improve clarity.

- B. **Amendments:**

None.



619668

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
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	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 22 - 34
and insert:

(b) A rebuttable presumption that the defendant has waived any defenses to the foreclosure is created if a lienholder enters documents filed in the defendant's bankruptcy case which:

1. Evidence the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;

2. Have not been withdrawn by the defendant; and



619668

3. Show that a final order has been entered in the
defendant's bankruptcy case which discharges the defendant's
debts or confirms the defendant's repayment plan that provides
for the surrender of the property.

(2) Pursuant to s. 90.203, a court shall take judicial
notice of any order entered in a bankruptcy case upon the
request of a lienholder.

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

And the title is amended as follows:

Delete lines 7 - 8

and insert:

action creates a rebuttable presumption that the
defendant has waived any defenses to the foreclosure;
requiring a court to take judicial notice of

By the Committee on Banking and Insurance; and Senator Passidomo

597-02142-17

2017660c1

A bill to be entitled

An act relating to bankruptcy matters in foreclosure proceedings; creating s. 702.12, F.S.; authorizing lienholders to use certain documents as an admission in an action to foreclose a mortgage; providing that submission of certain documents in a foreclosure action creates a rebuttable presumption; authorizing lienholders to make a request for judicial notice of final orders entered in bankruptcy cases; providing construction; providing applicability; providing an effective date.

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

Section 1. Section 702.12, Florida Statutes, is created to read:

702.12 Actions in foreclosure.—

(1) (a) A lienholder, in an action to foreclose a mortgage, may submit any document the defendant filed in the defendant's bankruptcy case under penalty of perjury for use as an admission by the defendant.

(b) The lienholder's entry of a document the defendant filed in the defendant's bankruptcy case which evidences intention to surrender to the lienholder the property that is the subject of the foreclosure, which document has not been withdrawn by the defendant, together with the submission of a final order entered in the bankruptcy case which discharges the defendant's debts or confirms the defendant's repayment plan which intention is contained therein, creates a rebuttable

Page 1 of 2

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

597-02142-17

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presumption that the defendant has waived any defenses to the foreclosure.

(2) In addition to a request set forth in s. 90.203, the lienholder may request that the court take judicial notice of any final order entered in a bankruptcy case.

(3) This section does not preclude the defendant in a foreclosure action from raising a defense based upon the lienholder's action or inaction subsequent to the filing of the document filed in the bankruptcy case which evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

(4) This section applies to any foreclosure action filed on or after October 1, 2017.

Section 2. This act shall take effect October 1, 2017.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 6, 2017

I respectfully request that **Senate Bill #660**, relating to Foreclosures, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/23/17

Meeting Date

SB 660

Bill Number (if applicable)

Topic Foreclosure in Bankruptcy Proceedings

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP - FL Bankers

Address 1001 Thomasville Rd. Ste 201

Phone 850-224-2265

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Tallahassee

FL

32301

City

State

Zip

Email kpratt@FloridaBankers.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Bankers Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-17

Meeting Date

660

Bill Number (if applicable)

Topic Bankruptcy matters in Foreclosures

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Dir. of Governmental Affairs

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FL

32311

City

State

Zip

Email jennifer.martin@lscu.coop

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Credit Union Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 954

INTRODUCER: Senators Passidomo and Braynon

SUBJECT: Canvassing of Vote-by-mail Ballots

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Ulrich	EE	Favorable
2.	Davis	Cibula	JU	Favorable
3.			RC	

I. Summary:

SB 954 creates a statutory affidavit “cure” process to remedy and count a vote-by-mail ballot where the ballot signature submitted by the voter does not match the signature on file in the registration book or precinct register. This new process is similar to the process for curing a vote-by-mail ballot with *no signature*, adopted by the Legislature in 2013.

In order to count a *mismatched* signature ballot, the bill requires the voter to submit:

- A signed affidavit attesting to his or her eligibility along with the fact that he or she requested and returned a vote-by-mail ballot, and acknowledging that committing voter fraud or voting multiple ballots is a third degree felony; and
- A copy of the same type of current and valid picture identification required at the polls.

The bill more effectively implements an *ad hoc* procedure that a federal district court judge recently mandated for counting mismatched-signature ballots during the 2016 election cycle. That same court stayed proceedings on a permanent injunction until May of 2017, ostensibly to give the Legislature an opportunity to address this issue during the upcoming legislative session.

The bill takes effect upon becoming a law.

II. Present Situation:

In 2013, at the urging of the state supervisors of elections, the Legislature changed the law to allow a voter who returned a vote-by-mail ballot *without a signature* on the Voter’s Certificate (on the back of the mailing envelope) to correct or “cure” the defect by submitting a sworn affidavit along with corroborating identification.¹

¹ Ch. 2013-57, § 15, Laws of Fla. (codified at § 101.68, F.S.) Previously, the practice had been that a ballot was deemed “cast” when a voter took the final step that enabled the ballot to be counted.

For the 2014 election cycle, county canvassing boards cured *missing* vote-by-mail ballot signatures by confirming the validity of the voter identification submitted and comparing the voter's signature on the cure affidavit with the registration signature on file in the registration books or precinct register. If the voter ID was valid and the signatures matched, the canvassing board counted the ballot; otherwise, the board rejected the ballot and notified the voter of the reason, *post-election*.² The notification included a card for the voter to update his or her signature for the next election. It is important to note that a matching voter signature was an essential component of the cure process for determining the validity of the ballot.³

In 2016, shortly before the general election, U.S. District Judge Mark Walker ruled that the state's failure to provide a process for curing vote-by-mail ballots with *mismatched* signatures was unconstitutional in light of the State's statutory procedure for correcting *missing* signatures.⁴ The federal court issued a temporary injunction directing the state to offer the same process for curing both types of signature deficiencies, notwithstanding that Florida law *requires a matching signature on the cure affidavit* in order for a ballot to count.⁵

As a result, the only mismatched-signature ballots that canvassing boards should have remedied under the judge's order were those where the voter returned an affidavit with a *matching* signature, perhaps because the voter:

- Hurriedly wrote his or her signature on the original Voter's Certificate or signed on an uneven surface, but was more precise in signing the cure affidavit; or
- Recalled using a different signature in the past, and signed the cure affidavit with that prior signature.⁶

The judge's order did not provide relief to voters who submitted the *same* mismatched signature on both the Voter's Certificate *and* cure affidavit, perhaps resulting from:

- The voter forgetting that he or she had registered using a different signature; or
- The voter's signature deteriorating or changing *over time* as the result of the natural aging process or a specific health-related event (i.e., stroke, blindness, paralysis, and dementia).

² There was and is no statutory requirement that the supervisors notify voters who submit missing ballot signatures. The idea was that third parties (political parties and other groups) who follow vote-by-mail ballot returns on a daily basis would handle that responsibility.

³ "The canvassing board shall, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate **or on the absentee ballot affidavit as provided in subsection (4)** [the cure affidavit] with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that absentee ballot." (emphasis added) Section 101.68(1)(c)1., F.S. (2014).

⁴ *Fla. Democratic Party v. Detzner*, 2016 U.S. Dist. LEXIS 143620, Case No. 4:16cv607-MW/CAS (N.D. Fla., Oct. 16, 2016). The court opined, "It is illogical, irrational, and patently bizarre for the State of Florida to withhold the opportunity to cure from mismatched-signature voters while providing that same opportunity to no-signature voters. And in doing so, the State of Florida has categorically disenfranchised thousands of voters arguably for no reason other than they have poor handwriting or their handwriting has changed over time." *Id.* at 22.

⁵ The State chose not to defend the statute on substantive grounds, leaving the judge only the one-sided Petitioner's brief/argument and Florida statutory law as sources of information from which to construct the opinion.

⁶ A person may use different signatures at various stages of life, especially at a younger age when the person is seeking to establish his or her own identity.

The federal court stayed the case with a permanent injunction until Friday, May 5, 2017, the last day of the regular session and scheduled a status conference for the week of May 15, 2017.⁷

III. Effect of Proposed Changes:

SB 954 creates a process for a voter to cure a vote-by-mail ballot with a *non-matching* signature. The voter must submit a signed “cure” affidavit along with a copy of a valid picture ID. This is similar to the process the Legislature authorized in 2013 for fixing vote-by-mail ballots that contained *no signature*, a process which is maintained and expanded upon in the current bill.

The cure process for both types of defective ballots begins when a Supervisor of Elections receives a vote-by-mail ballot that contains *no signature* or that contains a signature that *does not match* the voter’s signature in the registration book or precinct register. The supervisor must immediately notify the voter⁸ and provide an opportunity to cure the defect by submission of a signed cure affidavit and a copy of a proper ID no later than 5:00 p.m. on the day before the election — the current deadline for correcting a ballot with no signature.⁹

The decision tree in Section VII, Related Issues graphically details the process for canvassing vote-by-mail ballots with missing or mismatched signatures. Key points from the diagram are discussed below.

Mismatched-Signature Ballots

A voter may cure a mismatched signature on a vote-by mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, which is now categorized as Tier 1 identification, such as a Florida driver’s license or passport,¹⁰ if the signature on the cure affidavit does not match the voter’s signature on file; or
- Either Tier 1 identification, such as picture identification that is accepted at the polls or one of the lesser forms of identification currently authorized in law for curing

⁷ *Fla. Dem. Party, et al. v. Detzner*, No. 4:16cv607-MW/CAS (N.D. Fla, Dec. 12, 2016) (order staying case).

⁸ Current law does not specifically task the supervisor with this responsibility, as the 2013 authorizing legislation envisioned notification by campaigns, parties, and interested third-party groups that track vote-by-mail ballots on a daily basis. This position is no longer viable given the judge’s temporary injunction in *Fla. Dem. Party* case directing the supervisors to provide such notice, notwithstanding that the directive may have sprung from a misunderstanding of current Florida law. See *Fla. Dem. Party v. Detzner*, No. 4:16cv607-MW/CAS at p. 28-29 (N.D. Fla., Oct. 16, 2016) (citing a notice provision historically applied only *post-election*).

⁹ The affidavit and instructions are available on the Division of Elections and all supervisors’ websites, along with all relevant contact information and mailing addresses. Section 101.68(4)(e), F.S. (re-designated as subparagraph (d) in the bill).

¹⁰ Tier 1 identification includes the following current and valid photo IDs: Florida driver license; Florida identification card issued by the Department of Highway Safety and Motor Vehicles; United States passport; debit or credit card; military identification; student identification; retirement center identification; neighborhood association identification; public assistance identification; veteran health identification card issued by the United States Department of Veterans Affairs; a Florida license to carry a concealed weapon or firearm; or, an employee identification card issued by any branch, department, agency, or entity of the Federal Government, the state, a county, or a municipality. The bill also *specifically* designates a Florida driver’s license and state-issued ID as permissible forms of photo identification, a clarification of the original 2013 legislation that incorporates the current practice and informal legal interpretation.

missing signatures with the voter's name and current residence address, which is — categorized in the bill as Tier 2¹¹ identification, such as a current utility bill, if the signature on the cure affidavit does not match the voter's signature on file.

Missing-Signature Ballots¹²

A voter may cure a missing signature on a vote-by mail ballot by submitting:

- A *signed affidavit* attesting to his or her eligibility to vote and attesting to the fact that he or she requested and returned a vote-by-mail ballot; and
- The same type of current and valid picture identification required at the polls, now categorized as Tier 1 identification,¹³ if the signature on the cure affidavit does not match the voter's signature on file; or
- Either Tier 1 identification, like a photo identification acceptable at the polls, or one of the lesser forms of identification currently authorized in law with the voter's name and current residence address, which is categorized in the bill as Tier 2,¹⁴ such as a current utility bill, if the signature on the cure affidavit does match the voter's signature on file.

Additional minor changes made by the bill include:

- Modifying the cure affidavit instructions to request a preference for Tier 1 identification, if available. (If the signature on the cure affidavit does not match the signature on file, the voter must have submitted a current and valid Tier 1 photo ID for the ballot to count.)
- Amending the *post-election* notification process to require that a supervisor of elections send a voter registration card to any voter whose ballot *counted* notwithstanding a non-matching signature — for purposes of updating the signature for the next election.
- Making technical, conforming, and structural changes to the statute.

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.

¹¹ Tier 2 identification includes a current utility bill, bank statement, government check, paycheck, or government document, but excluding a voter identification card.

¹² With the exception of providing an *additional* opportunity for a voter to cure a defective ballot upon submission of a cure affidavit with a *mismatched* voter signature, which would not count under current law, the process for cure remains the same.

¹³ See *supra* note 10.

¹⁴ See *supra* note 11.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

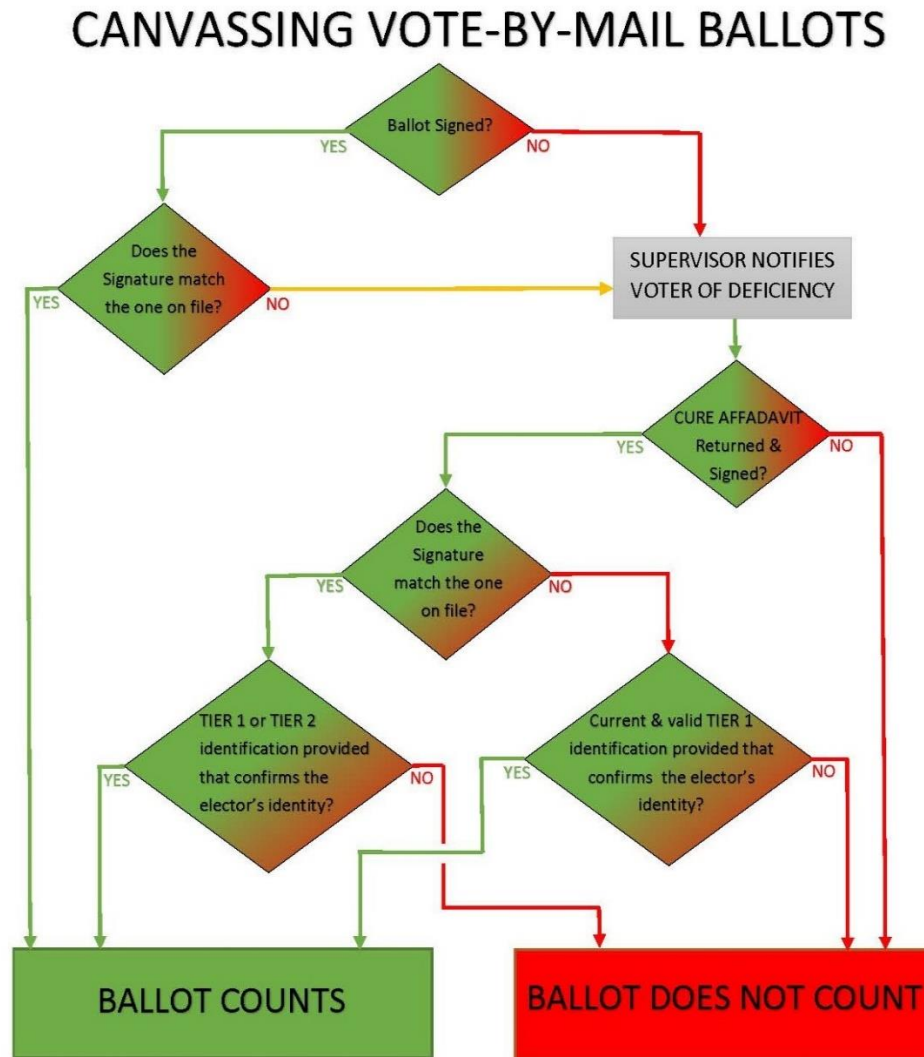
Supervisors of Elections may incur some additional costs to notify voters who submit vote-by-mail ballots with missing or mismatched signatures and do not have an e-mail address on file. Such costs are expected to be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The following decision tree outlines the canvassing board process for determining the validity of vote-by-mail ballots with missing and/or mismatched signatures:



VIII. Statutes Affected:

This bill substantially amends section 101.68, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Passidomo

28-00662A-17

2017954__

1 A bill to be entitled
 2 An act relating to the canvassing of vote-by-mail
 3 ballots; amending s. 101.68, F.S.; deleting an
 4 obsolete date; modifying and clarifying provisions
 5 governing the canvassing of vote-by-mail ballots;
 6 authorizing use of the vote-by-mail ballot cure
 7 affidavit if an elector's signature does not match the
 8 signature in the registration books or precinct
 9 register; requiring the supervisor of elections to
 10 immediately notify an elector upon receipt of a vote-
 11 by-mail ballot with a missing or mismatched signature;
 12 revising terminology; revising the cure affidavit
 13 instructions with respect to acceptable forms of
 14 identification; specifying that a Florida driver
 15 license or Florida identification card are acceptable
 16 forms of identification for purposes of curing a vote-
 17 by-mail ballot; expanding the scope of post-election
 18 signature update requests to include electors who
 19 cured a vote-by-mail ballot with a mismatched
 20 signature; providing an effective date.
 21
 22 Be It Enacted by the Legislature of the State of Florida:
 23
 24 Section 1. Section 101.68, Florida Statutes, is amended to
 25 read:
 26 101.68 Canvassing of vote-by-mail ballot.—
 27 (1) The supervisor of the county where the absent elector
 28 resides shall receive the voted ballot, at which time the
 29 supervisor shall compare the signature of the elector on the

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30 voter's certificate with the signature of the elector in the
 31 registration books or the precinct register to determine whether
 32 the elector is duly registered in the county and may record on
 33 the elector's registration certificate that the elector has
 34 voted. ~~However, effective July 1, 2005,~~ An elector who dies
 35 after casting a vote-by-mail ballot but on or before election
 36 day shall remain listed in the registration books until the
 37 results have been certified for the election in which the ballot
 38 was cast. The supervisor shall safely keep the ballot unopened
 39 in his or her office until the county canvassing board canvasses
 40 the vote. Except as provided in subsection (4), after a vote-by-
 41 mail ballot is received by the supervisor, the ballot is deemed
 42 to have been cast, and changes or additions may not be made to
 43 the voter's certificate.
 44 (2) (a) The county canvassing board may begin the canvassing
 45 of vote-by-mail ballots at 7 a.m. on the 15th day before the
 46 election, but not later than noon on the day following the
 47 election. In addition, for any county using electronic
 48 tabulating equipment, the processing of vote-by-mail ballots
 49 through such tabulating equipment may begin at 7 a.m. on the
 50 15th day before the election. However, notwithstanding any such
 51 authorization to begin canvassing or otherwise processing vote-
 52 by-mail ballots early, no result shall be released until after
 53 the closing of the polls in that county on election day. Any
 54 supervisor of elections, deputy supervisor of elections,
 55 canvassing board member, election board member, or election
 56 employee who releases the results of a canvassing or processing
 57 of vote-by-mail ballots prior to the closing of the polls in
 58 that county on election day commits a felony of the third

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degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) To ensure that all vote-by-mail ballots to be counted by the canvassing board are accounted for, the canvassing board shall compare the number of ballots in its possession with the number of requests for ballots received to be counted according to the supervisor's file or list.

(c)1. The canvassing board must ~~shall~~, if the supervisor has not already done so, compare the signature of the elector on the voter's certificate or on the vote-by-mail ballot cure affidavit as provided in subsection (4) with the signature of the elector in the registration books or the precinct register to see that the elector is duly registered in the county and to determine the legality of that vote-by-mail ballot. A vote-by-mail ballot may only be counted if:

a. The signature on the voter's certificate or the cure affidavit matches the elector's signature in the registration books or precinct register; however, in the case of a cure affidavit, the supporting identification listed in subsection (4) must also confirm the identity of the elector; or

b. The cure affidavit contains a signature that does not match the elector's signature in the registration books or precinct register, but the elector has submitted a current and valid Tier 1 identification pursuant to subsection (4) which confirms the identity of the elector.

2. The ballot of an elector who casts a vote-by-mail ballot shall be counted even if the elector dies on or before election day, as long as, before ~~prior to~~ the death of the voter, the ballot was postmarked by the United States Postal Service, date-

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stamped with a verifiable tracking number by a common carrier, or already in the possession of the supervisor of elections. A ~~vote-by-mail ballot is considered illegal if the voter's certificate or vote-by-mail ballot affidavit does not include the signature of the elector, as shown by the registration records or the precinct register. However,~~

3. A vote-by-mail ballot is not considered illegal if the signature of the elector does not cross the seal of the mailing envelope. ~~If the canvassing board determines that any ballot is illegal, a member of the board shall, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The vote-by-mail ballot affidavit, if applicable, the envelope, and the ballot contained therein shall be preserved in the manner that official ballots voted are preserved.~~

4.2. If any elector or candidate present believes that a vote-by-mail ballot is illegal due to a defect apparent on the voter's certificate or the cure ~~vote-by-mail ballot~~ affidavit, he or she may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of that ballot, specifying the precinct, the ballot, and the reason he or she believes the ballot to be illegal. A challenge based upon a defect in the voter's certificate or cure ~~vote-by-mail ballot~~ affidavit may not be accepted after the ballot has been removed from the mailing envelope.

5. If the canvassing board determines that a ballot is illegal, a member of the board must, without opening the envelope, mark across the face of the envelope: "rejected as illegal." The cure affidavit, if applicable, the envelope, and the ballot therein shall be preserved in the manner that

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117 official ballots are preserved.

118 (d) The canvassing board shall record the ballot upon the
 119 proper record, unless the ballot has been previously recorded by
 120 the supervisor. The mailing envelopes shall be opened and the
 121 secrecy envelopes shall be mixed so as to make it impossible to
 122 determine which secrecy envelope came out of which signed
 123 mailing envelope; however, in any county in which an electronic
 124 or electromechanical voting system is used, the ballots may be
 125 sorted by ballot styles and the mailing envelopes may be opened
 126 and the secrecy envelopes mixed separately for each ballot
 127 style. The votes on vote-by-mail ballots shall be included in
 128 the total vote of the county.

129 (3) The supervisor or the chair of the county canvassing
 130 board shall, after the board convenes, have custody of the vote-
 131 by-mail ballots until a final proclamation is made as to the
 132 total vote received by each candidate.

133 ~~(4) (a) The supervisor of elections shall, on behalf of the~~
 134 ~~county canvassing board, notify each elector whose ballot was~~
 135 ~~rejected as illegal and provide the specific reason the ballot~~
 136 ~~was rejected. The supervisor shall mail a voter registration~~
 137 ~~application to the elector to be completed indicating the~~
 138 ~~elector's current signature if the elector's ballot was rejected~~
 139 ~~due to a difference between the elector's signature on the~~
 140 ~~voter's certificate or vote-by-mail ballot affidavit and the~~
 141 ~~elector's signature in the registration books or precinct~~
 142 ~~register. This section does not prohibit the supervisor from~~
 143 ~~providing additional methods for updating an elector's~~
 144 ~~signature.~~

145 ~~(b) Until 5 p.m. on the day before an election, The~~

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146 supervisor shall, on behalf of the county canvassing board,
 147 immediately notify ~~allow~~ an elector who has returned a vote-by-
 148 mail ballot that does not include the elector's signature or
 149 contains a signature that does not match the elector's signature
 150 in the registration books or precinct register. The supervisor
 151 shall allow such an elector to complete and submit an affidavit
 152 in order to cure the ~~unsigned~~ vote-by-mail ballot until 5 p.m.
 153 on the day before the election.

154 ~~(b) (c)~~ The elector ~~shall provide identification to the~~
 155 ~~supervisor and must complete a~~ cure ~~vote-by-mail ballot~~
 156 affidavit in substantially the following form:

VOTE-BY-MAIL BALLOT CURE AFFIDAVIT

157
 158 I,, am a qualified voter in this election and
 159 registered voter of County, Florida. I do solemnly swear or
 160 affirm that I requested and returned the vote-by-mail ballot and
 161 that I have not and will not vote more than one ballot in this
 162 election. I understand that if I commit or attempt any fraud in
 163 connection with voting, vote a fraudulent ballot, or vote more
 164 than once in an election, I may be convicted of a felony of the
 165 third degree and fined up to \$5,000 and imprisoned for up to 5
 166 years. I understand that my failure to sign this affidavit means
 167 that my vote-by-mail ballot will be invalidated.

168
 169 ... (Voter's Signature)...

170
 171 ... (Address)...

172
 173 ~~(c) (d)~~ Instructions must accompany the cure ~~vote-by-mail~~
 174 ~~ballot~~ affidavit in substantially the following form:

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175
176 READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE
177 AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR
178 BALLOT NOT TO COUNT.

179
180 1. In order to ensure that your vote-by-mail ballot will be
181 counted, your affidavit should be completed and returned as soon
182 as possible so that it can reach the supervisor of elections of
183 the county in which your precinct is located no later than 5
184 p.m. on the ~~2nd~~ day before the election.

185 2. You must sign your name on the line above (Voter's
186 Signature).

187 3. You must make a copy of one of the following forms of
188 identification:

189 a. Tier 1 identification.—Current and valid identification
190 that includes your name and photograph: Florida driver license;
191 Florida identification card issued by the Department of Highway
192 Safety and Motor Vehicles; United States passport; debit or
193 credit card; military identification; student identification;
194 retirement center identification; neighborhood association
195 identification; public assistance identification; veteran health
196 identification card issued by the United States Department of
197 Veterans Affairs; a Florida license to carry a concealed weapon
198 or firearm; or an employee identification card issued by any
199 branch, department, agency, or entity of the Federal Government,
200 the state, a county, or a municipality; or

201 b. Tier 2 identification.—ONLY IF YOU DO NOT HAVE A TIER 1
202 FORM OF IDENTIFICATION, identification that shows your name and
203 current residence address: current utility bill, bank statement,

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204 government check, paycheck, or government document (excluding
205 voter identification card).

206 4. Place the envelope bearing the affidavit into a mailing
207 envelope addressed to the supervisor. Insert a copy of your
208 identification in the mailing envelope. Mail, deliver, or have
209 delivered the completed affidavit along with the copy of your
210 identification to your county supervisor of elections. Be sure
211 there is sufficient postage if mailed and that the supervisor's
212 address is correct.

213 5. Alternatively, you may fax or e-mail your completed
214 affidavit and a copy of your identification to the supervisor of
215 elections. If e-mailing, please provide these documents as
216 attachments.

217 (d) (e) The department and each supervisor shall include the
218 affidavit and instructions on their respective websites. The
219 supervisor must include his or her office's mailing address, e-
220 mail address, and fax number on the page containing the
221 affidavit instructions; the department's instruction page must
222 include the office mailing addresses, e-mail addresses, and fax
223 numbers of all supervisors of elections or provide a conspicuous
224 link to such addresses.

225 (e) (f) The supervisor shall attach each affidavit received
226 to the appropriate vote-by-mail ballot mailing envelope.

227 (f) After all election results on the ballot have been
228 certified, the supervisor shall, on behalf of the county
229 canvassing board, notify each elector whose ballot has been
230 rejected as illegal and provide the specific reason the ballot
231 was rejected. In addition, the supervisor shall mail a voter
232 registration application to the elector to be completed

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233 indicating the elector's current signature if the signature on
234 the voter's certificate or cure affidavit did not match the
235 elector's signature in the registration books or precinct
236 register. This section does not prohibit the supervisor from
237 providing additional methods for updating an elector's
238 signature.

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



**SENATOR KATHLEEN
PASSIDOMO**
28th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Healthy Policy, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism

SELECT COMMITTEE:

Joint Select Committee on Collective
Bargaining

JOINT COMMITTEE:

Joint Legislative Auditing Committee

March 8, 2017

The Honorable Greg Steube, Chair
Committee on Judiciary
Florida Senate
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Steube:

Senate Bill 954, Canvassing of Vote-by-mail ballots, has been referred to the Committee on Judiciary. I would appreciate the placing of this bill on the committee agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Kathleen C. Passidomo

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Assistant

REPLY TO:

☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

954

Bill Number (if applicable)

Topic Vote by mail

Amendment Barcode (if applicable)

Name Kelly Quintana

Job Title legislative advocate

Address 540 Beverly Ct

Phone 772 204 1792

Street

Tallahassee

State

FL

Zip

City

Email lvwfadvocacy@

gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 672

INTRODUCER: Senator Bean

SUBJECT: Certificates of Nonviable Birth

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Favorable
2.	Davis	Cibula	JU	Favorable
3.			AP	

I. Summary:

SB 672 creates the “Grieving Families Act,” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The bill defines a “nonviable birth” as an unintentional, spontaneous fetal demise that occurs after the completion of the 9th week of gestation but before the 20th week of gestation of a pregnancy. The pregnancy must have been verified by a health care practitioner.

When requested to do so by a parent, the Department of Health, Office of Vital Statistics, must register nonviable births based upon information submitted by certain health care practitioners and facilities. The department must then issue a certificate within 60 days of a parent’s properly submitted request. The person required to register a nonviable birth must advise a parent how to request the certificate of nonviable birth.

The bill prohibits using a certificate of nonviable birth in the calculation of live birth statistics.

The bill specifies that the provisions in this act may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

II. Present Situation:

Vital Statistics

The Office of Vital Statistics,¹ housed within the Department of Health, is responsible for compiling, storing, and preserving the vital records of the state. Vital records² are the official certificates or reports of birth, death, fetal death, marriage, dissolution of marriage, certain name changes, and data related to these records.

Florida officially began collecting birth and death records in 1917. Two years later, in 1919, the state became a nationally recognized death registration jurisdiction. In 1924, the state became a nationally recognized birth registration jurisdiction. Since 1927, marriage and dissolution records have been filed with the Office of Vital Statistics.³ In addition to the state office, which operates under the direction of the state registrar, district offices operate under the direction of local registrars.

Birth Registration

A certificate for each live birth that occurs in this state must be filed within 5 days after the birth. The certificate may be filed with the local registrar of the district where the birth occurred or submitted electronically to the state registrar. Responsibility for filing the certificate is assigned to various persons depending upon where the birth occurs. For example, if the birth occurs in a hospital, birth center, or other health care facility, or in route thereto, the person in charge of the facility is responsible for filing the certificate. The health care practitioner in attendance is responsible for providing the facility with the information required by the birth certificate. If the birth occurs outside a facility and a physician, certified nurse midwife, midwife, or a public health nurse was in attendance, then that person must file the certificate.⁴

Death and Fetal Death Registration

A certificate for each death or fetal death⁵ that occurs in this state must be filed within 5 days after the death. The certificate may be filed with the local registrar of the district in which the death or fetal death occurred or submitted electronically to the state registrar.⁶

¹ The statutes consistently refer to the “Office” of Vital Statistics and not the “Bureau” of Vital Statistics. For example, see s. 382.003, F.S. While the statutes refer to an Office of Vital Statistics, the department has established this responsibility at the bureau level. See the Department’s Organizational chart available at: <http://www.floridahealth.gov/about-the-department-of-health/documents/orgchart.pdf>.

² Section 382.002(17), F.S.

³ Department of Health, Florida Vital Statistics Annual Report, August 2016, Page *vii*, <http://www.flpublichealth.com/VSBOOK/pdf/2015/Intro.pdf> (last visited March 16, 2017).

⁴ Section 382.013, F.S.

⁵ Section 382.002(8), F.S., defines “fetal death” as death prior to the complete expulsion or extraction of a product of human conception from its mother if the 20th week of gestation has been reached and the death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles.

⁶ Section 382.008(1).

Katherine's Law - Certificate of Birth Resulting in Stillbirth

In 2006, Florida's governor signed into law legislation that allows for the creation and issuance of a certificate of birth resulting in stillbirth.⁷ This law is known as Katherine's Law.⁸

The certificate of birth resulting in stillbirth is not proof of live birth⁹ and may not be used to establish identity.¹⁰ Gestation must be 20 weeks or more,¹¹ and there must be a fetal death certificate on file with the Bureau of Vital Statistics in order for a certificate to be prepared. The information included on the certificate comes from the fetal death certificate.

Miscarriage

Miscarriage is often described as the spontaneous loss of a pregnancy that occurs before the 20th week of gestation. Approximately 10 to 20 percent of all known pregnancies end in miscarriage. The number of miscarriages might actually be higher because some occur before a woman is aware that she is pregnant.¹²

Stephanie Saboor Grieving Parents Act

In 2003, the Legislature enacted the Stephanie Saboor Grieving Parents Act.¹³ The act applies to a physician, physician assistant, nurse, or midwife¹⁴ or a hospital, ambulatory surgical center, or birth center¹⁵ with custody of fetal remains following a spontaneous fetal demise that occurs after a gestation period of less than 20 completed weeks. Those persons or facilities are required to notify the mother of her option to arrange for the burial or cremation of the fetal remains, as well as the procedures provided by general law.^{16,17}

III. Effect of Proposed Changes:

SB 672 creates the “Grieving Families Act,” which enables a parent to obtain, in certain situations, a certificate of nonviable birth following a miscarriage. The provisions of this act closely follow the provisions for obtaining a certificate of birth resulting in stillbirth.

⁷ Section 382.002(16), F.S., defines “stillbirth” as an unintended, intrauterine fetal death after a gestational age of not less than 20 completed weeks.

⁸ Ch. 2006-118, Laws of Fla.

⁹ Section 382.0085(4)(e), F.S.

¹⁰ See <http://www.floridahealth.gov/certificates/certificates/birth/Stillbirth/index.html> (last visited March 16, 2017).

¹¹ Section 382.002(16), F.S.

¹² See for example, The Mayo Clinic, Miscarriage website at: <http://www.mayoclinic.org/diseases-conditions/pregnancy-loss-miscarriage/home/ovc-20213664>, (last visited on March 16, 2017).

¹³ Chapter 2003-52, L.O.F., codified at s. 383.33625, F.S.

¹⁴ See s. 383.33625(2), F.S., which requires a health care practitioner licensed pursuant to chapter 458, 459, 464, or 467, F.S., to provide the notification.

¹⁵ Section 383.33625(4), F.S., requires a facility licensed pursuant to chapter 383 or chapter 395, F.S., to provide the notification.

¹⁶ Section 383.33625(4), F.S.

¹⁷ Fetal remains of less than 20 completed weeks of gestation would be considered biomedical waste, which is governed by s. 381.0098, F.S.

The bill defines a “nonviable birth” as an unintentional, spontaneous fetal demise that occurs after the completion of the 9th week of gestation but before the 20th week of gestation. The pregnancy must have been verified by a health care practitioner.

A parent who experiences a nonviable birth may request a licensed nurse or licensed midwife who attends or diagnoses a nonviable birth, or a hospital, ambulatory surgical center, or birthing center at which a nonviable birth occurs, to electronically file or submit a form for a registration of nonviable birth. The health care practitioner or facility must electronically file or submit the form to the Office of Vital Statistics within 30 days after receipt of the request.

These health care practitioners or facilities must advise a parent who experiences a nonviable birth of the opportunity to request the preparation of a certificate of nonviable birth, how to contact the Office of Vital Statistics in order to obtain the certificate of nonviable birth, and that a copy of the original is available as a public record.

The Department of Health must issue a certificate of nonviable birth within 60 days after receipt of a properly completed request from a parent named on the registration of nonviable birth. The bill requires the request for a certificate of nonviable birth to be on a form adopted by department rule and include the date of the nonviable birth and the county in which the nonviable birth occurred.

The certificate of nonviable birth must contain:

- The date of the nonviable birth.
- The county in which the nonviable birth occurred.
- The name of the fetus, as indicated on the registration of nonviable birth. If a name was not provided on the original or amended registration and the parent chooses not to provide a name, the certificate will use “baby boy,” “baby girl,” or “baby” if the sex is unknown, and the last name of the parents.
- A statement on the front of the certificate which provides, “This certificate is not proof of a live birth.”

Only a parent named on the nonviable birth registration may request the Office of Vital Statistics to issue a certificate of nonviable birth. This request may be made at any time. The bill provides that the office may refuse to issue a certificate of nonviable birth to a person who is not a parent named on the nonviable birth registration. This refusal is final agency action and is not subject to review under chapter 120, F.S., the Administrative Procedures Act. Once the certificate has been issued; however, any person may request a copy of that certificate pursuant to a public records request.

The bill further provides:

- That the Office of Vital Statistics may not use a certificate of nonviable birth in the calculation of live birth statistics.
- That the provisions in this act may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

- Rulemaking authority for the department to prescribe the form, content, and process for issuance of a certificate of nonviable birth.
- Authority for the department to impose a fee of between \$3 and \$5 for processing and filing a new certificate of nonviable birth.

The act takes effect July 1, 2017.

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:

A parent who requests the issuance of a certificate of nonviable birth will pay a fee of not less than \$3 or more than \$5.

The specified health care practitioners and health care facilities will incur an administrative expense related to informing patients who have experienced a nonviable birth about their option to request the preparation of a registration of nonviable birth, the issuance of a certificate of nonviable birth, and the information related to that process. An additional administrative expense will be incurred if a parent requests that the registration of nonviable birth be filed with the Office of Vital Statistics.

C. Government Sector Impact:

To the extent that the health care practitioners and health care facilities are governmental entities or engaged in governmental functions when responsibilities under this bill are triggered, they will experience similar administrative expenses as those in the private sector.

The Department of Health will need to develop a web based nonviable birth module and develop forms for registration and certification of nonviable births and system and database changes. The system cost is estimated at \$50,000 per contracted provider.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 674 creates an exemption from the public records law for information relating to the cause of death and the parentage, marital status, and medical information in all nonviable birth records, except for health research purposes. The bills are linked and SB 674, if enacted, will take effect when this bill, or a similar one takes effect.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 382.002, 382.008, 382.0085, and 382.0255.

This bill creates section 382.0086, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

¹⁸ Department of Health, *House Bill 101 Fiscal Analysis* (Jan. 9, 2017) (on file with the Senate Committee on Judiciary.)

By Senator Bean

4-00514A-17

2017672__

A bill to be entitled

An act relating to certificates of nonviable birth; creating the "Grieving Families Act"; amending s. 382.002, F.S.; providing a definition; amending s. 382.008, F.S.; authorizing the State Registrar of the Office of Vital Statistics of the Department of Health to electronically receive a certificate of nonviable birth; requiring certain health care practitioners and health care facilities to electronically file a registration of nonviable birth within a specified timeframe; amending s. 382.0085, F.S.; conforming a cross-reference; creating s. 382.0086, F.S.; requiring the Department of Health to issue a certificate of nonviable birth within a specified timeframe upon the request of a parent; requiring the person registering the nonviable birth to advise the parent that a certificate of nonviable birth is available and that the certificate of nonviable birth is a public record; requiring the request for a certificate of nonviable birth to be on a form prescribed by the department and to include certain information; providing requirements for the certificate of nonviable birth; authorizing a parent to request a certificate of nonviable birth regardless of the date on which the nonviable birth occurred; designating the refusal to issue a certificate of nonviable birth to certain persons as final agency action that is not subject to administrative review; prohibiting the use of certificates of nonviable birth to calculate live birth statistics; prohibiting specified provisions from being used in certain civil actions; authorizing the department to adopt rules; amending s. 382.0255,

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F.S.; authorizing the department to collect fees for processing and filing a new certificate of nonviable birth; providing an effective date.

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

Section 1. This act may be cited as the "Grieving Families Act."

Section 2. Subsections (14) through (18) of section 382.002, Florida Statutes, are renumbered as subsections (15) through (19), respectively, and a new subsection (14) is added to that section, to read:

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

(14) "Nonviable birth" means an unintentional, spontaneous fetal demise occurring after the completion of the 9th week of gestation but prior to the 20th week of gestation of a pregnancy that has been verified by a health care practitioner.

Section 3. Section 382.008, Florida Statutes, is amended to read:

382.008 Death, ~~and~~ fetal death, and nonviable birth registration.—

(1) A certificate for each death and fetal death which occurs in this state shall be filed electronically on the department electronic death registration system or on a form prescribed by the department with the department or local registrar of the district in which the death occurred within 5 days after such death and prior to final disposition, and shall be registered by the department if it has been completed and filed in accordance with this chapter or adopted rules. The

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certificate shall include the decedent's social security number, if available. In addition, each certificate of death or fetal death:

(a) If requested by the informant, shall include aliases or "also known as" (AKA) names of a decedent in addition to the decedent's name of record. Aliases shall be entered on the face of the death certificate in the space provided for name if there is sufficient space;

(b) If the place of death is unknown, shall be registered in the registration district in which the dead body or fetus is found within 5 days after such occurrence; and

(c) If death occurs in a moving conveyance, shall be registered in the registration district in which the dead body was first removed from such conveyance.

(2)(a) The funeral director who first assumes custody of a dead body or fetus shall file the certificate of death or fetal death. In the absence of the funeral director, the physician or other person in attendance at or after the death or the district medical examiner of the county in which the death occurred or the body was found shall file the certificate of death or fetal death. The person who files the certificate shall obtain personal data from a legally authorized person as described in s. 497.005 or the best qualified person or source available. The medical certification of cause of death shall be furnished to the funeral director, either in person or via certified mail or electronic transfer, by the physician or medical examiner responsible for furnishing such information. For fetal deaths, the physician, midwife, or hospital administrator shall provide any medical or health information to the funeral director within

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72 hours after expulsion or extraction.

(b) The State Registrar may receive electronically a certificate of death, ~~or fetal death, or nonviable birth~~ which is required to be filed with the registrar under this chapter through facsimile or other electronic transfer for the purpose of filing the certificate. The receipt of a certificate of death, ~~or fetal death, or nonviable birth~~ by electronic transfer constitutes delivery to the State Registrar as required by law.

(3) Within 72 hours after receipt of a death or fetal death certificate from the funeral director, the medical certification of cause of death shall be completed and made available to the funeral director by the decedent's primary or attending physician or, if s. 382.011 applies, the district medical examiner of the county in which the death occurred or the body was found. The primary or attending physician or medical examiner shall certify over his or her signature the cause of death to the best of his or her knowledge and belief. As used in this section, the term "primary or attending physician" means a physician who treated the decedent through examination, medical advice, or medication during the 12 months preceding the date of death.

(a) The department may grant the funeral director an extension of time upon a good and sufficient showing of any of the following conditions:

1. An autopsy is pending.
2. Toxicology, laboratory, or other diagnostic reports have not been completed.
3. The identity of the decedent is unknown and further investigation or identification is required.

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120 (b) If the decedent's primary or attending physician or
 121 district medical examiner of the county in which the death
 122 occurred or the body was found indicates that he or she will
 123 sign and complete the medical certification of cause of death
 124 but will not be available until after the 5-day registration
 125 deadline, the local registrar may grant an extension of 5 days.
 126 If a further extension is required, the funeral director must
 127 provide written justification to the registrar.

128 (4) If the department or local registrar grants an
 129 extension of time to provide the medical certification of cause
 130 of death, the funeral director shall file a temporary
 131 certificate of death or fetal death which shall contain all
 132 available information, including the fact that the cause of
 133 death is pending. The decedent's primary or attending physician
 134 or the district medical examiner of the county in which the
 135 death occurred or the body was found shall provide an estimated
 136 date for completion of the permanent certificate.

137 (5) A permanent certificate of death or fetal death,
 138 containing the cause of death and any other information that was
 139 previously unavailable, shall be registered as a replacement for
 140 the temporary certificate. The permanent certificate may also
 141 include corrected information if the items being corrected are
 142 noted on the back of the certificate and dated and signed by the
 143 funeral director, physician, or district medical examiner of the
 144 county in which the death occurred or the body was found, as
 145 appropriate.

146 (6) The original certificate of death or fetal death shall
 147 contain all the information required by the department for
 148 legal, social, and health research purposes. All information

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149 relating to cause of death in all death and fetal death records
 150 and the parentage, marital status, and medical information
 151 included in all fetal death records of this state are
 152 confidential and exempt from the provisions of s. 119.07(1),
 153 except for health research purposes as approved by the
 154 department; nor may copies of the same be issued except as
 155 provided in s. 382.025.

156 (7) Upon the request of a parent who experiences a
 157 nonviable birth, a health care practitioner licensed pursuant to
 158 chapter 464 or chapter 467 who attends or diagnoses a nonviable
 159 birth, or a health care facility licensed pursuant to chapter
 160 383 or chapter 395 at which a nonviable birth occurs, shall
 161 electronically file a registration of nonviable birth on the
 162 department electronic death registration system or on a form
 163 prescribed by the department with the department or local
 164 registrar of the district in which the nonviable birth occurred
 165 within 30 days after receipt of such request and shall be
 166 registered with the department if it has been completed and
 167 filed in accordance with this chapter or adopted rules.

168 Section 4. Subsection (9) of section 382.0085, Florida
 169 Statutes, is amended to read:

170 382.0085 Stillbirth registration.—

171 (9) This section or s. 382.002(17) ~~382.002(16)~~ may not be
 172 used to establish, bring, or support a civil cause of action
 173 seeking damages against any person or entity for bodily injury,
 174 personal injury, or wrongful death for a stillbirth.

175 Section 5. Section 382.0086, Florida Statutes, is created
 176 to read:

177 382.0086 Certificate of nonviable birth.—

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(1) For any nonviable birth occurring in this state, the department shall issue a certificate of nonviable birth within 60 days upon the request of a parent named on the registration of nonviable birth.

(2) The person who is required to register a nonviable birth under this chapter shall advise a parent who experiences a nonviable birth:

(a) That the parent may request the preparation of a certificate of nonviable birth.

(b) That the parent may obtain a certificate of nonviable birth by contacting the Office of Vital Statistics.

(c) How the parent may contact the Office of Vital Statistics to request a certificate of nonviable birth.

(d) That a copy of the original certificate of nonviable birth is available as a public record when held by an agency as defined in s. 119.011(2).

(3) The request for a certificate of nonviable birth must be on a form prescribed by department rule and include the date of the nonviable birth and the county in which the nonviable birth occurred.

(4) The certificate of nonviable birth must contain all of the following:

(a) The date of the nonviable birth.

(b) The county in which the nonviable birth occurred.

(c) The name of the fetus, as provided on the registration of nonviable birth pursuant to s. 382.008. If a name does not appear on the original or amended registration of nonviable birth and the requesting parent does not wish to provide a name, the Office of Vital Statistics shall fill in the certificate of

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nonviable birth with the name "baby boy" or "baby girl" and the last name of the parents as provided in s. 382.013(3). If the sex of the child is unknown, the Office of Vital Statistics shall fill in the certificate of nonviable birth with the name "baby" and the last name of the parents as provided in s. 382.013(3).

(d) The following statement, which must appear on the front of the certificate: "This certificate is not proof of a live birth."

(5) A certificate of nonviable birth shall be a public record when held by an agency as defined in s. 119.011(2). The Office of Vital Statistics must inform any parent who requests a certificate of nonviable birth that a copy of the original certificate of nonviable birth is available as a public record.

(6) A parent may request that the Office of Vital Statistics issue a certificate of nonviable birth regardless of the date on which the nonviable birth occurred.

(7) It is final agency action, not subject to review under chapter 120, for the Office of Vital Statistics to refuse to issue a certificate of nonviable birth to a person who is not a parent named on the nonviable birth registration.

(8) The Office of Vital Statistics may not use a certificate of nonviable birth in the calculation of live birth statistics.

(9) This section or s. 382.002(14) may not be used as a basis to establish, bring, or support a civil cause of action seeking damages against any person or entity for bodily injury, personal injury, or wrongful death for a nonviable birth.

(10) The department shall prescribe by rule the form,

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236 content, and process for issuance of a certificate of nonviable
237 birth.

238 Section 6. Paragraph (k) is added to subsection (1) of
239 section 382.0255, Florida Statutes, to read:

240 382.0255 Fees.—

241 (1) The department is entitled to fees, as follows:

242 (k) Not less than \$3 or more than \$5 for processing and
243 filing a new certificate of nonviable birth pursuant to s.
244 382.0086.

245 Section 7. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 15, 2017

I respectfully request that **Senate Bill # 672**, relating to Certificates of Nonviable Birth, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/17

Meeting Date

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

672

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Michael Sheedy

Job Title Executive Director

Address 201 W. Park Ave.

Street

Phone 850.222-3803

Tallahassee

City

FL

State

32301

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Conference of Catholic Bishops

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

672

Bill Number (if applicable)

Topic Non viable birth cert

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Munden Way

Phone 850 567 1202

Street

Tallahassee

FL

State

32309

Zip

Email Watson.Strategies@comcast.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Midwives Assoc of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

672
Bill Number (if applicable)

Topic CERTIFICATES FOR NON-VIABLE BIRTHS

Amendment Barcode (if applicable)

Name MARIA VALERO

Job Title STATE POLICY DIRECTOR

Address 8235 NE 2ND AVE
Street

Phone 786 442 8199

Miami FL 33138
City State Zip

Email CHARO@LATINA INSTITUTE.ORG

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA LATINA ADVOCACY NETWORK

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3-22-17
Meeting Date

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

672
Bill Number (if applicable)

Topic Certificate of Notable Birth

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title MS

Address 625 E. Brevard St

Phone 850-251-4280

Street

City

State

Zip

Email barbraderane1@

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 680

INTRODUCER: Judiciary Committee and Senators Baxley and Garcia

SUBJECT: Bail Bonds

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			BI	
3.			CJ	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 680 provides additional bases for a court to discharge or release a bail bond agent from the obligation to pay the amount of a forfeited bond to a court. Similarly, the bill provides additional bases for a bail bond agent to seek the remission or return of the proceeds of a forfeited bond from a court.

Discharge of a Forfeiture

Current law requires a court to discharge the forfeiture of a bail bond within 60 days after the court determines that at the scheduled day and time of the appearance, the defendant did not appear because of circumstances beyond his or her control or because the defendant was adjudicated insane and confined in an institution or hospital or incarcerated.

This bill requires a court to discharge the forfeiture of a bail bond in additional circumstances. Specifically, the bond must be discharged if within 60 days after the scheduled appearance, the defendant is confined in an immigration detention facility, is deported, or is deceased. Further, the bond must be discharged if the defendant becomes incarcerated and the state refuses to seek the extradition of the defendant within 30 days after a surety agent's request if the surety agrees to pay all costs and expenses to return the defendant.

The bill also revises an existing ground in which a court is required to discharge a forfeiture of a bail bond. Under existing law, the forfeiture must be discharged or the proceeds remitted if the defendant surrenders or is arrested. Under the bill, a forfeiture must be discharged only if the surrender or arrest occurs within 60 days after the required court appearance and if a hold is placed on the defendant to return him or her to the court.

Remission of a Forfeiture

Current law also authorizes a bail bond agent to seek the remission or return of all or a portion of the proceeds of a bail bond which has been forfeited to the court. Grounds to seek a remission occur when a defendant surrenders or is apprehended within a certain number of days after forfeiture. Current law grants the court discretion to order a remission of up to a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant. This bill removes discretion from the court and instead orders remission based on the maximum percentages available under current law.

Cancellation of a Bond

Current law requires the court to order a bail bond cancelled within 10 business days after the conditions of the bond are met. This bill provides that the conditions of the bond are met if the bond has not been declared forfeited within the 36 months since the original bond was posted.

II. Present Situation:

Determination of Pretrial Release

Setting bail for a defendant at an initial appearance is a way for the court to ensure the presence of the defendant at subsequent court hearings without keeping him or her incarcerated.¹ This is consistent with the requirements of the Florida Constitution which provide a constitutional right to pretrial release in Art. I, s. 14:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions.

However, the court must balance the constitutional right to pretrial release with other considerations:

If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.²

¹ Section 903.011(1), F.S.

² Art. I, s. 14, FLA. CONST. Section 903.046(1), F.S., provides that the purpose of a bail determination is to ensure the appearance of the criminal defendant at subsequent proceedings, while protecting the community from unreasonable danger from the defendant.

Therefore, in determining whether to release a defendant on bail and the actual amount of bail, the court must include in its considerations:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the defendant;
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant's past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear at court proceedings;
- The nature and probability of danger which the defendant's release poses to the community;
- The source of funds used to post bail or procure an appearance bond, and any connection to criminal activity;
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence;
- The nature and probability of intimidation and danger to victims;
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release; and
- Any other factors relevant to the court.³

At the time of determining bail, the court will establish conditions of pretrial release. The court must impose as a condition of pretrial release that the defendant refrain from criminal activity. Also, the court may issue an order of no contact, prohibiting the defendant from having any contact with the victim.⁴

If the court includes a monetary requirement of bail in its order of pretrial release, a registered bail bond agent⁵ may satisfy the bail requirement through the posting of a criminal surety bail bond.⁶

Qualifications as a Bail Bond Agent

To qualify as a surety, a bail bond agent must:

- Be at least 18 years old and possess a high school diploma or its equivalent;
- Meet citizen or legal alien requirements;
- Have certain ties to the state, including locating the business in the state;
- Provide at least 3 sworn letters of recommendation from residents of the counties in which the bail bond agent intends to operate;
- Not have been convicted of or plead guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by incarceration in prison; and
- Have passed any required examination.⁷

³ Section 903.046(2), F.S.

⁴ Section 903.047(1), F.S.

⁵ Section 903.045, F.S., provides, in part, "It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent ... shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond."

⁶ Section 903.011, F.S.

⁷ Section 648.34(2), F.S.

If the Department of Financial Services (DFS) finds that a person meets the conditions to serve as a bail bond agent, the DFS will issue a license to him or her.⁸ To operate in specific counties, a bail bond agent must then register with the sheriff's office and the clerk of the circuit court in the county in which he or she lives, and then apply to other counties if desired.⁹

Forfeiture, Discharge, Remission, and Cancellation of a Bond

If a defendant on pretrial release fails to appear at a scheduled court appearance, any bond posted is forfeited.¹⁰ If the bond is forfeited, the clerk of the court will mail or electronically send a notice to the bail bond agent within 5 days after forfeiture. The bail bond agent must pay the forfeiture within 60 days of the date the notice was mailed or electronically sent.¹¹

However, the court will discharge a forfeiture within 60 days if the court determines that:

- It was impossible for the defendant to appear due to circumstances beyond the defendant's control;
- At the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital, or incarcerated;
- The defendant has surrendered or been arrested, provided that the delay has not compromised the ability of the state to prosecute the defendant.¹²

If the defendant is arrested and returned to the county of jurisdiction prior to the court entering a judgment, upon affirmation of the sheriff or chief correctional officer, the clerk must discharge the forfeiture of the bond. However, the bail bond agent must pay the costs and expenses incurred in returning the defendant to the county.¹³

If a court has ordered the forfeiture of a bond and the amount of the forfeiture has been paid to the clerk of court, a bail bond agent may still recoup some or all of the original bond through a remission. If the defendant surrenders or is apprehended within 90 days after forfeiture, the court must direct remission of up to 100 percent of a forfeiture if the bail bond agent apprehended and surrendered the defendant or if the bail bond agent substantially procured the return of the defendant.¹⁴ Percentages of up to less than 100 percent of a forfeiture are provided beyond the 90 days after forfeiture, so that if the defendant surrenders or is returned to the county within:

- 180 days after forfeiture, up to 95 percent is remitted;
- 270 days after forfeiture, up to 90 percent is remitted;
- 1 year after forfeiture, up to 85 percent is remitted; or
- 2 years after forfeiture, up to 50 percent is remitted.¹⁵

⁸ Section 648.27(1), F.S.

⁹ Section 648.42, F.S.

¹⁰ Section 903.26(2)(b), F.S.

¹¹ Section 903.26(2)(a), F.S.

¹² Section 903.26(5), F.S.

¹³ Section 903.26(8), F.S.

¹⁴ Section 903.28(2), F.S.

¹⁵ Section 903.28, F.S.

The conditions of the bond are met at the time that a case is disposed of by a court entering an order of an adjudication of guilt or innocence, an acquittal, or a withholding of an adjudication of guilt. Within 10 business days after the conditions of a bond are met, or the forfeiture discharged or remitted, the court must order the bond cancelled.¹⁶

Funding of Clerks of Court

The clerks of court receive funding from a variety of sources. One funding source is the fine and forfeiture fund, which the clerks of the circuit court in each county are to establish for use in “performing court-related functions.”¹⁷ The fine and forfeiture fund also has many funding sources, one of which is the proceeds of forfeited bail bonds.¹⁸

III. Effect of Proposed Changes:

This bill provides additional bases for a court to discharge or release a bail bond agent from the obligation to pay the amount of a forfeited bond to a court. Similarly, the bill provides additional bases for a bail bond agent to seek the remission or return of the proceeds of a forfeited bond from a court. The bill also subjects any person, corporation, or other entity that charges a fee to *facilitate* the release of a defendant awaiting trial through the posting of a cash or surety bail bond to the same licensure requirements as bail bond agents.

Discharge of a Forfeiture

Current law requires a court to discharge a forfeiture within 60 days if the court determines that at the scheduled day and time of the appearance:

- Circumstances beyond the defendant’s control made it impossible for the defendant to appear;
- The defendant was adjudicated insane and confined in an institution or hospital;
- The defendant was incarcerated; or
- The defendant has surrendered or has been arrested and the delay has not compromised the ability of the state to properly prosecute the defendant.

This bill requires a court to consider the circumstances of the defendant not just on the original scheduled date to appear but also within 60 days after the scheduled appearance. The bill also provides that to qualify for a discharge based on the surrender or arrest of the defendant, surrender or arrest may take place at any county, state, or federal jail or prison, and upon a hold being placed to return the defendant to the county. However, these actions must take place within 60 days after the defendant’s required court appearance.

In addition to the increased timeframe, the bill requires the court to order the discharge of a forfeiture if:

- The defendant was confined in a county, state, federal, or immigration detention facility, or was deported;
- The defendant is deceased;

¹⁶ Section 903.31(1), F.S.

¹⁷ Section 142.01, F.S.

¹⁸ Section 142.01(1)(d), F.S.

- The defendant posted a new bond in the case; or
- The state is unwilling to seek extradition of a fugitive defendant within 30 days after a bail bond agent requests extradition, provided that the agent agrees to pay all costs and the expenses incurred to return the defendant to the county.

Remission of a Forfeiture

Current law also authorizes a bail bond agent to recoup a bond that has been forfeited through a remission, in instances in which a defendant surrenders or is apprehended within a certain number of days after forfeiture. The court, under current law, has discretion to order a remission of up to a certain percent of the amount of money forfeited, depending on the number of days between the forfeiture and the return of the defendant. This bill removes discretion from the court and instead orders remission based on those fixed percentages in existing law. For example, where existing law provides that the court may direct remission of up to, but not more than, 95 percent of a forfeiture, the bill requires the remission of 95 percent of the forfeiture.

Cancellation of a Bond

Current law requires the court to order the bond cancelled within 10 business days after the conditions of a bond are met. This bill provides that the conditions of the bond have also been met if 36 months have passed since the defendant posted the original bond.

The bill also replaces references to a “breach” of a bond, with a “forfeiture” of a bond. By changing the references, courts will be precluded from ordering the forfeiture of a bond if a defendant breaches a condition of pretrial release other than the failure to appear at a criminal proceeding.

The bill takes effect July 1, 2017.

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:

Bail bond and surety companies will financially benefit from this bill, due to the additional bases authorized for a discharge of a forfeiture, remission of fixed percentages of a forfeiture, and the cancellation of a bond if 36 months have passed from the original posting of the bond. Additionally, the additional licensing requirements for those or charge a fee or premium to facilitate the pretrial release of a defendant may reduce competition in the bail bond industry but may also provide other consumer protections.

C. Government Sector Impact:

To the extent that the bill reduces forfeitures of bail bonds or requires the remission of forfeited amounts, the bill may require the Legislature to provide additional funding to the clerks of court for their court-related functions.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 1 of the bill provides that “A person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond must be licensed pursuant to chapter 648.” This language appears to be inconsistent, however, with s. 648.27(1), F.S., which provides “A license may not be issued except ... to an individual. A firm, partnership, association, or corporation, as such, may not be licensed.”

The inconsistency between the bill and existing law about who must be licensed under chapter 648, F.S., should be resolved but how to do so is not clear. Perhaps what constitutes acting as a bail bond agent should be revised in chapter 648, F.S., in lieu of the changes in the bill. Another option might be to provide criteria in chapter 648, F.S., to license corporations and other entities.

Additionally, the effect of the new requirement for licensing those who *facilitate* the release of an incarcerated defendant is unclear. It might regulate a larger class of activities and require licensure of a larger class of individuals than are regulated or licensed under current chapter 648, F.S. Chapter 648, F.S. regulates those who “Charge[] a fee or premium to release an accused defendant or detainee from jail.”²⁰ Those who facilitate a person’s release are not expressly addressed in chapter 648, F.S.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 903.045, 903.26, 903.28, and 903.31.

¹⁹ See s. 142.01(1)(d), F.S.

²⁰ Section 648.25(1)(b)1., F.S.

IX. Additional Information:

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

CS by Judiciary on March 22, 2017:

The CS provides that to qualify for a discharge of a forfeiture:

- Based on the surrender or arrest of the defendant, the surrender or arrest may be at any county, state, or federal jail or prison, upon a hold being placed to return the defendant to the county; or
- Based on a determination that the state is unwilling to extradite a fugitive defendant, the number of days after which the surety agent requests extradition is increased from 10 to 30 days, and the surety agent must pay all costs and expenses incurred to return the defendant, not just transportation costs.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 903.045, Florida Statutes, is amended to
read:

903.045 Nature of criminal surety bail bonds.—It is the
public policy of this state and the intent of the Legislature
that a criminal surety bail bond, executed by a bail bond agent
licensed pursuant to chapter 648 in connection with the pretrial
or appellate release of a criminal defendant, shall be construed



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as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all ~~subsequent~~ criminal proceedings for which the surety bond was posted. A person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond must be licensed pursuant to chapter 648 ~~and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.~~

Section 2. Subsections (2), (5), (6), (7), and (8) of section 903.26, Florida Statutes, are amended to read:

903.26 Forfeiture of the bond; when and how directed; discharge; how and when made; effect of payment.—

(2)(a) If there is a failure of the defendant to appear as required ~~breach of the bond~~, the court shall declare the bond and any bonds or money deposited as bail forfeited. The clerk of the court shall mail or electronically transmit a notice to the surety agent and surety company within 5 days after the forfeiture. A certificate signed by the clerk of the court or the clerk's designee, certifying that the notice required herein was mailed or electronically transmitted on a specified date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing or electronic transmission was properly accomplished as indicated therein. If such mailing or electronic transmission was properly accomplished as evidenced by such certificate, the failure of the surety agent, of a company, or of a defendant to receive such notice shall not



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41 constitute a defense to such forfeiture and shall not be grounds
42 for discharge, remission, reduction, set aside, or continuance
43 of such forfeiture. The forfeiture shall be paid within 60 days
44 after ~~of~~ the date the notice was mailed or electronically
45 transmitted.

46 (b) Failure of the defendant to appear at the time, date,
47 and place of required appearance shall result in forfeiture of
48 the bond. Such forfeiture shall be automatically entered by the
49 clerk upon such failure to appear, and the clerk shall follow
50 the procedures ~~outlined~~ in paragraph (a). However, the court may
51 determine, in its discretion, in the interest of justice, that
52 an appearance by the defendant on the same day as required does
53 not warrant forfeiture of the bond; and the court may direct the
54 clerk to set aside any such forfeiture which may have been
55 entered. Any appearance by the defendant later than the required
56 day constitutes forfeiture of the bond, and the court shall not
57 preclude entry of such forfeiture by the clerk.

58 (c) If there is a forfeiture breach of the bond, the clerk
59 shall provide, upon request, a certified copy of the warrant or
60 capias to the bail bond agent or surety company.

61 (5) The court shall discharge a forfeiture within 60 days
62 upon:

63 (a) A determination that it was impossible for the
64 defendant to appear as required or within 60 days after the date
65 of the required appearance due to circumstances beyond the
66 defendant's control. The potential adverse economic consequences
67 of appearing as required may ~~shall~~ not be considered as
68 constituting a ground for such a determination;

69 (b) A determination that, at the time of the required



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70 appearance or within 60 days after the date of the required
71 appearance, the defendant was adjudicated insane and confined in
72 an institution or hospital; or was confined in any county,
73 state, federal, or immigration detention facility; was deported;
74 or is deceased a jail or prison;

75 (c) Surrender or arrest of the defendant at the time of the
76 required appearance or within 60 days after the date of the
77 required appearance in any county, state, or federal jail or
78 prison and upon a hold being placed to return the defendant to
79 the jurisdiction of the court if the delay has not thwarted the
80 proper prosecution of the defendant. If the forfeiture has been
81 before discharge, the court shall direct remission of the
82 forfeiture. The court shall condition a discharge or remission
83 on the payment of costs and the expenses incurred by an official
84 in returning the defendant to the jurisdiction of the court; or

85 (d) A determination that the state is unwilling to seek
86 extradition of the fugitive defendant within 30 days after a
87 request by the surety agent to do so, and contingent upon the
88 surety agent's consent to pay all costs and the expenses
89 incurred by an official in returning the defendant to the
90 jurisdiction of the court, up to the penal amount of the bond.

91 ~~(6) The discharge of a forfeiture shall not be ordered for~~
92 ~~any reason other than as specified herein.~~

93 ~~(6)-(7)~~ The payment by a surety of a forfeiture under ~~the~~
94 ~~provisions of~~ this law shall have the same effect on the bond as
95 payment of a judgment.

96 ~~(7)-(8)~~ If the defendant is arrested and returned to the
97 county of jurisdiction of the court or has posted a new bond for
98 the case at issue before ~~prior to~~ judgment, the clerk, upon



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affirmation by the sheriff or the chief correctional officer, shall, without further hearing or order of the court, discharge the forfeiture of the bond. However, if the surety agent fails to pay the costs and expenses incurred in returning the defendant to the county of jurisdiction, the clerk shall not discharge the forfeiture of the bond. If the surety agent and the sheriff fail to agree on the amount of said costs, then the court, after notice to the sheriff and the state attorney, shall determine the amount of the costs.

Section 3. Subsections (2), (3), (4), (5), and (6) of section 903.28, Florida Statutes, are amended to read:

903.28 Remission of forfeiture; conditions.—

(2) If the defendant surrenders or is apprehended within 90 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 100 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.



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(3) If the defendant surrenders or is apprehended within 180 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 95 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(4) If the defendant surrenders or is apprehended within 270 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 90 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not



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substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(5) If the defendant surrenders or is apprehended within 1 year after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 85 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(6) If the defendant surrenders or is apprehended within 2 years after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 50 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant



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was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

Section 4. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.—

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, the clerk of the court shall mail or electronically furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence or, an acquittal, if a period of 36 months has passed since the original bond was posted, or a withholding of an adjudication of guilt shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited before the 36-month expiration.

(2) The original appearance bond does not guarantee a deferred sentence; ~~sentences~~, appearance during or after a



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presentence investigation;; appearance during or after appeals;;
conduct during or appearance after admission to a pretrial
intervention program; placement in a court-ordered program,
including a residential mental health facility; payment of
fines;; or attendance at educational or rehabilitation
facilities the court otherwise provides in the judgment. If the
original appearance bond has been forfeited or revoked, the bond
shall not be reinstated without approval from the surety on the
original bond.

(3) ~~If in any case where~~ no formal charges are ~~have been~~
brought against the defendant within 365 days after arrest, the
court shall order the bond canceled unless good cause is shown
by the state.

Section 5. This act shall take effect July 1, 2017.

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

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to bail bonds; amending s. 903.045,
F.S.; revising legislative intent concerning the
obligations of a bail bond agent; revising the
commitments and obligations of a bail bond agent;
requiring that anyone charging a fee or premium to
post a cash or surety bail bond be licensed under
specified provisions; deleting a provision relating to
circumstances that constitute a breach by the bail
bond agent; amending s. 903.26, F.S.; revising the



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circumstances under which a surety bond deposited as
bail must be forfeited; revising the circumstances
that require a forfeiture to be discharged; amending
s. 903.28, F.S.; revising the amount of forfeiture to
be remitted under specified conditions; amending s.
903.31, F.S.; specifying that certain provisions
concerning cancellation of a bond do not apply if the
bond is forfeited within a specified period after it
has been posted; providing that an original appearance
bond does not guarantee placement in a court-ordered
program; providing an effective date.

By Senator Baxley

12-00670-17

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A bill to be entitled

An act relating to bail bonds; amending s. 903.045, F.S.; revising legislative intent concerning the obligations of a bail bond agent; requiring that anyone charging a fee or premium to post a cash or surety bail bond must be licensed under specified provisions; amending s. 903.26, F.S.; specifying that a defendant's failure to appear before the court in a proceeding for which the surety bond was posted requires the bond and any bonds or money deposited as bail to be forfeited; revising the circumstances that require a forfeiture to be discharged; amending s. 903.28, F.S.; clarifying the amount of forfeiture to be remitted under different specified conditions; amending s. 903.31, F.S.; specifying that certain provisions concerning the cancellation of a bond do not apply if the bond is forfeited within a specified period after it has been posted; providing that an original appearance bond does not guarantee placement in a court-ordered program; providing an effective date.

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

Section 1. Section 903.045, Florida Statutes, is amended to read:

903.045 Nature of criminal surety bail bonds.—It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent to

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ensure that the defendant appears at all ~~subsequent~~ criminal proceedings for which the surety bond was posted. A person, corporation, company, or other entity that charges a fee or premium to facilitate the release of an accused defendant from jail through the posting of a cash or surety bail bond must be licensed pursuant to chapter 648 and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.

Section 2. Subsections (2), (5), (6), (7), and (8) of section 903.26, Florida Statutes, are amended to read:

903.26 Forfeiture of the bond; when and how directed; discharge; how and when made; effect of payment.—

(2) (a) If there is a failure of the defendant to appear as required ~~breach of the bond~~, the court shall declare the bond and any bonds or money deposited as bail forfeited. The clerk of the court shall mail or electronically transmit a notice to the surety agent and surety company within 5 days after the forfeiture. A certificate signed by the clerk of the court or the clerk's designee, certifying that the notice required herein was mailed or electronically transmitted on a specified date and accompanied by a copy of the required notice, shall constitute sufficient proof that such mailing or electronic transmission was properly accomplished as indicated therein. If such mailing or electronic transmission was properly accomplished as evidenced by such certificate, the failure of the surety agent, of a company, or of a defendant to receive such notice shall not constitute a defense to such forfeiture and shall not be grounds

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for discharge, remission, reduction, set aside, or continuance of such forfeiture. The forfeiture shall be paid within 60 days ~~after~~ of the date the notice was mailed or electronically transmitted.

(b) Failure of the defendant to appear at the time, date, and place of required appearance shall result in forfeiture of the bond. Such forfeiture shall be automatically entered by the clerk upon such failure to appear, and the clerk shall follow the procedures ~~outlined~~ in paragraph (a). However, the court may determine, in its discretion, in the interest of justice, that an appearance by the defendant on the same day as required does not warrant forfeiture of the bond; and the court may direct the clerk to set aside any such forfeiture which may have been entered. Any appearance by the defendant later than the required day constitutes forfeiture of the bond, and the court shall not preclude entry of such forfeiture by the clerk.

(c) If there is a forfeiture breach of the bond, the clerk shall provide, upon request, a certified copy of the warrant or capias to the bail bond agent or surety company.

(5) The court shall discharge a forfeiture within 60 days upon:

(a) A determination that it was impossible for the defendant to appear as required or within 60 days after the date of the required appearance due to circumstances beyond the defendant's control. The potential adverse economic consequences of appearing as required may ~~shall~~ not be considered as constituting a ground for such a determination;

(b) A determination that, at the time of the required appearance or within 60 days after the date of the required

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appearance, the defendant was ~~adjudicated insane and~~ confined in an institution or hospital; ~~or~~ was confined in any county, state, federal, or immigration detention facility; was deported; or is deceased a jail or prison;

(c) Surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant. If the forfeiture has been before discharge, the court shall direct remission of the forfeiture. The court shall condition a discharge or remission on the payment of costs and the expenses incurred by an official in returning the defendant to the jurisdiction of the court; or

(d) A determination that the state is unwilling to seek extradition of the fugitive defendant within 10 days after a request by the surety to do so, and contingent upon the surety agent's consent to pay all transportation costs incurred by an official in returning the defendant to the jurisdiction of the court, up to the penal amount of the bond.

~~(6) The discharge of a forfeiture shall not be ordered for any reason other than as specified herein.~~

(6) ~~(7)~~ The payment by a surety of a forfeiture under ~~the provisions of~~ this law shall have the same effect on the bond as payment of a judgment.

(7) ~~(8)~~ If the defendant is arrested and returned to the county of jurisdiction of the court or has posted a new bond for the case at issue before ~~prior to~~ judgment, the clerk, upon affirmation by the sheriff or the chief correctional officer, shall, without further hearing or order of the court, discharge the forfeiture of the bond. However, if the surety agent fails to pay the costs and expenses incurred in returning the

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defendant to the county of jurisdiction, the clerk shall not discharge the forfeiture of the bond. If the surety agent and the sheriff fail to agree on the amount of said costs, then the court, after notice to the sheriff and the state attorney, shall determine the amount of the costs.

Section 3. Subsections (2), (3), (4), (5), and (6) of section 903.28, Florida Statutes, are amended to read:

903.28 Remission of forfeiture; conditions.—

(2) If the defendant surrenders or is apprehended within 90 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 100 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(3) If the defendant surrenders or is apprehended within 180 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall

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direct remission of ~~up to, but not more than,~~ 95 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(4) If the defendant surrenders or is apprehended within 270 days after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 90 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not

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thwarted the proper prosecution of the defendant.

(5) If the defendant surrenders or is apprehended within 1 year after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 85 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

(6) If the defendant surrenders or is apprehended within 2 years after forfeiture, the court, on motion at a hearing upon notice having been given to the clerk of the circuit court and the state attorney as required in subsection (8), shall direct remission of ~~up to, but not more than,~~ 50 percent of a forfeiture if the surety apprehended and surrendered the defendant or if the apprehension or surrender of the defendant was substantially procured or caused by the surety, or the surety has substantially attempted to procure or cause the apprehension or surrender of the defendant, and the delay has not thwarted the proper prosecution of the defendant. In

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addition, remission shall be granted when the surety did not substantially participate or attempt to participate in the apprehension or surrender of the defendant when the costs of returning the defendant to the jurisdiction of the court have been deducted from the remission and when the delay has not thwarted the proper prosecution of the defendant.

Section 4. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.—

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled and, if the surety has attached a certificate of cancellation to the original bond, the clerk of the court shall mail or electronically furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence, an acquittal, if a period of 36 months has passed since the original bond was posted, or a withholding of an adjudication of guilt shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited before the 36-month expiration.

(2) The original appearance bond does not guarantee a deferred ~~sentence; sentences,~~ appearance during or after a presentence investigation;~~;~~ appearance during or after appeals;~~;~~ conduct during or appearance after admission to a pretrial intervention program;~~;~~ placement in a court-ordered program, including a residential mental health facility; payment of

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236 fines;⁷ or attendance at educational or rehabilitation
237 facilities the court otherwise provides in the judgment. If the
238 original appearance bond has been forfeited or revoked, the bond
239 shall not be reinstated without approval from the surety on the
240 original bond.

241 (3) ~~If in any case where~~ no formal charges are ~~have been~~
242 brought against the defendant within 365 days after arrest, the
243 court shall order the bond canceled unless good cause is shown
244 by the state.

245 Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY
12th District

February 27, 2017

The Honorable Senator Greg Stuebe
326 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Steube,

I respectfully request you place Senate Bill 680 Bail Bonds on your next available agenda.

This bill removes any breach of the bond as a basis on which a forfeiture can occur, and narrows it to only a failure to appear. It reduces judicial discretion to reduce the amount remitted to the bond agent in a remission of forfeiture order and revises the bases on which a forfeiture can be discharged.

The bill creates flexibility for judges and bail bond agents to remedy and resolve breaches of a bond. To the extent that a greater number of bonds are reinstated after forfeiture, and to the extent that signing onto bonds is more affordable for the bail bond agent, this may increase the number of arrestees that can post bail, thereby reducing the need for jail beds.

I appreciate your favorable consideration.

Onward & Upward,

Dennis K. Baxley

Dennis Baxley
Senator, District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 22, 2017
Meeting Date

680
Bill Number (if applicable)

Topic Bail Bonds

Amendment Barcode (if applicable)

Name David Griffin

Job Title _____

Address 301 S. Bronough St. Suite 600
Street
Tallahassee FL 32301
City State Zip

Phone 850-577-9090

Email david.griffin@gray-robinson.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Government Payment Services

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

680
Bill Number (if applicable)

Topic Bail Bonds

Amendment Barcode (if applicable)

Name JANET COLLINS

Job Title OWNER - BAIL AGENT

Address 381 CHAMBERLIN BLVD
Street
FORT PIERCE FL 34946
City State Zip

Phone 772-370-2424

Email JanetCollinsFL@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL. BAIL AGENTS ASSOCIATION -

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Mar 17
Meeting Date

680
Bill Number (if applicable)

Topic Bail Bonds

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

SB 680

Bill Number (if applicable)

Topic Bail Bonds

Amendment Barcode (if applicable)

Name Kelly Mallette

Job Title _____

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Palmetto Surety

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 818

INTRODUCER: Regulated Industries Committee and Senator Hutson

SUBJECT: Timeshares

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Fav/CS
2.	Davis	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 818 amends chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (act), which establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers.

The specific changes by the bill:

- Revise the term “interestholder” with respect to a multisite timeshare plan governed by Part II of the act;
- Revise requirements for instruments that establish or govern a component site property regime, including the requirement to issue or provide certain documents to creditors;
- Revise requirements for terminations of timeshare plans;
- Revise requirements for extensions of timeshare plans, which apply to all timeshare properties in the state;
- Allow reasonable termination expenses to be paid pro rata by owners of former timeshare properties; and
- Amend requirements for voting upon an extension of a term of a timeshare plan, including meeting notices, voter eligibility, proxies, and quorum requirements.

The bill has no fiscal impact on state government.

II. Present Situation:

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

The Florida Vacation Plan and Timesharing Act, chapter 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.² Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.³ Part I of chapter 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

According to information provided by the American Resort Development Association (ARDA), Florida had the greatest number of the 1,547 timeshare resorts in the United States in 2015.⁴

Definitions

A timeshare plan is any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.⁵ The term includes both personal property timeshare and real property timeshare plans.⁶

Each timeshare plan must have a managing entity that must be the developer, a separate manager or management firm, or an owners' association. The managing entity operates or maintains the timeshare plan.⁷

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁸

¹ See s. 721.05(36), F.S.

² Section 721.02(2) and (3), F.S.

³ Section 721.03, F.S.

⁴ See American Resort Development Association, U.S. Vacation Timeshare Industry Shows Increased Growth in 2015: Another Year of Substantial Growth (Jul. 6, 2016), <http://www.arda.org/arda/news-information/default.aspx?id=5575&libID=5594> (last visited Mar. 17, 2017).

⁵ Section 721.05(39), F.S.

⁶ A "personal property timeshare plan," is a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. s. 721.05(39)(a) F.S. A "real property timeshare plan," is a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property. S. 721.05(39)(b), F.S.

⁷ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

⁸ See ss. 721.05(41) and 718.103(26), F.S.

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.⁹ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary’s spouse or other dependent.

A “timeshare license” is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.¹⁰ A “timeshare interest” is a timeshare estate, a personal property timeshare interest, or a timeshare license.¹¹

Multisite Timeshare Plans

A “multisite timeshare plan” is any method, arrangement, or procedure by which a purchaser obtains a recurring right to use and occupy accommodations or facilities of more than one component site through use of a reservation system.¹² The reservation system requires purchasers to compete with other purchases in the same multisite timeshare plan.¹³ There are two different types of multisite timeshare plans, nonspecific and specific.

A “nonspecific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, in which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.¹⁴

A “specific multisite timeshare plan” is a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, in which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.¹⁵

Substitutions and Deletions for Multisite Timeshare Plans

Section 721.552(2), F.S., permits substitutions of accommodations and facilities for nonspecific multisite timeshare plans that are “substantially similar” to the existing accommodations and facilities. Substitutions are limited to no more than 25 percent of the available accommodations at a given component site per year. Before a substitution occurs, notice must be provided to all the purchasers of the timeshare plan. However, under limited circumstances, a managing entity may substitute all accommodations in a given year if a written plan of substitution has been

⁹ Section 721.05(34), F.S.

¹⁰ Section 721.05(37), F.S.

¹¹ Section 721.05(36), F.S.

¹² Section 721.52(4), F.S. The purchaser may or may not be able to elect to stop participating in the multisite timeshare plan.

¹³ Section 721.52(6), F.S.

¹⁴ Section 721.52(5), F.S.

¹⁵ Section 721.52(7), F.S.

provided to each purchaser of the timeshare plan and approved by a majority of purchasers and a majority of the board of administration.¹⁶

Section 721.52(7), F.S., defines a “specific multisite timeshare plan” to mean:

a multisite timeshare with respect to which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.

A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.¹⁷

For each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners’ association.¹⁸ The public offering statement must include an estimated operating budget for the timeshare plan and a schedule of the purchaser’s expenses to be paid to the timeshare plan and the managing entity.¹⁹ A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures.

III. Effect of Proposed Changes:

This bill revises the term “interestholder” in s. 721.05, (21), F.S., to exclude certain persons that have interests in a multisite timeshare plan that has a component site that is also part of a single-site timeshare plan, condominium, or other property regime (component site property regime). Those excluded as interestholders in a multisite timeshare plan with a component site property regime (the non-interestholders) are:

- A developer;
- An owner of the underlying fee or personal property;
- A mortgagee, judgment creditor, or other lienor; or
- Any other person having an interest in or lien or encumbrance against a timeshare interest in a single-site timeshare plan, or an interest in or lien or encumbrance against *a unit in a condominium or property regime, unless the timeshare interest or the unit is “specifically subject to, or otherwise dedicated to, the multisite timeshare plan.”* (Emphasis added.)

The bill expresses legislative intent that the revision of the term “interestholder” is a clarification of existing law; those who are interestholders under current law are described nearly identically to those proposed to be classified as non-interestholders:

- A developer;

¹⁶ Section 721.552(2), F.S.

¹⁷ Section 721.07, F.S.

¹⁸ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.

¹⁹ Section 721.07(5)(t)3., F.S.

- An owner of the underlying fee or personal property;
- A mortgagee, judgment creditor, or other lienor; or
- Any other person having an interest in or lien or encumbrance against a timeshare interest in a single-site timeshare plan, or an interest in or lien or encumbrance against *the accommodations or facilities of the timeshare plan*. (Emphasis added.)

The revision to the term “interestholder” creates a distinction between persons based on the type of timeshare plan they have developed, owned, provided financing for, are owed monies by, or against which they have an interest, lien, or encumbrance. This distinction impacts voting and other rights related to timeshare plans.

The bill amends s. 721.08, F.S., concerning escrow accounts, non-disturbance instruments, alternate security arrangements, and transfer of legal title; the bill expresses legislative intent that the revision is a clarification of existing law.

For a component site property regime, certain documents that establish or govern a component site property regime are deemed not to be an encumbrance²⁰ under chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (act), including a:

- Timeshare instrument;
- Declaration of condominium; or
- Other instrument.

The bill provides that a document that establishes or governs a component site property regime, in addition to not being an encumbrance, does not create a requirement for a “nondisturbance and notice to creditors instrument” under s. 721.08, F.S. For each accommodation or facility of a multisite timeshare plan involving a component site property regime, a “subordination and notice to creditors instrument” is not required from the managing entity, owners’ association, or any other person. Under current law, the developer of such accommodation or facility must provide the division evidence that each interestholder has executed and recorded a subordination and notice to creditors instrument in the public records where the accommodation or facility is located.²¹

The bill amends s. 721.125, F.S., which currently relates to the extension and termination of timeshare plans, so that the section will deal only with the termination of timeshare plans. If the timeshare property is managed by an owners’ association that is separate from any underlying condominium, cooperative, or homeowners’ association, termination of a timeshare plan does not change the corporate status of the owners’ association.

However, under the bill, the owners’ association existence continues only for these limited purposes:

- Concluding its affairs;
- Prosecuting and defending actions by or against it;

²⁰ The term “encumbrance” is defined in chapter 679, F.S., Uniform Commercial Code: Secured Transactions, as a right in real property, other than an ownership interest, including mortgages and other liens on real property. *See* s. 679.1021(1)(ff), F.S.

²¹ *See* s. 721.53(1), F.S.

- Collecting and discharging obligations;
- Disposing of and conveying its property;
- Collecting and dividing its assets; and
- Otherwise complying with s. 721.125(3), F.S.

After termination of a timeshare plan, the bill provides that the board of administration of the owners' association (board) serves as the termination trustee. In that fiduciary capacity, the board may bring a partition action²² on behalf of the tenants in common²³ in each former timeshare property or may sell the former timeshare property in any manner and to any person approved by a majority of all the tenants in common. The termination trustee also has all other powers reasonably necessary to accomplish the partition or sale, including the power to maintain the property while the partition action or sale is pending, and must adopt reasonable procedures to implement the partition or sale and comply with these requirements.

The bill provides that all reasonable expenses incurred by the termination trustee relating to the performance of the trustee's duties, including reasonable fees of attorneys and other professionals, must be paid by the tenants in common, in proportion to their ownership interests. Many timeshare plans do not address the handling of costs of termination.²⁴

Additionally, the bill provides that termination of a timeshare plan in a timeshare condominium or timeshare cooperative, when the underlying condominium or cooperative is not simultaneously terminated, requires the designation of a voting representative for the unit, and the filing of a voting certificate with the underlying condominium or cooperative association. The designation is made by a majority of the tenants in common in each former timeshare unit who are present and voting in person or by proxy at a meeting of such tenants in common. The meeting is conducted by the termination trustee or by the board of administration of the condominium or cooperative association if the association managed the former timeshare property. The voting representative may vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

The bill creates s. 721.1255, F.S., to separately address extensions of timeshare plans,²⁵ and expresses legislative intent, including that:

- Most older timeshare properties in Florida are based on a condominium structure, and the termination dates set forth in the timeshare instruments for those properties are approaching.
- Many older timeshare properties located in Florida have been well-maintained, and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others.
- To preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the public policy of Florida requires the creation of a statutory method to enable the owners of these timeshare properties to extend the terms of their timeshare plans,

²² The term "partition" is used in chapter 64, F.S., for the dividing of interests in real and personal property by a court, or if partition cannot be made without prejudice to the owners, by a court-ordered sale at public auction to the highest bidder. *See* ss. 64.051, 64.071, and 64.091, F.S.

²³ The term "tenants in common" is a type of simultaneous ownership of real property by two or more parties. *See* <http://legal-dictionary.thefreedictionary.com/tenancy+in+common> (last visited Mar. 17, 2017).

²⁴ Conversation with representatives of the American Resort Development Association (ARDA)(Mar. 3, 2017).

²⁵ All provisions within s. 721.125, F.S., which address the extension of timeshare plans, are deleted in the bill.

notwithstanding contrary provisions in their timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

The bill revises the minimum required vote and the eligibility of voting interests required for an extension of a term of a timeshare plan. Unless the timeshare instrument specifically provides a lower percentage, the vote or written consent, or both, *of at least 66 percent of all eligible voting interests present in person or by proxy at a duly called and constituted meeting of the owners' association* is required. (Currently, the requirement under s. 721.125(1), F.S., is that 60 percent of all voting interests must authorize an extension of a timeshare plan, unless the timeshare instrument provides otherwise.) The bill provides that the meeting of the owners' association may be held "at any time." The bill provides that if the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force to the same extent as if the extended termination date of the timeshare plan were the original termination date of the timeshare plan.

The bill revises the quorum requirements for a vote to extend the term of a timeshare plan. Unless the timeshare instrument specifically provides for a lower quorum, the quorum for the owners' association meeting is 50 percent of all eligible voting interests in the timeshare plan. Under current law, unless the articles of incorporation, the bylaws, or the provisions of chapter 721, F.S. provide for a higher quorum requirement, the percentage of voting interests required to make decisions and to constitute a quorum for a members' meeting of a timeshare condominium²⁶ or owners' association is 15 percent of the voting interests.²⁷

The bill provides that a proxy for a vote to extend a timeshare plan pursuant to this section may be valid for a period of up to 3 years and is revocable unless it states that it is irrevocable. The duration and revocability of proxies for voting on matters respecting timeshare plans are not addressed in current law.

The bill provides that the board of administration of the owners' association may determine that any person or entity holding a voting interest who is delinquent in the payment of more than 2 years of assessments is ineligible to vote on any extension of the timeshare plan unless the delinquency is paid in full before the vote.

The bill restricts the effectiveness of a proposed extension for a component site of a multisite timeshare plan located in Florida. If an extension vote or consent is proposed for such a component site, the extension is effective only if the extension is approved by the person authorized to make additions or substitutions of accommodations and facilities pursuant to the timeshare instrument.

The revised procedures for extension of timeshare plans apply to all timeshare properties in Florida. Under current law, unless the timeshare instrument provides otherwise, the provisions relating to extensions or terminations of timeshare plans²⁸ apply only to a timeshare plan in

²⁶ A "timeshare condominium" is a timeshare plan that is subject to the provisions of both chapter 718, F.S., regulating condominiums, and chapter 721, F.S., regulating vacation and timeshare plans.

²⁷ Section 721.13(7), F.S.

²⁸ See s. 721.125(3), F.S.

existence for at least 25 years as of the effective date of the termination or extension vote or consent, or both, of *60 percent of all voting interests* in the timeshare plan. The vote or written consent may extend or terminate the timeshare plan at any time.²⁹

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Business and Professional Regulation (DBPR) notes there is no fiscal impact to the private sector.³⁰

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) notes there is no fiscal impact to state government.³¹

VI. Technical Deficiencies:

Section 4 creates s. 721.1255(2)(d), F.S., which provides that the board of administration of the owners' association may determine that a person holding a voting interest who is delinquent in paying more than two years of assessments is ineligible to vote on an extension of the timeshare plan, unless the delinquency is paid in full "before the vote." The bill does not address the timing and method for handling of payments to eliminate such a deficiency. See lines 192-197.

²⁹ See s. 721.151(1), F.S.

³⁰ Department of Business and Professional Regulation, *Senate Bill 818 Legislative Bill Analysis* (March 2, 2017) (on file with the Senate Committee on Judiciary).

³¹ *Id.*

VII. Related Issues:

The bill revises provisions affecting persons who have or may have an interest in or a lien or encumbrance against a timeshare interest, or other unit that is subject to a timeshare plan and provisions related to the termination of existing timeshare plans. Therefore, these provisions may implicate constitutional concerns relating to impairment of contract.³²

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³³ the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”³⁴

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.³⁵

In *United States Fidelity & Guaranty Co. v. Department of Insurance*,³⁶ the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person’s interest to not have his or her contracts impaired, with the state’s interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”³⁷ The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry the complaining party had entered had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.³⁸ If the state regulation constitutes a substantial impairment, the state must have a

³² U.S. CONST., art. 1, s.10 and FLA. CONST. art 1, s. 10.

³³ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

³⁴ *Pomponio*, 378 So. 2d at 779,(quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 at 244-45 (1978)).

³⁵ *Id.*

³⁶ *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).

³⁷ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

³⁸ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

significant and legitimate public purpose³⁹ and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.⁴⁰

Furthermore, although retroactive application of a law may be constitutional in certain situations,⁴¹ in 2011, the Florida Supreme Court unanimously held, in *Cohn v. The Grand Condominium Association, Inc.*,⁴² that by changing the distribution of voting power between residential owners and other owners in a mixed-use condominium, the retroactive application of the law at issue altered the rights of the unit owners in contravention of their contractual agreement and impaired the obligation of contract as applied.

VIII. Statutes Affected:

This bill substantially amends sections 721.05, 721.08, and 721.125, F.S.

This bill creates section 721.1255, Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on March 8, 2017:

The committee substitute:

- Clarifies, for certain multisite timeshare plans that have a component site that is part of a single-site timeshare plan or condominium or other property, the parties who:
 - Are “interestholders” in the multisite timeshare plan, i.e. all timeshare interests, timeshare units, or other units specifically subject to the multisite timeshare plan; and
 - Are not “interestholders” in the multisite timeshare plan, i.e. developers; owners of the underlying land or personal property; mortgage lenders, judgment creditors, or lienholders; or any other persons with an interest, lien, or encumbrance in a single site timeshare plan, condominium, or other property;
- Clarifies that certain documents are not encumbrances, and do not create a requirement for certain notices to creditors; and
- Requires a vote to extend the term of a timeshare plan take place at a duly *noticed* meeting.

B. Amendments:

None.

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

³⁹ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

⁴⁰ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1361.

⁴¹ *Century Village, Inc. v. Wellington*, 361 So. 2d 128 (Fla. 1978).

⁴² *Cohn*, 62 So. 3d 1120, 1122 (Fla. 2011).

By the Committee on Regulated Industries; and Senator Hutson

580-02237-17

2017818c1

1 A bill to be entitled
 2 An act relating to timeshares; amending s. 721.05,
 3 F.S.; revising the definition of the term
 4 "interestholder" to clarify that the term does not
 5 include certain parties to a certain multisite
 6 timeshare plan; amending s. 721.08, F.S.; clarifying
 7 current law; providing that certain instruments are
 8 not an encumbrance as they relate to certain vacation
 9 and timeshare plans; amending s. 721.125, F.S.;
 10 revising requirements for the termination of a
 11 timeshare plan; providing that the termination of a
 12 timeshare plan does not change the corporate status of
 13 an owners' association under certain circumstances;
 14 providing that the owners' association continues to
 15 exist until certain affairs are concluded; requiring
 16 the board of administration of the owners' association
 17 to serve as the termination trustee after termination
 18 of a timeshare plan; providing powers of the
 19 termination trustee; specifying that certain expenses
 20 incurred by the termination trustee must be borne by
 21 the tenants of a former timeshare property; requiring
 22 the termination trustee to adopt certain procedures to
 23 implement the partition or sale of a former timeshare
 24 property; requiring a voting representative to be
 25 designated under certain circumstances; specifying the
 26 voting rights of the voting representative; conforming
 27 provisions to changes made by the act; creating s.
 28 725.1255, F.S.; providing legislative findings;
 29 specifying the percentage of votes required to extend

580-02237-17

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30 the term of a timeshare plan under certain
 31 circumstances; specifying what constitutes a quorum
 32 under certain circumstances; specifying that a meeting
 33 to extend a timeshare plan may be held at any time;
 34 authorizing an owners' association to determine if a
 35 person or entity holding a voting interest is
 36 ineligible to vote, subject to certain requirements;
 37 specifying the maximum duration of validity of a
 38 proxy; providing that a proxy for a vote is revocable
 39 unless otherwise stated; specifying requirements for
 40 certain extension votes to be effective; providing
 41 applicability; providing an effective date.
 42
 43 Be It Enacted by the Legislature of the State of Florida:
 44
 45 Section 1. Subsection (21) of section 721.05, Florida
 46 Statutes, is amended to read:
 47 721.05 Definitions.—As used in this chapter, the term:
 48 (21) (a) "Interestholder" means a developer, an owner of the
 49 underlying fee or owner of the underlying personal property, a
 50 mortgagee, judgment creditor, or other lienor, or any other
 51 person having an interest in or lien or encumbrance against the
 52 accommodations or facilities of the timeshare plan.
 53 (b) With respect to a multisite timeshare plan governed by
 54 part II which contains a component site that is also part of a
 55 single-site timeshare plan or condominium or other property
 56 regime, the term, except as to any timeshare interest, timeshare
 57 unit, or other unit that is specifically subject to, or
 58 otherwise dedicated to, the multisite timeshare plan, does not

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59 include a developer; an owner of the underlying fee or owner of
 60 the underlying personal property; a mortgagee, judgment
 61 creditor, or other lienor; or any other person having an
 62 interest in or lien or encumbrance against a timeshare interest
 63 in such single-site timeshare plan, or an interest in or lien or
 64 encumbrance against a timeshare unit or other unit in such
 65 condominium or property regime. This paragraph is intended only
 66 as a clarification of existing law.

67 Section 2. Subsection (11) is added to section 721.08,
 68 Florida Statutes, to read:

69 721.08 Escrow accounts; nondisturbance instruments;
 70 alternate security arrangements; transfer of legal title.—

71 (11) A timeshare instrument, declaration of condominium, or
 72 other instrument establishing or governing a component site
 73 property regime is not an encumbrance for purposes of this
 74 chapter and does not create a requirement for a nondisturbance
 75 and notice to creditors instrument for purposes of this section
 76 or a subordination and notice to creditors instrument for
 77 purposes of s. 721.53 from the managing entity, owners'
 78 association, or any other person. This subsection is intended
 79 only as a clarification of existing law.

80 Section 3. Section 721.125, Florida Statutes, is amended to
 81 read:

82 721.125 ~~Extension or~~ Termination of timeshare plans.—

83 (1) Unless the timeshare instrument provides otherwise, the
 84 vote or written consent, or both, of 60 percent of all voting
 85 interests in a timeshare plan may ~~extend or~~ terminate the term
 86 of the timeshare plan at any time. ~~If the term of a timeshare~~
 87 ~~plan is extended pursuant to this section, all rights,~~

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88 ~~privileges, duties, and obligations created under applicable law~~
 89 ~~or the timeshare instrument continue in full force to the same~~
 90 ~~extent as if the extended termination date of the timeshare plan~~
 91 ~~were the original termination date of the timeshare plan.~~ If a
 92 timeshare plan is terminated pursuant to this section, the
 93 termination has immediate effect pursuant to applicable law and
 94 the timeshare instrument as if the effective date of the
 95 termination were the original date of termination.

96 (2) If a termination ~~or extension~~ vote or consent pursuant
 97 to subsection (1) is proposed for a component site of a
 98 multisite timeshare plan located in this state, the proposed
 99 termination ~~or extension~~ is effective only if the person
 100 authorized to make additions or substitutions of accommodations
 101 and facilities pursuant to the timeshare instrument also
 102 approves the termination ~~or extension~~.

103 (3)(a) If the timeshare property is managed by an owners'
 104 association that is separate from any underlying condominium,
 105 cooperative, or homeowners' association, the termination of a
 106 timeshare plan does not change the corporate status of the
 107 owners' association. The owners' association continues to exist
 108 only for the purposes of concluding its affairs, prosecuting and
 109 defending actions by or against it, collecting and discharging
 110 obligations, disposing of and conveying its property, collecting
 111 and dividing its assets, and otherwise complying with this
 112 subsection.

113 1. After termination of a timeshare plan, the board of
 114 administration of the owners' association shall serve as the
 115 termination trustee, and in such fiduciary capacity may bring an
 116 action in partition on behalf of the tenants in common in each

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former timeshare property or sell the former timeshare property in any manner and to any person who is approved by a majority of all such tenants in common. The termination trustee also has all other powers reasonably necessary to effect the partition or sale of the former timeshare property, including the power to maintain the property during the pendency of any partition action or sale.

2. All reasonable expenses incurred by the termination trustee relating to the performance of its duties pursuant to this subsection, including the reasonable fees of attorneys and other professionals, must be paid by the tenants in common of the former timeshare property subject to partition or sale, proportionate to their respective ownership interests.

3. The termination trustee shall adopt reasonable procedures to implement the partition or sale of the former timeshare property and comply with the requirements of this subsection.

(b) If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, shall designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association. The voting representative may vote on all matters at meetings of the condominium or cooperative

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association, including termination of the condominium or cooperative.

~~(4)(3)~~ This section applies only to a timeshare plan that has been in existence for at least 25 years as of the effective date of the termination ~~or extension~~ vote or consent required by subsection (1).

Section 4. Section 721.1255, Florida Statutes, is created to read:

721.1255 Extension of timeshare plans.—

(1)(a) The Legislature finds that timeshare plans are created as authorized by statute. Most of the older timeshare properties located in this state are based on a condominium structure, and many of these older timeshare properties are approaching the termination dates set forth in their timeshare instruments.

(b) The Legislature further finds that there are many older timeshare properties located in this state which have been well-maintained over the years and continue to be financially supported, used, and enjoyed by their owners, exchangers, guests, renters, and others. In order to preserve the continued use, enjoyment, tax values, and overall viability of these timeshare properties, the Legislature further finds that the public policy of this state requires the creation of a statutory method to enable the owners of these timeshare properties to extend the terms of their timeshare plans, notwithstanding contrary provisions in their timeshare instruments which may create uncertainty for purchasers, prospective purchasers, and lenders, and which may discourage the ongoing maintenance, refurbishment, and improvement of these timeshare properties.

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175 (2) (a) Unless the timeshare instrument specifically
 176 provides a lower percentage, the vote or written consent, or
 177 both, of at least 66 percent of all eligible voting interests
 178 present in person or by proxy at a duly noticed, called, and
 179 constituted meeting of the owners' association may, at any time,
 180 extend the term of the timeshare plan. If the term of a
 181 timeshare plan is extended pursuant to this section, all rights,
 182 privileges, duties, and obligations created under applicable law
 183 or the timeshare instrument continue in full force to the same
 184 extent as if the extended termination date of the timeshare plan
 185 were the original termination date of the timeshare plan.

186 (b) Unless the timeshare instrument specifically provides
 187 for a lower quorum, the quorum for the owners' association
 188 meeting described in paragraph (a) is 50 percent of all eligible
 189 voting interests in the timeshare plan.

190 (c) The owners' association meeting described in paragraph
 191 (a) may be held at any time.

192 (d) The board of administration of the owners' association
 193 may determine that any person or entity holding a voting
 194 interest who is delinquent in the payment of more than 2 years
 195 of assessments is ineligible to vote on any extension of the
 196 timeshare plan unless the delinquency is paid in full before the
 197 vote.

198 (e) A proxy for a vote to extend a timeshare plan pursuant
 199 to this section may be valid for a period of up to 3 years and
 200 is revocable unless it states that it is irrevocable.

201 (3) If an extension vote or consent pursuant to this
 202 section is proposed for a component site of a multisite
 203 timeshare plan located in this state, the proposed extension is

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204 effective only if the person authorized to make additions or
 205 substitutions of accommodations and facilities pursuant to the
 206 timeshare instrument also approves the extension.

207 (4) This section applies to all timeshare properties
 208 located in this state.

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

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The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill #818**, relating to Timeshares, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in dark ink, appearing to read "Travis Hutson", is written over a horizontal line.

Senator Travis Hutson
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

818
Bill Number (if applicable)

Topic Timeshare Bill

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S. Monroe St. Suite 300
Street
Tallahassee FL 32301
City State Zip

Phone 850-222-7500

Email garyh@hgsllaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Resort Developer's Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 894

INTRODUCER: Senator Simmons

SUBJECT: Arrest Warrants for State Prisoners

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Favorable
2.	Parks	Cibula	JU	Favorable
3.			AP	

I. Summary:

SB 894 creates procedures to help state prisoners serve out sentences for violations of probation or community control while in prison for other crimes.¹ If a prisoner has an unserved warrant for arrest issued by another county for a violation of probation, the bill allows the prisoner to petition for a status hearing, where a state attorney informs the circuit court whether the prisoner does in fact have an unserved warrant for the violation.

If the prisoner has an unserved warrant, the bill provides that the court must order the state attorney to submit an order to send the prisoner to the issuing county's jail. The order must then be sent from the court to the local county sheriff to execute the prisoner's transport to the county that issued the probation warrant.

II. Present Situation:

Sometimes a prisoner's arrest or imprisonment in one county also violates his probation in another county. The Department of Corrections estimates that approximately 20 inmates are currently incarcerated with unserved probation warrants.²

It is difficult for prisoners in this situation to serve their time for violating probation concurrently with their existing sentences, because their probation warrants have not been served. A state prisoner has no right to force a hearing on a probation violation.³ Florida appellate courts have held that a probationer is only entitled to a hearing on a violation after he or she has been arrested and returned to the county alleging the violation.⁴

¹ "Probation" should be read to mean "probation and/or community control" for the remainder of this analysis, as the two mechanisms are treated the same by the caselaw, the existing Florida Statutes, and this bill.

² Dep't of Corrections, *Agency Analysis to HB 1091* (2017).

³ *Chapman v. State*, 910 So. 2d 940, 942 (Fla. 5th D.C.A. 2005) (citation omitted).

⁴ *Bonner v. State*, 866 So. 2d 163, 164-65 (Fla. 5th D.C.A. 2004).

When a prisoner's arrest in one county violates his or her probation in another county, the latter county may file a detainer. A detainer instructs the holding county to either (a) hold the prisoner for the county filing the detainer, or (b) inform the county filing the detainer when the prisoner is about to be released.⁵

The Florida Supreme Court has ruled that a detainer generally does not result in accrual of time served for the probation violation because a detainer is not the same as an arrest warrant.⁶ As a result, a prisoner can leave prison in one county, then be arrested for violating his or her probation in another county.

The Second District Court of Appeal has ruled that a trial court has no duty to conduct hearings on warrants for probation violations, especially when the defendant is not imprisoned in the same county as the court.⁷

III. Effect of Proposed Changes:

Probation

The bill creates new procedures to be used by a prisoner who has an unserved warrant for arrest due to a probation violation. Such a prisoner may file a notice of unserved warrant in the circuit court for the county that he or she claims issued the probation warrant.⁸ The prisoner must notify the state attorney in the county that issued the warrant, and the state attorney must then schedule a "status hearing" regarding the prisoner within 90 days. The status hearing is attended only by the state attorney and the judge; the prisoner may not be transported to the hearing.

During the hearing, the state attorney informs the judge whether the prisoner has an unserved warrant for a probation violation. If there is such a warrant, the judge must order the state attorney to submit a transport order for the prisoner within 30 days. The transport order concerns the transportation of the prisoner from the holding county to the county that issued the probation warrant; the order is to be carried out by the sheriff of the county that issued the warrant.

Effective Date

The bill is effective July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill is not affected by the restrictions in the State Constitution which limit the Legislature's authority to impose mandates on counties and municipalities because the bill relates to criminal laws.

⁵ *Id.* at 164.

⁶ *Gethers v. State*, 838 So. 2d 504, 508 (Fla. 2003). The Court said time would only accrue in a situation where the holding county was only holding the probationer because of the detainer.

⁷ *Norman v. State*, 900 So. 2d 702, 703 (Fla. 2d D.C.A. 2005) (rejecting defendant's mandamus petition to compel a hearing).

⁸ Notably, the bill provides no means of informing prisoners whether they have violated their probations.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

There is no provision for the prisoner or his counsel to attend the status hearing. However, the bill does not close the hearing.

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

None.

B. Private Sector Impact:

The bill may get prisoners back into the workforce more efficiently. Many transitional programs are not open to prisoners with open warrants, so resolving the warrants may help these prisoners re-integrate into society.⁹

C. Government Sector Impact:

County and state transportation costs may rise due to the cost of transporting prisoners between counties. The status hearings will also marginally increase the workloads of state courts and state attorneys.

The bill compels courts and law enforcement agencies to act relatively quickly if a prisoner is aware that he or she has an outstanding warrant for a probation or community control violation. The Department of Corrections anticipates that forcing such action on prisoners' warrants will result in them being released from the criminal justice system more quickly, as more prisoners will begin serving concurrent sentences for probation violations.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁹ *Id.*

¹⁰ Dep't of Corrections, *Agency Analysis to HB 1091* (2017).

VIII. Statutes Affected:

This bill creates section 948.33, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Simmons

9-00517-17

2017894__

A bill to be entitled

An act relating to arrest warrants for state prisoners; creating s. 948.33, F.S.; authorizing a prisoner in a state prison who has an unserved violation of probation or an unserved violation of community control warrant to file a notice of unserved warrant in the circuit court where the warrant was issued; requiring the prisoner to serve notice on the state attorney; requiring the state attorney to schedule a status hearing within a certain time after receiving notice; specifying procedures and requirements for the status hearing; providing for prosecution of the violation; requiring the court to send the order to the county sheriff; providing an effective date.

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

Section 1. Section 948.33, Florida Statutes, is created to read:

948.33 Prosecution for violation of probation and community control arrest warrants of state prisoners.—A prisoner in a state prison in this state who has an unserved violation of probation or an unserved violation of community control warrant for his or her arrest may file a state prisoner's notice of unserved warrant in the circuit court of the judicial circuit in which the unserved warrant was issued. The prisoner must serve notice on the state attorney of that circuit and the state attorney must schedule the notice for a status hearing before

Page 1 of 2

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the circuit court within 90 days after receipt of the notice. The state prisoner may not be transported to the status hearing. At the status hearing the state attorney shall inform the court whether there is an unserved violation of probation or an unserved violation of community control warrant for the arrest of the state prisoner. If a warrant for either violation exists, the court must order the state attorney to submit to the court within 30 days after the status hearing an order to transport the state prisoner to the county jail of the county that issued the warrant for prosecution of the violation and the court shall send the order to the county sheriff for execution.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill 894**, relating to Arrest Warrants for State Prisoners, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2017

Meeting Date

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

894

Bill Number (if applicable)

Topic Arrest Warrants for State Prisoners

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

City

State

Zip

Email scotts@pdo8.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, 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 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2017

Meeting Date

894

Bill Number (if applicable)

Topic Arrest Warrants for State Prisoners

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

City

State

Zip

Email mdunagan@flsheriffs.org

Speaking: ☐ For ☐ Against ☐ Information

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

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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 17

Meeting Date

894

Bill Number (if applicable)

Topic Arrest Warrants

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing State Prisoner's Arrest Warrants

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1052

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Justifiable Use of Force

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1052 corrects an inconsistency in law caused by 2014 legislation amending s. 776.013(3), F.S., a statute governing the right to self-defense in a person's dwelling, residence, or vehicle. The relevant provision now states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force.

As a result of the inconsistency, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force are clear—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.

Accordingly, the bill revises s. 776.013(3), F.S., to delete the word "attacked" and make the subsection more consistent with the other statutory provisions governing the right to use defensive force.

II. Present Situation:

Stand Your Ground law

In 2005, the Legislature enacted into law chapter 2005-27, Laws of Fla., commonly known as the "Stand Your Ground" (SYG) law. The law expanded the common law Castle Doctrine and abrogated the common law duty to retreat on the part of the defender. These changes were incorporated into chapter 776, F.S., which governs the justifiable use of force.

The Castle Doctrine and Home Protection

The Castle Doctrine, a doctrine dating back to common law, provided that when faced with an intruder, a person had no duty to retreat from his or her home, the proverbial “castle.” Rather, the defender had the right to stay in the home and protect himself or herself with force, including deadly force.¹

The SYG law expanded the concept of the Castle Doctrine in two main ways. First, the law extended the concept of a person’s “castle” to include a dwelling, residence, or occupied vehicle.² As a result, a person who acts in self-defense in this expanded castle generally has no duty to retreat before acting in self-defense.

Second, the SYG law created a presumption that a person within a “castle” has a reasonable fear of imminent peril of death or great bodily harm if two conditions are met.³ First, the intruder must have entered or be in the process of unlawfully and forcibly entering the dwelling, residence, or occupied vehicle or be attempting to forcibly remove a person. Second, the defender must know or had reason to believe that an unlawful and forcible entry had occurred or was occurring.⁴

Defense of Self or Others

The 2005 changes to the self-defense law also generally eliminated the duty to retreat before using force outside of a person’s dwelling, residence, or occupied vehicle. When acting in self-defense or in defense of others, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes the force is necessary to defend himself or herself or another against an imminent use of unlawful force.⁵ The person may use deadly force, if the person reasonably believes the force is necessary to prevent imminent death or great bodily harm to himself or herself. However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.⁶

¹ *Recent Development: Florida Legislation; Florida Legislation—The Controversy over Florida’s New “Stand Your Ground” Law—Fla. Stat. S. 776.013(2005)*, 33 FLA. ST. U.L.REV. 351, 355 (Fall 2005).

² Section 776.013(5), F.S., defines a dwelling as a temporary or permanent building or conveyance of any kind, including an attached porch with or without a roof, mobile or immobile, including a tent, provided that it is designed for nighttime lodging. A residence is a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. A vehicle is a conveyance of any kind, whether or not motorized provided that it is designed to transport people or property.

³ Conversely, s. 776.013(4), F.S., presumes that a person who unlawfully and by force enters or attempts to enter a person’s dwelling, residence, or occupied vehicle intends to commit an unlawful act involving force or violence.

⁴ Section 776.013(1) and (2), F.S. The presumption does not apply if the person against whom defensive force is used or threatened has the right to be in or is a lawful resident of the location and against whom there is no injunction for protection; the person sought to be removed is in the lawful custody or guardianship of the person against whom the defensive force is used or threatened; the person who uses or threatens to use defensive force is committing a crime or using the location to further a criminal act; or the person against whom defensive force is used or threatened is a law enforcement officer entering the premises pursuant to an official duty and who identifies him or herself as a law enforcement officer. Section 776.013(2), F.S.

⁵ Section 776.012(1), F.S.

⁶ Section 776.012(2), F.S.

Defense of Property

When acting in defense of property, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes that the force is necessary to stop a trespasser's entry on personal or real property other than a dwelling.⁷ A person may use deadly force, if the person reasonably believes deadly force is needed to prevent a forcible felony.⁸ However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.⁹

Stand Your Ground Law in other States

At least 22 states have a version of the Stand Your Ground law. These laws provide that a defender does not have a duty to retreat from an attacker in any place in which the defender is lawfully present.¹⁰ These states having SYG laws include Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.¹¹ Nine of these states have adopted laws with specific language providing that a person may stand his or her ground.¹²

2014 Changes to Laws Governing the Justifiable Use of Force

In 2014, the Legislature revised chapter 776, F.S., which governs the justifiable use of force and includes the SYG law.¹³ The main change to the chapter was to clarify that a person who can lawfully use force in self-defense may also threaten to use force in self-defense. Further, the changes provided that a person who lawfully threatens to use force in self-defense retains all the rights and immunities under the SYG law.

However, the changes to s. 776.013(3), F.S., which authorize a person to threaten to use defensive force in his or her dwelling, residence, or vehicle contain an apparent drafting error. This error could cause the statute to be read to require that a person be attacked before he or she has the right to use defensive force. The problematic revisions to the 2014 legislation are shown below:

⁷ Section 776.031(1), F.S.

⁸ A forcible felony is defined to include the following offenses: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Section 776.08, F.S.

⁹ Section 776.031(2), F.S.

¹⁰ *Self-defense and "Stand Your Ground,"* National Conference of State Legislatures (Aug. 30, 2013).

<http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx> (last visited Jan. 10, 2017).

¹¹ Alabama (s. 13A-3-20, 23); Arizona (s. 13-405); Florida (ch. 776, F.S.); Georgia (ss. 16-3-23, 16-3-23-1, 16-3-24); Indiana (s. 35-41-3-2); Kansas (ss. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230); Kentucky (ss. 503.050, 503.055, 503.080); Louisiana (ss. 14:19, 14:20); Michigan (s. 780.972); Mississippi (s. 97-3-15); Montana (s. 45-3-110); Nevada (ss. 200.120, 200.160); New Hampshire (s. 627:4); North Carolina (ss. 14-51.2, 14-51.3); Oklahoma (s. 1289.25); Pennsylvania (title 18, s. 505); South Carolina (ss. 16-11-440, 16-11-450); South Dakota (s. 22-18-4); Tennessee (s. 39-11-614); Texas (ss. 9.31, 9.32, 9.41, 9.42, 9.43); Utah (ss. 76-2-402, 76-2-405, 76-2-407); West Virginia (s. 55-7-22).

¹² States including Stand Your Ground language in self-defense laws are: Alabama (s. 13A-3-23(b)), Florida (s. 776.013, F.S.), Georgia (s. 16-3-23.1), Kansas (s. 21-5320), Kentucky (s. 503.055), Louisiana (s. 14:19), Oklahoma (s. 1289.25), Pennsylvania (title 18, s. 505), and South Carolina (s. 16-11-440(C)).

¹³ Chapter 2014-195, Laws of Fla.

(3) A person ~~who is not engaged in an unlawful activity and who is attacked in his or her dwelling, residence, or vehicle in any other place where he or she has a right to be~~ has no duty to retreat and has the right to stand his or her ground and use or threaten to use ~~meet force with~~ force, including deadly force, if he or she uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2) reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

A requirement that a person be attacked before he or she has the right to use or threaten to use force in self-defense is inconsistent with other provisions of chapter 776, F.S. These other provisions clearly indicate that the right to use force or threaten to use force in self-defense begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.¹⁴

III. Effect of Proposed Changes:

This bill clarifies, s. 776.013, F.S., the statute that defines a person's rights to self-defense when the person is in a dwelling, residence, or vehicle.

Currently, s. 776.013(3), F.S., contains a provision that is inconsistent with other provisions of chapter 776, F.S., which govern the right to self-defense. The problematic language states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force.

As written, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force are clear—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.

Accordingly, the bill revises s. 776.013(3), F.S., to delete the word "attacked" and make the subsection more consistent with the other statutory provisions governing the right to use defensive force.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁴ See ss. 776.012, 776.013(1) and 4, and 776.031, F.S.

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 changes made by the bill minimize the risk that s. 776.013(3), F.S., can be read out of context with the other provisions of chapter 776, F.S., and used as the basis for arresting a person who lawfully uses force in self-defense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 776.013, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on March 22, 2017

The CS replaces the substance of the original bill with an amendment to s. 776.013, F.S., to delete the word “attacked.”

B. Amendments:

None.



882434

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 776.013, Florida
Statutes, is amended to read:

776.013 Home protection; use or threatened use of deadly
force; presumption of fear of death or great bodily harm.—

(3) A person who is ~~attacked~~ in his or her dwelling,
residence, or vehicle has no duty to retreat and has the right
to stand his or her ground and use or threaten to use force,



882434

including deadly force, if he or she uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2).

Section 2. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to justifiable use of force; amending
s. 776.013, F.S.; deleting a requirement that a person
first be attacked in his or her dwelling, residence,
or vehicle before using or threatening to use force;
providing an effective date.



244652

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 24 - 32
and insert:

(1) A person who is in a dwelling, residence, or vehicle in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:

(a) Non-deadly force against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the



244652

other's imminent use of unlawful force; or

(b) Deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

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

And the title is amended as follows:

Delete lines 3 - 10

and insert:

s. 776.013, F.S.; clarifying the right to use defensive force by a person who is in a dwelling, residence, or occupied vehicle; authorizing the person to use force when the person reasonably believes such force is necessary to defend against the imminent use of unlawful force or to prevent the imminent commission of a forcible felony; conforming a cross-

By Senator Simmons

9-00578B-17

20171052__

A bill to be entitled

An act relating to justifiable use of force; amending s. 776.013, F.S.; specifying that a person who is attacked or threatened with the use of force in a dwelling, residence, or vehicle in which the person has the right to be has no duty to retreat and has the right to stand his or her ground by using or threatening to use force upon a reasonable belief of necessity to prevent imminent death, great bodily harm, or a forcible felony; conforming a cross-reference; deleting provisions relating to using or threatening to use force under certain circumstances; providing an effective date.

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

Section 1. Present subsections (1) and (2) of section 776.013, Florida Statutes, are redesignated as subsections (2) and (3), respectively, a new subsection (1) is added to that section, and present subsections (2) and (3) of that section are amended, to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) Notwithstanding any other provision of this chapter, a person who is attacked or threatened with the use of force in a dwelling, residence, or vehicle in which the person has a right to be has no duty to retreat and has the right to stand his or her ground by using or threatening to use force, including deadly force, if he or she reasonably believes that such conduct

9-00578B-17

20171052__

is necessary to prevent imminent death or great bodily harm to himself, herself, or another or to prevent the imminent commission of a forcible felony.

(3)-(2) The presumption set forth in subsection (2) ~~(1)~~ does not apply if:

(a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or

(c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or

(d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

~~(3) A person who is attacked in his or her dwelling,~~

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20171052

59 ~~residence, or vehicle has no duty to retreat and has the right~~
60 ~~to stand his or her ground and use or threaten to use force,~~
61 ~~including deadly force, if he or she uses or threatens to use~~
62 ~~force in accordance with s. 776.012(1) or (2) or s. 776.031(1)~~
63 ~~or (2).~~

64 Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 6, 2017

I respectfully request that **Senate Bill 1052**, relating to Justifiable Use of Force, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "David Simmons", is written over a horizontal line.

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE

APPEARANCE RECORD

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

March 22, 2017

Meeting Date

SB-1052

*Bill Number (if applicable)***882434***Amendment Barcode (if applicable)*Topic Glitch Bill / Use of ForceName Marion Hammer

Job Title _____

Address PO Box 1387*Street*Tallahassee*City*Florida*State*32302*Zip*Phone 850-222-9518

Email _____

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing National Rifle Association & Unified Sportsmen of FloridaAppearing at request of Chair: ☐ Yes ☐ NoLobbyist registered with Legislature: ☒ Yes ☐ No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.****This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

3/22/2017

Meeting Date

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

1052

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

Phone 352-338-7370

Street

Gainesville

FL

32601

Email scotts@pdo8.org

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, 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 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

SB 1052

Bill Number (if applicable)

Topic Use of Force

Amendment Barcode (if applicable)

Name Phil Archer

Job Title State Attorney - 12th Circuit

Address 2725 Judge Fran Samielon

Phone (321) 637-5525

Street

Viera

Fl.

State

32940

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Prosecuting Attorneys Assoc. (FPAA)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

S-001

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 22, 2017

Meeting Date

SB-1052

Bill Number (if applicable)

Topic Glitch Bill / Use of Force

Amendment Barcode (if applicable)

Name Marion Hammer

Job Title _____

Address PO Box 1387

Phone 850-222-9518

Street

Tallahassee

Florida

32302

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Rifle Association & Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

SB 1052

Bill Number (if applicable)

Topic Opposition to SB 1052

Amendment Barcode (if applicable)

Name Katie Browder

Job Title Volunteer with Moms Demand Action

Address 1013 NE 9th St

Phone (843) 259-1368

Street

Gainesville

FL

32601

City

State

Zip

Email katiebrowder@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Moms Demand Action

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

1052

Bill Number (if applicable)

Topic Force

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title legislative advocate

Address 540 Beverly Ct

Street

Tallahassee

City

FL

State

32301

Zip

Phone 772 204 1792

Email lwfadvocacy@

gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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: SCR 920

INTRODUCER: Senator Farmer

SUBJECT: Groveland Four

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Favorable
2.	Brown	Cibula	JU	Favorable
3.			RC	

I. Summary:

SCR 920 acknowledges the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the men who came to be known as the “Groveland Four.”

Despite a lack of evidence or credible witnesses, the four men were charged with rape. Ernest Thomas escaped while under arrest, and law enforcement officers shot and killed him. Amidst an environment of inaccurately-obtained eyewitness identification, forced confessions, and indicting news reports, Mr. Greenlee, Mr. Irvin, and Mr. Shepherd were convicted of rape. Mr. Greenlee, just 16 years old at the time of the incident, received a sentence of life imprisonment. Juries sentenced Mr. Irvin and Mr. Shepherd to the death penalty.

The concurrent resolution:

- Deems the four men exonerated;
- Offers a formal and heartfelt apology to the men and their families; and
- Urges the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee.

II. Present Situation:

The Groveland Four

On July 17, 1949, a 17-year-old white married woman Norma Padgett, and Willie Padgett, her estranged husband, went to the police and reported that Norma Padgett had been raped. They told police that on the night before, July 16, 1949, their car had broken down just outside of Groveland, Florida. Norma Padgett stated that four black men drove up to them, stopped and got out of their car and then raped her.¹

¹ Gilbert King, *Devil in the Grove*, pg. 37-38 (2012).

Shortly thereafter, Sheriff Willis McCall arrested Walter Irvin (a World War II Veteran), Samuel Shepherd (also a World War II veteran), Charles Greenlee (16 years old at the time), and Ernest Thomas, the men who came to be known as the “Groveland Four.” Law enforcement officers transported the four men to the city jail. A few days after Ernest Thomas’ arrest, he escaped, and over a number of days, ran 25 miles through swamp land. On July 26, 1949, a law enforcement officer and a deputized officer found Ernest Thomas and shot and killed him.² Law enforcement officers subjected the remaining men to lengthy interrogations and violent beatings. The police extracted coerced confessions from Charles Greenlee and Samuel Shepherd.³

Of the men, Walter Irvin and Samuel Shepherd were the only ones who stated that they had encountered the Padgetts that night. Driving back from Altamonte Springs late at night, Mr. Irving and Mr. Shepherd were just a few miles north of Groveland when they saw the Padgetts standing on the side of the road next to a car. They stopped to offer help. Willie Padgett asked the two men to help push the car as the battery had died and the car could be jump started if pushed. Mr. Irvin and Mr. Shepherd alleged that they found Willie Padgett to be drunk and argumentative, despite their attempts to offer help. After the two men attempted to push the car for a while, Samuel said that he told the Padgetts that they could not make the car operable that night due to the dead battery. Tensions escalated again, and Samuel Shepherd admitted to initiating a physical altercation with Willie.⁴ Both Mr. Irvin and Mr. Shepherd insisted that they did not rape Norma Padgett.

Charles Greenlee admitted to knowing Ernest Thomas, but denied ever meeting the Padgetts.⁵

Walter Irvin, Samuel Shepherd, and Charles Greenlee were tried for the crime of rape. Amidst an environment of inaccurately-obtained eyewitness identification, forced confessions, and inciting news reports, Mr. Greenlee, Mr. Irvin, and Mr. Shepherd were convicted of rape. Juries recommended the death penalty for Mr. Irvin and Mr. Shepherd, and a sentence of life imprisonment for Mr. Greenlee.⁶

Concurrent Resolutions

A concurrent resolution is a resolution that is adopted by both houses. Concurrent resolutions are limited to procedural legislative matters and the ratification of federal constitutional amendments.⁷

Exoneration and Pardon

One of the legal definitions of “exoneration” is the absolving of a charge or imputation of guilt.⁸ The Florida Constitution grants the power to pardon to the Governor, with the consent of at least

² *Id.* at 117.

³ *Id.* at 61-67, 72-75, 126-129.

⁴ Gilbert King, *supra* note 1, at 37-39.

⁵ *Id.* at 66.

⁶ *Id.* at 167-183.

⁷ The Florida Senate, *Glossary, Bills: Resolution: Concurrent Resolution (SCR, HCR)*, available at <http://www.flsenate.gov/Reference/Glossary#concurrent> (last visited March 19, 2017).

⁸ BALLENTINE’S LAW DICTIONARY (3rd ed. 2010).

two Cabinet members.⁹ Except in cases of treason and in which impeachment results in conviction, the Governor may, by executive order filed with the Secretary of State, suspend collection of fines and forfeitures, grant reprieves not exceeding 60 days, and with the approval of two members of the Cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.¹⁰

III. Effect of Proposed Changes:

The Senate Concurrent Resolution provides in whereas clauses additional factual statements relating to the Groveland Four, following their trials and conviction:

- After the court convicted Mr. Irvin, Mr. Shepherd, and Mr. Greenlee, Thurgood Marshall, then executive director of the NAACP Legal Defense and Educational Fund, appealed the convictions of Walter Irvin and Samuel Shepherd to the United States Supreme Court. The court unanimously overturned the judgments on April 9, 1951, and ordered a retrial.¹¹
- Seven months later, in November 1951, while transporting Walter Irvin and Samuel Shepherd from Florida State Prison in Raiford to Tavares State Prison for a pretrial hearing, Sheriff Willis McCall and Deputy Sheriff James L. Yates shot both men, claiming self-defense. The men were handcuffed at the time.
- Samuel Shepherd died at the scene, but Walter Irvin, pretending to be dead, survived and accused the sheriff and his deputy of attempted murder. Prosecutors never brought charges against the officers.
- The trial court retried Walter Irvin and the jury convicted him a second time. The court resentenced Walter Irvin to death. The Florida Supreme Court subsequently affirmed the conviction, finding without merit Mr. Irvin's argument that he was deprived of a fair and impartial trial.¹² Mr. Irvin then filed a writ of habeas corpus¹³ to the Florida Supreme Court, which was also denied.¹⁴
- In 1955, Governor LeRoy Collins commuted Mr. Irvin's sentence to life in prison. In 1970, while visiting Lake County, Mr. Irvin, who had been paroled 2 years earlier by then Governor Claude Kirk, was found dead in his car. While Mr. Irvin's death was officially attributed to natural causes, Thurgood Marshall doubted the circumstances surrounding Mr. Irvin's death.
- Charles Greenlee, released on parole in 1962 after serving 12 years in prison, died in April 2012 at the age of 78.
- On March 15, 2016, the Lake County Commission approved Proclamation 2016-26 and presented it to the families of the Groveland Four. The proclamation reportedly apologizes to

⁹ Art. IV, s. 8(a), FLA. CONST.

¹⁰ Section 940.01, F.S.

¹¹ *Shepherd v. Florida*, 341 U.S. 50 (1951). In the concurring opinion, Justices Jackson and Frankfurter noted, "But prejudicial influences outside the courtroom, becoming all too typical of a highly publicized trial, were brought to bear on this jury with such force that the conclusion is inescapable that these defendants were prejudged as guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated." *Id.* at 51.

¹² *Irvin v. State*, 66 So. 2d 288, 296-297 (Fla. 1953).

¹³ A writ of habeas corpus is an appeal filed by an incarcerated defendant on the basis that the defendant is being unlawfully deprived of his or her liberty. BLACK'S LAW DICTIONARY (6th ed. 1990).

¹⁴ *Irvin v. Chapman*, 75 So. 2d 591, 593 (Fla. 1954).

the families for the injustices against Mr. Irvin, Mr. Shepherd, Mr. Greenlee, and Mr. Thomas, and urges the Governor to exonerate the men.¹⁵

- NAACP leader Harry T. Moore and his wife, Harriette, advocated on behalf of the four men. The Moores died when their home in Mims was bombed on December 25, 1951.

The resolution acknowledges that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas were the victims of gross injustices and that the Legislature apologizes to the families of the Groveland Four and deems the four men formally exonerated.

The resolution also urges the Governor and Cabinet to review the cases of Walter Irvin and Charles Greenlee grant them pardons.

SCR 920 requests that copies be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁵ Lake County Commission, Minutes of a Regular Meeting of the Board of County Commissioners (March 15, 2016), available at http://www.lakecountyclerk.org/forms/board_minutes/2016/03/2016-03-15_Regular_Meeting.htm (last visited March 19, 2017). Christal Hayes, *Groveland Four families thankful for Lake apology, still seek exoneration*, Orlando Sentinel (March 15, 2016), available at <http://www.orlandosentinel.com/news/lake/os-groveland-four-families-lake-county-20160315-story.html> (last visited March 19, 2017).

VI. Technical Deficiencies:

None.

VII. Related Issues:

On lines 97 through 98 of the bill, the bill calls for the Legislature to “deem the four men formally exonerated.”

A person has been exonerated if he or she was convicted of a crime and later found to be innocent or relieved of all consequences of the conviction by a government official or body with the authority to take that action.¹⁶ “The official action may be taken by:

- A governor providing a complete pardon, whether or not the governor issues the pardon based on the innocence of the defendant;
- A court ordering an acquittal of all charges factually related to the crime for which the person was originally convicted; or
- A court granting a motion to dismiss or a prosecutor, in limited circumstances, dismissing the case.”¹⁷

As the Legislature cannot issue an exoneration, the sponsor of the bill may wish to remove the reference to exoneration or state that the four men are worthy of exoneration.

VIII. Statutes Affected:

None.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

¹⁶ The National Registry of Exonerations, *Glossary*, available at <https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited March 19, 2017). The National Registry of Exonerations is a joint project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School, and Michigan State University College of Law.

¹⁷ *Id.*

By Senator Farmer

34-00535A-17

2017920__

Senate Concurrent Resolution

A concurrent resolution acknowledging the grave injustice perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, who came to be known as the "Groveland Four," exonerating the four men, offering a formal and heartfelt apology to these victims of racial hatred and to their families; and urging the Governor and Cabinet to pardon Walter Irvin and Charles Greenlee.

WHEREAS, on July 16, 1949, a 17-year-old white woman and her estranged husband reported to police that they had been attacked and that she had been raped by four black men after the car in which she and her estranged husband were riding broke down on a rural road outside Groveland, in Lake County, and

WHEREAS, despite the lack of physical evidence in the case and the established alibis of the accused, Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas, the four men were presumed guilty, and

WHEREAS, Walter Irvin and Samuel Shepherd, both World War II veterans, acknowledged that they had stopped by the broken-down vehicle to see if they could assist the couple, but denied any involvement in the alleged rape, and

WHEREAS, Charles Greenlee, who was only 16 years old at the time, and Ernest Thomas denied ever meeting the alleged victim and her estranged husband, and

WHEREAS, after their arrest that evening, Charles Greenlee, Walter Irvin, and Samuel Shepherd were severely beaten in the basement of the county jail, and Mr. Greenlee and Mr. Shepherd

Page 1 of 4

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

34-00535A-17

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were coerced into confessing to the crime, while Mr. Irvin refused to admit his guilt, and

WHEREAS, Ernest Thomas, who fled the county, was shot to death several days later in Madison County by members of a deputized posse of armed men, and

WHEREAS, the three surviving men, Charles Greenlee, Walter Irvin, and Samuel Shepherd, were tried and convicted in the case, with Mr. Greenlee sentenced to life imprisonment due to his age and Mr. Irvin and Mr. Shepherd sentenced to death, and

WHEREAS, Thurgood Marshall, then executive director of the NAACP Legal Defense and Educational Fund, appealed the convictions of Walter Irvin and Samuel Shepherd to the United States Supreme Court, which unanimously overturned the judgments on April 9, 1951, and ordered a retrial, and

WHEREAS, 7 months later, in November 1951, while transporting Walter Irvin and Samuel Shepherd from Florida State Prison in Raiford to Tavares State Prison for a pretrial hearing, Lake County Sheriff Willis McCall and Deputy Sheriff James L. Yates shot both men on a dirt road leading into Umatilla, claiming that they had shot the handcuffed men in self-defense when the two tried to escape, and

WHEREAS, Samuel Shepherd died at the scene as a result of his wounds, but Walter Irvin, who pretended to be dead, survived and accused the sheriff and his deputy of attempted murder, but no charges were ever brought against the officers, and

WHEREAS, Walter Irvin was retried and convicted a second time for the crime and was sentenced to death, despite the fact that the state attorney allegedly withheld exculpatory medical evidence from the defense, and despite testimony from a former

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Federal Bureau of Investigation criminologist stating that he believed forensic evidence had been manufactured by deputies, and

WHEREAS, Mr. Irvin's sentence was commuted to life in prison in 1955 by then Governor LeRoy Collins, who was not convinced of Mr. Irvin's guilt, and

WHEREAS, in 1970, while visiting Lake County, Walter Irvin, who had been paroled 2 years earlier by then Governor Claude Kirk, was found dead in his car, and, while Mr. Irvin's death was officially attributed to natural causes, Thurgood Marshall reportedly had doubts about the circumstances surrounding his death, and

WHEREAS, Charles Greenlee, who was paroled in 1962 after serving 12 years in prison, died in April 2012 at the age of 78, and

WHEREAS, the grave injustice perpetrated against the Groveland Four extended far beyond Lake and Madison Counties and is believed to have played a role in the deaths of National Association for the Advancement of Colored People leader Harry T. Moore and his wife, Harriette, who had advocated on behalf of the four men and were killed when their home in Mims was bombed on December 25, 1951, and

WHEREAS, the people of this state recognize that no action on the part of the Legislature can make right the egregious wrongs perpetrated against Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas and their families by the criminal justice system, law enforcement agencies, and individuals whose actions were fueled by racial hatred, and

WHEREAS, the families of Charles Greenlee, Walter Irvin,

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Samuel Shepherd, and Ernest Thomas have demanded that steps be taken to clear the men's names, NOW, THEREFORE,

Be It Resolved by the Senate of the State of Florida, the House of Representatives Concurring:

That we hereby acknowledge that Charles Greenlee, Walter Irvin, Samuel Shepherd, and Ernest Thomas were the victims of gross injustices and that we apologize to the families of the Groveland Four for all of the aforementioned wrongs and deem the four men formally exonerated.

BE IT FURTHER RESOLVED that the Legislature urges the Governor and Cabinet to review the cases of Walter Irvin and Charles Greenlee and to grant Mr. Irvin and Mr. Greenlee pardons.

BE IT FURTHER RESOLVED that a copy of this resolution be provided to the Governor, the Attorney General, the Chief Financial Officer, the Commissioner of Agriculture, and the families of the Groveland Four as a tangible token of the sentiments expressed herein.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Higher Education
Appropriations Subcommittee on Pre-K - 12 Education
Banking and Insurance
Education
Environmental Preservation and Conservation

SENATOR GARY M. FARMER, JR.
34th District

March 8, 2017

Chair Greg Steube
Judiciary Committee
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to steube.greg@flsenate.gov

Chair Steube,

I respectfully request that you place SB 920 relating to the exoneration of the Groveland Four on the agenda of the Judiciary Committee at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "Gary Farmer", is written over the typed name and district number.

Senator Gary Farmer
District 34

CC:

Tom Cibula, Staff Director
Joyce Butler, Administrative Assistant
Elizabeth Bolles, Legislative Assistant to Senator Steube
Rita Fulkner, Legislative Assistant to Senator Steube

REPLY TO:

- ☐ Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
- ☐ 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1320

INTRODUCER: Senator Stargel

SUBJECT: Tax Administration

DATE: March 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2. _____	_____	<u>AFT</u>	_____
3. _____	_____	<u>AP</u>	_____

I. Summary:

SB 1320 modifies various statutes relating to the administration of taxes. The bill contains recommendations made by the Department of Revenue (Department) and approved by the Cabinet which are designed to reduce the burden on taxpayers. The bill does so by eliminating fees that generate negligible amounts, repealing an obsolete provision requiring the court to report information on probate cases, and affording taxpayers and tax collection service providers greater flexibility in waiving penalties, and extending due dates for filings and tax payments.

The bill eliminates:

- The fees charged for sales and use tax registration; fuel and pollutants licensing; perchloroethylene registration; dry cleaning tax registration; and fuel tax refunds;
- The requirement that circuit court judges report to the Department the names of decedents and estates in probate unless the Department is a creditor of the estate, as changes in law render this requirement obsolete; and
- The requirement that vending machine operators post a notice stating that machines without a posted notice may be reported using a toll-free number and that someone reporting noncompliance may be eligible for a reward.

Additionally, the bill:

- Allows a tax collection service provider to waive a reemployment tax penalty imposed for a failure to file certain quarterly reports electronically if the tax collection service provider finds a penalty to be inequitable;
- Extends due dates for annual filings and installment payments when the due date falls on a weekend or a holiday; and
- Provides specific guidelines for the notification, adoption, and expiration of local ordinances imposing a tax on motor and diesel fuel prior to July 2002.

The Revenue Estimating Conference estimates this bill will reduce recurring revenues to the General Revenue Fund by \$100,000 to \$200,000 in Fiscal Year 2017-2018. The fiscal impact of repealing the fee for sales tax registration and fuel and pollutants licensing is approximately \$138,000 and \$36,000, respectively. The fiscal impact of the repeal of the dry cleaning and perchloroethylene registration fee is insignificant.

This act takes effect upon becoming a law, while the fee eliminations proposed in the bill take effect January 1, 2018.

II. Present Situation:

The Department of Revenue (Department) presented its legislative agenda to the Governor and Cabinet on September 20, 2016.¹ At the cabinet meeting, the Department proposed various changes to law designed to reduce the burden on taxpayers. The Department specifically recommended eliminating certain fees, eliminating unnecessary reporting and notice requirements, and providing greater flexibility in imposing penalties and extending due dates for filings. The Cabinet approved the agenda item of the Department with the Governor abstaining from the vote.² The areas recommended for change are detailed below.

Reporting Requirements by the Court (Sections 198.30 and 733.2121, F.S.)

Section 198.30, F.S., requires circuit court judges to report the names of decedents and other information on estates in probate to both the Department and the Agency for Health Care Administration (AHCA). In addition, personal representatives are required to provide certain information to the Department and AHCA pursuant to s. 733.2121(3), F.S.

Fuel and Pollutants License Fees (Sections 206.02, 206.021, 206.022, 206.405, 206.406, 206.9943 and 206.9952, 206.998 F.S.)

Florida law imposes a \$30 license tax on persons applying for an annual fuel or pollutants license and a \$5 annual fee to obtain a license as a natural gas fuel retailer. The Department issues the taxpayer a receipt, which must be posted on display in public view. All money derived from the license taxes pursuant to s. 206.02, 206.021, 206.022, and 206.404, F.S., must be paid into the state Treasury to the credit of the General Revenue Fund.

Fuel Tax Refund Fee (Section 206.41, F.S.)

Florida law allows certain taxpayers to obtain quarterly refunds of a portion of the tax paid on fuel purchases. These qualified taxpayers must purchase the fuel for use in agriculture, commercial fishing, school buses, mass public transportation, or another authorized purpose. The Department is required to deduct a \$2 fee from each of these quarterly tax refunds.

¹ *Agenda for Meeting of the Governor and Cabinet* (Sept. 20, 2016); available at: <http://www.myflorida.com/myflorida/cabinet/agenda16/0920/agenda.pdf>.

² As the basis for his abstaining from voting on the legislative proposal of the Department, Governor Scott stated, "Florida law requires the Governor to independently review legislation upon passage; accordingly, I'm abstaining from the vote, and the record should reflect the abstention." Transcript, *Meeting of the Governor and Cabinet on September 20, 2016*, pgs. 93-96, available at: <http://www.myflorida.com/myflorida/cabinet/agenda16/0920/transcript.pdf>.

Vending Machine Notice Requirement (Section 212.0515, F.S.)

Sales tax is due on the sale of food, beverages, and most items purchased through vending machines in Florida. Vending machine owners are required to register with the Department. Vending machine owners also must display a notice on each vending machine which provides that machines without a posted notice may be reported using a toll-free number and that a person who reports noncompliance may be eligible for a reward. Florida law imposes a \$250 penalty on each vending machine that does not display the notice.

Sales and Use Tax Registration Fee (Sections 212.0596 and 212.18, F.S.)

Florida law imposes a \$5 fee on each business location that registers with the Department to collect, report, and remit sales and use tax. However, the \$5 registration fee is waived if a business applies online through the Department's online registration process.

Ninth-cent and Local Option Dates (Sections 336.021 and 336.025, F.S.)

Chapter 336, F.S., provides clear direction on the administration of rate changes for ninth-cent and local option fuel taxes imposed after July 1, 2002. For taxes imposed prior to July 2002, the statutes do not clearly identify adoption dates for ordinances or the length of time the adopted ordinance will remain in effect.

Dry Cleaning Tax Registration Fee (Section 376.70, F.S.)

Dry cleaning facilities are required to register with the Department and pay a \$30 fee. If a facility registers electronically, the Department waives the \$30 fee as authorized by statute. The majority of these registrations are electronic and no fee is charged.

Perchloroethylene Registration Fee (Section 376.75, F.S.)

Any person producing, importing or selling perchloroethylene (perc) is required to register with the Department and pay a \$30 fee. Additionally, the person must also register for a pollutants license that requires a \$30 license tax. The Department has allowed perc registrants to designate their perc registration on the pollutants registration and has not required a separate application and fee for perc.

Extension of Annual and Installment Due Dates (Sections 443.131 and 443.141, F.S.)

Due dates for reemployment tax installment payments and annual filings are provided for by statute and do not allow for additional time when the due dates fall on a Saturday, Sunday, or holiday. Quarterly filing due dates are provided for by rule and have provisions allowing later due dates when the date falls on a weekend or holiday.

Reemployment Tax Penalty Waiver (Section 443.163, F.S.)

Florida law requires certain employers to file their Employers Quarterly Report electronically. When employers fail to file electronically as required, current law imposes a penalty. There is no provision for a waiver of penalty should the penalty imposition be found to be inequitable.

III. Effect of Proposed Changes:

The bill contains recommendations made by the Department of Revenue (Department) and approved by the Cabinet which are designed to reduce the burden on taxpayers. The bill does so by eliminating fees that generate negligible amounts, repealing an obsolete provision requiring the court to report information on probate cases, and affording taxpayers and tax collection service providers greater flexibility in waiving penalties, and extending due dates **for filings and tax payments.**

In particular, various fees are eliminated after a finding by the Department that the amounts generated by the collection of these fees is negligible.

Sections 1, 22, 23. Elimination of Reporting Requirements (Sections 198.30 and 733.2121, F.S.)

Present Situation: Section 198.30, F.S., requires circuit court judges to report the names of decedents and other information on estates in probate to both the Department and the Agency for Health Care Administration (AHCA). In addition, personal representatives are required to provide certain information to the Department and AHCA pursuant to s. 733.2121(3), F.S. Due to estate and intangible tax law changes, the Department no longer needs the information circuit court judges provide and, in most circumstances, does not need the information supplied by personal representatives.

Proposed Change: This proposal amends s. 198.30, F.S., to eliminate the requirement to provide information to the Department. Therefore, this information will be provided only to AHCA. Additionally, s. 733.2121, F.S., is amended to require a notice of creditors to be served on the Department only when the Department is a creditor of the estate.

Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, and 24. Fuel and Pollutants License Fee Elimination (Sections 206.02, 206.021, 206.022, 206.405, 206.406, 206.9943 and 206.9952, 206.998, F.S.)

Present Situation: Florida law imposes a \$30 license tax on persons applying for an annual fuel or pollutants license and a \$5 annual fee to obtain a license as a natural gas fuel retailer. The Department issues the taxpayer a receipt, which must be posted on display in public view. All money derived from the license taxes pursuant to ss. 206.02, 206.021, 206.022, and 206.404, F.S., must be paid into the state Treasury to the credit of the General Revenue Fund.

Proposed Change: This proposal eliminates the \$30 annual license tax required for a fuel or pollutants license as well as the \$5 annual fee to obtain a natural gas fuel license. Additionally, s. 206.405, F.S., the receipt for payment of the license tax, and s. 206.406, F.S., the disposition of license tax funds, are repealed. The bill amends s. 206.998, F.S., to conform to the repealed sections.

Section 8. Fuel Tax Refund Fee Elimination (Section 206.41, F.S.)

Present Situation: Florida law allows certain taxpayers to obtain quarterly refunds of a portion of the tax paid on fuel purchases. These qualified taxpayers must purchase the fuel for use in

agriculture, commercial fishing, school buses, mass public transportation, or another authorized purpose. The Department is required to deduct a \$2 fee from each of these quarterly tax refunds.

Proposed Change: This proposal eliminates the \$2 processing fee deducted from the quarterly fuel tax refunds made to these qualified taxpayers.

Section 12. Elimination of Vending Machine Notice Requirement (Section 212.0515, F.S.)

Present Situation: Sales tax is due on the sale of food, beverages, and most items purchased through vending machines in Florida. Vending machine owners also must display a notice on each vending machine which provides that machines without a posted notice may be reported using a toll-free number and that a person who reports noncompliance may be eligible for a reward. Florida law imposes a \$250 penalty for each vending machine that does not display the notice.

Proposed Change: This proposal eliminates the required notice.

Sections 13 and 14. Sales and Use Tax Registration Fee Elimination (Sections 212.0596 and 212.18, F.S.)

Present Situation: Florida law imposes a \$5 fee on each business location that registers with the Department to collect, report, and remit sales and use tax. However, the \$5 registration fee is waived if a business applies online through the Department's online registration process.

Proposed Change: This proposal eliminates the \$5 application fee charged for all businesses registering to collect, report, and remit sales and use tax.

Sections 15 and 16. Ninth-cent and Local Option Dates (Sections 336.021 and 336.025, F.S.)

Present Situation: Chapter 336, F.S., provides clear direction on the administration of rate changes for ninth-cent and local option fuel taxes imposed after July 1, 2002. For taxes imposed prior to July 2002, however, the statutes do not clearly identify adoption dates for ordinances or the length of time the adopted ordinance will remain in effect.

Proposed Change: This proposal provides specific guidelines for the notification, adoption, and expiration of local ordinances imposed prior to July 2002. For those tax levies, any re-imposition would be required to be levied before July 1 to allow the Department time to make any necessary changes to distribution programs.

Section 17. Dry Cleaning Tax Registration Fee Elimination (Section 376.70, F.S.)

Present Situation: Dry cleaning facilities are required to register with the Department and pay a \$30 fee. If a facility registers electronically, the Department waives the \$30 fee as authorized by statute. The majority of these registrations are electronic and no fee is charged.

Proposed Change: This proposal eliminates the \$30 registration fee for all registrations.

Section 18. Perchloroethylene Registration Fee Elimination (Section 376.75, F.S.)

Present Situation: Any person producing, importing or selling perchloroethylene (perc) is required to register with the Department and pay a \$30 fee. Additionally, the person must also register for a pollutants license that requires a \$30 license tax. The Department has allowed perc registrants to designate their perc registration on the pollutants registration and has not required a separate application and fee for perc.

Present Change: This proposal repeals the \$30 perc registration fee.

Section 19 and 20. Extension of Annual and Installment Due Dates (Sections 443.131 and 443.141, F.S.)

Present Situation: Due dates for reemployment tax installment payments and annual filings are provided for by statute and do not allow for additional time when the due dates fall on a Saturday, Sunday, or holiday. Quarterly filing due dates are provided for by rule and have provisions allowing later due dates when the date falls on a weekend or holiday.

Proposed Change: This proposal adds provisions allowing for later due dates for annual filings and installment payments when the date falls on a Saturday, Sunday, or holiday or any other day when the United States Postal Service is closed.

Section 21. Reemployment Tax Penalty Waiver (Section 443.163, F.S.)

Present Situation: Florida law requires certain employers to file their Employers Quarterly Report electronically. When employers fail to file electronically as required, current law imposes a penalty. The tax collection service provider has no flexibility to waive the penalty.

Proposed Change: This proposal allows a tax collection service provider to waive the penalty imposed for a failure to file electronically if the tax collection service provider finds a penalty to be inequitable. Grounds for inequity include the death or serious illness of the person who prepares and files the report, destructions of the business records by fire or another casualty, or unscheduled and unavoidable computer downtime.

Section 25. Effective Date

Although the bill takes effect upon becoming a law, certain provisions do not take effect until January 1, 2018. These provisions having the later effective date eliminate fees and the notice requirements on vending machines.

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 Revenue Estimating Conference estimates that this bill will reduce General Revenue Fund receipts by \$0.1 and \$0.2 million recurring revenues in Fiscal Year 2017-2018. Eliminating the fee for sales tax registration and fuel and pollutants licensing will reduce revenue by approximately \$138,000 and \$36,000, respectively. The elimination of the dry cleaning and perchloroethylene registration fee will have an insignificant impact.³

B. Private Sector Impact:

By eliminating various licensing and registration fees, the bill will reduce costs to businesses to pay the associated fees and the administrative costs of completing the paperwork associated with the fees.

C. Government Sector Impact:

The Department of Revenue does not expect an operational impact from the provisions of this bill.⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 198.30, 206.02, 206.021, 206.022, 206.03, 206.045, 206.41, 206.9943, 206.9952, 206.998, 206.9865, 212.0515, 212.0596, 212.18, 336.021, 336.025, 376.70, 376.75, 443.131, 443.141, 443.163, and 733.2121.

This bill reenacts section 733.701 of the Florida Statutes.

³ Website of the Office of Economic and Demographic Research, *2017 Revenue Estimating Conference, 2017 Conference Table* available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/pdf/page1-10.pdf> and <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/pdf/page39-45.pdf>.

⁴ Department of Revenue, *2017 Agency Legislative Bill Analysis* (March 7, 2017) (on file with the Senate Judiciary Committee).

This bill repeals the following sections of the Florida Statutes: 206.405 and 206.406.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Stargel

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1 A bill to be entitled
 2 An act relating to tax administration; amending s.
 3 198.30, F.S.; deleting a requirement for circuit
 4 judges to monthly report certain information to the
 5 Department of Revenue relating to the estates of
 6 certain decedents; amending s. 206.02, F.S.; deleting
 7 requirements to pay license taxes for a terminal
 8 supplier license, an importer, exporter, or blender of
 9 motor fuels license, or a wholesaler of motor fuel
 10 license; conforming a provision to changes made by the
 11 act; amending s. 206.021, F.S.; deleting a requirement
 12 to pay license taxes for a carrier license; amending
 13 s. 206.022, F.S.; deleting a requirement to pay
 14 license taxes for a terminal operator license;
 15 amending s. 206.03, F.S.; conforming a provision to
 16 changes made by the act; amending s. 206.045, F.S.;
 17 conforming a provision to changes made by the act;
 18 repealing ss. 206.405 and 206.406, F.S., relating to
 19 receipt for payment of license taxes and disposition
 20 of license tax funds, respectively; amending s.
 21 206.41, F.S.; deleting a requirement for the
 22 department to deduct a specified fee from certain
 23 motor fuel refund claims; amending s. 206.9943, F.S.;
 24 deleting a requirement to pay license fees for a
 25 pollutant tax license; amending s. 206.9952, F.S.;
 26 deleting a requirement to pay license fees for a
 27 natural gas fuel retailer license; amending s.
 28 206.9865, F.S.; deleting a requirement to pay
 29 application fees for an aviation fuel tax license for

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30 commercial air carriers; amending s. 212.0515, F.S.;
 31 deleting a requirement for vending machine operators
 32 to post a specified notice on vending machines;
 33 deleting a provision requiring the department to pay
 34 an informant certain rewards for reporting vending
 35 machines without the notice; conforming provisions to
 36 changes made by the act; amending s. 212.0596, F.S.;
 37 deleting an authorization for procedures that waive
 38 registration fees in relation to the use tax on mail
 39 order purchases by certain persons; amending s.
 40 212.18, F.S.; deleting a requirement for certificates
 41 of registration fees for certain dealers in relation
 42 to the sales and use tax; conforming provisions to
 43 changes made by the act; amending s. 336.021, F.S.;
 44 specifying a condition for the reimposition of ninth-
 45 cent fuel taxes on motor and diesel fuels by a county;
 46 amending s. 336.025, F.S.; specifying a condition for
 47 the reimposition of local option fuel taxes on motor
 48 and diesel fuels by a county; providing construction
 49 relating to requirements on a decision to rescind a
 50 tax; amending s. 376.70, F.S.; deleting a requirement
 51 for drycleaning or dry drop-off facilities to pay
 52 registration fees to the department; amending s.
 53 376.75, F.S.; deleting a requirement to pay
 54 registration fees for certain persons producing,
 55 importing, selling, or using perchloroethylene;
 56 amending s. 443.131, F.S.; revising a deadline for
 57 employers of employees performing domestic services to
 58 annually report wages and pay certain contributions

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under the Reemployment Assistance Program Law; defining the term "holiday"; amending s. 443.141, F.S.; specifying a due date of certain employer contributions if such date falls on a weekend or holiday; defining the term "holiday"; conforming cross-references; amending s. 443.163, F.S.; deleting a form name; authorizing reemployment assistance tax collection service providers to waive a certain penalty under certain circumstances; amending s. 733.2121, F.S.; providing that a personal representative may serve a notice to creditors on the department only under certain circumstances; deleting a provision providing construction; reenacting s. 733.701, F.S., relating to notifying creditors, to incorporate the amendment made to s. 733.2121, F.S., in a reference thereto; amending s. 206.998, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Section 198.30, Florida Statutes, is amended to read:

198.30 Circuit judge to report names of decedents, etc.— Each circuit judge of this state shall, on or before the 10th day of every month, notify the Agency for Health Care Administration ~~department~~ of the names of all decedents; the names and addresses of the respective personal representatives, administrators, or curators appointed; the amount of the bonds,

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if any, required by the court; and the probable value of the estates, in all estates of decedents whose wills have been probated or propounded for probate before the circuit judge or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding month; and such report shall contain any other information that ~~which~~ the circuit judge may have concerning the estates of such decedents. ~~In addition, a copy of this report shall be provided to the Agency for Health Care Administration.~~ A circuit judge shall also furnish forthwith such further information, from the records and files of the circuit court in regard to such estates, as the department may from time to time require.

Section 2. Effective January 1, 2018, subsections (2), (3), and (4), paragraph (a) of subsection (7), and paragraph (b) of subsection (8) of section 206.02, Florida Statutes, are amended to read:

206.02 Application for license; temporary license; terminal suppliers, importers, exporters, blenders, biodiesel manufacturers, and wholesalers.—

(2) To procure a terminal supplier license, a person shall file with the department an application under oath, and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state and that person's registration number under s. 4101 of the Internal Revenue Code.

(b) The location, with street number address, of his or her principal office or place of business and the location where records will be made available for inspection.

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(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a \$30 license tax. Each license must shall be renewed annually through application, including an annual \$30 license tax.~~

(3) To procure an importer, exporter, or blender of motor fuels license, a person shall file with the department an application under oath, and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state.

(b) The location, with street number address, of his or her principal office or place of business and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or

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country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a \$30 license tax. Each license must shall be renewed annually through application, including an annual \$30 license tax.~~

(4) To procure a wholesaler of motor fuel license, a person shall file with the department an application under oath and in such form as the department may prescribe, setting forth:

(a) The name under which the person will transact business within the state.

(b) The location, with street number address, of his or her principal office or place of business within this state and the location where records will be made available for inspection.

(c) The name and complete residence address of the owner or the names and addresses of the partners, if such person is a partnership, or of the principal officers, if such person is a corporation or association; and, if such person is a corporation organized under the laws of another state, territory, or country, he or she shall also indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in the state.

~~The application shall require a \$30 license tax. Each license must shall be renewed annually through application, including an~~

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~~annual \$30 license fee.~~

(7) (a) If all applicants for a license hold a current license in good standing of the same type and kind, the department shall issue a temporary license upon the filing of a completed application, ~~payment of all fees,~~ and the posting of adequate bond. A temporary license shall automatically expire 90 days after its effective date or, prior to the expiration of 90 days or the period of any extension, upon issuance of a permanent license or of a notice of intent to deny a permanent license. A temporary license may be extended once for a period not to exceed 60 days, upon written request of the applicant, subject to the restrictions imposed by this subsection.

(8)

(b) Notwithstanding the provisions of this chapter requiring a license ~~tax~~ and a bond or criminal background check, the department may issue a temporary license as an importer or exporter to a person who holds a valid Florida wholesaler license or to a person who is an unlicensed dealer. A license may be issued under this subsection only to a business that has a physical location in this state and holds a valid Florida sales and use tax certificate of registration or that holds a valid fuel license issued by another state.

Section 3. Effective January 1, 2018, subsection (3) and paragraph (b) of subsection (5) of section 206.021, Florida Statutes, are amended to read:

206.021 Application for license; carriers.—

(3) ~~The application shall require a \$30 license tax.~~ Each license must ~~shall~~ be renewed annually through application, ~~including an annual \$30 license tax.~~

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(5)

(b) Notwithstanding the provisions of this chapter requiring a license ~~tax~~ and a bond or criminal background check, the department may issue a temporary license as a carrier to a person who holds a valid Florida wholesaler, importer, exporter, or blender license or to a person who is an unlicensed dealer. A license may be issued under this subsection only to a business that has a physical location in this state and holds a valid Florida sales and use tax certificate of registration or that holds a valid fuel license issued by another state.

Section 4. Effective January 1, 2018, subsection (2) of section 206.022, Florida Statutes, is amended to read:

206.022 Application for license; terminal operators.—

(2) ~~The application shall require a \$30 license tax.~~ Each license shall be renewed annually through application, ~~including an annual \$30 license tax.~~

Section 5. Effective January 1, 2018, subsection (1) of section 206.03, Florida Statutes, is amended to read:

206.03 Licensing of terminal suppliers, importers, exporters, and wholesalers.—

(1) The application in proper form having been accepted for filing, ~~the filing fee paid,~~ and the bond accepted and approved, except as provided in s. 206.05(1), the department shall issue to such person a license to transact business in the state, subject to cancellation of such license as provided by law.

Section 6. Effective January 1, 2018, section 206.045, Florida Statutes, is amended to read:

206.045 Licensing period; ~~cost for license issuance.~~

Beginning January 1, 1998, the licensing period under this

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chapter shall be a calendar year, or any part thereof. ~~The cost of any such license issued pursuant to this chapter shall be \$30.~~

Section 7. Effective January 1, 2018, ss. 206.405 and 206.406, Florida Statutes, are repealed.

Section 8. Effective January 1, 2018, paragraph (c) of subsection (5) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(5)

(c)1. No refund may be authorized unless a sworn application therefor containing such information as the department may determine is filed with the department not later than the last day of the month following the quarter for which the refund is claimed. However, when a justified excuse for late filing is presented to the department and the last preceding claim was filed on time, the deadline for filing may be extended an additional month. No refund will be authorized unless the amount due is for \$5 or more for any refund period and unless application is made upon forms prescribed by the department.

2. Claims made for refunds provided pursuant to subsection (4) shall be paid quarterly. ~~The department shall deduct a fee of \$2 for each claim, which fee shall be deposited in the General Revenue Fund.~~

Section 9. Effective January 1, 2018, subsection (3) of section 206.9943, Florida Statutes, is amended to read:

206.9943 Pollutant tax license.—

(3) The license must be renewed annually, ~~and the fee for original application or renewal is \$30.~~

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Section 10. Effective January 1, 2018, subsection (9) of section 206.9952, Florida Statutes, is amended to read:

206.9952 Application for license as a natural gas fuel retailer.—

(9) ~~The license application requires a license fee of \$5. Each license shall be renewed annually by submitting a reapplication and the license fee to the department. The license fee shall be paid to the department for deposit into the General Revenue Fund.~~

Section 11. Effective January 1, 2018, subsection (3) of section 206.9865, Florida Statutes, is amended to read:

206.9865 Commercial air carriers; registration; reporting.—

(3) The application must be renewed annually ~~and the fee for application or renewal is \$30.~~

Section 12. Effective January 1, 2018, subsections (3) and (4) and present subsection (7) of section 212.0515, Florida Statutes, are amended to read:

212.0515 Sales from vending machines; sales to vending machine operators; special provisions; registration; penalties.—

(3) ~~(a)~~ An operator of a vending machine may not operate or cause to be operated in this state any vending machine until the operator has registered with the department and has obtained a separate registration certificate for each county in which such machines are located, ~~and has affixed a notice to each vending machine selling food or beverages. The notice must be conspicuously displayed on the vending machine when it is being operated in this state and shall contain the following language in conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING~~

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291 MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE
 292 NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD. DO NOT USE THIS
 293 NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST
 294 MONEY OR OUT-OF-DATE PRODUCTS.

295 ~~(b)~~ The department shall establish a toll-free number to
 296 report any violations of this section. ~~Upon a determination that~~
 297 ~~a violation has occurred, the department shall pay the informant~~
 298 ~~a reward of up to 10 percent of previously unpaid taxes~~
 299 ~~recovered as a result of the information provided. A person who~~
 300 ~~receives information concerning a violation of this section from~~
 301 ~~an employee as specified in s. 213.30 is not eligible for a cash~~
 302 ~~reward.~~

303 ~~(4) A penalty of \$250 per machine is imposed on an operator~~
 304 ~~who fails to properly obtain and display the required notice on~~
 305 ~~any machine. Penalties accrue interest as provided for~~
 306 ~~delinquent taxes under this chapter and apply in addition to all~~
 307 ~~other applicable taxes, interest, and penalties.~~

308 ~~(6)(7) The department may adopt rules necessary to~~
 309 ~~administer the provisions of this section and may establish a~~
 310 ~~schedule for phasing in the requirement that existing notices be~~
 311 ~~replaced with revised notices displayed on vending machines.~~

312 Section 13. Effective January 1, 2018, subsection (7) of
 313 section 212.0596, Florida Statutes, is amended to read:

314 212.0596 Taxation of mail order sales.—

315 (7) The department may establish by rule procedures for
 316 collecting the use tax from unregistered persons who but for
 317 their mail order purchases would not be required to remit sales
 318 or use tax directly to the department. The procedures may
 319 provide for waiver of registration ~~and registration fees,~~

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320 provisions for irregular remittance of tax, elimination of the
 321 collection allowance, and nonapplication of local option
 322 surtaxes.

323 Section 14. Effective January 1, 2018, paragraphs (a) and
 324 (c) of subsection (3) of section 212.18, Florida Statutes, are
 325 amended to read:

326 212.18 Administration of law; registration of dealers;
 327 rules.—

328 (3) (a) A person desiring to engage in or conduct business
 329 in this state as a dealer, or to lease, rent, or let or grant
 330 licenses in living quarters or sleeping or housekeeping
 331 accommodations in hotels, apartment houses, roominghouses, or
 332 tourist or trailer camps that are subject to tax under s.
 333 212.03, or to lease, rent, or let or grant licenses in real
 334 property, and a person who sells or receives anything of value
 335 by way of admissions, must file with the department an
 336 application for a certificate of registration for each place of
 337 business. The application must include the names of the persons
 338 who have interests in such business and their residences, the
 339 address of the business, and other data reasonably required by
 340 the department. However, owners and operators of vending
 341 machines or newspaper rack machines are required to obtain only
 342 one certificate of registration for each county in which such
 343 machines are located. The department, by rule, may authorize a
 344 dealer that uses independent sellers to sell its merchandise to
 345 remit tax on the retail sales price charged to the ultimate
 346 consumer in lieu of having the independent seller register as a
 347 dealer and remit the tax. The department may appoint the county
 348 tax collector as the department's agent to accept applications

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for registrations. The application must be submitted to the department before the person, firm, copartnership, or corporation may engage in such business, ~~and it must be accompanied by a registration fee of \$5. However, a registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. The department may waive the registration fee for applications submitted through the department's Internet registration process.~~

(c)1. A person who engages in acts requiring a certificate of registration under this subsection and who fails or refuses to register commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Such acts are subject to injunctive proceedings as provided by law. A person who engages in acts requiring a certificate of registration and who fails or refuses to register is also subject to a \$100 initial registration fee ~~in lieu of the \$5 registration fee required by paragraph (a).~~ However, the department may waive the ~~increase in the~~ registration fee if it finds that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.

2.a. A person who willfully fails to register after the department provides notice of the duty to register as a dealer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. The department shall provide written notice of the duty to register to the person by personal service or by sending notice by registered mail to the person's last known address. The department may provide written notice by both methods described in this sub-subparagraph.

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Section 15. Subsection (5) of section 336.021, Florida Statutes, is amended to read:

336.021 County transportation system; levy of ninth-cent fuel tax on motor fuel and diesel fuel.—

(5) All impositions of the tax shall be levied before October 1 of each year to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is to be effective September 1 of the year of expiration. All impositions shall be required to end on December 31 of a year. A decision to rescind the tax shall not take effect on any date other than December 31 and shall require a minimum of 60 days' notice to the department of such decision.

Section 16. Paragraphs (a) and (b) of subsection (1) and paragraph (a) of subsection (5) of section 336.025, Florida Statutes, are amended to read:

336.025 County transportation system; levy of local option fuel tax on motor fuel and diesel fuel.—

(1) (a) In addition to other taxes allowed by law, there may be levied as provided in ss. 206.41(1)(e) and 206.87(1)(c) a 1-cent, 2-cent, 3-cent, 4-cent, 5-cent, or 6-cent local option fuel tax upon every gallon of motor fuel and diesel fuel sold in a county and taxed under the provisions of part I or part II of chapter 206.

1. All impositions and rate changes of the tax shall be levied before October 1 to be effective January 1 of the following year for a period not to exceed 30 years, and the

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applicable method of distribution shall be established pursuant to subsection (3) or subsection (4). However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is effective September 1 of the year of expiration. Upon expiration, the tax may be relevied provided that a redetermination of the method of distribution is made as provided in this section.

2. County and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures.

3. Any tax levied pursuant to this paragraph may be extended on a majority vote of the governing body of the county. A redetermination of the method of distribution shall be established pursuant to subsection (3) or subsection (4), if, after July 1, 1986, the tax is extended or the tax rate changed, for the period of extension or for the additional tax.

(b) In addition to other taxes allowed by law, there may be levied as provided in s. 206.41(1)(e) a 1-cent, 2-cent, 3-cent, 4-cent, or 5-cent local option fuel tax upon every gallon of motor fuel sold in a county and taxed under the provisions of part I of chapter 206. The tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.

1. All impositions and rate changes of the tax shall be levied before October 1, to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may

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be reimposed at the current authorized rate if the imposition of the tax is levied before July 1 and is effective September 1 of the year of expiration.

2. The county may, prior to levy of the tax, establish by interlocal agreement with one or more municipalities located therein, representing a majority of the population of the incorporated area within the county, a distribution formula for dividing the entire proceeds of the tax among county government and all eligible municipalities within the county. If no interlocal agreement is adopted before the effective date of the tax, tax revenues shall be distributed pursuant to the provisions of subsection (4). If no interlocal agreement exists, a new interlocal agreement may be established prior to June 1 of any year pursuant to this subparagraph. However, any interlocal agreement agreed to under this subparagraph after the initial levy of the tax or change in the tax rate authorized in this section shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized by this paragraph, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

3. County and municipal governments shall use moneys received pursuant to this paragraph for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan or for

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expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments. For purposes of this paragraph, expenditures for the construction of new roads, the reconstruction or resurfacing of existing paved roads, or the paving of existing graded roads shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.

(5) (a) By October 1 of each year, the county shall notify the Department of Revenue of the rate of the taxes levied pursuant to paragraphs (1) (a) and (b), and of its decision to rescind or change the rate of a tax, if applicable, and shall provide the department with a certified copy of the interlocal agreement established under subparagraph (1) (b) 2. or subparagraph (3) (a) 1. with distribution proportions established by such agreement or pursuant to subsection (4), if applicable. A decision to rescind a tax may not take effect on any date other than December 31, regardless of when the tax was originally imposed, and requires a minimum of 60 days' notice to the Department of Revenue of such decision.

Section 17. Effective January 1, 2018, subsection (2) of section 376.70, Florida Statutes, is amended to read:

376.70 Tax on gross receipts of drycleaning facilities.—

(2) Each drycleaning facility or dry drop-off facility imposing a charge for the drycleaning or laundering of clothing or other fabrics is required to register with the Department of Revenue and become licensed for the purposes of this section.

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The owner or operator of the facility shall register the facility with the Department of Revenue. Drycleaning facilities or dry drop-off facilities operating at more than one location are only required to have a single registration. ~~The fee for registration is \$30. The owner or operator of the facility shall pay the registration fee to the Department of Revenue. The department may waive the registration fee for applications submitted through the department's Internet registration process.~~

Section 18. Subsection (2) of section 376.75, Florida Statutes, is amended to read:

376.75 Tax on production or importation of perchloroethylene.—

(2) Any person producing in, importing into, or causing to be imported into, or selling in, this state perchloroethylene must register with the Department of Revenue and become licensed for the purposes of remitting the tax pursuant to, or providing information required by, this section. Such person must register as a seller of perchloroethylene, a user of perchloroethylene in drycleaning facilities, or a user of perchloroethylene for purposes other than drycleaning. Persons operating at more than one location are only required to have a single registration. ~~The fee for registration is \$30.~~ Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 19. Subsection (1) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(1) PAYMENT OF CONTRIBUTIONS.—Contributions accrue and are

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523 payable by each employer for each calendar quarter he or she is
 524 subject to this chapter for wages paid during each calendar
 525 quarter for employment. Contributions are due and payable by
 526 each employer to the tax collection service provider, in
 527 accordance with the rules adopted by the Department of Economic
 528 Opportunity or the state agency providing tax collection
 529 services. This subsection does not prohibit the tax collection
 530 service provider from allowing, at the request of the employer,
 531 employers of employees performing domestic services, as defined
 532 in s. 443.1216(6), to pay contributions or report wages at
 533 intervals other than quarterly when the nonquarterly payment or
 534 reporting assists the service provider and when nonquarterly
 535 payment and reporting is authorized under federal law. Employers
 536 of employees performing domestic services may report wages and
 537 pay contributions annually, with a due date of no later than
 538 January 31, unless that day is a Saturday, Sunday, or holiday,
 539 in which event the due date is the next day that is not a
 540 Saturday, Sunday, or holiday. For purposes of this subsection,
 541 the term "holiday" means a day designated under s. 110.117(1)
 542 and (2) and any other day when the offices of the United States
 543 Postal Service are closed January 1 and a delinquency date of
 544 February 1. To qualify for this election, the employer must
 545 employ only employees performing domestic services, be eligible
 546 for a variation from the standard rate computed under subsection
 547 (3), apply to this program no later than December 1 of the
 548 preceding calendar year, and agree to provide the department or
 549 its tax collection service provider with any special reports
 550 that are requested, including copies of all federal employment
 551 tax forms. An employer who fails to timely furnish any wage

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552 information required by the department or its tax collection
 553 service provider loses the privilege to participate in this
 554 program, effective the calendar quarter immediately after the
 555 calendar quarter the failure occurred. The employer may reapply
 556 for annual reporting when a complete calendar year elapses after
 557 the employer's disqualification if the employer timely furnished
 558 any requested wage information during the period in which annual
 559 reporting was denied. An employer may not deduct contributions,
 560 interests, penalties, fines, or fees required under this chapter
 561 from any part of the wages of his or her employees. A fractional
 562 part of a cent less than one-half cent shall be disregarded from
 563 the payment of contributions, but a fractional part of at least
 564 one-half cent shall be increased to 1 cent.

565 Section 20. Paragraph (d) of subsection (1) of section
 566 443.141, Florida Statutes, is amended to read:

567 443.141 Collection of contributions and reimbursements.—

568 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
 569 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

570 (d) *Payments for contributions.*—For an annual
 571 administrative fee not to exceed \$5, a contributing employer may
 572 pay its quarterly contributions due for wages paid in the first
 573 three quarters of each year in equal installments if those
 574 contributions are paid as follows:

575 1. For contributions due for wages paid in the first
 576 quarter of each year, one-fourth of the contributions due must
 577 be paid on or before April 30, one-fourth must be paid on or
 578 before July 31, one-fourth must be paid on or before October 31,
 579 and one-fourth must be paid on or before December 31.

580 2. In addition to the payments specified in subparagraph

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1., for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.

3. In addition to the payments specified in subparagraphs 1. and 2., for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31, and one-half must be paid on or before December 31.

4. If any of the due dates in this paragraph falls on a Saturday, Sunday, or holiday, the due date is the next day that is not a Saturday, Sunday, or holiday. For purposes of this paragraph, the term "holiday" means a day designated under s. 110.117(1) and (2) and any other day when the offices of the United States Postal Service are closed.

5.4- The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and deposited into the Operating Trust Fund of the Department of Revenue.

6.5- Interest does not accrue on any contribution that becomes due for wages paid in the first three quarters of each year if the employer pays the contribution in accordance with subparagraphs 1.-5. ~~subparagraphs 1.-4.~~ Interest and fees continue to accrue on prior delinquent contributions and commence accruing on all contributions due for wages paid in the first three quarters of each year which are not paid in accordance with subparagraphs 1.-4. ~~subparagraphs 1.-3.~~ Penalties may be assessed in accordance with this chapter. The

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contributions due for wages paid in the fourth quarter are not affected by this paragraph and are due and payable in accordance with this chapter.

Section 21. Section 443.163, Florida Statutes, is amended to read:

443.163 Electronic reporting and remitting of contributions and reimbursements.—

(1) An employer may file any report and remit any contributions or reimbursements required under this chapter by electronic means. The Department of Economic Opportunity or the state agency providing reemployment assistance tax collection services shall adopt rules prescribing the format and instructions necessary for electronically filing reports and remitting contributions and reimbursements to ensure a full collection of contributions and reimbursements due. The acceptable method of transfer, the method, form, and content of the electronic means, and the method, if any, by which the employer will be provided with an acknowledgment shall be prescribed by the department or its tax collection service provider. However, any employer who employed 10 or more employees in any quarter during the preceding state fiscal year must file the Employers Quarterly Reports ~~(UCT-6)~~ for the current calendar year and remit the contributions and reimbursements due by electronic means approved by the tax collection service provider. A person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year must file the Employers Quarterly Reports ~~(UCT-6)~~ for each calendar quarter in the current calendar year, beginning with reports due for the second calendar quarter of

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639 2003, by electronic means approved by the tax collection service
640 provider.

641 (2) (a) An employer who is required by law to file an
642 Employers Quarterly Report ~~(UCT-6)~~ by approved electronic means,
643 but who files the report by a means other than approved
644 electronic means, is liable for a penalty of \$50 for that report
645 and \$1 for each employee. This penalty is in addition to any
646 other penalty provided by this chapter. However, the penalty
647 does not apply if the tax collection service provider waives the
648 electronic filing requirement in advance. An employer who fails
649 to remit contributions or reimbursements by approved electronic
650 means as required by law is liable for a penalty of \$50 for each
651 remittance submitted by a means other than approved electronic
652 means. This penalty is in addition to any other penalty provided
653 by this chapter.

654 (b) A person who prepared and reported for 100 or more
655 employers in any quarter during the preceding state fiscal year,
656 but who fails to file an Employers Quarterly Report ~~(UCT-6)~~ for
657 each calendar quarter in the current calendar year by approved
658 electronic means, is liable for a penalty of \$50 for that report
659 and \$1 for each employee. This penalty is in addition to any
660 other penalty provided by this chapter. However, the penalty
661 does not apply if the tax collection service provider waives the
662 electronic filing requirement in advance.

663 (3) The tax collection service provider may waive the
664 requirement to file an Employers Quarterly Report ~~(UCT-6)~~ by
665 electronic means for employers that are unable to comply despite
666 good faith efforts or due to circumstances beyond the employer's
667 reasonable control.

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668 (a) As prescribed by the Department of Economic Opportunity
669 or its tax collection service provider, grounds for approving
670 the waiver include, but are not limited to, circumstances in
671 which the employer does not:

672 1. Currently file information or data electronically with
673 any business or government agency; or

674 2. Have a compatible computer that meets or exceeds the
675 standards prescribed by the department or its tax collection
676 service provider.

677 (b) The tax collection service provider shall accept other
678 reasons for requesting a waiver from the requirement to submit
679 the Employers Quarterly Report ~~(UCT-6)~~ by electronic means,
680 including, but not limited to:

681 1. That the employer needs additional time to program his
682 or her computer;

683 2. That complying with this requirement causes the employer
684 financial hardship; or

685 3. That complying with this requirement conflicts with the
686 employer's business procedures.

687 (c) The department or the state agency providing
688 reemployment assistance tax collection services may establish by
689 rule the length of time a waiver is valid and may determine
690 whether subsequent waivers will be authorized, based on this
691 subsection.

692 (4) As used in this section, the term "electronic means"
693 includes, but is not limited to, electronic data interchange;
694 electronic funds transfer; and use of the Internet, telephone,
695 or other technology specified by the Department of Economic
696 Opportunity or its tax collection service provider.

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697 (5) The tax collection service provider may waive the
 698 penalty imposed by this section if a written request for a
 699 waiver is filed which establishes that imposition would be
 700 inequitable. Examples of inequity include, but are not limited
 701 to, situations where the failure to electronically file was
 702 caused by one of the following factors:

703 (a) Death or serious illness of the person responsible for
 704 the preparation and filing of the report.

705 (b) Destruction of the business records by fire or other
 706 casualty.

707 (c) Unscheduled and unavoidable computer downtime.

708 Section 22. Paragraph (e) of subsection (3) of section
 709 733.2121, Florida Statutes, is amended to read:

710 733.2121 Notice to creditors; filing of claims.—

711 (3)

712 (e) The personal representative may serve a notice to
 713 creditors on the Department of Revenue only when the Department
 714 of Revenue is determined to be a creditor under paragraph (a) If
 715 the Department of Revenue has not previously been served with a
 716 copy of the notice to creditors, then service of the inventory
 717 on the Department of Revenue shall be the equivalent of service
 718 of a copy of the notice to creditors.

719 Section 23. For the purpose of incorporating the amendment
 720 made by this act to section 733.2121, Florida Statutes, in a
 721 reference thereto, section 733.701, Florida Statutes, is
 722 reenacted to read:

723 733.701 Notifying creditors.—Unless creditors' claims are
 724 otherwise barred by s. 733.710, every personal representative
 725 shall cause notice to creditors to be published and served under

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726 s. 733.2121.

727 Section 24. Effective January 1, 2018, section 206.998,
 728 Florida Statutes, is amended to read:

729 206.998 Applicability of specified sections of parts I and
 730 II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026,
 731 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07,
 732 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15,
 733 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204,
 734 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25,
 735 206.27, 206.28, ~~206.405, 206.406,~~ 206.41, 206.413, 206.43,
 736 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606,
 737 206.608, and 206.61 of part I of this chapter and ss. 206.86,
 738 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part
 739 II of this chapter shall, as far as lawful or practicable, be
 740 applicable to the tax levied and imposed and to the collection
 741 thereof as if fully set out in this part. However, any provision
 742 of any such section does not apply if it conflicts with any
 743 provision of this part.

744 Section 25. Except as otherwise expressly provided in this
 745 act, this act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

SENATOR KELLI STARGEL
22nd District

March 14, 2017

The Honorable Greg Steube
Senate Committee on Judiciary, Chair
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Steube:

I respectfully request that SB 1320, related to *Tax Administration*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel
State Senator, District 22

Cc: Tom Cibula/ Staff Director
Joyce Butler/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1330

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Weapons and Firearms

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Fav/CS
2.			ED	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB1330 expressly states that two statutes that currently prohibit those who hold a concealed weapons and firearms license from carrying a concealed weapon or firearm at any school or career center no longer prohibit a licensee from carrying during nonschool hours at a private school that has a religious institution on its property.

II. Present Situation:

Overview

Possessing firearms or weapons on the property of any elementary or secondary school, or any college or university, whether public or private, is generally prohibited under Florida law. There are several exceptions to this prohibition. Federal law also generally prohibits a person from possessing a firearm on school property. One exception to this federal prohibition is that it does not apply to those licensed to carry a firearm by the state. But Florida's concealed carry license does not authorize licensees to carry weapons or firearms into school facilities.

Carrying Weapons and Firearms

Carrying a concealed weapon or firearm, as well as openly carrying a firearm, is generally illegal in this state. However, these prohibitions are subject to a host of exceptions.¹

Lawful Concealed Carry of Weapons and Firearms

A license to carry a concealed weapon or firearm appears to authorize a licensee to carry a concealed firearm in most places in the state. In general, a person will qualify for a license if he or she is at least 21 years of age, has qualifying training, does not chronically and habitually consume alcohol or other substances to the point of impairment, and has no recent criminal history.

A license, however, does not authorize a person to carry a concealed firearm into several places, including any college or university facility, any career center, or any elementary or secondary school facility or administration building. The license also does not authorize a person to carry a concealed firearm into any school, college, or professional athletic event not related to firearms.²

As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

Additional exceptions to the general prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or carry a concealed firearm in a manner described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. The statute also authorizes those engaged in hunting, fishing, or camping to carry a firearm while engaging in those activities or traveling to and from them. A person may also possess a firearm at his or her home or place of business.

Prohibited Possession of Weapons and Firearms at School or Related Location

In general, s. 790.115, F.S., prohibits a person from possessing any firearm, electric weapon or device, destructive device, or other weapon on the property of any school, school bus, or school bus stop. Unlike the statute authorizing the issuance of concealed weapon or firearm licenses, this statute expressly and broadly defines the term “school.” Under the definition, a school means any preschool through postsecondary school, *whether public or private*.³ The penalty for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed weapons and firearms license.⁴

¹ Many of these exceptions are set forth in s. 790.25, F.S. Florida’s licensed concealed carrying program, set forth at s. 790.06, F.S., is another exception.

² See s. 790.06(12), F.S., for a list of the places that a license does not authorize a licensee to carry into.

³ It also means any career center. Section 790.115(2)(a), F.S.

⁴ A non-licensee possessing a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000. *See*, ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser charge, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

However, the statute includes several exceptions to the ban on possessing a weapon at a school. Specifically, the statute allows a person to possess any of the banned weapons “as authorized in support of school-sanctioned activities.” Additionally, a person may “carry” a firearm in:⁵

- A case to a firearms program, class, or function, if approved by school authorities;
- A case to a career center having a firearms training range; or
- A vehicle if the firearm is not accessible for immediate use, unless, in the case of a school district, the school district has opted out of this allowance.

Prohibited Exhibition of a Weapon or Firearm at a School or Related Location

The ban on possessing weapons on school property applies only to such weapons as firearms, bombs, brass knuckles, knives, and the like. However, criminal penalties apply to a person who exhibits a sword, sword cane, box cutter, or common pocketknife in an angry or threatening manner.⁶

Federal Law

The federal Gun-Free School Zones Act prohibits possessing a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.⁷ However, this prohibition does not apply to a person who is licensed to carry a concealed weapon or firearm.⁸

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting students from possessing firearms at or near schools. This prohibition is also subject to exceptions.⁹ This act expressly states that it does not apply to a firearm “that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”¹⁰

III. Effect of Proposed Changes:

Carrying Weapons and Firearms at Private Schools

Under current law, section 790.115, F.S., prohibits carrying a firearm or weapon on any school property, subject to exceptions in the statute. This statute defines school to include preschools through colleges and universities, public *or private*, as well as career centers. Also, this state’s concealed weapons and firearms licensing statute lists elementary and secondary facilities and administration buildings, college and university facilities, and career centers as places where the license does not authorize a person to carry.

⁵ Section 790.115(2)(a)1.-3., F.S.

⁶ Section 790.115(1), F.S.

⁷ 18 U.S.C. § 922(q)(2)(A).

⁸ *See*, 18 U.S.C. § 922(q)(2)(B)(ii).

⁹ *See*, 20 U.S.C. § 7961.

¹⁰ 20 U.S.C. § 7961(g).

The bill expressly states that section 790.115, F.S., and the concealed weapons and firearms licensing statute do not prohibit concealed carry licensees from carrying on private school property during non-school hours, if a religious institution is located on the property. As such, the bill appears effectively to authorize licensees to carry concealed weapons and firearms in these places.¹¹

The bill adopts the definition of “religious institution” from elsewhere in the Florida Statutes:¹²

“Religious institution” means a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.

As such, “religious institution” can mean several different things. It can mean a place, or it can mean a group of people, such as a congregation. Accordingly, the times and places covered by the bill—i.e., “nonschool hours” at a “private school property” on which is located at “religious institution”—would *clearly* include, for example, any nonschool hour of any day at a private Jewish school that has on its campus a synagogue building that houses an active congregation.

The times and places covered by the bill would *probably* include, for example:

- Any nonschool hour of any day at a private Christian school that does not have a dedicated church building on its property, but hosts a congregation of worshipers in its auditorium on Sunday mornings.
- Friday evening at a private secular high school while it is hosting a Muslim congregation in its gymnasium.

Private School’s Right to Exclude Anyone Possessing a Weapon or Firearm

It appears that a private school may exclude from its campus any person possessing a weapon or firearm. The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”¹³ The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”¹⁴

A person who enters the property of another without authorization commits the crime of trespass to property. This elements of the crime are set forth in s. 810.08(1), F.S., which states:

Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or

¹¹ Federal law generally prohibits possessing a firearm at or within 1,000 feet of any school’s property.

¹² The bill references s. 775.0861, F.S., which defines “religious institution” by reference to s. 496.404(23), F.S.

¹³ FLA. CONST. art. I, s. 2.

¹⁴ *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance

Trespassing with a firearm is a third degree felony,¹⁵ punishable by up to 5 years in prison,¹⁶ 5 years of probation, and a fine not to exceed \$5,000.¹⁷

Effective Date

The bill takes effect July 1, 2017.

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:

None.

VI. Technical Deficiencies:

None.

¹⁵ Section 810.08(2)(c), F.S.

¹⁶ Section 775.082(3)(e), F.S.

¹⁷ Section 775.083(1)(c), F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 790.115, 435.04, and 1012.315.

This bill reenacts the following sections of the Florida Statutes: 921.0022, 790.251, 943.051, 985.11, 985.25, 985.255, and 985.557.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on March 22, 2017:

The underlying bill made certain statutory provisions regulating weapons and firearms at schools, colleges, universities, and career centers apply only to public entities. The committee substitute replaced the substance of the underlying bill with a simpler concept. The committee substitute provides that two statutes that prohibit a person from possessing a concealed weapon or firearm at a school do not apply to private school property during nonschool hours if a religious institution is located on the property.

B. Amendments:

None.



701632

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of subsection 790.115, Florida
Statutes, is amended to read:

790.115 Possessing or discharging weapons or firearms at a
school-sponsored event or on school property prohibited;
penalties; exceptions.—

(3) (a) This section does not apply to any law enforcement
officer as defined in s. 943.10(1), (2), (3), (4), (6), (7),



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(8), (9), or (14).

(b) This section and s. 790.06(12)(a)10., 11., and 13. do not prohibit a person who is licensed under s. 790.06 from carrying a concealed weapon or concealed firearm on private school property during nonschool hours if a religious institution, as defined in s. 775.0861, is located on the property.

Section 2. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to concealed weapons and firearms on private school property; amending s. 790.115, F.S.; specifying that concealed weapon and concealed firearm licensees are not prohibited by specified laws from carrying such weapons or firearms on private school property under a specified circumstance; providing an effective date.

By Senator Stargel

22-00660C-17

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A bill to be entitled

An act relating to weapons and firearms; amending s. 790.115, F.S.; redefining the term "school" to exclude private schools; defining the term "school property"; making technical changes; revising provisions prohibiting possession and discharge of weapons or firearms during school-sanctioned activities or on school property; amending ss. 435.04, 921.0022, and 1012.315, F.S.; conforming cross-references; reenacting ss. 790.251(7)(a), 943.051(3)(b), 985.11(1)(b), 985.25(1)(b), 985.255(1)(e), and 985.557(1)(a), F.S., relating to protection of the right to keep and bear arms in motor vehicles for certain purposes, criminal justice information, fingerprinting and photographing, a detention intake, detention criteria, and direct filing of an information, respectively, to incorporate the amendment made to s. 790.115, F.S., in references thereto; providing an effective date.

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

Section 1. Present subsections (1) through (4) of section 790.115, Florida Statutes, are redesignated as subsections (2) through (5), respectively, a new subsection (1) is added to that section, and present subsections (1) and (2) of that section are amended, to read:

790.115 Possessing or discharging weapons or firearms at a school-sponsored event or on school property prohibited;

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penalties; exceptions.—

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

(a) "School" means any public preschool, public elementary school, public middle school, public junior high school, public secondary school, public postsecondary school, or career center.

(b) "School property" means property owned or leased by a school which is primarily devoted to instructional use.

(2)(1) A person who exhibits any sword, sword cane, firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade, box cutter, or common pocketknife, except as authorized in support of school-sanctioned activities, in the presence of one or more persons in a rude, careless, angry, or threatening manner and not in lawful self-defense, at a school-sponsored event or on ~~the grounds or facilities of~~ any school property, school bus, or school bus stop, or within 1,000 feet of the real property that comprises a preschool, an public or private elementary school, a middle school, a junior high school, or a secondary school, during school hours or during the time of a school-sanctioned ~~sanctioned school~~ activity, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This subsection does not apply to the exhibition of a firearm or weapon on private real property within 1,000 feet of a school by the owner of such private real property or by a person whose presence on such property has been authorized, licensed, or invited by the owner.

(3)(2)(a) A person shall not possess any firearm, electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, except

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as authorized in support of school-sanctioned activities, at a school-sponsored event or on the school property ~~of any school~~, school bus, or school bus stop; however, a person may carry a firearm:

1. In a case to a firearms program, class, or function which has been approved in advance by the principal or chief administrative officer of the school as a program or class to which firearms could be carried;

2. In a case to a school ~~career-center~~ having a firearms training range; or

3. In a vehicle or as otherwise provided pursuant to s. 790.25 ~~790.25(5); except that school districts may adopt written and published policies that waive the exception in this subparagraph for purposes of student and campus parking privileges.~~

~~For the purposes of this section, "school" means any preschool, elementary school, middle school, junior high school, secondary school, career center, or postsecondary school, whether public or nonpublic.~~

(b) A person who willfully and knowingly possesses any electric weapon or device, destructive device, or other weapon as defined in s. 790.001(13), including a razor blade or box cutter, on school property, except as authorized in support of school-sanctioned activities or as provided in paragraph (a), in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c)1. A person who willfully and knowingly possesses any

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firearm on school property, except as authorized in support of school-sanctioned activities or as provided in paragraph (a), in violation of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A person who stores or leaves a loaded firearm within the reach or easy access of a minor who obtains the firearm and commits a violation of subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083; except that this does not apply if the firearm was stored or left in a securely locked box or container or in a location which a reasonable person would have believed to be secure, or was securely locked with a firearm-mounted push-button combination lock or a trigger lock; if the minor obtains the firearm as a result of an unlawful entry by any person; or to members of the Armed Forces, National Guard, or State Militia, or to police or other law enforcement officers, with respect to firearm possession by a minor which occurs during or incidental to the performance of their official duties.

(d) A person who discharges any weapon or firearm while in violation of paragraph (a), unless discharged for lawful defense of himself or herself or another or for a lawful purpose, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) The penalties of this subsection ~~do shall~~ not apply to persons licensed under s. 790.06. Persons licensed under s. 790.06 shall be punished as provided in s. 790.06 ~~s. 790.06(12)~~, except that a licenseholder who willfully and unlawfully discharges a weapon or firearm on school property as prohibited

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by this subsection commits a felony of the second degree,
punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Paragraphs (q) and (r) of subsection (2) of
section 435.04, Florida Statutes, are amended to read:

435.04 Level 2 screening standards.—

(2) The security background investigations under this
section must ensure that no persons subject to the provisions of
this section have been arrested for and are awaiting final
disposition of, have been found guilty of, regardless of
adjudication, or entered a plea of nolo contendere or guilty to,
or have been adjudicated delinquent and the record has not been
sealed or expunged for, any offense prohibited under any of the
following provisions of state law or similar law of another
jurisdiction:

(q) Section 790.115(2) ~~790.115(1)~~, relating to exhibiting
firearms or weapons within 1,000 feet of a school.

(r) Section 790.115(3)(b) ~~790.115(2)(b)~~, relating to
possessing an electric weapon or device, destructive device, or
other weapon on school property.

Section 3. Paragraphs (d) and (f) of subsection (3) of
section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking
chart.—

(3) OFFENSE SEVERITY RANKING CHART

(d) LEVEL 4

Florida Statute	Felony Degree	Description
--------------------	------------------	-------------

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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.

499.0051(1)

3rd

Failure to maintain or
deliver transaction
history, transaction
information, or
transaction statements.

499.0051(5)

2nd

Knowing sale or
delivery, or possession
with intent to sell,
contraband prescription
drugs.

517.07(1)

3rd

Failure to register
securities.

517.12(1)

3rd

Failure of dealer,
associated person, or
issuer of securities to
register.

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	784.07 (2) (b)	3rd	Battery of law enforcement officer, firefighter, etc.
149			
	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
150			
	784.075	3rd	Battery on detention or commitment facility staff.
151			
	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
152			
	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
153			
	784.081 (3)	3rd	Battery on specified official or employee.
154			
	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
155			
	784.083 (3)	3rd	Battery on code

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			inspector.
156			
	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
157			
	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
158			
	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
159			
	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
160			
	787.07	3rd	Human smuggling.
161			

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	<u>790.115(2)</u>	3rd	Exhibiting firearm or	
	790.115(1)		weapon within 1,000 feet	
162			of a school.	
	<u>790.115(3)(b)</u>	3rd	Possessing electric	
	790.115(2)(b)		weapon or device,	
			destructive device, or	
			other weapon on school	
163			property.	
	<u>790.115(3)(c)</u>	3rd	Possessing firearm on	
	790.115(2)(e)		school property.	
164				
	800.04(7)(c)	3rd	Lewd or lascivious	
			exhibition; offender	
			less than 18 years.	
165				
	810.02(4)(a)	3rd	Burglary, or attempted	
			burglary, of an	
			unoccupied structure;	
			unarmed; no assault or	
166			battery.	
	810.02(4)(b)	3rd	Burglary, or attempted	
			burglary, of an	
			unoccupied conveyance;	
			unarmed; no assault or	
167			battery.	

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	810.06	3rd	Burglary; possession of	
			tools.	
168				
	810.08(2)(c)	3rd	Trespass on property,	
			armed with firearm or	
			dangerous weapon.	
169				
	812.014(2)(c)3.	3rd	Grand theft, 3rd degree	
			\$10,000 or more but less	
			than \$20,000.	
170				
	812.014	3rd	Grand theft, 3rd degree,	
	(2)(c)4.-10.		a will, firearm, motor	
			vehicle, livestock, etc.	
171				
	812.0195(2)	3rd	Dealing in stolen	
			property by use of the	
			Internet; property	
			stolen \$300 or more.	
172				
	817.563(1)	3rd	Sell or deliver	
			substance other than	
			controlled substance	
			agreed upon, excluding	
			s. 893.03(5) drugs.	
173				
	817.568(2)(a)	3rd	Fraudulent use of	
			personal identification	
			information.	

174	22-00660C-17	20171330__	
	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
175	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
176	837.02(1)	3rd	Perjury in official proceedings.
177	837.021(1)	3rd	Make contradictory statements in official proceedings.
178	838.022	3rd	Official misconduct.
179	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
180	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.

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181	22-00660C-17	20171330__	
	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
182	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
183	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
184	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
185	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
186	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).
187	914.14(2)	3rd	Witnesses accepting bribes.
188	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
189	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
190	918.12	3rd	Tampering with jurors.
191	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
192			
193	(f) LEVEL 6		
194			
	Florida	Felony	
	Statute	Degree	Description
195	316.027(2) (b)	2nd	Leaving the scene of a crash involving serious

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196				bodily injury.
	316.193 (2) (b)	3rd		Felony DUI, 4th or subsequent conviction.
197				
	400.9935 (4) (c)	2nd		Operating a clinic, or offering services requiring licensure, without a license.
198				
	499.0051 (2)	2nd		Knowing forgery of transaction history, transaction information, or transaction statement.
199				
	499.0051 (3)	2nd		Knowing purchase or receipt of prescription drug from unauthorized person.
200				
	499.0051 (4)	2nd		Knowing sale or transfer of prescription drug to unauthorized person.
201				
	775.0875 (1)	3rd		Taking firearm from law enforcement officer.
202				
	784.021 (1) (a)	3rd		Aggravated assault;

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				deadly weapon without intent to kill.
203	784.021 (1) (b)	3rd		Aggravated assault; intent to commit felony.
204	784.041	3rd		Felony battery; domestic battery by strangulation.
205	784.048 (3)	3rd		Aggravated stalking; credible threat.
206	784.048 (5)	3rd		Aggravated stalking of person under 16.
207	784.07 (2) (c)	2nd		Aggravated assault on law enforcement officer.
208	784.074 (1) (b)	2nd		Aggravated assault on sexually violent predators facility staff.
209	784.08 (2) (b)	2nd		Aggravated assault on a person 65 years of age or older.
210	784.081 (2)	2nd		Aggravated assault on

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

	22-00660C-17		20171330	
				specified official or employee.
211	784.082 (2)	2nd		Aggravated assault by detained person on visitor or other detainee.
212	784.083 (2)	2nd		Aggravated assault on code inspector.
213	787.02 (2)	3rd		False imprisonment; restraining with purpose other than those in s. 787.01.
214	<u>790.115 (3) (d)</u> 790.115 (2) (d)	2nd		Discharging firearm or weapon on school property.
215	790.161 (2)	2nd		Make, possess, or throw destructive device with intent to do bodily harm or damage property.
216	790.164 (1)	2nd		False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to

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

	22-00660C-17		20171330__	
			state property, or use of firearms in violent manner.	
217	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	
218	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	
219	794.05(1)	2nd	Unlawful sexual activity with specified minor.	
220	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.	
221	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.	
222	806.031(2)	2nd	Arson resulting in great	

	22-00660C-17		20171330__	
			bodily harm to firefighter or any other person.	
223	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.	
224	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.	
225	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.	
226	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.	
227	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.	
228	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.	

	22-00660C-17		20171330__
229	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
230	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
231	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
232	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
233	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
234	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
235	827.03(2)(c)	3rd	Abuse of a child.

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236	827.03(2)(d)	3rd	Neglect of a child.
237	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
238	836.05	2nd	Threats; extortion.
239	836.10	2nd	Written threats to kill or do bodily injury.
240	843.12	3rd	Aids or assists person to escape.
241	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
242	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
243	847.0135(2)	3rd	Facilitates sexual

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conduct of or with a
minor or the visual
depiction of such
conduct.

914.23

2nd

Retaliation against a
witness, victim, or
informant, with bodily
injury.

944.35(3)(a)2.

3rd

Committing malicious
battery upon or
inflicting cruel or
inhuman treatment on an
inmate or offender on
community supervision,
resulting in great
bodily harm.

944.40

2nd

Escapes.

944.46

3rd

Harboring, concealing,
aiding escaped
prisoners.

944.47(1)(a)5.

2nd

Introduction of
contraband (firearm,
weapon, or explosive)
into correctional

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facility.

951.22(1)

3rd

Intoxicating drug,
firearm, or weapon
introduced into county
facility.

Section 4. Paragraphs (n) and (o) of subsection (1) of
section 1012.315, Florida Statutes, are amended to read:

1012.315 Disqualification from employment.—A person is
ineligible for educator certification, and instructional
personnel and school administrators, as defined in s. 1012.01,
are ineligible for employment in any position that requires
direct contact with students in a district school system,
charter school, or private school that accepts scholarship
students under s. 1002.39 or s. 1002.395, if the person,
instructional personnel, or school administrator has been
convicted of:

(1) Any felony offense prohibited under any of the
following statutes:

(n) Section 790.115(2) ~~790.115(1)~~, relating to exhibiting
firearms or weapons at a school-sponsored event, on school
property, or within 1,000 feet of a school.

(o) Section 790.115(3)(b) ~~790.115(2)(b)~~, relating to
possessing an electric weapon or device, destructive device, or
other weapon at a school-sponsored event or on school property.

Section 5. For the purpose of incorporating the amendment
made by this act to section 790.115, Florida Statutes, in a
reference thereto, paragraph (a) of subsection (7) of section

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

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273 790.251, Florida Statutes, is reenacted to read:
 274 790.251 Protection of the right to keep and bear arms in
 275 motor vehicles for self-defense and other lawful purposes;
 276 prohibited acts; duty of public and private employers; immunity
 277 from liability; enforcement.—
 278 (7) EXCEPTIONS.—The prohibitions in subsection (4) do not
 279 apply to:
 280 (a) Any school property as defined and regulated under s.
 281 790.115.
 282 Section 6. For the purpose of incorporating the amendment
 283 made by this act to section 790.115, Florida Statutes, in a
 284 reference thereto, paragraph (b) of subsection (3) of section
 285 943.051, Florida Statutes, is reenacted to read:
 286 943.051 Criminal justice information; collection and
 287 storage; fingerprinting.—
 288 (3)
 289 (b) A minor who is charged with or found to have committed
 290 the following offenses shall be fingerprinted and the
 291 fingerprints shall be submitted electronically to the
 292 department, unless the minor is issued a civil citation pursuant
 293 to s. 985.12:
 294 1. Assault, as defined in s. 784.011.
 295 2. Battery, as defined in s. 784.03.
 296 3. Carrying a concealed weapon, as defined in s. 790.01(1).
 297 4. Unlawful use of destructive devices or bombs, as defined
 298 in s. 790.1615(1).
 299 5. Neglect of a child, as defined in s. 827.03(1)(e).
 300 6. Assault or battery on a law enforcement officer, a
 301 firefighter, or other specified officers, as defined in s.

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

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302 784.07(2)(a) and (b).
 303 7. Open carrying of a weapon, as defined in s. 790.053.
 304 8. Exposure of sexual organs, as defined in s. 800.03.
 305 9. Unlawful possession of a firearm, as defined in s.
 306 790.22(5).
 307 10. Petit theft, as defined in s. 812.014(3).
 308 11. Cruelty to animals, as defined in s. 828.12(1).
 309 12. Arson, as defined in s. 806.031(1).
 310 13. Unlawful possession or discharge of a weapon or firearm
 311 at a school-sponsored event or on school property, as provided
 312 in s. 790.115.
 313 Section 7. For the purpose of incorporating the amendment
 314 made by this act to section 790.115, Florida Statutes, in a
 315 reference thereto, paragraph (b) of subsection (1) of section
 316 985.11, Florida Statutes, is reenacted to read:
 317 985.11 Fingerprinting and photographing.—
 318 (1)
 319 (b) Unless the child is issued a civil citation or is
 320 participating in a similar diversion program pursuant to s.
 321 985.12, a child who is charged with or found to have committed
 322 one of the following offenses shall be fingerprinted, and the
 323 fingerprints shall be submitted to the Department of Law
 324 Enforcement as provided in s. 943.051(3)(b):
 325 1. Assault, as defined in s. 784.011.
 326 2. Battery, as defined in s. 784.03.
 327 3. Carrying a concealed weapon, as defined in s. 790.01(1).
 328 4. Unlawful use of destructive devices or bombs, as defined
 329 in s. 790.1615(1).
 330 5. Neglect of a child, as defined in s. 827.03(1)(e).

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331 6. Assault on a law enforcement officer, a firefighter, or
 332 other specified officers, as defined in s. 784.07(2)(a).
 333 7. Open carrying of a weapon, as defined in s. 790.053.
 334 8. Exposure of sexual organs, as defined in s. 800.03.
 335 9. Unlawful possession of a firearm, as defined in s.
 336 790.22(5).
 337 10. Petit theft, as defined in s. 812.014.
 338 11. Cruelty to animals, as defined in s. 828.12(1).
 339 12. Arson, resulting in bodily harm to a firefighter, as
 340 defined in s. 806.031(1).
 341 13. Unlawful possession or discharge of a weapon or firearm
 342 at a school-sponsored event or on school property as defined in
 343 s. 790.115.
 344
 345 A law enforcement agency may fingerprint and photograph a child
 346 taken into custody upon probable cause that such child has
 347 committed any other violation of law, as the agency deems
 348 appropriate. Such fingerprint records and photographs shall be
 349 retained by the law enforcement agency in a separate file, and
 350 these records and all copies thereof must be marked "Juvenile
 351 Confidential." These records are not available for public
 352 disclosure and inspection under s. 119.07(1) except as provided
 353 in ss. 943.053 and 985.04(2), but shall be available to other
 354 law enforcement agencies, criminal justice agencies, state
 355 attorneys, the courts, the child, the parents or legal
 356 custodians of the child, their attorneys, and any other person
 357 authorized by the court to have access to such records. In
 358 addition, such records may be submitted to the Department of Law
 359 Enforcement for inclusion in the state criminal history records

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360 and used by criminal justice agencies for criminal justice
 361 purposes. These records may, in the discretion of the court, be
 362 open to inspection by anyone upon a showing of cause. The
 363 fingerprint and photograph records shall be produced in the
 364 court whenever directed by the court. Any photograph taken
 365 pursuant to this section may be shown by a law enforcement
 366 officer to any victim or witness of a crime for the purpose of
 367 identifying the person who committed such crime.

368 Section 8. For the purpose of incorporating the amendment
 369 made by this act to section 790.115, Florida Statutes, in a
 370 reference thereto, paragraph (b) of subsection (1) of section
 371 985.25, Florida Statutes, is reenacted to read:

372 985.25 Detention intake.—

373 (1) The department shall receive custody of a child who has
 374 been taken into custody from the law enforcement agency or court
 375 and shall review the facts in the law enforcement report or
 376 probable cause affidavit and make such further inquiry as may be
 377 necessary to determine whether detention care is appropriate.

378 (b) The department shall base the decision whether to place
 379 the child into secure or nonsecure detention care on an
 380 assessment of risk in accordance with the risk assessment
 381 instrument and procedures developed by the department under s.
 382 985.245. However, a child charged with possessing or discharging
 383 a firearm on school property in violation of s. 790.115 shall be
 384 placed in secure detention care. A child who has been taken into
 385 custody on three or more separate occasions within a 60-day
 386 period shall be placed in secure detention care until the
 387 child's detention hearing.
 388

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389 Under no circumstances shall the department or the state
 390 attorney or law enforcement officer authorize the detention of
 391 any child in a jail or other facility intended or used for the
 392 detention of adults, without an order of the court.

393 Section 9. For the purpose of incorporating the amendment
 394 made by this act to section 790.115, Florida Statutes, in a
 395 reference thereto, paragraph (e) of subsection (1) of section
 396 985.255, Florida Statutes, is reenacted to read:

397 985.255 Detention criteria; detention hearing.—

398 (1) Subject to s. 985.25(1), a child taken into custody and
 399 placed into secure or nonsecure detention care shall be given a
 400 hearing within 24 hours after being taken into custody. At the
 401 hearing, the court may order continued detention if:

402 (e) The child is charged with possession of or discharging
 403 a firearm on school property in violation of s. 790.115 or the
 404 illegal possession of a firearm.

405 Section 10. For the purpose of incorporating the amendment
 406 made by this act to section 790.115, Florida Statutes, in a
 407 reference thereto, paragraph (a) of subsection (1) of section
 408 985.557, Florida Statutes, is reenacted to read:

409 985.557 Direct filing of an information; discretionary and
 410 mandatory criteria.—

411 (1) DISCRETIONARY DIRECT FILE.—

412 (a) With respect to any child who was 14 or 15 years of age
 413 at the time the alleged offense was committed, the state
 414 attorney may file an information when in the state attorney's
 415 judgment and discretion the public interest requires that adult
 416 sanctions be considered or imposed and when the offense charged
 417 is for the commission of, attempt to commit, or conspiracy to

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418 commit:

419 1. Arson;

420 2. Sexual battery;

421 3. Robbery;

422 4. Kidnapping;

423 5. Aggravated child abuse;

424 6. Aggravated assault;

425 7. Aggravated stalking;

426 8. Murder;

427 9. Manslaughter;

428 10. Unlawful throwing, placing, or discharging of a
 429 destructive device or bomb;

430 11. Armed burglary in violation of s. 810.02(2)(b) or
 431 specified burglary of a dwelling or structure in violation of s.
 432 810.02(2)(c), or burglary with an assault or battery in
 433 violation of s. 810.02(2)(a);

434 12. Aggravated battery;

435 13. Any lewd or lascivious offense committed upon or in the
 436 presence of a person less than 16 years of age;

437 14. Carrying, displaying, using, threatening, or attempting
 438 to use a weapon or firearm during the commission of a felony;

439 15. Grand theft in violation of s. 812.014(2)(a);

440 16. Possessing or discharging any weapon or firearm on
 441 school property in violation of s. 790.115;

442 17. Home invasion robbery;

443 18. Carjacking; or

444 19. Grand theft of a motor vehicle in violation of s.

445 812.014(2)(c)6. or grand theft of a motor vehicle valued at

446 \$20,000 or more in violation of s. 812.014(2)(b) if the child

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447 has a previous adjudication for grand theft of a motor vehicle
448 in violation of s. 812.014(2)(c)6. or s. 812.014(2)(b).
449 Section 11. This act shall take effect October 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax,
Chair
Appropriations Subcommittee on Health and
Human Services, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Military and Veterans Affairs, Space, and Domestic
Security

SENATOR KELLI STARGEL
22nd District

March 14, 2017

The Honorable Greg Steube
Senate Committee on Judiciary, Chair
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Steube:

I respectfully request that SB 1330, related to *Weapons and Firearms*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Kelli Stargel
State Senator, District 22

Cc: Tom Cibula/ Staff Director
Joyce Butler/ AA

REPLY TO:

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- ☐ 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

1330

Bill Number (if applicable)

701632

Amendment Barcode (if applicable)

Topic Weapons and Firearms

Name Doug Bell

Job Title _____

Address 101 N. Monroe St

Street

Phone 850-681-4270

TCH

City

State

Zip

Email douglas.belle@nrc.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Chapter - American Academy of Pediatrics

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2017

Meeting Date

1330

Bill Number (if applicable)

Topic Weapons and Firearms

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

1330

Bill Number (if applicable)

Topic Weapons & Firearms

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct

Phone 772 204 1792

Street

Tallahassee

FL

32301

City

State

Zip

Email lwrfadvocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-2017

Meeting Date

SB-1330

Bill Number (if applicable)

Topic Firearms on Church Private Property

Amendment Barcode (if applicable)

Name Marion Hammer

Job Title _____

Address PO Box 1387

Phone 850-222-9518

Street

Tallahassee

Florida

32302

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NRA & Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-2017

Meeting Date

SB-1330

Bill Number (if applicable)

Topic Firearms on Church Private Property

Amendment Barcode (if applicable)

Name Marion Hammer

Job Title _____

Address PO Box 1387

Phone 850-222-9518

Street

Tallahassee

Florida

32302

Email _____

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing NRA & Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

SB 1330

Bill Number (if applicable)

Topic

Possession of Firearms

Amendment Barcode (if applicable)

Name

Phil Archer

Job Title

State Attorney - 18th Circuit

Address

2725 Judge Fran Jamieson

Phone

Street

Viera

FL

32940

Email

City

State

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

State Attorney - 18th

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

7/22/17

Meeting Date

SB 1330

Bill Number (if applicable)

Topic Weapons & Firearms

Amendment Barcode (if applicable)

Name Mikelle Gajda

Job Title Chapter Leader Moms Demand Action

Address 11929 Derbyshire Dr

Phone 804 370 7221

Street

Tampa

City

FL

State

33626

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing MOMS DEMAND ACTION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22

Meeting Date

1330

Bill Number (if applicable)

Topic Firearms

Amendment Barcode (if applicable)

Name Jacob Epern

Job Title Government & Community Relations

Address 75 N. Woodward Ave

Phone _____

Street

Tallahassee

FL

32304

Email _____

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Campaign to Keep Guns off Campus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

SB1330

Bill Number (if applicable)

Topic Weapons + Firearms

Amendment Barcode (if applicable)

Name David Shepp

Job Title Lobbyist

Address P.O. Box 3739
Street

Phone 863 581-4250

Lake land FL 33802
City State Zip

Email sheppesstrategy.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Polk County Sheriff's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

1330

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Director of Policy & Communications

Address 4853 S. Orange Ave

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 612

INTRODUCER: Senator Gibson

SUBJECT: Federal Matching Funds Information

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Favorable
2.	Stallard	Cibula	JU	Favorable
3.			AP	

I. Summary:

SB 612 requires each state agency and the judicial branch to provide, as part of its annual legislative budget request, information about federal matching funds that may be available by participating in relevant federal programs.

II. Present Situation:

Planning and Budgeting

The judicial branch and the Division of Administrative Hearings, as well as the head of each state agency, must submit a final legislative budget request to the Legislature, with a copy to the Governor, by October 15 of each year.¹ These budget requests must include several types of information for each program, as specified in statute, such as the authority for the program, details on trust funds and fees, and the total number of positions in the program.²

Additionally, each state agency that receives federal funds must:³

- Designate a senior official having a direct reporting relationship to the agency head to be responsible for the internal coordination of the agency's efforts to maximize the amount of federally derived dollars the agency receives;
- Create and maintain an inventory of all programs that are partially or fully funded from federal sources and provide reports to the Executive Office of the Governor or legislative committees, as requested;
- Develop, document, and implement, in a manner prescribed by the Executive Office of the Governor, an internal process whereby information on all federal funds received, as well as

¹ Section 216.023(1)-(2), F.S.

² Section 216.023(4)(a), F.S.

³ Section 216.103(2), F.S.

the impact of congressional initiatives on the state, can be collected, assimilated, and evaluated rapidly; and

- Establish and maintain a process to identify and monitor specific opportunities to preserve or enhance the state's share of federal grant-in-aid programs, improve the delivery of services utilizing federal funds, and realize the benefits of additional flexibility given to the state in federal programs.

III. Effect of Proposed Changes:

The bill requires the annual legislative budget request for every state agency and the judicial branch to include additional information for each appropriation category. This information must:

- Identify each program that receives some federal matching funds, but does not maximize available federal matching funding;
- Identify the amount of state or local funds that would be required to maximize the amount of federal matching funds provided to the state;
- List federal programs that the agency or judicial branch does not participate in, but for which the agency could receive federal funding by participating in such programs; and
- Estimate the amount of federal funds the agency or state does not draw down as a result of non-participation in the federal match programs identified.

The bill takes effect July 1, 2017.

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 bill requires state agencies, as well as the judicial branch, to focus on ways they could receive more federal funding. The net fiscal effect of this, however, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 216.013 and 216.023 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Gibson

6-01002-17

2017612__

A bill to be entitled

An act relating to federal matching funds information; amending s. 216.013, F.S.; conforming a cross-reference; amending s. 216.023, F.S.; requiring each state agency and the judicial branch to provide, as a part of the legislative budget request, specified information concerning federal programs; providing an effective date.

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

Section 1. Paragraph (h) of subsection (1) of section 216.013, Florida Statutes, is amended to read:

216.013 Long-range program plan.—State agencies and the judicial branch shall develop long-range program plans to achieve state goals using an interagency planning process that includes the development of integrated agency program service outcomes. The plans shall be policy based, priority driven, accountable, and developed through careful examination and justification of all agency and judicial branch programs.

(1) Long-range program plans shall provide the framework for the development of budget requests and shall identify or update:

(h) Legislatively approved output and outcome performance measures. Each performance measure must identify the associated activity contributing to the measure from those identified in accordance with s. 216.023(4)(c) ~~216.023(4)(b)~~.

Section 2. Present paragraph (b) of subsection (4) of section 216.023, Florida Statutes, is redesignated as paragraph (c), and a new paragraph (b) is added to that subsection, to read:

216.023 Legislative budget requests to be furnished to

6-01002-17

2017612__

Legislature by agencies.—

(4)

(b) It is the intent of the Legislature to ensure that adequate information is made available to allow it to make informed budget decisions regarding federal programs that offer funding matches for states that participate in such programs. Therefore, each state agency and the judicial branch must submit for each appropriation category within its respective jurisdiction the following information as part of the annual legislative budget request:

1. An identification of each program that receives some, but does not maximize, available federal matching funds.

2. An identification of the amount of state or local funds that would be required to maximize the amount of federal matching funds provided to the state.

3. A listing of federal programs that the agency or judicial branch does not participate in, but for which the agency could receive federal funding by participating in such programs.

4. An estimate of the amount of federal funds that the agency or state does not draw down as a result of non-participation in the federal match programs identified in subparagraph 3.

Section 3. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON
6th District

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

March 6, 2017

Senator Greg Steube, Chair
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Steube:

I respectfully request that SB 612, relating to federal matching funds information, be placed on the next committee agenda.

SB 612, requires each state agency and judicial branch to provide, as a part of the legislative budget request, specific information concerning federal programs that allow the state to draw down federal dollars. This bill passed unanimously in the first committee.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Audrey Gibson
State Senator
District 6

REPLY TO:

- ☐ 101 E. Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553 FAX: (904) 359-2532
- ☐ 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5008

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 852

INTRODUCER: Criminal Justice Committee and Senator Garcia and others

SUBJECT: Human Trafficking

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.	Davis	Cibula	JU	Favorable
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 852 amends multiple statutes to include the term “commercial sexual exploitation.” The term emphasizes the fact that sex is exchanged for money, goods, or services and better defines the victims served by the Department of Children and Families (DCF), sheriff’s offices conducting child abuse investigations, and community-based care agencies.

The bill:

- Defines the term “commercial sexual exploitation” to mean the use of any person under the age of 18 for sexual purposes in exchange for, or the promise of, money, goods, or services;
- Changes the date of the annual report by DCF on commercial sex trafficking of minors from December 1st to October 1st;
- Requires DCF to maintain data specifying certain services available for verified victims of commercial sexual exploitation;
- Adds the crime of human trafficking involving commercial sexual activity, to the list of crimes where the defendant’s confession is admissible during specified situations in trial;
- Amends sections of statute to remove the outdated definition of “sexually exploited child” and replace it with “commercial sexual exploitation;”
- Clarifies procedures for conducting a multidisciplinary staffing for alleged or verified victims of commercial sexual exploitation who are not eligible for relief or benefits under the federal Trafficking Victims Protection Act;

- Requires that the multidisciplinary staffing develop a service plan for any child victims suspected or verified as victims of commercial sexual exploitation and that the plan identify the victim's needs and local services;
- Specifies that services provided in the service plan be in the least restrictive environment and identifies types of services that may be included in the service plan; and
- Requires DCF or the sheriff's office to follow up with the verified victims of commercial sexual exploitation within six months.

The bill will likely have a fiscal impact on DCF and the six sheriff's offices that conduct child protective services through a contract with DCF; however, the impact is not expected to be significant.

II. Present Situation:

Human trafficking is a form of modern-day slavery. Victims of human trafficking are young children, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. Approximately 20.9 million adults and children are estimated to be in some sort of forced labor or sexual exploitation. Of that number, an estimated 26 percent are children, and in 2010, it was estimated that as many as 300,000 children in the United States are at risk for exploitation each year.¹

Section 787.06, F.S., is Florida's human trafficking statute. It defines "human trafficking" as the "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person." The statute contains a variety of provisions prohibiting persons from knowingly engaging in human trafficking by using labor or services or through commercial sexual activity.² Similarly, sex trafficking is defined as a commercial sex act induced by force, fraud, or coercion in which the person induced to perform the act is under 18.³

Children can be victims of human trafficking in two forms: commercial sexual exploitation and labor exploitation. In Florida, human trafficking is reported to the Child Abuse Hotline. Toll free national numbers to report human trafficking of children in Florida are relayed to the abuse hotline.

Commercial sex acts include, but are not limited to, prostitution and/or pornography as a means for the perpetrator to make money.⁴ Calls to the abuse hotline are investigated DCF or in certain counties, by the sheriff's office.⁵

¹ U.S. Department of Justice, Office of Justice Programs, *OJP Fact Sheet, Fast Facts*, (December 2011) available at http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html (last visited March 19, 2017). Polaris, *Human Trafficking: The Facts*, 2016, available at <https://polarisproject.org/facts> (last visited March 19, 2017).

² See ss. 787.06(3) and (4), F.S.

³ Department of Children and Families, *What is Human Trafficking*, available at <http://www.myflfamilies.com/service-programs/human-trafficking/what-is-human-trafficking> (last visited March 19, 2017). 22 U.S.C. s. 7102(9)(A).

⁴ The federal Trafficking Victims Protection Act defines "commercial sex act" as any sex act on account of which anything of value is given to or received by *any person*. 22 USC s. 7102 (4).

⁵ Section 39.3065, F.S., and specific appropriation 331 of the 2016-2017 General Appropriations Act (Ch. 2016-66, s. 331, Laws of Fla.) assign state responsibility for conducting child abuse investigations to the sheriff's offices in Broward, Hillsborough, Manatee, Pasco, Pinellas, and Seminole counties.

Once a call is made to the hotline, an investigation is opened by DCF or certain sheriff's office in counties where the sheriff conducts child abuse investigations. If commercial sexual trafficking is suspected or verified, DCF, community-based care agencies, or sheriff's office, conducts a multidisciplinary staffing on each case.⁶ The staffing includes local experts in child protection, child welfare, medical professionals, and law enforcement officers who assess the needs of the child and determine if the victim needs placement in a residential home, or "safe house" pursuant to s. 39.524, F.S. Multidisciplinary staffing teams are also charged with assessing the local services available to victims of commercial sexual exploitation.⁷

Section 409.16791, F.S., requires the Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an annual study on commercial sexual exploitation of children. The most recent report found that in 2015, there were 1,279 reports of human trafficking to the Child Abuse Hotline in Florida.⁸ Of those, 264 were verified. Of the verified cases, 123 were dependent children in foster care while 141 were not dependent. The OPPAGA report noted that there is no data on the status or outcomes for the 141 victims not in foster care.

III. Effect of Proposed Changes:

Section 1 amends s. 39.524, F.S., safe-harbor placement, to update terminology. Current law uses the term "sexual exploitation" defined in s. 39.01(70)(g), F.S., relating to sexual abuse. The term "commercial sexual exploitation" is more appropriate because it emphasizes the fact that sex is exchanged for money, goods, or services.

Annual Report -The bill changes the due date of DCF's annual report to the Legislature on commercial sex trafficking of minors from December 1st to October 1st. Most of the state's child welfare reports are due October 1st of each year to allow the Legislature time to consider the reports before the legislative session. The required reporting categories are expanded. The bill requires DCF, with information from sheriff's offices that conduct child abuse investigations and community-based care agencies, to report on the prevalence of exploitation in Florida, specialized services, local services, and DCF's response to the recommendations from the annual report by OPPAGA on commercial sexual exploitation of children.⁹

DCF is required to maintain data specifying the number of children who were:

- Verified victims of commercial sexual exploitation.
- Referred to nonresidential services in the community.
- Placed in a safe house or safe foster home.
- Referred to a safe house or safe foster home for whom placement was unavailable.

⁶ Section 409.1754(2), F.S.

⁷ *Id.*

⁸ Office of Program Policy Analysis and Government Accountability, *Placement Challenges Persist for Child Victims of Commercial Sexual Exploitation; Questions Regarding Effective Interventions and Outcomes Remain*, Report No. 16-04, available at <http://www.oppaga.state.fl.us/Summary.aspx?reportNum=16-04> (last visited March 19, 2017). Ch. 2014-161, Laws of Fla.

⁹ The report by the Office of Program Policy Analysis and Government Accountability is required each year pursuant to s. 409.16791, F.S.

DCF must also identify which counties did not have the available placement in a safe house or safe foster home.

Section 2 amends s. 92.565, F.S., relating to the admissibility of a confession in sexual abuse cases, to add the crime of human trafficking involving commercial sexual activity, s. 787.06(3), F.S., to the list crimes where the defendant's confession is admissible during specified situations in trial, without the state proving the corpus delicti¹⁰ of the crime. This could improve prosecution of persons committing commercial sexual exploitation of children.

Section 3 adds the term “commercial sexual exploitation” to the definition section of chapter 409, F.S., dealing with social and economic assistance. Commercial sexual exploitation means “the use of any person under the age of 18 for sexual purposes in exchange for, or promise of money, goods, or services.” This is added to chapter 409, F.S., because the state's program to serve child victims of commercial sexual exploitation is not limited to dependent children under chapter 39, F.S. This new term better defines the victims served by DCF, sheriff's offices conducting child abuse investigations, and community-based care agencies.¹¹ The bill clarifies that a sheriff's office that provides child protection services must assess children for services and safe-harbor placement.¹²

Section 4 amends s. 409.1678, F.S., to remove the outdated definition of “sexually exploited child” and replace it with “commercial sexual exploitation.” Section 409.1678, F.S., addresses the specialized residential options for children who are victims of commercial sexual exploitation. These homes specialize in the care of victims of commercial sexual exploitation. There are currently four safe houses licensed by DCF statewide. These four homes have a total capacity of 24 beds.¹³ The bill allows DCF to serve those victims not eligible for relief and benefits under the federal Trafficking Victims Protection Act.¹⁴

Section 5 amends s. 409.1754, F.S., to clarify procedures for conducting a multidisciplinary staffing for alleged or verified victims of commercial sexual exploitation, who are not eligible for relief or benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq. The bill requires that the multidisciplinary staffing develop a service plan for any child victims suspected or verified as a victim of commercial sexual exploitation. This service plan identifies the victim's needs and local services. The bill directs DCF to update the case plan required under chapter 39, F.S., for dependent children who are alleged or verified victims of commercial sexual exploitation.

¹⁰ In Latin, “corpus delicti” literally means the body of the crime. In legal terms it means the fact of a crime having been actually committed. BLACK'S LAW DICTIONARY, 346 (7th ed. 1999).

¹¹ See Department of Children and Families Operating Procedure No. 170-14, *Response to the Human Trafficking of Children*, July 1, 2016, available at http://centerforchildwelfare.fmhi.usf.edu/kb/DCF_Pol/CFOP_170/CFOP170-14.pdf (last visited on March 20, 2017).

¹² See *supra* note 5.

¹³ See *supra* note 8.

¹⁴ Federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.

The bill clarifies that in those counties where the sheriff's office conducts child abuse investigations, that the sheriff's office must provide the service plan. The service plan is voluntary and is provided to the victim's family or legal guardian.

The bill specifies that services provided in the service plan be in the least restrictive environment and identifies types of services that may be included in the service plan. These services include:

- Emergency shelter and runaway center services;
- Outpatient individual or group counseling for the victim and the victim's family or legal guardian;
- Substance use disorder treatment services;
- Drop-in centers or mentoring programs;
- Commercial sexual exploitation treatment programs;
- Child advocacy center services pursuant to s. 39.3035, F.S.;
- Prevention services such as those provided by the Florida Network of Youth and Family Services and the PACE Center for Girls;
- Family foster care;
- Therapeutic foster care;
- Safe houses or safe foster homes;
- Residential treatment programs; and
- Employment or workforce training.

DCF or the sheriff's office must follow up with all verified victims of commercial sexual exploitation, not just victims who are dependent (foster care), within six months to determine if the child received services, if these services assisted the child and his or her family, and if the child has been victimized again.

Section 6 amends s. 907.041, F.S., relating to pretrial detention and release, to add human trafficking to the list of crimes considered dangerous and for which the court may not grant nonmonetary pretrial release at first appearance.

Section 7 reenacts s. 790.065, F.S., relating to the sale and delivery of firearms, in order to incorporate the amendments made to s. 907.041, F.S.

Section 8 provides the bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill clarifies that the six sheriff's offices that have the responsibility for conducting child abuse investigations must provide a service plan and follow up with all verified victims. This requirement may cause the six sheriff's offices to incur costs. If these costs are less than \$1.8 million the bill is exempt from the mandates provision of the Florida Constitution due to its insignificant fiscal impact.

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 additional requirement of developing a service plan for each child who is not dependent would fall to the community-based care lead agencies. Based upon current trends, DCF estimates that 405 children will have a verified report of commercial child sexual exploitation in FY 2016-2017. The community-based care lead agencies currently provide a case manager and develop a case plan for community children who are placed in residential placements based on their commercial sexual exploitation victimization, and this has been minimal throughout the regions. DCF believes that the workload increase will be minimal and can be absorbed within existing resources.¹⁵

C. Government Sector Impact:

Currently, regional DCF staff and community-based care agency staff conduct multidisciplinary staffings for alleged and confirmed victims of commercial sex trafficking. The bill requires the staff to develop a service plan at the multidisciplinary staffings for verified victims of commercial sex trafficking. Identifying local services available to victims is currently a duty of the multidisciplinary staffings.¹⁶ The bill requires the staffings to document the local services that would be needed by each victim based on the information the staffing is required by law to collect and maintain. This is a new requirement and can be absorbed within existing resources.¹⁷

The bill requires DCF to follow up with victims of commercial sex trafficking within six months of a confirmed case. DCF's Florida Safe Families Network currently holds information on the care and status of victims who are dependent. Information on victims who are not dependent will have to be collected. The bill authorizes DCF to collect basic status information from the victim, family, or legal guardian. This is a new requirement and can be absorbed within existing resources.

¹⁵ Department of Children and Families, *Senate Bill 852 Legislative Analysis* (Feb. 15, 2017) (on file with the Senate Committee on Judiciary).

¹⁶ Section 409.1754 (2), F.S.

¹⁷ See *supra* note 16.

Sheriff's offices in six counties conduct child protective services by law and through a contract with DCF.¹⁸ These sheriff's offices are currently required to conduct multidisciplinary staffings along with the local community-based care agency. Sheriff's offices could see an increase in costs to prepare a service plan for victims and for following up with victims who are not dependent. The cost is not expected to be significant.¹⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.524, 92.565, 409.016, 409.1678, 409.1754, and 907.041.

This bill reenacts section 790.065, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Criminal Justice on March 13, 2017:

The committee substitute made a technical change to update a reference to chapter law to the enacted statute, s. 409.16791, F.S.

B. Amendments:

None.

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

¹⁸ Section 39.3065, F.S.

¹⁹ See *supra* note 16.

By the Committee on Criminal Justice; and Senators Garcia, Benacquisto, Flores, and Campbell

591-02377-17

2017852c1

1 A bill to be entitled
 2 An act relating to human trafficking; amending s.
 3 39.524, F.S.; requiring the Department of Children and
 4 Families or a sheriff's office to conduct a
 5 multidisciplinary staffing on child victims of
 6 commercial sexual exploitation to determine the
 7 child's service and placement needs; revising the date
 8 by which the department or sheriff's office must
 9 submit a report to the Legislature on child commercial
 10 sexual exploitation and safe-harbor placements;
 11 revising the contents of the report, including
 12 recommendations by the Office of Program Policy
 13 Analysis and Government Accountability study on
 14 commercial sexual exploitation of children; requiring
 15 the department to maintain certain data on the child
 16 victims; amending s. 92.565, F.S.; adding commercial
 17 sexual activity as a crime in which the defendant's
 18 admission is admissible during trial; amending s.
 19 409.016, F.S.; defining the term "commercial sexual
 20 exploitation"; amending s. 409.1678, F.S.; deleting
 21 the term "sexually exploited child"; removing an
 22 obsolete date; conforming provisions to changes made
 23 by the act; amending s. 409.1754, F.S.; requiring the
 24 department or sheriff's office to conduct
 25 multidisciplinary staffings for child victims;
 26 requiring a service plan for all victims of child
 27 commercial sexual exploitation; requiring the
 28 department or sheriff's office to follow up on all
 29 victims of child commercial sexual exploitation within

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30 a specified timeframe; amending s. 907.041, F.S.;
 31 adding human trafficking to the list of crimes
 32 requiring pretrial detention of the defendant;
 33 reenacting s. 790.065(2)(c), F.S., relating to the
 34 sale and delivery of firearms to incorporate the
 35 amendment made to s. 907.041, F.S., in a reference
 36 thereto; providing an effective date.
 37

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

39
 40 Section 1. Section 39.524, Florida Statutes, is amended to
 41 read:

42 39.524 Safe-harbor placement.—

43 (1) Except as provided in s. 39.407 or s. 985.801, a
 44 dependent child 6 years of age or older who is suspected of
 45 being or has been found to be a victim of commercial sexual
 46 exploitation as defined in s. 409.016 ~~s. 39.01(70)(g)~~ must be
 47 assessed, and the department or a sheriff's office acting under
 48 s. 39.3065 must conduct a multidisciplinary staffing pursuant to
 49 s. 409.1754(2), to determine the child's need for services and
 50 his or her need for placement in a safe house or safe foster
 51 home as provided in s. 409.1678 using the initial screening and
 52 assessment instruments provided in s. 409.1754(1). If such
 53 placement is determined to be appropriate for the child as a
 54 result of this assessment, the child may be placed in a safe
 55 house or safe foster home, if one is available. However, the
 56 child may be placed in another setting, if the other setting is
 57 more appropriate to the child's needs or if a safe house or safe
 58 foster home is unavailable, as long as the child's behaviors are

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managed so as not to endanger other children served in that setting.

(2) The results of the assessment described in s. 409.1754(1), the multidisciplinary staffing described in s. 409.1754(2), and the actions taken as a result of the assessment must be included in the disposition hearing or next judicial review of the child. At each subsequent judicial review, the court must be advised in writing of the status of the child's placement, with special reference regarding the stability of the placement, any specialized services, and the permanency planning for the child.

(3) (a) By October ~~December~~ 1 of each year, the department, with information from community-based care agencies and certain sheriff's offices acting under s. 39.3065, shall report to the Legislature on the prevalence of child commercial sexual exploitation; the specialized services provided and placement of such children; the local service capacity assessed pursuant to s. 409.1754; the placement of children in safe houses and safe foster homes during the year, including the criteria used to determine the placement of children; the number of children who were evaluated for placement; the number of children who were placed based upon the evaluation; and the number of children who were not placed; and the department's response to the findings and recommendations made by the Office of Program Policy Analysis and Government Accountability in its annual study on commercial sexual exploitation of children, as required by s. 409.16791.

(b) The department shall maintain data specifying the number of children who were verified as victims of commercial

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sexual exploitation, who were referred to nonresidential services in the community, who were placed in a safe house or safe foster home, and who were referred to a safe house or safe foster home for whom placement was unavailable, and shall identify the counties in which such placement was unavailable. The department shall include this data in its report under this subsection so that the Legislature may consider this information in developing the General Appropriations Act.

Section 2. Subsection (2) of section 92.565, Florida Statutes, is amended to read:

92.565 Admissibility of confession in sexual abuse cases.—

(2) In any criminal action in which the defendant is charged with a crime against a victim under s. 787.06(3), involving commercial sexual activity; s. 794.011; s. 794.05; s. 800.04; s. 826.04; s. 827.03, involving sexual abuse; s. 827.04, involving sexual abuse; s. 827.071; or s. 847.0135(5), or any other crime involving sexual abuse of another, or with any attempt, solicitation, or conspiracy to commit any of these crimes, the defendant's memorialized confession or admission is admissible during trial without the state having to prove a corpus delicti of the crime if the court finds in a hearing conducted outside the presence of the jury that the state is unable to show the existence of each element of the crime, and having so found, further finds that the defendant's confession or admission is trustworthy. Factors which may be relevant in determining whether the state is unable to show the existence of each element of the crime include, but are not limited to, the fact that, at the time the crime was committed, the victim was:

(a) Physically helpless, mentally incapacitated, or

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mentally defective, as those terms are defined in s. 794.011;

(b) Physically incapacitated due to age, infirmity, or any other cause; or

(c) Less than 12 years of age.

Section 3. Present subsections (1), (2), and (3) of section 409.016, Florida Statutes, are redesignated as subsections (2), (3), and (4), respectively, and a new subsection (1) is added to that section, to read:

409.016 Definitions.—As used in this chapter:

(1) "Commercial sexual exploitation" means the use of any person under the age of 18 years for sexual purposes in exchange for money, goods, or services or the promise of money, goods, or services.

Section 4. Section 409.1678, Florida Statutes, is amended to read:

409.1678 Specialized residential options for children who are victims of commercial sexual exploitation.—

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

(a) "Safe foster home" means a foster home certified by the department under this section to care for sexually exploited children.

(b) "Safe house" means a group residential placement certified by the department under this section to care for sexually exploited children.

~~(c) "Sexually exploited child" means a child who has suffered sexual exploitation as defined in s. 39.01(70)(g) and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.~~

(2) CERTIFICATION OF SAFE HOUSES AND SAFE FOSTER HOMES.—

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(a) A safe house and a safe foster home shall provide a safe, separate, and therapeutic environment tailored to the needs of commercially sexually exploited children who have endured significant trauma ~~and are not eligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq.~~ Safe houses and safe foster homes shall use a model of treatment that includes strength-based and trauma-informed approaches.

(b) A safe house or a safe foster home must be certified by the department. A residential facility accepting state funds appropriated to provide services to ~~sexually exploited children or child victims of commercial sexual exploitation sex trafficking~~ must be certified by the department as a safe house or a safe foster home. An entity may not use the designation "safe house" or "safe foster home" and hold itself out as serving child victims of commercial sexual exploitation ~~sexually exploited children~~ unless the entity is certified under this section.

(c) To be certified, a safe house must hold a license as a residential child-caring agency, as defined in s. 409.175, and a safe foster home must hold a license as a family foster home, as defined in s. 409.175. A safe house or safe foster home must also:

1. Use strength-based and trauma-informed approaches to care, to the extent possible and appropriate.

2. Serve exclusively one sex.

3. Group child victims of commercial sexual exploitation ~~sexually exploited children~~ by age or maturity level.

4. Care for child victims of commercial sexual exploitation

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175 ~~sexually exploited children~~ in a manner that separates those
 176 children from children with other needs. Safe houses and safe
 177 foster homes may care for other populations if the children who
 178 have not experienced commercial sexual exploitation do not
 179 interact with children who have experienced commercial sexual
 180 exploitation.

181 5. Have awake staff members on duty 24 hours a day, if a
 182 safe house.

183 6. Provide appropriate security through facility design,
 184 hardware, technology, staffing, and siting, including, but not
 185 limited to, external video monitoring or door exit alarms, a
 186 high staff-to-client ratio, or being situated in a remote
 187 location that is isolated from major transportation centers and
 188 common trafficking areas.

189 7. Meet other criteria established by department rule,
 190 which may include, but are not limited to, personnel
 191 qualifications, staffing ratios, and types of services offered.

192 (d) Safe houses and safe foster homes shall provide
 193 services tailored to the needs of child victims of commercial
 194 sexual exploitation ~~sexually exploited children~~ and shall
 195 conduct a comprehensive assessment of the service needs of each
 196 resident. In addition to the services required to be provided by
 197 residential child caring agencies and family foster homes, safe
 198 houses and safe foster homes must provide, arrange for, or
 199 coordinate, at a minimum, the following services:

- 200 1. Victim-witness counseling.
- 201 2. Family counseling.
- 202 3. Behavioral health care.
- 203 4. Treatment and intervention for sexual assault.

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204 5. Education tailored to the child's individual needs,
 205 including remedial education if necessary.

206 6. Life skills and workforce training.

207 7. Mentoring by a survivor of commercial sexual
 208 exploitation, if available and appropriate for the child.

209 8. Substance abuse screening and, when necessary, access to
 210 treatment.

211 9. Planning services for the successful transition of each
 212 child back to the community.

213 10. Activities structured in a manner that provides child
 214 victims of commercial sexual exploitation ~~sexually exploited~~
 215 ~~children~~ with a full schedule.

216 (e) The community-based care lead agencies shall ensure
 217 that foster parents of safe foster homes and staff of safe
 218 houses complete intensive training regarding, at a minimum, the
 219 needs of child victims of commercial sexual exploitation
 220 ~~sexually exploited children~~, the effects of trauma and sexual
 221 exploitation, and how to address those needs using strength-
 222 based and trauma-informed approaches. The department shall
 223 specify the contents of this training by rule and may develop or
 224 contract for a standard curriculum. The department may establish
 225 by rule additional criteria for the certification of safe houses
 226 and safe foster homes that shall address the security,
 227 therapeutic, social, health, and educational needs of child
 228 victims of commercial sexual exploitation ~~sexually exploited~~
 229 ~~children~~.

230 (f) The department shall inspect safe houses and safe
 231 foster homes before certification and annually thereafter to
 232 ensure compliance with the requirements of this section. The

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department may place a moratorium on referrals and may revoke the certification of a safe house or safe foster home that fails at any time to meet the requirements of, or rules adopted under, this section.

(g) The certification period for safe houses and safe foster homes shall run concurrently with the terms of their licenses.

(3) SERVICES WITHIN A RESIDENTIAL TREATMENT CENTER OR HOSPITAL. ~~No later than July 1, 2015,~~ Residential treatment centers licensed under s. 394.875, and hospitals licensed under chapter 395 that provide residential mental health treatment, shall provide specialized treatment for commercially sexually exploited children in the custody of the department who are placed in these facilities pursuant to s. 39.407(6), s. 394.4625, or s. 394.467. The specialized treatment must meet the requirements of subparagraphs (2)(c)1. and 3.-7., paragraph (2)(d), and the department's treatment standards adopted pursuant to this section. The facilities shall ensure that children are served in single-sex groups and that staff working with such children are adequately trained in the effects of trauma and sexual exploitation, the needs of child victims of commercial sexual exploitation ~~sexually exploited children~~, and how to address those needs using strength-based and trauma-informed approaches.

(4) FUNDING FOR SERVICES; CASE MANAGEMENT.—

(a) This section does not prohibit any provider of services for child victims of commercial sexual exploitation ~~sexually exploited children~~ from appropriately billing Medicaid for services rendered, from contracting with a local school district

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for educational services, or from obtaining federal or local funding for services provided, as long as two or more funding sources do not pay for the same specific service that has been provided to a child.

(b) The community-based care lead agency shall ensure that all child victims of commercial sexual exploitation ~~sexually exploited children~~ residing in safe houses or safe foster homes or served in residential treatment centers or hospitals pursuant to subsection (3) have a case manager and a case plan, whether or not the child is a dependent child.

(5) SCOPE OF AVAILABILITY OF SERVICES.—To the extent possible provided by law and with authorized funding, the services specified in this section may be available to all child victims of commercial sexual exploitation who are not eligible for relief and benefits under the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq., ~~sexually exploited children~~ whether such services are accessed voluntarily, as a condition of probation, through a diversion program, through a proceeding under chapter 39, or through a referral from a local community-based care or social service agency.

(6) LOCATION INFORMATION.—

(a) Information about the location of a safe house, safe foster home, or other residential facility serving child victims of commercial sexual exploitation ~~victims of sexual exploitation~~, as defined in s. 409.016 ~~s. 39.01(70)(g)~~, which is held by an agency, as defined in s. 119.011, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such confidential and exempt information held by an agency before, on, or after the

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effective date of the exemption.

(b) Information about the location of a safe house, safe foster home, or other residential facility serving child victims of commercial sexual exploitation ~~victims of sexual exploitation~~, as defined in s. 409.016 ~~s. 39.01(70)(g)~~, may be provided to an agency, as defined in s. 119.011, as necessary to maintain health and safety standards and to address emergency situations in the safe house, safe foster home, or other residential facility.

(c) The exemptions from s. 119.07(1) and s. 24(a), Art. I of the State Constitution provided in this subsection do not apply to facilities licensed by the Agency for Health Care Administration.

(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 5. Section 409.1754, Florida Statutes, is amended to read:

409.1754 Commercial sexual exploitation of children ~~Sexually exploited children~~; screening and assessment; training; multidisciplinary staffings; service plans ~~case management; task forces~~.

(1) SCREENING AND ASSESSMENT.—

(a) The department shall develop or adopt one or more initial screening and assessment instruments to identify, determine the needs of, plan services for, and determine the appropriate placement for child victims of commercial sexual exploitation who are not eligible for relief and benefits under

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the federal Trafficking Victims Protection Act, 22 U.S.C. ss. 7101 et seq ~~sexually exploited children~~. The department shall consult state and local agencies, organizations, and individuals involved in the identification and care of such sexually exploited children when developing or adopting initial screening and assessment instruments. Initial screening and assessment instruments shall assess the appropriate placement of child victims of commercial sexual exploitation ~~a sexually exploited child~~, including whether placement in a safe house or safe foster home as provided in s. 409.1678 is appropriate, and shall consider, at a minimum, the following factors:

1. Risk of the child running away.
2. Risk of the child recruiting other children into the commercial sex trade.
3. Level of the child's attachment to his or her exploiter.
4. Level and type of trauma that the child has endured.
5. Nature of the child's interactions with law enforcement.
6. Length of time that the child was a victim of commercial sexual exploitation ~~sexually exploited~~.
7. Extent of any substance abuse by the child.

(b) The initial screening and assessment instruments shall be validated, if possible, and must be used by the department, juvenile assessment centers as provided in s. 985.135, and community-based care lead agencies.

(c) The department shall adopt rules that specify the initial screening and assessment instruments to be used and provide requirements for their use and for the reporting of data collected through their use.

(d) The department, or a sheriff's office acting under s.

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39.3065, the Department of Juvenile Justice, and community-based care lead agencies may use additional assessment instruments in the course of serving sexually exploited children.

(2) MULTIDISCIPLINARY STAFFINGS AND SERVICE PLANS.—

(a) The department, or a sheriff's office acting under s. 39.3065, shall conduct a multidisciplinary staffing for each child that is a suspected or verified victim of commercial sexual exploitation. The department or sheriff's office shall coordinate the staffing and invite individuals involved in the child's care, including, but not limited to, the child, if appropriate; the child's family or legal guardian; the child's guardian ad litem; Department of Juvenile Justice staff; school district staff; local health and human services providers; victim advocates; and any other persons who may be able to assist the child.

(b) The staffing must use the assessment, local services, and local protocols required by this section to develop a service plan. The service plan must identify the needs of the child and his or her family, the local services available to meet those needs, and whether placement in a safe house or safe foster home is needed. If the child is dependent, the case plan required by s. 39.6011 may meet the requirement for a service plan, but must be amended to incorporate the results of the multidisciplinary staffing. If the child is not dependent, the service plan is voluntary and the department or sheriff's office shall provide the plan to the victim and his or her family or legal guardian and offer to make any needed referrals to local service providers.

(c) The services identified in the service plan should be

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provided in the least restrictive environment and may include, but need not be limited to, the following:

1. Emergency shelter and runaway center services;
2. Outpatient individual or group counseling for the victim and the victim's family or legal guardian;
3. Substance use disorder treatment services;
4. Drop-in centers or mentoring programs;
5. Commercial sexual exploitation treatment programs;
6. Child advocacy center services pursuant to s. 39.3035;
7. Prevention services such as those provided by the Florida Network of Youth and Family Services and the PACE Center for Girls;
8. Family foster care;
9. Therapeutic foster care;
10. Safe houses or safe foster homes;
11. Residential treatment programs; and
12. Employment or workforce training.

(d) The department, or a sheriff's office acting under s. 39.3065, shall follow up with all verified victims of commercial sexual exploitation who are dependent within 6 months of the completion of the child abuse investigation, and such information must be included in the report required under s. 39.524. The followup must determine the following:

1. Whether a referral was made for the services recommended in the service plan;
2. Whether the services were received and, if not, the reasons why;
3. Whether the services or treatments were completed and, if not, the reasons why;

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4. Whether the victim has experienced commercial sexual exploitation since the verified report;

5. Whether the victim has run away since the verified report;

6. The type and number of placements, if applicable;

7. The educational status of the child;

8. The employment status of the child; and

9. Whether the child has been involved in the juvenile or criminal justice system.

(e) The department, or a sheriff's office acting under s. 39.3065, shall follow up with all verified victims of commercial sexual exploitation who are not dependent within 6 months after the child abuse investigation is completed and the information must be used in the report required under s. 39.524. The followup for nondependent victims and their families is voluntary, and the victim, family, or legal guardian is not required to respond. The followup must attempt to determine the following:

1. Whether a referral was made for the services recommended in the service plan;

2. Whether the services were received and, if not, the reasons why;

3. Whether the services or treatments were completed and, if not, the reasons why;

4. Whether the victim has experienced commercial sexual exploitation since the verified report;

5. Whether the victim has run away since the verified report;

6. The educational status of the child;

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7. The employment status of the child; and

8. Whether the child has been involved in the juvenile or criminal justice system.

~~(3)(2) TRAINING; LOCAL PROTOCOLS CASE MANAGEMENT; TASK FORCES.-~~

(a) ~~1-~~ The department, or a sheriff's office acting under s. 39.3065, and community-based care lead agencies shall ensure that cases in which a child is alleged, suspected, or known to be a victim of commercial sexual exploitation have been sexually exploited are assigned to child protective investigators and case managers who have specialized intensive training in handling cases involving a sexually exploited child. The department, sheriff's office, and lead agencies shall ensure that child protective investigators and case managers receive this training before accepting a case involving a commercially sexually exploited child.

(b) ~~2-~~ The Department of Juvenile Justice shall ensure that juvenile probation staff or contractors administering the detention risk assessment instrument pursuant to s. 985.14 receive specialized intensive training in identifying and serving commercially sexually exploited children.

~~(b) The department and community-based care lead agencies shall conduct regular multidisciplinary staffings relating to services provided for sexually exploited children to ensure that all parties possess relevant information and services are coordinated across systems. The department or community-based care lead agency, as appropriate, shall coordinate these staffings and invite individuals involved in the child's care, including, but not limited to, the child's guardian ad litem,~~

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465 ~~juvenile justice system staff, school district staff, service~~
 466 ~~providers, and victim advocates.~~

467 (c) ~~1-~~ Each region of the department and each community-
 468 based care lead agency shall jointly assess local service
 469 capacity to meet the specialized service needs of commercially
 470 sexually exploited children and establish a plan to develop the
 471 necessary capacity. Each plan shall be developed in consultation
 472 with community-based care lead agencies, local law enforcement
 473 officials, local school officials, runaway and homeless youth
 474 program providers, local probation departments, children's
 475 advocacy centers, guardians ad litem, public defenders, state
 476 attorneys' offices, safe houses, and child advocates and service
 477 providers who work directly with commercially sexually exploited
 478 children.

479 (d) ~~2-~~ Each region of the department and each community-
 480 based care lead agency shall establish local protocols and
 481 procedures for working with commercially sexually exploited
 482 children which are responsive to the individual circumstances of
 483 each child. The protocols and procedures shall take into account
 484 the varying types and levels of trauma endured; whether the
 485 commercial sexual exploitation is actively occurring, occurred
 486 in the past, or is inactive but likely to recur; and the
 487 differing community resources and degrees of familial support
 488 that are available. Child protective investigators and case
 489 managers must use these protocols and procedures when working
 490 with a victim of commercial sexual exploitation ~~sexually~~
 491 ~~exploited child.~~

492 (4) ~~(3)~~ LOCAL RESPONSE TO HUMAN TRAFFICKING; TRAINING; TASK
 493 FORCE.—

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494 (a) To the extent that funds are available, the local
 495 regional director may provide training to local law enforcement
 496 officials who are likely to encounter child victims of
 497 commercial sexual exploitation ~~sexually exploited children~~ in
 498 the course of their law enforcement duties. Training ~~must~~ shall
 499 address ~~the provisions of~~ this section and how to identify and
 500 obtain appropriate services for such ~~sexually exploited~~
 501 children. The local circuit administrator may contract with a
 502 not-for-profit agency with experience working with commercially
 503 sexually exploited children to provide the training. Circuits
 504 may work cooperatively to provide training, which may be
 505 provided on a regional basis. The department shall assist
 506 circuits to obtain available funds for the purpose of conducting
 507 law enforcement training from the Office of Juvenile Justice and
 508 Delinquency Prevention of the United States Department of
 509 Justice.

510 (b) Circuit administrators or their designees, chief
 511 probation officers of the Department of Juvenile Justice or
 512 their designees, and the chief operating officers of community-
 513 based care lead agencies or their designees shall participate in
 514 any task force, committee, council, advisory group, coalition,
 515 or other entity in their service area that is involved in
 516 coordinating responses to address human trafficking or
 517 commercial sexual exploitation of children. If such entity does
 518 not exist, the circuit administrator for the department shall
 519 initiate one.

520 Section 6. Subsection (4) of section 907.041, Florida
 521 Statutes, is amended to read:

522 907.041 Pretrial detention and release.—

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523 (4) PRETRIAL DETENTION.—
 524 (a) As used in this subsection, "dangerous crime" means any
 525 of the following:
 526 1. Arson;
 527 2. Aggravated assault;
 528 3. Aggravated battery;
 529 4. Illegal use of explosives;
 530 5. Child abuse or aggravated child abuse;
 531 6. Abuse of an elderly person or disabled adult, or
 532 aggravated abuse of an elderly person or disabled adult;
 533 7. Aircraft piracy;
 534 8. Kidnapping;
 535 9. Homicide;
 536 10. Manslaughter;
 537 11. Sexual battery;
 538 12. Robbery;
 539 13. Carjacking;
 540 14. Lewd, lascivious, or indecent assault or act upon or in
 541 presence of a child under the age of 16 years;
 542 15. Sexual activity with a child, who is 12 years of age or
 543 older but less than 18 years of age, by or at solicitation of
 544 person in familial or custodial authority;
 545 16. Burglary of a dwelling;
 546 17. Stalking and aggravated stalking;
 547 18. Act of domestic violence as defined in s. 741.28;
 548 19. Home invasion robbery;
 549 20. Act of terrorism as defined in s. 775.30;
 550 21. Manufacturing any substances in violation of chapter
 551 893; ~~and~~

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552 22. Attempting or conspiring to commit any such crime; and
 553 23. Human trafficking.
 554 (b) No person charged with a dangerous crime shall be
 555 granted nonmonetary pretrial release at a first appearance
 556 hearing; however, the court shall retain the discretion to
 557 release an accused on electronic monitoring or on recognizance
 558 bond if the findings on the record of facts and circumstances
 559 warrant such a release.
 560 (c) The court may order pretrial detention if it finds a
 561 substantial probability, based on a defendant's past and present
 562 patterns of behavior, the criteria in s. 903.046, and any other
 563 relevant facts, that any of the following circumstances exist:
 564 1. The defendant has previously violated conditions of
 565 release and that no further conditions of release are reasonably
 566 likely to assure the defendant's appearance at subsequent
 567 proceedings;
 568 2. The defendant, with the intent to obstruct the judicial
 569 process, has threatened, intimidated, or injured any victim,
 570 potential witness, juror, or judicial officer, or has attempted
 571 or conspired to do so, and that no condition of release will
 572 reasonably prevent the obstruction of the judicial process;
 573 3. The defendant is charged with trafficking in controlled
 574 substances as defined by s. 893.135, that there is a substantial
 575 probability that the defendant has committed the offense, and
 576 that no conditions of release will reasonably assure the
 577 defendant's appearance at subsequent criminal proceedings;
 578 4. The defendant is charged with DUI manslaughter, as
 579 defined by s. 316.193, and that there is a substantial
 580 probability that the defendant committed the crime and that the

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defendant poses a threat of harm to the community; conditions that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community include, but are not limited to, any of the following:

a. The defendant has previously been convicted of any crime under s. 316.193, or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193;

b. The defendant was driving with a suspended driver license when the charged crime was committed; or

c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver license was suspended or revoked in violation of s. 322.34;

5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons;

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;

7. The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably

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protect the community from risk of physical harm to persons or assure the presence of the accused at trial; or

8.a. The defendant has ever been sentenced pursuant to s. 775.082(9) or s. 775.084 as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal, or the state attorney files a notice seeking that the defendant be sentenced pursuant to s. 775.082(9) or s. 775.084, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal;

b. There is a substantial probability that the defendant committed the offense; and

c. There are no conditions of release that can reasonably protect the community from risk of physical harm or ensure the presence of the accused at trial.

(d) When a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency shall promptly notify the state attorney of the arrest and shall provide the state attorney with such information as the arresting agency has obtained relative to:

1. The nature and circumstances of the offense charged;
2. The nature of any physical evidence seized and the contents of any statements obtained from the defendant or any witness;

3. The defendant's family ties, residence, employment, financial condition, and mental condition; and

4. The defendant's past conduct and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.

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(e) When a person charged with a crime for which pretrial detention could be ordered is arrested, the arresting agency may detain such defendant, prior to the filing by the state attorney of a motion seeking pretrial detention, for a period not to exceed 24 hours.

(f) The pretrial detention hearing shall be held within 5 days of the filing by the state attorney of a complaint to seek pretrial detention. The defendant may request a continuance. No continuance shall be for longer than 5 days unless there are extenuating circumstances. The defendant may be detained pending the hearing. The state attorney shall be entitled to one continuance for good cause.

(g) The state attorney has the burden of showing the need for pretrial detention.

(h) The defendant is entitled to be represented by counsel, to present witnesses and evidence, and to cross-examine witnesses. The court may admit relevant evidence without complying with the rules of evidence, but evidence secured in violation of the United States Constitution or the Constitution of the State of Florida shall not be admissible. No testimony by the defendant shall be admissible to prove guilt at any other judicial proceeding, but such testimony may be admitted in an action for perjury, based upon the defendant's statements made at the pretrial detention hearing, or for impeachment.

(i) The pretrial detention order of the court shall be based solely upon evidence produced at the hearing and shall contain findings of fact and conclusions of law to support it. The order shall be made either in writing or orally on the record. The court shall render its findings within 24 hours of

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the pretrial detention hearing.

(j) A defendant convicted at trial following the issuance of a pretrial detention order shall have credited to his or her sentence, if imprisonment is imposed, the time the defendant was held under the order, pursuant to s. 921.161.

(k) The defendant shall be entitled to dissolution of the pretrial detention order whenever the court finds that a subsequent event has eliminated the basis for detention.

(l) The Legislature finds that a person who manufactures any substances in violation of chapter 893 poses a threat of harm to the community and that the factual circumstances of such a crime indicate a disregard for the safety of the community. The court shall order pretrial detention if the court finds that there is a substantial probability that a defendant charged with manufacturing any substances in violation of chapter 893 committed such a crime and if the court finds that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons.

Section 7. For the purpose of incorporating the amendment made by this act to section 907.041(4)(a), Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 790.065, Florida Statutes, is reenacted to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(c)1. Review any records available to it to determine whether the potential buyer or transferee has been indicted or has had an information filed against her or him for an offense

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that is a felony under either state or federal law, or, as mandated by federal law, has had an injunction for protection against domestic violence entered against the potential buyer or transferee under s. 741.30, has had an injunction for protection against repeat violence entered against the potential buyer or transferee under s. 784.046, or has been arrested for a dangerous crime as specified in s. 907.041(4)(a) or for any of the following enumerated offenses:

- a. Criminal anarchy under ss. 876.01 and 876.02.
- b. Extortion under s. 836.05.
- c. Explosives violations under s. 552.22(1) and (2).
- d. Controlled substances violations under chapter 893.
- e. Resisting an officer with violence under s. 843.01.
- f. Weapons and firearms violations under this chapter.
- g. Treason under s. 876.32.
- h. Assisting self-murder under s. 782.08.
- i. Sabotage under s. 876.38.
- j. Stalking or aggravated stalking under s. 784.048.

If the review indicates any such indictment, information, or arrest, the department shall provide to the licensee a conditional nonapproval number.

2. Within 24 working hours, the department shall determine the disposition of the indictment, information, or arrest and inform the licensee as to whether the potential buyer is prohibited from receiving or possessing a firearm. For purposes of this paragraph, "working hours" means the hours from 8 a.m. to 5 p.m. Monday through Friday, excluding legal holidays.

3. The office of the clerk of court, at no charge to the

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department, shall respond to any department request for data on the disposition of the indictment, information, or arrest as soon as possible, but in no event later than 8 working hours.

4. The department shall determine as quickly as possible within the allotted time period whether the potential buyer is prohibited from receiving or possessing a firearm.

5. If the potential buyer is not so prohibited, or if the department cannot determine the disposition information within the allotted time period, the department shall provide the licensee with a conditional approval number.

6. If the buyer is so prohibited, the conditional nonapproval number shall become a nonapproval number.

7. The department shall continue its attempts to obtain the disposition information and may retain a record of all approval numbers granted without sufficient disposition information. If the department later obtains disposition information which indicates:

a. That the potential buyer is not prohibited from owning a firearm, it shall treat the record of the transaction in accordance with this section; or

b. That the potential buyer is prohibited from owning a firearm, it shall immediately revoke the conditional approval number and notify local law enforcement.

8. During the time that disposition of the indictment, information, or arrest is pending and until the department is notified by the potential buyer that there has been a final disposition of the indictment, information, or arrest, the conditional nonapproval number shall remain in effect.

Section 8. This act shall take effect October 1, 2017.

The Florida Senate
State Senator René García
36th District

Please reply to:
District Office:
1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

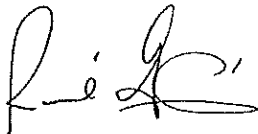
March 14th, 2017

The Honorable Greg Steube
Chairman, Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Steube,

Please have this letter serve as my formal request to have **SB 852: Human Trafficking** be heard during the next scheduled Judiciary Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: Tom Cibula
Joyce Butler

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

852
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable) _____

Name Jean Gonzalez Wingo

Job Title Grt Relations - FL Federation

Republican Women

Address 460 Frank Shaw Rd

Phone 850-339-4607

Street

City

Tal

State

FL

Zip

32312

Email JeanGWingo@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Federation of Republican Women

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-22-17
Meeting Date

852
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Erin Choy

Job Title Chair

Address 404 E. Sixth Ave
Street
Tallahassee FL 32303
City State Zip

Phone 904-635-4168

Email erin.choy@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Junior Leagues of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Mar 17

Meeting Date

852

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

Tall FL 32301
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-22-17
Meeting Date

852
Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Barbara DelVane

Job Title Ms

Address 625 E. Brevard ST

Phone 850-251-4280

Street

Tallahassee FL 32308

City

State

Zip

Email barbadervane1@yahoo.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL NOW

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

12.3.22-19

Meeting Date

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

852

Bill Number (if applicable)

Topic Human Trafficking

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 401 S. Magnolia DR #4

Phone 850-425-2600

Street

City

State

Zip

Email Cmackin@iamfor

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Children's Campaign

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

852

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Amber Kelly

Job Title Director of Policy & Communications

Address 4853 S. Orange Avenue

Phone (407) 418-0250

Street

Orlando

City

FL

State

32806

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Family Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17

Meeting Date

852

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Bill Bunkley

Job Title President

Address PO Box 341644

Street

Phone (813) 264-2977

Tampa

City

FL

State

336096

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Ethics & Religious Liberty Commission

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1682

INTRODUCER: Senators Garcia and Rodriguez

SUBJECT: Condominiums

DATE: March 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cibula	Cibula	JU	Favorable
2. _____	_____	RI	_____
3. _____	_____	RC	_____

I. Summary:

SB 1682 makes three main categories of changes relating to the regulation and operation of condominium associations. The changes:

- Define and prohibit or restrict activities constituting a conflict of interest which may be detrimental to the unit owners of a condominium.
- Impose criminal penalties for misconduct in the operations of a condominium, such as withholding or altering the records or engaging in fraudulent activities in elections.
- Increase access to records by unit owners.

These changes are substantially based on a final report by a Miami-Dade County grand jury, titled, *Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action*. The report found that the existing statutes do not sufficiently restrict self-dealing by members of the boards of condominiums or sufficiently deter other forms of misconduct such as election fraud. Additionally, the report found that the existing statutory mechanisms are insufficient to force condominium associations to make their official records available to unit owners in a timely manner.

II. Present Situation:

A condominium is a form of ownership of real property which is comprised entirely of units which are accompanied by an undivided share in common elements, such as hallways, staircases, parking lots, and recreational facilities.¹ An association, which is a nonprofit corporation comprised of the unit owners of the condominium, is responsible for operating the

¹ Section 718.103(11), F.S.

condominium.² The board of the condominium is a representative body that is responsible for managing the association.³

Condominium associations are self-governing but are regulated to some degree by the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (division). Larger condominium associations may operate with the assistance of a community association management firm or community association manager. Community association management firms and community association managers are also licensed and regulated by the department.

Condominium Powers and Duties

The powers and duties of the association, operated by the board, include the power or duty to:

- Manage the condominium's property.
- Contract, sue, and be sued.
- Make and collect assessments and maintain the common elements of the association.
- Purchase adequate property insurance.
- Obtain liability insurance for its directors and officers.
- Maintain insurance or a fidelity bond for those persons who control or disburse the association's funds.
- Maintain the official records of the association, which include:
 - Minutes of the meetings of the board of administration.
 - The association's insurance policies.
 - Accounting records for the association.
 - Ballots, sign-in sheets, and other papers relating to voting by unit owners.
- Make the official records of the association available to a unit owner within 5 working days after the receipt of a written request.
- Preparing financial reports and providing them to unit owners.⁴

Restrictions on Conflicts of Interest

Chapter 718, F.S., imposes a number of general restrictions on conflicts of interest by members of the board of a condominium association. The members of the board of the association have a fiduciary relationship to the unit owners.⁵ Consistent with this responsibility, the statutes prohibit officers and directors from soliciting or accepting anything of value from a person providing or proposing to provide goods or services to the association. An officer or director who violates the prohibition is subject to a civil penalty.

Additionally, officers and directors are required to exercise their duties "in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association."⁶ An

² Section 718.111(1)(a), F.S.

³ Section 718.103(4), F.S.

⁴ Section 718.111, F.S.

⁵ Section 718.111(1)(a), F.S.

⁶ Section 718.111(1)(d), F.S.

officer or director of an association is liable for monetary damages if he or she breaches or fails to perform his or her duties and the breach or failure related to certain violations of criminal law, an improper personal benefit or certain reckless acts.⁷

The restrictions on conflicts of interest by board members do not prohibit a board member from having a financial interest in a party providing maintenance or management services to the association.⁸ In those cases, contracts between the party providing maintenance or services are permissible if the board member's interest in the party is disclosed in the contract.

Elections

Members of the board of an association are generally selected through elections.⁹ Candidates for election to the board, however, may not include a member who is delinquent in the payment of any monetary obligation due the association. Similarly, the association may suspend the voting rights of members who are delinquent on any monetary obligation to the association by more than 90 days.¹⁰ Notices of elections must be delivered to each unit owner entitled to vote at least 60 days before the election.¹¹ The elections must be conducted on secret ballots.¹²

Members of the board can be recalled by an agreement among a majority of the unit owners who are entitled to vote in condominium matters or a by a vote of the unit owners at a special meeting.¹³ A recalled member must turn over association records and other property of the association within 5 days after he or she is recalled. If the board does not certify the recall of a board member, the board must file a petition for arbitration with the division.¹⁴

Arbitration

The Division of Florida Condominiums, Timeshares, and Mobile Homes is authorized to employ attorneys and certify other attorneys who may act as arbitrators to resolve condominium disputes.¹⁵ An attorney who is certified by the division as an arbitrator must be in good standing with The Florida Bar. The disputes that are subject to arbitration may relate to the authority of the board to require or prohibit a unit owner from taking actions relating to his or her unit.¹⁶ Other disputes eligible for arbitration may relate to the failure of the board to properly conduct an election, give adequate notice of meetings and other actions, or allow inspection of the association's books and records. A dispute relating to election irregularities in an election for a member of the board must be handled on an expedited basis.¹⁷

⁷ *Id.*; s. 617.0834, F.S.

⁸ Section 718.3025, F.S.

⁹ *See* s. 718.112(2), F.S.

¹⁰ Section 718.303(5), F.S.

¹¹ Section 718.112(2)(d)4.a., F.S.

¹² *Id.*

¹³ Section 718.112(2)(j), F.S.

¹⁴ Section 718.112(2)(j)3., F.S.

¹⁵ Section 718.1255(4), F.S.

¹⁶ Section 718.1255(1), F.S.

¹⁷ Section 718.1255(5), F.S.

Regulation by the Department of Business and Professional Regulation

The Division of Florida Condominiums, Timeshares, and Mobile Homes has authority to ensure that condominium associations and boards comply with the statutes and rules governing condominiums.¹⁸ This includes the authority to investigate complaints relating to financial issues, elections, and access to records by unit owners.

If the division has reasonable cause to believe that a condominium association, its board, or officer of the board has violated the statutes or rules governing condominiums, the division may initiate enforcement proceedings.¹⁹ These enforcement proceedings may result in letters of censure or warning, cease and desist orders, restitution, declaratory relief, injunctive relief, and civil penalties.

The division is also required to maintain a toll-free number for condominium unit owners.²⁰ When the division receives a complaint, it generally must conduct its investigation and take action on the complaint within 90 days.²¹ If the division believes that a person has altered, concealed, or destroyed a document that must be maintained by an association for the purpose of impairing its accuracy or availability in an investigation, the division must refer the matter to a local law enforcement agency.²²

The division also houses a condominium ombudsman whose duties include:

- Acting as a liaison between the division, unit owners, boards of directors, and board members.
- Developing policies and procedures to assist unit owners, boards of directors, board members and community association managers to understand their rights and responsibilities.
- Monitoring and reviewing procedures and disputes concerning condominium election and meetings.
- Appointing an election monitor to attend the annual meeting of unit owners and conduct the election of directors upon a petition by at least 15 percent of the voting interests in the association or six unit owners, whichever is greater.²³

Grand Jury Report—Addressing Condo Owners’ Pleas for Help: Recommendations for Legislative Action

The increasing numbers of condominiums in this state, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the Department of Business and Professional Regulation motivated a Miami-Dade County grand jury to conduct an

¹⁸ Section 718.501(1), F.S.

¹⁹ Section 718.501(1)(d), F.S.

²⁰ Section 718.501(1)(k), F.S.

²¹ Section 718.501(1)(m), F.S.

²² Section 718.501(1)(n), F.S.

²³ Section 718.5012, F.S.

investigation of complaints by those who live in condominiums and the department's responses to them.^{24,25} Here is a brief summary of the findings and recommendations in the report:

- The statutes governing unit owner access to records are ineffective because the financial penalties for the denial of access to records may be paid from assessments levied against the unit owners, not by the person who wrongfully withheld access to records.²⁶
- The statutes should not allow a member of a board of a condominium to vote for or against awarding a contract that involves the board member, a relative of the board member, or any person or entity who has a relationship with that board member or the board member's relative.²⁷
- Investigators with the department have little experience or training and seem more intent of closing complaints than resolving them.²⁸
- Some associations delay notifying unit owners of delinquent assessments that disqualify them from voting in elections in order to impede those unit owners from becoming current in their financial obligations before the election.²⁹
- There are many complaints about fraud in condominium elections, and the statutes should be revised to provide criminal punishments for those who engage in fraudulent activities in condominium elections.³⁰
- Election monitors should have the authority to collect evidence and void a condominium election when they reasonably believe that fraudulent election activities have occurred.³¹
- The broad scope of the department's responsibilities may be the cause of its ineffective regulation of condominiums, and if placed elsewhere, the department's investigative arm should employ trained and experienced investigators who have the authority to conduct criminal investigations and to initiate investigations based on their own observations.³²

III. Effect of Proposed Changes:

This bill makes three main categories of changes relating to the regulation and operation of condominium associations. The changes:

- Define and prohibit or restrict activities constituting a conflict of interest.
- Impose criminal penalties for misconduct in the operations of a condominium.
- Increase access to records by unit owners.

The bill also addresses a number of miscellaneous issues pertaining to condominiums.

²⁴ FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY, ADDRESSING CONDO OWNERS' PLEAS FOR HELP: RECOMMENDATIONS FOR LEGISLATIVE ACTION (Feb. 6, 2017), <http://www.miamisao.com/wp-content/uploads/2017/02/Grand-Jury-Report-Final.pdf>.

²⁵ In addition to issuing criminal indictments, grand juries "consider the actions of public bodies and officials in the use of public funds and report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes and misconduct involving public offices and public monies." *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518, 522 (Fla. 1977).

²⁶ FINAL REPORT OF THE MIAMI-DADE COUNTY GRAND JURY, *supra* note 24 at 8-9.

²⁷ *Id.* at 9-10.

²⁸ *Id.* at 19.

²⁹ *Id.* at 21.

³⁰ *Id.* at 20-22.

³¹ *Id.* 24-26.

³² *Id.* at 27.

Conflicts of Interest (Sections 1, 2, 5, & 6)

The bill prohibits conflicts of interest among those who are responsible for operating a condominium as follows:

- Attorneys are prohibited from representing both the board of a condominium association and the management company of the association.
- Members of the board or the management company for a condominium association are prohibited from purchasing a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or from taking title to the unit by deed in lieu of foreclosure.
- Condominium associations are prohibited from contracting with a service provider that is owned or operated by a board member or a person who has a financial relationship with a board member.
- A party that contracts to provide maintenance or management services or a board member of the party is prohibited from owning more than 50 percent of the units of the condominium or from purchasing a property that is subject to a lien by the association.

Additionally, officers and directors of a condominium board are required to disclose activities that may reasonably be construed to be a conflict of interest. The existence of the conflict of interest must be documented on contracts and meeting agendas. In some cases, the officer or director engaged in a conflict of interest must choose to no longer pursue the activity creating the conflict or withdraw from office. Otherwise, the board must remove the officer or director from office.

In other cases, where the potential for a conflict of interest exists, the person responsible for creating the potential conflict may not be present during the board's deliberations or vote on the matter. Additionally, a contract between a director, officer, or relative of either and the association which is not properly noticed to the unit owners is void.

Criminal Penalties (Sections 1 & 4)

The bill authorizes criminal penalties for several types of misconduct relating to condominiums. A person is subject to criminal penalties as follows:

- A director or board member who knowingly, willfully, and repeatedly fails to provide access to the official records of the association commits a second degree misdemeanor.
- A person who knowingly and intentionally defaces or destroys association accounting records or fails to create or maintain required accounting records with the intent of harming the association commits a first degree misdemeanor.
- A person who willfully and knowingly refuses to produce association records with the intent of facilitating the commission of a crime or avoiding or escaping detection, arrest, trial, or punishments commits a third degree felony.
- A person who willfully, knowingly, and falsely swears or affirms an oath or affirmation or procures another person to do the same in connection with voting in an association election commits a third degree felony.
- A person who willfully and knowingly perpetrates or attempts to perpetrate fraud in connection with voting in an association election commits a third degree felony.

- A person who willfully, knowingly, and fraudulently changes or attempts to change a vote or ballot cast or to be cast in an association election commits a felony of the third degree.

Access to Association Records (Sections 1 & 9)

The bill requires condominium associations to keep additional records and generally to take actions to make those records available to unit owners as follows:

- A condominium association must maintain bids for materials, equipment, and services as part of its official records.
- A condominium association must make its records available to renters and authorized representatives of unit owners and renters.
- A condominium association must provide an annual report to the Department of Business and Professional Regulation listing the financial institutions at which it maintains accounts, and unit owners may obtain the report from the department.
- A condominium association that mails or hand delivers financial reports to unit owners after the receipt of a written request must do so within 5 days after receiving the request. Under current law, these reports must be provided upon receipt of the request.

Additionally, condominium associations having 500 or more units must post copies of certain types of its official records on its website. However, the records must be inaccessible to the general public. The records that must be posted on the website include:

- The declaration of condominium and related amendments.
- The bylaws.
- Articles of incorporation of the association and related amendments.
- The rules of the association.
- Management agreements, leases, and other contracts to which the association is a party.
- The annual budget for the association.
- The annual financial report for the association.
- Certifications by directors relating to conflicts of interest.
- Contracts and transactions between the association and other entities in which a director has a financial interest.
- Notices of board meetings and agendas for those meetings.

Miscellaneous Changes (Sections 1, 2, 3, & 7)

Finally, the bill makes a number of miscellaneous changes to the regulations for condominiums. These changes:

- Require an association to timely provide copies of financial reports to unit owners or lose the authority to waive heightened financial reporting requirements.
- Prohibit member of a condominium board from serving more than four consecutive 2-year terms unless approved by a two-thirds vote of the total voting interests of the association.
- Eliminate the authority of a condominium board to certify the recall of a board member.
- Extend the time period for a recalled board member to turn over records and other association property to 10 days from 5 days after the recall.
- Specify minimum qualifications for arbitrators who are certified by the Division of Florida Condominiums, Timeshares and Mobile Homes to arbitrate a condominium dispute.

- Require arbitrators who arbitrate condominium disputes to render decisions within 30 days after a hearing.
- Prohibit a condominium from suspending the voting rights of a unit owner unless the unit owner owes more than \$1,000 to the association.
- Prohibit a receiver from exercising the voting rights of a unit that is in receivership for the benefit of the association.
- Authorize the ombudsman to review secret ballots cast in the vote of an association where there is reasonable cause to believe that election misconduct has occurred.

Effective Date

The bill takes effect July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill is not a mandate as it does not affect counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The provisions of the bill which define and restrict conflicts of interests may result in lower costs for contracted services to condominiums.

Condominiums may incur increased costs to maintain and make their records available to unit owners.

C. Government Sector Impact:

The state will incur costs to investigate, prosecute, and punish persons who violate the new criminal standards in the bill.

The minimum qualifications for arbitrators who may arbitrate condominium disputes as set forth in the bill may reduce the pool of qualified arbitrators. This may result in greater

costs to the Department of Business and Professional Regulation to employ these arbitrators.

VI. Technical Deficiencies:

Lines 1089-1101 of the bill purports give a board of a condominium some authority to prohibit a director, officer, or relative of any officer or director from engaging in activities that constitute a conflict of interest. The logistics of how the matter is submitted to a vote of the board is not clear.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.1255, 718.3025, 718.303, 718.5012, and 718.71.

This bill creates the following sections of the Florida Statutes: 718.129 and 718.3027.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Garcia

36-00715B-17

20171682__

1 A bill to be entitled
 2 An act relating to condominiums; amending s. 718.111,
 3 F.S.; prohibiting an attorney from representing a
 4 board under certain conditions; prohibiting certain
 5 actions by a board member or management company;
 6 providing recordkeeping requirements; providing that
 7 the official records of an association are open to
 8 inspection by unit renters; providing criminal
 9 penalties; providing a definition; providing
 10 requirements relating to the posting of specified
 11 documents on an association's website; providing a
 12 remedy for an association's failure to provide a unit
 13 owner with a copy of the most recent financial report;
 14 requiring the Division of Florida Condominiums,
 15 Timeshares, and Mobile Homes to maintain and provide
 16 copies of financial reports; amending s. 718.112,
 17 F.S.; providing board member term limits; providing an
 18 exception; deleting certification requirements
 19 relating to the recall of board members; revising the
 20 amount of time in which a recalled board member must
 21 turn over records and property of the association to
 22 the board; prohibiting an association from employing
 23 or contracting with a service provider that is owned
 24 or operated by certain persons; amending s. 718.1255,
 25 F.S.; authorizing, rather than requiring, the division
 26 to employ full-time attorneys to conduct certain
 27 arbitration hearings; providing requirements for the
 28 certification of arbitrators; prohibiting the
 29 Department of Business and Professional Regulation

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30 from entering into a legal services contract for
 31 certain arbitration hearings; requiring the division
 32 to assign or enter into contracts with arbitrators;
 33 requiring arbitrators to conduct hearings within a
 34 specified period; providing an exception; providing
 35 arbitration proceeding requirements; creating s.
 36 718.129, F.S.; providing that certain activities
 37 constitute fraudulent voting activities related to
 38 association elections; providing criminal penalties;
 39 amending s. 718.3025, F.S.; prohibiting specified
 40 parties from certain activities; creating s. 718.3027,
 41 F.S.; providing requirements relating to board
 42 director and officer conflicts of interest; providing
 43 that certain contracts are null and void if they do
 44 not meet specified notice requirements; amending s.
 45 718.303, F.S.; providing requirements relating to the
 46 suspension of voting rights of unit owners and
 47 members; prohibiting a receiver from exercising the
 48 voting rights of a unit owner whose unit is placed in
 49 receivership; amending s. 718.5012, F.S.; providing
 50 the ombudsman with an additional power; creating s.
 51 718.71, F.S.; providing financial reporting
 52 requirements of an association; providing an effective
 53 date.

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

56
 57 Section 1. Subsections (3) and (9), paragraphs (a) and (c)
 58 of subsection (12), and subsection (13) of section 718.111,

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Florida Statutes, are amended, and paragraph (g) is added to subsection (12) of that section, to read:

718.111 The association.—

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.—

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be

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available.

(b) An attorney may not represent a board if the attorney represents the management company of the association.

(9) PURCHASE OF UNITS.—The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, a board member or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

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- 117 5. A copy of the current rules of the association.
- 118 6. A book or books that contain the minutes of all meetings
- 119 of the association, the board of administration, and the unit
- 120 owners, which minutes must be retained for at least 7 years.
- 121 7. A current roster of all unit owners and their mailing
- 122 addresses, unit identifications, voting certifications, and, if
- 123 known, telephone numbers. The association shall also maintain
- 124 the electronic mailing addresses and facsimile numbers of unit
- 125 owners consenting to receive notice by electronic transmission.
- 126 The electronic mailing addresses and facsimile numbers are not
- 127 accessible to unit owners if consent to receive notice by
- 128 electronic transmission is not provided in accordance with sub-
- 129 subparagraph (c)5.e. ~~subparagraph (c)5.~~ However, the association
- 130 is not liable for an inadvertent disclosure of the electronic
- 131 mail address or facsimile number for receiving electronic
- 132 transmission of notices.
- 133 8. All current insurance policies of the association and
- 134 condominiums operated by the association.
- 135 9. A current copy of any management agreement, lease, or
- 136 other contract to which the association is a party or under
- 137 which the association or the unit owners have an obligation or
- 138 responsibility.
- 139 10. Bills of sale or transfer for all property owned by the
- 140 association.
- 141 11. Accounting records for the association and separate
- 142 accounting records for each condominium that the association
- 143 operates. All accounting records must be maintained for at least
- 144 7 years. Any person who knowingly or intentionally defaces or
- 145 destroys such records, or who knowingly or intentionally fails

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- 146 to create or maintain such records, with the intent of causing
- 147 harm to the association or one or more of its members, is
- 148 personally subject to a civil penalty pursuant to s.
- 149 718.501(1)(d). The accounting records must include, but are not
- 150 limited to:
- 151 a. Accurate, itemized, and detailed records of all receipts
- 152 and expenditures.
- 153 b. A current account and a monthly, bimonthly, or quarterly
- 154 statement of the account for each unit designating the name of
- 155 the unit owner, the due date and amount of each assessment, the
- 156 amount paid on the account, and the balance due.
- 157 c. All audits, reviews, accounting statements, and
- 158 financial reports of the association or condominium.
- 159 d. All contracts for work to be performed. Bids for work to
- 160 be performed are also considered official records and must be
- 161 maintained by the association.
- 162 12. Ballots, sign-in sheets, voting proxies, and all other
- 163 papers relating to voting by unit owners, which must be
- 164 maintained for 1 year from the date of the election, vote, or
- 165 meeting to which the document relates, notwithstanding paragraph
- 166 (b).
- 167 13. All rental records if the association is acting as
- 168 agent for the rental of condominium units.
- 169 14. A copy of the current question and answer sheet as
- 170 described in s. 718.504.
- 171 15. All other written records of the association not
- 172 specifically included in the foregoing which are related to the
- 173 operation of the association.
- 174 16. A copy of the inspection report as described in s.

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718.301(4) (p) .

17. Bids for materials, equipment, or services.

(c) 1. The official records of the association are open to inspection by any association member, ~~or~~ the authorized representative of such member, or the renter of such member's unit at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member, authorized representative of such member, or the renter of such member's unit. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are \$50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any director or member of the board or association who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subparagraph, the term "repeatedly violates" means more than two violations within a 12-month period.

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3. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

4. Any person who willfully and knowingly refuses to release or otherwise produce association records with the intent of facilitating the commission of a crime or avoiding or escaping detection, arrest, trial, or punishment for a crime commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

5. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the

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association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a.1- Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b.2- Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c.3- Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph ~~subparagraph~~, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d.4- Medical records of unit owners.

e.5- Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers,

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facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph ~~subparagraph~~, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph ~~subparagraph~~. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph ~~subparagraph~~ if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f.6- Electronic security measures that are used by the association to safeguard data, including passwords.

g.7- The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(g)1. An association with 500 or more units that does not manage timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

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- 291 a. The association's website must be:
 292 (I) An independent website or web portal wholly owned and
 293 operated by the association; or
 294 (II) A website or web portal operated by a third-party
 295 provider with whom the association owns, leases, rents, or
 296 otherwise obtains the right to operate a web page, subpage, web
 297 portal, or collection of subpages or web portals dedicated to
 298 the association's activities and on which required notices,
 299 records, and documents may be posted by the association.
 300 b. The association's website must be accessible through the
 301 Internet and must contain a subpage, web portal, or other
 302 protected electronic location that is inaccessible to the
 303 general public and accessible only to unit owners, employees of
 304 the association, and the department.
 305 c. Upon a unit owner's request, the association must
 306 provide the unit owner with a username and password and access
 307 to the protected sections of the association's website that
 308 contain any notices, records, or documents that must be
 309 electronically provided.
 310 2. A current copy of the following documents must be posted
 311 in digital format on the association's website:
 312 a. The recorded declaration of condominium of each
 313 condominium operated by the association and each amendment to
 314 each declaration.
 315 b. The recorded bylaws of the association and each
 316 amendment to the bylaws.
 317 c. The articles of incorporation of the association, or
 318 other documents creating the association, and each amendment
 319 thereto. The copy posted pursuant to this sub-subparagraph must

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- 320 be a certified copy.
 321 d. The rules of the association.
 322 e. Any management agreement, lease, or other contract to
 323 which the association is a party or under which the association
 324 or the unit owners have an obligation or responsibility.
 325 Summaries of bids for materials, equipment, or services must be
 326 maintained on the website for 1 year.
 327 f. The annual budget required by s. 718.112(2)(f) and any
 328 proposed budget to be considered at the annual meeting.
 329 g. The financial report required by subsection (13) and any
 330 proposed financial report to be considered at a meeting.
 331 h. The certification of each director required by s.
 332 718.112(2)(d)4.b.
 333 i. All contracts or transactions between the association
 334 and any director, officer, corporation, firm, or association
 335 that is not an affiliated condominium association or any other
 336 entity in which an association director is also a director or
 337 officer and financially interested.
 338 j. Any contract or document regarding a conflict of
 339 interest or possible conflict of interest as provided in ss.
 340 468.436(2) and 718.3026(3).
 341 k. The notice of any board meeting and the agenda for the
 342 meeting, as required by s. 718.112(2)(d)3., no later than 14
 343 days before the meeting. The notice must be posted in plain view
 344 on the front page of the website, or on a separate subpage of
 345 the website labeled "Notices" which is conspicuously visible and
 346 linked from the front page. The association must also post on
 347 its website any documents to be considered during the meeting or
 348 listed on the agenda at least 7 days before the meeting at which

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349 the document or the information within the document will be
 350 considered, including the following documents:

351 (I) The proposed annual budget required by s.
 352 718.112(2)(f), which must be provided at least 14 days before
 353 the meeting.

354 (II) The proposed financial report required by subsection
 355 (13).

356 3. The association shall ensure that the information and
 357 records described in paragraph (c), which are not permitted to
 358 be accessible to unit owners, are not posted on the
 359 association's website. If protected information or information
 360 restricted from being accessible to unit owners is included in
 361 documents that are required to be posted on the association's
 362 website, the association shall ensure the information is
 363 redacted before posting the documents online.

364 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 365 the fiscal year, or annually on a date provided in the bylaws,
 366 the association shall prepare and complete, or contract for the
 367 preparation and completion of, a financial report for the
 368 preceding fiscal year. Within 21 days after the final financial
 369 report is completed by the association or received from the
 370 third party, but not later than 120 days after the end of the
 371 fiscal year or other date as provided in the bylaws, the
 372 association shall mail to each unit owner at the address last
 373 furnished to the association by the unit owner, or hand deliver
 374 to each unit owner, a copy of the most recent financial report
 375 or a notice that a copy of the most recent financial report will
 376 be mailed or hand delivered to the unit owner, without charge,
 377 within 5 business days after ~~upon~~ receipt of a written request

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378 from the unit owner. The division shall adopt rules setting
 379 forth uniform accounting principles and standards to be used by
 380 all associations and addressing the financial reporting
 381 requirements for multicondominium associations. The rules must
 382 include, but not be limited to, standards for presenting a
 383 summary of association reserves, including a good faith estimate
 384 disclosing the annual amount of reserve funds that would be
 385 necessary for the association to fully fund reserves for each
 386 reserve item based on the straight-line accounting method. This
 387 disclosure is not applicable to reserves funded via the pooling
 388 method. In adopting such rules, the division shall consider the
 389 number of members and annual revenues of an association.
 390 Financial reports shall be prepared as follows:

391 (a) An association that meets the criteria of this
 392 paragraph shall prepare a complete set of financial statements
 393 in accordance with generally accepted accounting principles. The
 394 financial statements must be based upon the association's total
 395 annual revenues, as follows:

396 1. An association with total annual revenues of \$150,000 or
 397 more, but less than \$300,000, shall prepare compiled financial
 398 statements.

399 2. An association with total annual revenues of at least
 400 \$300,000, but less than \$500,000, shall prepare reviewed
 401 financial statements.

402 3. An association with total annual revenues of \$500,000 or
 403 more shall prepare audited financial statements.

404 (b)1. An association with total annual revenues of less
 405 than \$150,000 shall prepare a report of cash receipts and
 406 expenditures.

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2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).

3. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.

(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

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1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association. An association may not waive the financial reporting requirements of this section for more than 3

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consecutive years.

(e) If an association has not mailed or hand delivered to the unit owner a copy of the most recent financial report within 5 business days after receipt of a written request from the unit owner, the unit owner may give notice to the division of the association's failure to comply. Upon notification, the division shall give notice to the association that the association must mail or hand deliver the copy of the most recent financial report to the unit owner and the division within 5 business days after such notice. Any association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d). A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

Section 2. Paragraphs (d) and (j) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (p) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

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2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. ~~If the bylaws or articles of incorporation permit terms of no more than 2 years, the association~~ Board members may serve 2-year terms if permitted by the bylaws or articles of incorporation. A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association

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that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must

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include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings shall be posted. This requirement does not apply if there is no condominium property or association property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner.

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581 However, if a unit is owned by more than one person, the
 582 association must provide notice to the address that the
 583 developer identifies for that purpose and thereafter as one or
 584 more of the owners of the unit advise the association in
 585 writing, or if no address is given or the owners of the unit do
 586 not agree, to the address provided on the deed of record. An
 587 officer of the association, or the manager or other person
 588 providing notice of the association meeting, must provide an
 589 affidavit or United States Postal Service certificate of
 590 mailing, to be included in the official records of the
 591 association affirming that the notice was mailed or hand
 592 delivered in accordance with this provision.

593 4. The members of the board of a residential condominium
 594 shall be elected by written ballot or voting machine. Proxies
 595 may not be used in electing the board in general elections or
 596 elections to fill vacancies caused by recall, resignation, or
 597 otherwise, unless otherwise provided in this chapter. This
 598 subparagraph does not apply to an association governing a
 599 timeshare condominium.

600 a. At least 60 days before a scheduled election, the
 601 association shall mail, deliver, or electronically transmit, by
 602 separate association mailing or included in another association
 603 mailing, delivery, or transmission, including regularly
 604 published newsletters, to each unit owner entitled to a vote, a
 605 first notice of the date of the election. A unit owner or other
 606 eligible person desiring to be a candidate for the board must
 607 give written notice of his or her intent to be a candidate to
 608 the association at least 40 days before a scheduled election.
 609 Together with the written notice and agenda as set forth in

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610 subparagraph 3., the association shall mail, deliver, or
 611 electronically transmit a second notice of the election to all
 612 unit owners entitled to vote, together with a ballot that lists
 613 all candidates. Upon request of a candidate, an information
 614 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 615 furnished by the candidate at least 35 days before the election,
 616 must be included with the mailing, delivery, or transmission of
 617 the ballot, with the costs of mailing, delivery, or electronic
 618 transmission and copying to be borne by the association. The
 619 association is not liable for the contents of the information
 620 sheets prepared by the candidates. In order to reduce costs, the
 621 association may print or duplicate the information sheets on
 622 both sides of the paper. The division shall by rule establish
 623 voting procedures consistent with this sub-subparagraph,
 624 including rules establishing procedures for giving notice by
 625 electronic transmission and rules providing for the secrecy of
 626 ballots. Elections shall be decided by a plurality of ballots
 627 cast. There is no quorum requirement; however, at least 20
 628 percent of the eligible voters must cast a ballot in order to
 629 have a valid election. A unit owner may not permit any other
 630 person to vote his or her ballot, and any ballots improperly
 631 cast are invalid. A unit owner who violates this provision may
 632 be fined by the association in accordance with s. 718.303. A
 633 unit owner who needs assistance in casting the ballot for the
 634 reasons stated in s. 101.051 may obtain such assistance. The
 635 regular election must occur on the date of the annual meeting.
 636 Notwithstanding this sub-subparagraph, an election is not
 637 required unless more candidates file notices of intent to run or
 638 are nominated than board vacancies exist.

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639 b. Within 90 days after being elected or appointed to the
 640 board of an association of a residential condominium, each newly
 641 elected or appointed director shall certify in writing to the
 642 secretary of the association that he or she has read the
 643 association's declaration of condominium, articles of
 644 incorporation, bylaws, and current written policies; that he or
 645 she will work to uphold such documents and policies to the best
 646 of his or her ability; and that he or she will faithfully
 647 discharge his or her fiduciary responsibility to the
 648 association's members. In lieu of this written certification,
 649 within 90 days after being elected or appointed to the board,
 650 the newly elected or appointed director may submit a certificate
 651 of having satisfactorily completed the educational curriculum
 652 administered by a division-approved condominium education
 653 provider within 1 year before or 90 days after the date of
 654 election or appointment. The written certification or
 655 educational certificate is valid and does not have to be
 656 resubmitted as long as the director serves on the board without
 657 interruption. A director of an association of a residential
 658 condominium who fails to timely file the written certification
 659 or educational certificate is suspended from service on the
 660 board until he or she complies with this sub-subparagraph. The
 661 board may temporarily fill the vacancy during the period of
 662 suspension. The secretary shall cause the association to retain
 663 a director's written certification or educational certificate
 664 for inspection by the members for 5 years after a director's
 665 election or the duration of the director's uninterrupted tenure,
 666 whichever is longer. Failure to have such written certification
 667 or educational certificate on file does not affect the validity

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668 of any board action.
 669 c. Any challenge to the election process must be commenced
 670 within 60 days after the election results are announced.
 671 5. Any approval by unit owners called for by this chapter
 672 or the applicable declaration or bylaws, including, but not
 673 limited to, the approval requirement in s. 718.111(8), must be
 674 made at a duly noticed meeting of unit owners and is subject to
 675 all requirements of this chapter or the applicable condominium
 676 documents relating to unit owner decisionmaking, except that
 677 unit owners may take action by written agreement, without
 678 meetings, on matters for which action by written agreement
 679 without meetings is expressly allowed by the applicable bylaws
 680 or declaration or any law that provides for such action.
 681 6. Unit owners may waive notice of specific meetings if
 682 allowed by the applicable bylaws or declaration or any law.
 683 Notice of meetings of the board of administration, unit owner
 684 meetings, except unit owner meetings called to recall board
 685 members under paragraph (j), and committee meetings may be given
 686 by electronic transmission to unit owners who consent to receive
 687 notice by electronic transmission.
 688 7. Unit owners have the right to participate in meetings of
 689 unit owners with reference to all designated agenda items.
 690 However, the association may adopt reasonable rules governing
 691 the frequency, duration, and manner of unit owner participation.
 692 8. A unit owner may tape record or videotape a meeting of
 693 the unit owners subject to reasonable rules adopted by the
 694 division.
 695 9. Unless otherwise provided in the bylaws, any vacancy
 696 occurring on the board before the expiration of a term may be

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

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filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and

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removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. ~~At the meeting, the board shall either certify the recall, in which case~~ Such member or members shall be recalled effective immediately and shall turn over to the board within 10 ~~5~~ full business days after the vote any and all records and property of the association in their possession, ~~or shall proceed as set forth in subparagraph 3.~~

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. ~~At the meeting, the board shall either certify the written agreement to recall a member or members of the board, in~~

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755 ~~which case such member or members shall be recalled effective~~
 756 ~~immediately and shall turn over to the board within 5 full~~
 757 ~~business days any and all records and property of the~~
 758 ~~association in their possession, or proceed as described in~~
 759 ~~subparagraph 3.~~

760 ~~3. If the board determines not to certify the written~~
 761 ~~agreement to recall a member or members of the board, or does~~
 762 ~~not certify the recall by a vote at a meeting, The board shall,~~
 763 ~~within 5 full business days after the meeting, file with the~~
 764 ~~division a petition for arbitration pursuant to the procedures~~
 765 ~~in s. 718.1255. For the purposes of this section, the unit~~
 766 ~~owners who voted at the meeting or who executed the agreement in~~
 767 ~~writing shall constitute one party under the petition for~~
 768 ~~arbitration. If the arbitrator certifies the recall as to any~~
 769 ~~member or members of the board, the recall will be effective~~
 770 ~~upon mailing of the final order of arbitration to the~~
 771 ~~association. If the association fails to comply with the order~~
 772 ~~of the arbitrator, the division may take action pursuant to s.~~
 773 ~~718.501. Any member or members so recalled shall deliver to the~~
 774 ~~board any and all records of the association in their possession~~
 775 ~~within 5 full business days after the effective date of the~~
 776 ~~recall.~~

777 ~~3.4.~~ If the board fails to duly notice and hold a board
 778 meeting within 5 full business days after service of an
 779 agreement in writing or within 5 full business days after the
 780 adjournment of the unit owner recall meeting, the recall shall
 781 be deemed effective and the board members so recalled shall
 782 immediately turn over to the board within 10 full business days
 783 after the vote any and all records and property of the

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784 association.

785 ~~4.5.~~ If the board fails to duly notice and hold the
 786 required meeting or fails to file the required petition, the
 787 unit owner representative may file a petition pursuant to s.
 788 718.1255 challenging the board's failure to act. The petition
 789 must be filed within 60 days after the expiration of the
 790 applicable 5-full-business-day period. The review of a petition
 791 under this subparagraph is limited to the sufficiency of service
 792 on the board and the facial validity of the written agreement or
 793 ballots filed.

794 ~~5.6.~~ If a vacancy occurs on the board as a result of a
 795 recall or removal and less than a majority of the board members
 796 are removed, the vacancy may be filled by the affirmative vote
 797 of a majority of the remaining directors, notwithstanding any
 798 provision to the contrary contained in this subsection. If
 799 vacancies occur on the board as a result of a recall and a
 800 majority or more of the board members are removed, the vacancies
 801 shall be filled in accordance with procedural rules to be
 802 adopted by the division, which rules need not be consistent with
 803 this subsection. The rules must provide procedures governing the
 804 conduct of the recall election as well as the operation of the
 805 association during the period after a recall but before the
 806 recall election.

807 ~~6.7.~~ A board member who has been recalled may file a
 808 petition pursuant to s. 718.1255 challenging the validity of the
 809 recall. The petition must be filed within 60 days after the
 810 recall ~~is deemed certified~~. The association and the unit owner
 811 representative shall be named as the respondents.

812 ~~7.8.~~ The division may not accept for filing a recall

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petition, whether filed pursuant to subparagraph 1.,
subparagraph 2., subparagraph 4. ~~5.~~, or subparagraph 6. ~~7.~~ and
~~regardless of whether the recall was certified,~~ when there are
60 or fewer days until the scheduled reelection of the board
member sought to be recalled or when 60 or fewer days have
elapsed since the election of the board member sought to be
recalled.

(p) Service providers; conflicts of interest.—An
association may not employ or contract with any service provider
that is owned or operated by a board member or any person who
has a financial relationship with a board member.

Section 3. Subsection (4) of section 718.1255, Florida
Statutes, is amended to read:

718.1255 Alternative dispute resolution; voluntary
mediation; mandatory nonbinding arbitration; legislative
findings.—

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF
DISPUTES.—The Division of Florida Condominiums, Timeshares, and
Mobile Homes of the Department of Business and Professional
Regulation may ~~shall~~ employ full-time attorneys to act as
arbitrators to conduct the arbitration hearings provided by this
chapter. The division may also certify attorneys who are not
employed by the division to act as arbitrators to conduct the
arbitration hearings provided by this chapter ~~section~~. No person
may be employed by the department as a full-time arbitrator
unless he or she is a member in good standing of The Florida
Bar. A person may only be certified by the division to act as an
arbitrator if he or she has been a member in good standing of
The Florida Bar for at least 5 years and has mediated or

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arbitrated at least 10 disputes involving condominiums in this
state during the 3 years immediately preceding the date of
application, mediated or arbitrated at least 30 disputes in any
subject area in this state during the 3 years immediately
preceding the date of application, or attained board
certification in real estate law or condominium and planned
development law from The Florida Bar. Arbitrator certification
is valid for 1 year. An arbitrator who does not maintain the
minimum qualifications for initial certification may not have
his or her certification renewed. The department may not enter
into a legal services contract for an arbitration hearing under
this chapter with an attorney who is not a certified arbitrator
unless a certified arbitrator is not available within 50 miles
of the dispute. The department shall adopt rules of procedure to
govern such arbitration hearings including mediation incident
thereto. The decision of an arbitrator shall be final; however,
a decision shall not be deemed final agency action. Nothing in
this provision shall be construed to foreclose parties from
proceeding in a trial de novo unless the parties have agreed
that the arbitration is binding. If judicial proceedings are
initiated, the final decision of the arbitrator shall be
admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party
to a dispute shall petition the division for nonbinding
arbitration. The petition must be accompanied by a filing fee in
the amount of \$50. Filing fees collected under this section must
be used to defray the expenses of the alternative dispute
resolution program.

(b) The petition must recite, and have attached thereto,

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supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition ~~shall be served by the division~~ upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or

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entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorneys' fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the

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physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal,

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and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorneys' fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located

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within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney's fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney's fees incurred in the arbitration proceeding as well as the costs and reasonable attorney's fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(1) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney's fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall

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recover reasonable attorney's fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

Section 4. Section 718.129, Florida Statutes, is created to read:

718.129 Fraudulent voting activities related to association elections; penalties.—The following acts constitute fraudulent voting activities related to association elections:

(1) A person who willfully, knowingly, and falsely swears or affirms to an oath or affirmation, or procures another person to willfully, knowingly, and falsely swear or affirm to an oath or affirmation, in connection with or arising out of voting or casting a ballot in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully and knowingly perpetrates or attempts to perpetrate, or willfully and knowingly aids another person in perpetrating or attempting to perpetrate, fraud in connection with or arising out of a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who willfully, knowingly, and fraudulently changes or attempts to change a vote or ballot cast, to be cast, or attempted to be cast by an elector in an association election to prevent such elector from voting or casting a ballot as he or

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she intended in such election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) (a) A person who willfully and knowingly aids or advises another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(b) A person who willfully and knowingly agrees, conspires, combines, or confederates with another person in committing a violation of this section shall be punished as if he or she had committed the violation.

(c) A person who willfully and knowingly aids or advises a person who has committed a violation of this section in avoiding or escaping detection, arrest, trial, or punishment shall be punished as if he or she had committed the violation. This paragraph does not prohibit a member of The Florida Bar from giving legal advice to a client.

Section 5. Subsection (5) is added to section 718.3025, Florida Statutes, to read:

718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—

(5) A party contracting to provide maintenance or management services, or a board member of such party, may not:

(a) Own 50 percent or more of the units in the condominium.

(b) Purchase a property subject to a lien by the association.

Section 6. Section 718.3027, Florida Statutes, is created to read:

718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association

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that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (4):

(a) Any director, officer, or relative of any director or officer enters into a contract for goods or services with the association.

(b) Any director, officer, or relative of any director or officer holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If any director, officer, or relative of any director or officer proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. If the board votes against the proposed activity, the director, officer, or relative must notify the board in writing of his or her intention not to pursue the proposed activity, or the director or officer shall withdraw from office. If the board finds that any officer or director has violated this subsection, the board must immediately remove the officer or director from office. The vacancy shall be filled according to general law.

(3) Any director, officer, or relative of any director or

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officer who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board, and is authorized to make a presentation to the board regarding the activity. After the presentation, the director, officer, or relative must leave the meeting during the discussion of, and the vote on, the activity. Any director or officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(4) The board must provide notice to unit owners of a possible conflict of interest, as described in subsection (1), in accordance with the procedures in s. 718.112(2)(c). All contracts and transactional documents related to the possible conflict of interest must be attached to, and made available with, the meeting agenda.

(5) Any contract entered into between any director, officer, or relative of any director or officer and the association that is not properly noticed before consideration in accordance with the procedures in s. 718.112(2)(c) is null and void.

Section 7. Subsection (5) of section 718.303, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than \$1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days

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before such suspension takes effect. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(8) A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association pursuant to this chapter.

Section 8. Subsection (5) of section 718.5012, Florida Statutes, is amended to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement

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1161 action in any manner where there is reasonable cause to believe
1162 that election misconduct has occurred and reviewing secret
1163 ballots cast at a vote of the association.

1164 Section 9. Section 718.71, Florida Statutes, is created to
1165 read:

1166 718.71 Financial reporting.-An association shall provide an
1167 annual report to the department containing the names of all of
1168 the financial institutions with which it maintains accounts, and
1169 a copy of such report may be obtained from the department upon
1170 written request of any association member.

1171 Section 10. This act shall take effect July 1, 2017.

The Florida Senate
State Senator René García
36th District

Please reply to:

District Office:

1490 West 68 Street
Suite # 201
Hialeah, FL 33014
Phone# (305) 364-3100

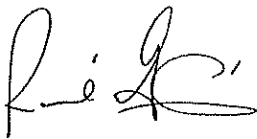
March 15th, 2017

The Honorable Greg Steube
Chairman, Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Steube,

Please have this letter serve as my formal request to have **SB 1682: Condominiums** be heard during the next scheduled Judiciary Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,



State Senator René García
District 36

CC: Tom Cibula
Joyce Butler

THE FLORIDA SENATE

APPEARANCE RECORD

3-22-17

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

1682

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCGARTY

Job Title ASS'T COUNTY ATTORNEY

Address 111 NW 1st St 2810

Phone

Street

MIAMI

33128

Email

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MIAMI - DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Rm
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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)

3-22-17

Meeting Date

1682

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title _____

Address 106 E College Ave #1200

Phone _____

Street

Tallahassee

FL

City

State

Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Cyber Citizens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

SB 1682
Bill Number (if applicable)

Topic Condominiums

Amendment Barcode (if applicable)

Name William P. Sklar

Job Title Chair - Florida Bar Condominium & Planned Development Comm.
Carlton Fields

Address 215 North Monroe Street Ste 1200 Phone 561-634-4953
Street
Tallahassee, FL 32308 City State Zip
Email wsklar

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Bar RPP TL

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

1682

Bill Number (if applicable)

Topic Condominiums, HOAs

Amendment Barcode (if applicable)

Name Terri Jones

Job Title _____

Address 8405 Olde Post Road
Street

Phone 321-537-5673

Tallahassee FL 32311
City State Zip

Email tljones@bellsouth.net

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

1682
Bill Number (if applicable)

Topic Amending Condominium Act

Amendment Barcode (if applicable)

Name Leah A. Simms

Job Title Arbitrator w/ DBPR

Address 2750 Old St. Augustine Rd. #D-32

Phone 305-310-5282

Tallahassee, FL 32301
City State Zip

Email leahsimms324@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

FThe 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 262

INTRODUCER: Senator Steube

SUBJECT: Health Insurance

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Favorable
2.	Davis	Cibula	JU	Pre-meeting
3.			RC	

I. Summary:

SB 262 increases the liability exposure of Health Maintenance Organizations for the negligence of health care providers who are not employees of the HMO and creates causes of action for other misconduct by an HMO.

The bill repeals several provisions of statute which expressly provide that HMOs, health insurers, prepaid health clinics, and prepaid health service organizations are not vicariously liable for the negligence non-employee health care providers. As a result, these organizations may be liable for the negligence of non-employee health care providers under theories of agency or apparent agency.

Additionally, the bill amends the Health Maintenance Organization Act to provide civil causes of action against HMOs for violations of the act and for acting in bad faith when failing to provide a covered service. The bill provides that any person may bring a civil action against a health maintenance organization if the HMO fails to provide a covered service when the HMO in good faith should have provided the service had it acted fairly and reasonably toward the person and with due regard for his or her interests. The covered service must be medically reasonable or necessary in the independent medical judgment of the treating physician.

The bill creates individual causes of action against HMOs for violations of specified provisions of the HMO Act such as the prompt pay statute, statutes relating to unfair trade practices, and statutes relating to quality assurance.

II. Present Situation:

Health maintenance organizations (“HMOs”) provide, either directly or through arrangements with other persons, comprehensive health care services that subscribers are entitled to receive pursuant to a contract. Services may include emergency care, inpatient hospital services,

physician care, ambulatory diagnostic treatment, and preventive health care services. Service providers, such as physicians, may be employees or partners in the HMO or they may contract with the HMO to provide services.¹ HMOs are regulated by parts I and III of chapter 641, F.S.²

Civil Liability of HMOs

Civil Remedies Against Insurers

Section 624.155, F.S., authorizes various individual causes of action against insurers, including health insurers. It provides that any person may bring an action against an insurer when the person is damaged when the insurer does not attempt “in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests.”³ However, s. 641.201, F.S., which broadly exempts HMOs from many provisions of the Florida Insurance Code, effectively exempts HMOs from the requirement under s. 624.155, F.S., to act in good faith.

Legislative History

In the late 1990s and early 2000s, the Legislature considered creating individual causes of actions for misconduct by HMOs similar to the causes of action that may be brought against insurers under s. 624.155, F.S. Specifically, in 1996, the Legislature passed CS/HB 1853, which created civil causes of action against HMOs, created a bad faith cause of action similar to the cause of action for bad faith against insurers in s. 624.155, F.S., and provided for plaintiff attorney fees in certain situations. The Governor vetoed that bill. The Legislature considered similar bills providing for causes of action against HMOs in 1997-2001 but those bills did not pass.⁴

Litigation History

In *Greene v. Well Care HMO, Inc.*,⁵ the court considered whether a patient could bring an action against her HMO under the HMO Act⁶ and whether a patient could bring a bad faith action. In that case, the patient’s physician recommended treatment, but the HMO denied coverage. The patient sought a second opinion and that physician agreed with the first doctor’s recommendation. The HMO denied coverage in violation of the policy terms.⁷ The court held that the HMO Act did not provide for a private cause of action against an HMO. The court also held that s. 624.155, F.S., which generally authorizes private causes of actions against insurers who engage in prohibited practices, did not apply to HMOs.⁸

¹ Section 641.19(12), F.S.

² Section 641.201, F.S.

³ Section 624.155(1)(b)1., F.S.

⁴ See, e.g., HB 1547 (1997 Regular Session), SB 490 (1998 Regular Session), SB 216 (1999 Regular Session), SB 2154 (2000), and SB 2292 (2001 Regular Session).

⁵ *Greene v. Well Care HMO, Inc.*, 778 So. 2d 1037 (Fla. 4th DCA 2001).

⁶ Section 641.17, F.S., names part I of ch. 641, F.S., the “Health Maintenance Organization Act.”

⁷ *Greene*, 778 So. 2d at 1039.

⁸ *Id.* at 1039-1041.

In 2003, the Florida Supreme Court issued a decision in *Villazon v. Prudential Helath Care Plan*,⁹ and agreed with the *Greene* court. The Court held that the HMO Act does not provide a private cause of action for violation of the Act's requirements. However, the Court held that the fact that there is no statutory cause of action does not preclude a common law negligence claim based on the same facts.¹⁰ In *Villazon*, the plaintiff alleged that the physicians who had contracted with the HMO were agents or apparent agents of the HMO and, therefore, the HMO was responsible for the physicians' negligence and vicariously liable¹¹ for the death of his wife.¹² The Court held that the existence of an agency relationship is generally a question to be determined by the trier of fact.¹³ As a result, the Court reversed the lower court's summary judgment that the HMO was not vicariously liable for the negligence of the plaintiff's treating physician.

Legislative Response

In response to *Villazon*, the Legislature amended ss. 641.19 and 641.51, F.S., to provide that the HMO is not vicariously liable for the negligence of health care providers unless the provider is an employee of the HMO. The statutory amendments prohibited causes of action based on agency or apparent agency relationships.¹⁴ The Legislature also created s. 768.0981, F.S., which provides:

An entity licensed or certified under chapter 624, chapter 636, or chapter 641 shall not be liable for the medical negligence of a health care provider with whom the licensed or certified entity has entered into a contract, other than an employee of such licensed or certified entity, unless the licensed or certified entity expressly directs or exercises actual control over the specific conduct that caused injury.¹⁵

ERISA Preemption

The Employee Retirement Income Security Act of 1974 (ERISA), limits the remedies available to persons covered under private sector employer plans and preempts certain state laws. ERISA may preempt civil remedies in state courts, whether pursued under common law theories of liability or pursuant to a statutory cause of action.

Most employer-sponsored health insurance and HMO plans are ERISA plans. However, ERISA does not apply to governmental plans and church plans and has no application to individual health insurance plans. ERISA has a civil enforcement clause that provides a remedy in federal court for denied employee benefits. Employees and enrollees have a federal cause of action to either obtain the actual benefit that was denied, payment for the benefit, or a decree granting the

⁹ *Villazon v. Prudential Health Care Plan*, 843 So. 2d 842, 852 (Fla. 2003).

¹⁰ *Id.* at 852.

¹¹ Vicarious liability occurs when one person, although entirely innocent of any wrongdoing, is held responsible for the wrongful act of another. See 38 Florida Jurisprudence 2d s. 101. For example, an employer can be held vicariously liable for a tort committed by an employee.

¹² *Villazon*, 843 So. 2d at 845.

¹³ *Id.*, at 853.

¹⁴ See 2003-416, Laws of Fla.

¹⁵ Chapter 624 is the Insurance Code, chapter 636 pertains to prepaid limited health service organizations and discount medical plan organizations, and chapter 641 pertains to health care service programs.

administration of future benefits.¹⁶ State tort remedies, on the other hand, allow for the recovery of pain and suffering, lost wages, and cost of future medical services.

In *Villazon*, the Florida Supreme Court held that ERISA did not preempt an action against an HMO alleging common law negligence and violations of the HMO Act.¹⁷ A year after *Villazon*, the United States Supreme Court considered whether a Texas statute imposing liability on HMOs for failure to exercise ordinary care in making coverage decision was preempted by ERISA.¹⁸ The court held that federal preemption applied and the remedies were limited to federal remedies.

Whether a claim against an ERISA plan is preempted is a fact-specific question. In *Badal v. Hinsdale Mem. Hosp.*,¹⁹ the court held that the claim was not preempted when the HMO was a defendant in the case under a theory of vicarious liability where the plaintiff alleged the HMO was responsible for the acts of its employees or agent. In determining whether ERISA preemption applies in medical malpractice cases, courts seem to look to see whether the malpractice is based on actions of a treating physician versus whether the injury was caused by a denial of coverage. In *Land v. Cigna Healthcare of Fla.*,²⁰ the court found ERISA preemption in a case where the treating physician ordered hospital admission for a patient, but the HMO nurse did not approve a hospital stay.

III. Effect of Proposed Changes:

Vicarious Liability

The bill repeals provisions in ss. 641.19 and 641.51, F.S., providing that an HMO arranging the provision of health care services does not create an actual agency, apparent agency, or employer-employee relationship for purposes of vicarious liability except when the provider is an actual employee of the HMO.

The bill also repeals s. 768.0981, F.S. That statute provides that an entity such as an insurer, prepaid limited health service organization, HMO, or prepaid health clinic²¹ is not liable for the medical negligence of a health care provider with whom the entity has entered into a contract unless the entity expressly directs or exercises actual control over the specific conduct that caused injury.

As a result repeal of provisions limiting actions based on theories of vicarious liability, an HMO will be liable for the negligence of a treating physician who is not an employee of the HMO if the specific facts of the case show that an actual agency or apparent agency relationship existed between the HMO and the treating physician.

¹⁶ 29 U.S.C. s. 1132(a)(1).

¹⁷ *Villazon*, 843 So. 2d at 850-851.

¹⁸ *Aetna Health v. Davila*, 542 U.S. 200 (2004).

¹⁹ *Badal v. Hinsdale Mem. Hosp.*, 2007 U.S. Dist. LEXIS 34713 (N.D. Ill. May 8, 2007).

²⁰ *Land v. Cigna Health Care of Fla.*, 381 F.3d 1274 (11th Cir. 2004).

²¹ Section 768.0981, F.S., specifically refers to entities licensed or certified under ch. 624, F.S., ch. 636, F.S., or ch. 641, F.S.

In effect, the bill revives the effect of the Florida Supreme Court's opinion in *Villazon v. Prudential Health Care Plan*, which was superseded by statute. Contracts between an HMO and a treating physician which label the physician as an independent contractor will not be sufficient to make an HMO immune from liability for the physician's negligence. The nature of the relationship and the HMO's liability will be based on whether the HMO had the right to control the activities of the physician in light of the totality of the circumstances.

HMO Bad Faith Liability

The bill creates a cause of action for bad faith against HMOs in specified situations. Specifically, it provides that a person may bring a civil action against an HMO if a person to whom a duty is owed suffers damage because of an HMO's failure to provide a covered service. The covered service must be one that the HMO should have been provided had the HMO acted in good faith and had acted fairly and reasonably toward the person with due regard for his or her interests. The service must have been medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the HMO.

The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. In a bad faith action brought pursuant to the provisions of this bill, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

Causes of Action for Violations of the HMO Act

The bill creates an individual cause of action against an HMO if a person to whom a duty is owed suffers damage as a result of an HMO's violation of specified statutes: s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), and s. 641.51, F.S. In an action alleging violations of these statutes, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

Section 641.3155, F.S., is known as the "prompt pay" law. It requires the HMO to provide notice of receipt of provider claims within specified times, to deny or contest provider claims within specified times, and to pay provider claims within specified times.

Subsection 641.3903(5), F.S., prohibits certain unfair claim settlement practices by HMOs. An HMO may not:

- Attempt to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the subscriber or group of subscribers to a health maintenance organization; or
- Make a material misrepresentation to the subscriber for the purpose and with the intent of effecting settlement of claims, loss, or damage under a health maintenance contract on less favorable terms than those provided in, and contemplated by, the contract.
- Engage in the practices below with such frequency as to indicate a general business practice of engaging in a unfair settlement practice:
 - Failing to adopt and implement standards for the proper investigation of claims;
 - Misrepresenting pertinent facts or contract provisions relating to coverage at issue;

- Failing to acknowledge and act promptly upon communications with respect to claims;
- Denying claims without conducting reasonable investigations based upon available information;
- Failing to affirm or deny coverage of claims upon written request of the subscriber within a reasonable time not to exceed 30 days after a claim or proof-of-loss statements have been completed and documents pertinent to the claim have been requested in a timely manner and received by the health maintenance organization;
- Failing to promptly provide a reasonable explanation in writing to the subscriber of the basis in the health maintenance contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;
- Failing to provide, upon written request of a subscriber, itemized statements verifying that services and supplies were furnished, where such statement is necessary for the submission of other insurance claims covered by individual specified disease or limited benefit policies;
- Failing to provide any subscriber with services, care, or treatment contracted for pursuant to any health maintenance contract without a reasonable basis to believe that a legitimate defense exists for not providing such services, care, or treatment; or
- Engaging in systematic down coding with the intent to deny reimbursement otherwise due.

Subsection 641.3903(10), F.S., prohibits an HMO from knowingly collecting any sum as a premium or charge for health maintenance coverage, which is not then provided or is not in due course to be provided. An HMO may not knowingly collect as a premium or charge for health maintenance coverage any sum in excess of or less than the premium or charge applicable to health maintenance coverage, in accordance with the applicable classifications and rates as filed with the Office of Insurance Regulation.

Subsection 641.3903(12), F.S., prohibits an HMO from engaging in or attempting to engage in discriminatory practices that discourage participation on the basis of the actual or perceived health status of Medicaid recipients. The statute also prohibits an HMO from refusing to provide services or care to a subscriber solely because medical services may be or have been sought for injuries resulting from an assault, battery, sexual assault, sexual battery, or any other offense by a family or household member or by another who is or was residing in the same dwelling unit.

Subsection 641.3903(13), F.S., prohibits an HMO from knowingly misleading potential enrollees as to the availability of providers.

Subsection 641.3903(14), F.S., prohibits any retaliatory action by an HMO against a contracted provider on the basis that the provider communicated information to the provider's patient regarding care or treatment options when the provider deems knowledge of such information by the patient to be in the best interest of the patient.

Section 641.51, F.S., requires an HMO to establish a quality assurance program and creates a requirement for second medical opinions in some cases. The HMO:

- Shall ensure that the health care services provided to subscribers shall be rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the community;

- Shall have an ongoing internal quality assurance program for its health care services;
- Shall not have the right to control the professional judgment of a physician;
- Shall ensure that only a physician holding an active, unencumbered license may render an adverse determination regarding a service provided by a physician licensed in Florida;
- Shall give the subscriber the right to a second medical opinion in any instance in which the subscriber disputes the organization's or the physician's opinion of the reasonableness or necessity of surgical procedures or is subject to a serious injury or illness;
- Shall develop and maintain a policy to determine when exceptional referrals to out-of-network specially qualified providers should be provided to address the unique medical needs of a subscriber;
- Shall develop and maintain written policies and procedures for the provision of standing referrals to subscribers with chronic and disabling conditions which require ongoing specialty care;
- Shall allow subscribers undergoing active treatment to continue coverage and care when medically necessary, through completion of treatment of a condition for which the subscriber was receiving care at the time of the termination of a provider contract;
- Release specified data to the Agency for Health Care Administration;
- Adopt recommendations for preventive pediatric health care which are consistent with the requirements for health checkups for children developed for the Medicaid program;
- Allow, without prior authorization, a female subscriber, to visit a contracted obstetrician/gynecologist for one annual visit and for medically necessary follow-up care; and
- Allow a contracted primary care physician to send a subscriber to a contracted licensed ophthalmologist under specified circumstances.

The bill provides that a person bringing an action for these violations of the HMO Act need not prove that the violation was committed with such frequency as to indicate a general business practice.

The bill provides that an HMO is liable for all of the claimant's damages or \$500 per violation, whichever is greater, for violations of the above-cited statutes. The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages.

ERISA Preemption

Federal preemption may limit this bill's application in situations where an ERISA plan makes a decision to deny coverage. As discussed in *Davila* and subsequent cases, courts will have to review the facts of each case to determine whether preemption applies in cases related to coverage decisions. In addition to cases related to denial of coverage, courts have found ERISA preemption in cases related to a prompt pay law²² and related to payment to medical providers.²³

The provisions of the bill will apply to non-ERISA plans. It is not known how many persons covered under HMO plans are covered under plans that would be excluded from portions of this

²² *America's Health Ins. v. Hudgens*, 742 F.3d 1319 (11th Cir. 2014).

²³ *Gables Ins. Recovery, Inc. v. Blue Cross & Blue Shield of Fla., Inc.*, 813 F.3d 1333 (11th Cir. 2015).

bill and how many persons are covered under plans that would be subject to all the provisions of the bill. A court noted that there is a trend in Georgia for employers to provide self-funded ERISA plans to their employees.²⁴ Subsequent to *Davila*, Texas passed a law to specifically exclude ERISA plans from the Texas Health Care Liability Act.²⁵ A 2005 bill analysis of the Texas legislation noted that there are only a few non-ERISA group health plans offered in Texas.²⁶

Effective Date

The bill has an effective date of October 1, 2017.

Retroactivity

This bill provides that the repeal of s. 768.0981, F.S., and amendments to ss. 641.19, 641.51, and 641.3917, F.S., apply to causes of action accruing on or after October 1, 2017. The bill is not retroactive and does not apply to ongoing litigation or to causes of action accruing before October 1, 2017.

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:

According to the Office of Insurance Regulation, the bill increases the exposure to lawsuits for health insurers, HMOs, prepaid health clinics, and prepaid limited health service organizations. This increased exposure may lead to more expensive premiums for consumers.²⁷

²⁴ *America's Health Ins. v. Hudgens*, 742 F.3d at 1324-1325.

²⁵ Texas Civil Practice and Remedies Code s. 88.0015.

²⁶ SB 554 Bill Analysis, Texas, March 17, 2005 (on file with the Committee on Banking and Insurance).

²⁷ Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis for SB 262*, (Feb. 17, 2017) (on file with the Senate Committee on Judiciary).

C. Government Sector Impact:

According to the Office of Insurance Regulation, the increased exposure to the above mentioned groups may lead to higher premiums under the state group health insurance plan.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 641.19, 641.51, and 641.3917, Florida Statutes. This bill repeals section 768.0981, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

²⁸ *Id.*

By Senator Steube

23-00399B-17

2017262__

A bill to be entitled

An act relating to health insurance; amending s.

641.19, F.S.; revising definitions; amending s.

641.51, F.S.; deleting a provision that provides that

health maintenance organizations are not vicariously

liable for certain medical negligence except under

certain circumstances; amending s. 641.3917, F.S.;

authorizing specified persons to bring a civil action

against a health maintenance organization for certain

violations; providing for construction; specifying a

health maintenance organization's liability for such

violations; repealing s. 768.0981, F.S., relating to a

limitation on actions against insurers, prepaid

limited health service organizations, health

maintenance organizations, or prepaid health clinics;

providing applicability; providing an effective date.

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

Section 1. Subsections (11), (12), and (18) of section 641.19, Florida Statutes, are amended to read:

641.19 Definitions.—As used in this part, the term:

(11) "Health maintenance contract" means any contract entered into by a health maintenance organization with a subscriber or group of subscribers to provide ~~coverage for~~ comprehensive health care services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(12) "Health maintenance organization" means any organization authorized under this part which:

(a) Provides, ~~through arrangements with other persons,~~ emergency care; ~~inpatient hospital services;~~ physician care, including care provided by physicians licensed under chapters

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

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458, 459, 460, and 461; ~~and~~ ambulatory diagnostic treatment; ~~and~~ preventive health care services.

(b) Provides, either directly or through arrangements with other persons, health care services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis.

(c) Provides, either directly or through arrangements with other persons, comprehensive health care services which subscribers are entitled to receive pursuant to a contract.

(d) Provides physician services, by physicians licensed under chapters 458, 459, 460, and 461, directly through physicians who are either employees or partners of such organization or under arrangements with a physician or any group of physicians.

(e) If offering services through a managed care system, has a system in which a primary physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 is designated for each subscriber upon request of a subscriber requesting service by a physician licensed under any of those chapters, and is responsible for coordinating the health care of the subscriber of the respectively requested service and for referring the subscriber to other providers of the same discipline when necessary. Each female subscriber may select as her primary physician an obstetrician/gynecologist who has agreed to serve as a primary physician and is in the health maintenance organization's provider network.

~~Except in cases in which the health care provider is an employee of the health maintenance organization, the fact that the health~~

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

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~~maintenance organization arranges for the provision of health care services under this chapter does not create an actual agency, apparent agency, or employer-employee relationship between the health care provider and the health maintenance organization for purposes of vicarious liability for the medical negligence of the health care provider.~~

(18) "Subscriber" means an entity or individual who has contracted, or on whose behalf a contract has been entered into, with a health maintenance organization for health care services coverage or other persons who also receive health care services coverage as a result of the contract.

Section 2. Subsection (3) of section 641.51, Florida Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion requirement.—

(3) The health maintenance organization shall not have the right to control the professional judgment of a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 concerning the proper course of treatment of a subscriber. However, this subsection shall not be considered to restrict a utilization management program established by an organization or to affect an organization's decision as to payment for covered services. ~~Except in cases in which the health care provider is an employee of the health maintenance organization, the health maintenance organization shall not be vicariously liable for the medical negligence of the health care provider, whether such claim is alleged under a theory of actual agency, apparent agency, or employer-employee relationship.~~

Section 3. Section 641.3917, Florida Statutes, is amended

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to read:

641.3917 Civil liability.—

(1) The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department or office shall abrogate such rights to damage or other relief in any court.

(2) Any person to whom a duty is owed may bring a civil action against a health maintenance organization when such person suffers damages as a result of the health maintenance organization's:

(a) Violation of s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), or s. 641.51; or

(b) Failure to provide a covered service, when the health maintenance organization in good faith should have provided such service had it acted fairly and reasonably toward the subscriber or enrollee and with due regard for his or her interests, and such service is medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the health maintenance organization.

A person bringing an action under this subsection need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(3) The health maintenance organization is liable for all of the claimant's damages or \$500 per violation, whichever is greater. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive

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120 damages. In an action or proceeding brought under this
121 subsection, the court shall award a prevailing plaintiff
122 reasonable attorney fees as part of the costs.

123 Section 4. Section 768.0981, Florida Statutes, is repealed.

124 Section 5. The amendments to ss. 641.19, 641.51, and
125 641.3917, Florida Statutes, made by this act and the repeal of
126 s. 768.0981, Florida Statutes, by this act apply to causes of
127 action accruing on or after the effective date of this act.

128 Section 6. This act shall take effect October 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

3/22/17

Meeting Date

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

262

Bill Number (if applicable)

Topic Vicarious Liability

Amendment Barcode (if applicable)

Name Chris Chaney

Job Title Lobbyist

Address 204 South Monroe Street
Street
Tallahassee FL 32301
City State Zip

Phone 222-8900

Email cc@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

SB 262
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Wences Troncoso

Job Title Vice president & general counsel

Address 200 W. College Ave Phone 850-386-2904
Street

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

4:00 pm
1105

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

262

Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Executive Director

Address 2544 Blairstone Pines Dr.

Phone 878-7364

Street

Tallahassee

FL

32301

City

State

Zip

Email winnsr@earthlink.net

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/17
Meeting Date

262
Bill Number (if applicable)

Topic INSURANCE

Amendment Barcode (if applicable)

Name GEORGE MEROS

Job Title ATTORNEY

Address 301 S. BRANOUGH

Phone 577-9090

TALLA FL
City State Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLA JUSTICE REFORM INSTITUTE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17
Meeting Date

262
Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Mary Thomas

Job Title Assistant General Counsel

Address 1430 Piedmont Dr E
Street

Phone 85022416496

TLH FL 32308
City State Zip

Email MThomas@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 22, 2017

Meeting Date

SB 262

Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave., Ste 304

Phone 850-228-6387

Street

Jell

City

FL

State

32301

Zip

Email dobarker@aarfp.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AARF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 624

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Steube

SUBJECT: Body Cameras

DATE: March 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jones	Hrdlicka	CJ	Fav/CS
2.	Brown	Cibula	JU	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 624 requires a law enforcement agency to address in its policies and procedures on the use of body cameras instances in which a law enforcement officer may review body camera footage.

Section 943.1718, F.S., currently requires a law enforcement agency using body cameras to record an incident to establish policies and procedures on their use. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about a recorded incident.

The bill authorizes a law enforcement officer using a body camera to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

However, the bill provides that the authorization to review body camera footage does not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.

II. Present Situation:

Body Cameras

A body camera is a portable electronic recording device that is worn on a law enforcement officer's person which records audio and video data of the officer's encounters and activities.¹ Body cameras are currently being used or considered for use by many law enforcement agencies.

Annually, the Criminal Justice Standards and Training Commission compiles the Criminal Justice Agency Profile Report, which provides compensation and benefit information for the 399 criminal justice agencies in Florida.² The 2015 report shows that 91 of the 382 responding agencies reported using body cameras and the 2016 preliminary report shows that 107 of the 368 responding agencies reported using body cameras.³

Officer Review of Body Camera Footage

Views on the Review of Body Camera Footage

The use of body cameras has raised numerous policy questions within the law enforcement community. A 2014 report from the United States Department of Justice, Police Executive Research Forum, provides recommendations to law enforcement agencies on the use of body cameras. The report specifically recommends that agencies allow a law enforcement officer to review the body camera footage of an incident before making a statement about the incident. Most of the police executives interviewed for the report believe that allowing officers to review the body camera footage provides the best evidence of the incident.⁴

Lexipol, a private company providing training on risk management to public safety organizations offers a specific online training on the use of body cameras.⁵ In the training, the presenter notes that a video is not always an accurate representation of the incident because it does not always show the fear of the officer or the force that occurred during the incident.⁶ However, viewing the video after the incident can assist the officer with memory recall of what occurred.⁷ On the other hand, an officer who views body camera footage before writing a report could make his or her account more susceptible to scrutiny based on a perception that the officer changed his or her account.⁸

¹ Section 943.1718(1)(a), F.S.

² Florida Department of Law Enforcement, *Criminal Justice Agency Profile Survey Results*, available at <http://www.fdle.state.fl.us/cms/CJSTC/Publications/CJAP/CJAP.aspx> (last visited March 15, 2017).

³ Email from Ronald Draa, Director of External Affairs, Florida Department of Law Enforcement, to Senate Criminal Justice Committee staff, (Feb. 28, 2017) (on file with the Senate Criminal Justice Committee and Senate Judiciary Committee).

⁴ Community Oriented Policing Services, U.S. Department of Justice, Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, pg. 29 (2014), available at <https://ric-zai-inc.com/Publications/cops-p296-pub.pdf>.

⁵ Lexipol, *About Lexipol, Public Safety Organization Policies and Resources*, available at <http://www.lexipol.com/about-us/> (last visited February 27, 2017) and Lexipol, *Officer Viewing of Body Worn Camera Footage*, available at <http://www.lexipol.com/body-worn-camera-webinar/> (last visited March 15, 2017); Ken Wallentine, Laura Scarry, and Grant Fredericks, Lexipol, *Point/Counterpoint: The Debate Over Officer Viewing of BWC Video*, December 12, 2016, available at <http://www.lexipol.com/wp-content/uploads/2016/11/BWC-Video-Viewing.pdf>.

⁶ *Id.* at p. 5-6.

⁷ *Id.* at 17.

⁸ *Id.* at 19.

Other States

Thirty states and the District of Columbia have enacted laws governing the use of body cameras by law enforcement agencies and officers.⁹ Seventeen states, including Florida, and the District of Columbia require law enforcement agencies to adopt written policies in order for law enforcement agencies to use or receive funding for body cameras.¹⁰ Some states have laws addressing whether a law enforcement officer may view body camera footage prior to writing a report or making a statement.¹¹ For example, in Texas a law enforcement agency that uses body cameras must enact policies ensuring an officer access to any recording of an incident prior to making a statement.¹²

In Connecticut, an officer may view the body camera footage when writing his or her police report. An officer may also view the body camera footage if he or she has to give a formal statement about the use of force involved or if he or she is the subject of a disciplinary investigation. The officer also has the right to view the body camera footage with an attorney or labor representative present and to review recordings of the incident from other body cameras that captured the officer's image or voice.¹³

Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish certain policies and procedures on their use. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about a recorded incident.

Section 943.1718, F.S., Body Camera Policies and Procedure

In 2016, the Legislature enacted requirements for law enforcement agencies who use body cameras.¹⁴ Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish policies and procedures that include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

⁹ National Conference of State Legislatures, *Body-Worn Cameras Interactive Graphic, State Body-Worn Camera Laws*, August 30, 2016, available at <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx> (last visited March 15, 2017).

¹⁰ NCSL, *Written Body-Worn Camera Policies*, available at http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx# (last visited March 15, 2017).

¹¹ *Id.*

¹² Tex. Occ. Code s. 1701.655(b)(5).

¹³ Conn. Gen. Stat. Ann. s. 29-4(e) and (f).

¹⁴ Chapter 2016-76, L.O.F.

III. Effect of Proposed Changes:

The bill requires a law enforcement agency to address in its body camera policies and procedures instances in which a law enforcement officer may review body camera footage. Specifically, the bill requires these policies and procedures to authorize a law enforcement officer who uses a body camera to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

However, the bill provides that the authorization to review body camera footage does not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Although this bill requires law enforcement agencies to include a new policy in their policies and procedures on the use of body cameras, little fiscal impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.1718, Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on March 22, 2017:

The committee substitute clarifies that the right of a law enforcement officer to review body camera footage before providing statements or writing a report does not apply at a crime scene or to identify witnesses.

CS by Criminal Justice on March 6, 2017:

The committee substitute:

- Requires a “provision” instead of “general guidelines” by law enforcement using body cameras;
- Limits the review of footage to law enforcement officers using body cameras;
- Allows the law enforcement officer to view the body camera footage instead of “relevant audio and video recordings”;
- Specifies that the law enforcement officer can review the body camera footage for incidents within the scope of the officer’s official duties instead of incidents in which the officer was involved; and
- Prohibits a law enforcement officer using a body camera to review the body camera footage before providing information at the scene of an incident for the sole purposes of identifying and preserving the crime scene and identifying witnesses and suspects.

- B. **Amendments:**

None.



230698

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2017	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 31 - 34
and insert:
arising within the scope of his or her official duties. Any such
provision may not apply to an officer's inherent duty to
immediately disclose information necessary to secure an active
crime scene or to identify suspects or witnesses.

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

And the title is amended as follows:



230698

12 Delete line 8
13 and insert:
14 taking certain actions; providing an exception;
15 providing an effective date.

By the Committee on Criminal Justice; and Senator Steube

591-02114-17

2017624c1

A bill to be entitled

An act relating to body cameras; amending s. 943.1718, F.S.; requiring law enforcement agencies that permit law enforcement officers to wear body cameras to establish policies and procedures that include a provision permitting a law enforcement officer using a body camera to review body camera footage before taking certain actions; providing an effective date.

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

Section 1. Subsection (2) of section 943.1718, Florida Statutes, is amended to read:

943.1718 Body cameras; policies and procedures.—

(2) A law enforcement agency that permits its law enforcement officers to wear body cameras shall establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

(a) General guidelines for the proper use, maintenance, and storage of body cameras.

(b) Any limitations on which law enforcement officers are permitted to wear body cameras.

(c) Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.

(d) A provision permitting a law enforcement officer using a body camera to review the recorded footage from the body camera, upon his or her own initiative or request, before

Page 1 of 2

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

591-02114-17

2017624c1

writing a report or providing a statement regarding an event arising within the scope of his or her official duties, except when an officer provides information at the scene of an incident for the sole purposes of identifying and preserving the crime scene and identifying witnesses and suspects.

(e) ~~(d)~~ General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/17

Meeting Date

624

Bill Number (if applicable)

Topic LEO BODY CAMERAS

Amendment Barcode (if applicable)

Name GARY BRADFORD

Job Title Government Relations

Address 300 E. BREVARD ST
Street

Phone 800-733-3722

Tallahassee

City

FL

State

32301

Zip

Email GARY@FLPBA.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA POLICE Benevolent Assn (PBA)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27

Meeting Date

SB624

Bill Number (if applicable)

Topic

BODY CAMERAS

Amendment Barcode (if applicable)

Name

David Bernhardt

Job Title

V. Pres of FLA FOP

Address

200 Office Plaza

Phone

Street

City

State

Zip

Email

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

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

Meeting Date

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 850.510.9922

City Tall State FL Zip 32301

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/22/2017

Meeting Date

624

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/22/2017

Meeting Date

624

Bill Number (if applicable)

Topic Body Cameras

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St

Phone _____

Street

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

CourtSmart Tag Report

Room: EL 110
Caption: Senate Judiciary

Case No.:
Judge:

Type:

Started: 3/22/2017 4:05:35 PM
Ends: 3/22/2017 5:57:26 PM **Length:** 01:51:52

4:05:33 PM Meeting Called to Order by Chair Benacquisto
4:05:37 PM Roll Call by Administrative Assistant Joyce Butler
4:05:42 PM Quorum Present
4:06:04 PM SB 226 presented by Senator Artilles presented
4:06:13 PM Amendment Barcode No. 246674 explained
4:08:03 PM Question from Senator Gibson
4:08:15 PM Response by Senator Artilles
4:08:27 PM Follow-up question from Senator Gibson
4:09:04 PM Response by Senator Artilles
4:09:12 PM Follow-up question from Senator Gibson
4:09:23 PM Response by Senator Artilles
4:09:45 PM Question from Senator Thurston
4:10:25 PM Response by Senator Artilles
4:10:30 PM Amendment Barcode No. 246674 adopted
4:11:07 PM Amendment Barcode No. 241760 withdrawn
4:11:29 PM Speaker Martha Cleaver, Consultant, Florida Association of Property Appraisers Inc. in support
4:11:41 PM Speaker Loren Levy, General Counsel, Property Appraisers' Association of Florida
4:12:16 PM Question from Senator Thurston
4:13:17 PM Response by Loren Levy
4:13:32 PM Angela Dempsey, Vice President, Poole McKinley waives in support
4:13:39 PM Phil Leary, Nation Center for Construction Education waives in support
4:13:52 PM Senator Artilles waives closure
4:14:00 PM Roll call
4:14:03 PM CS/SB 226 reported favorably
4:14:26 PM CS/SB 498 presented by Senator Young
4:18:08 PM Amendment Barcode No. 225104 presented
4:18:19 PM Amendment adopted
4:18:47 PM Amendment Barcode No. 549670 presented
4:18:57 PM Amendment adopted
4:19:08 PM Late-filed Amendment Barcode No. 346068 presented
4:19:26 PM Amendment adopted
4:19:34 PM Question from Senator Powell
4:19:47 PM Response by Senator Young
4:20:18 PM Follow-up question from Senator Powell
4:20:26 PM Response by Senator Young
4:20:34 PM Follow-up question from Senator Powell
4:20:50 PM Response by Senator Young
4:21:46 PM Follow-up question from Senator Powell
4:21:50 PM Response by Senator Young
4:22:08 PM Question from Senator Thurston
4:22:12 PM Response by Senator Young

4:23:05 PM Grace Lovett, Director Legislative Affairs, Department of Agriculture & Consumer Services waives in support
4:23:15 PM Senator Young waives closure
4:23:21 PM Roll call
4:23:24 PM CS/CS/SB 498 reported favorably
4:23:46 PM SB 1554 presented by Senator Young
4:25:00 PM Amendment Barcode No. 508936 presented
4:25:08 PM Amendment adopted
4:25:18 PM Kenneth Pratt, Senior Vice President, FL Bankers Association waives in support
4:25:23 PM Sarah Butters, The Real Property, Probate & Trust Law Section of the Florida Bar waives in support
4:25:36 PM Senator Young waives closure
4:25:41 PM Roll call
4:25:44 PM CS/SB 1554 reported favorably
4:26:08 PM Senator Farmer presents SCR 920
4:27:58 PM Senator Farmer closes
4:28:04 PM Roll call
4:28:11 PM SCR 920 reported favorably
4:28:43 PM Question from Senator Thurston
4:28:49 PM Response by Senator Farmer
4:29:24 PM SB 672 presented by Senator Bean
4:30:03 PM Michael Sheedy, Executive Director, Florida Conference of Catholic Bishops waives in support
4:30:10 PM Ron Watson, Midwives Association of Florida waives in support
4:30:17 PM Maria Valero, Florida Latina Advocacy Network waives in opposition
4:30:30 PM Barbara DeVane, FL NOW waives in opposition
4:30:39 PM Senator Bean waives closure
4:30:44 PM Roll call
4:30:54 PM SB 672 reported favorably
4:31:09 PM SB 300 presented by Senator Torres
4:31:40 PM Amendment Barcode No. 807320 presented
4:32:17 PM Amendment adopted
4:32:27 PM Albert Balido waives in support
4:32:34 PM Kelly Teague, Legislative Affairs Director, Orange County waives in opposition
4:32:43 PM Senator Torres waives closure
4:32:46 PM Roll call
4:32:49 PM CS/SB 300 reported favorably
4:33:12 PM CS/SB 660 presented by Senator Passidomo
4:34:05 PM Amendment Barcode No. 691668 presented
4:34:17 PM Amendment adopted
4:34:53 PM Kenneth Pratt, Senior Vice President, FL Bankers Association waives in support
4:35:02 PM Jennifer Martin, Director of Governmental Affairs, Florida Credit Union Association waives in support
4:35:09 PM Senator Passidomo waives closure
4:35:15 PM Roll call
4:35:19 PM CS/SB 660 reported favorably
4:35:32 PM SB 954 presented by Senator Passidomo
4:36:18 PM Kelly Quintero, Legislative Advocate, League of Women Voters of Florida waives in support
4:36:26 PM Senator Passidomo waives closure
4:36:31 PM Roll call
4:36:34 PM SB 954 reported favorably

4:37:13 PM SB 612 presented by Senator Gibson
 4:38:09 PM Senator Gibson waives closure
 4:38:12 PM Roll call
 4:38:17 PM SB 612 reported favorably
 4:38:50 PM SB 894 presented by Senator Simmons
 4:39:45 PM Question from Senator Powell
 4:39:50 PM Response by Senator Simmons
 4:40:54 PM Follow-up question from Senator Powell
 4:40:59 PM Response by Senator Simmons
 4:41:12 PM Speaker Honorable Stacy Scott, Public Defender, 8th Circuit, Florida Public Defender Association, Inc.
 4:42:23 PM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in support
 4:42:31 PM Barney Bishop, President & CEO waives in support
 4:42:45 PM Senator Simmons waives closure
 4:42:50 PM Roll call
 4:42:55 PM SB 894 reported favorably
 4:43:19 PM SB 298 presented by Senator Rouson
 4:43:30 PM Amendment Barcode No. 714770 presented
 4:43:55 PM Amendment adopted
 4:44:07 PM Speaker David Shepp, City of Lakeland in opposition
 4:44:28 PM Question from Senator Thurston
 4:45:17 PM Response by Mr. Shepp
 4:45:24 PM Follow-up question from Senator Thurston
 4:45:39 PM Response by Mr. Shepp
 4:45:54 PM Follow-up question from Senator Thurston
 4:46:00 PM Response by Mr. Shepp
 4:46:19 PM Speaker Daryl Parks, Reginald Jackson claimant in support
 4:47:55 PM Senator Rouson closes on CS/SB 298
 4:48:08 PM Roll call
 4:48:22 PM CS/SB 298 reported favorably
 4:48:50 PM CS/SB 852 presented by Senator Garcia
 4:49:50 PM Jean Gonzales Wingo, Governmental Relations, FL Federation Republican Women waives in support
 4:50:01 PM Erin Choy, Chair waives in support
 4:50:06 PM Barney Bishop, Florida Smart Justice Alliance waives in support
 4:50:12 PM Barbara DeVane, FL NOW waives in support
 4:50:19 PM Colleen Mackin, Constituency Services waives in support
 4:50:26 PM Amber Kelly, Director of Policy & Communications, Florida Family Action waives in support
 4:50:32 PM Bill Bunkley, President, FL Ethics & Religious Liberty Commission waives in support
 4:50:40 PM Senator Garcia waives closure
 4:50:46 PM Roll call
 4:50:50 PM CS/SB 852 reported favorably
 4:51:34 PM Recording Paused
 4:52:58 PM Recording Resumed
 4:53:02 PM SB 1682 presented by Senators Garcia and Rodriguez
 4:56:49 PM Jess McCarty, Assistant County Attorney, Miami-Dade County waives in support
 4:56:58 PM Speaker William Skylar, Chair, Florida Bar Condominium & Planned Development Commission in opposition
 4:58:43 PM Richard Pinsky, Cyber Citizens waives in support
 4:58:51 PM Speaker Terri Jones
 5:03:56 PM Speaker Leah A. Simms

5:11:02 PM Senators Garcia and Rodriguez closes
5:12:55 PM Roll call
5:13:56 PM SB 1682 reported favorably
5:14:24 PM Question from Senator Gibson
5:14:40 PM Senator voted favorably for 672 and 300
5:14:53 PM CS/SB 818 presented by Senator Hutson
5:15:47 PM Gary Hunter, American Resort Developers Association waives in support
5:15:56 PM Senator Hutson waives closure
5:16:00 PM Roll call
5:16:04 PM CS/SB 818 reported favorably
5:16:26 PM SB 1052 presented by Senator Simmons
5:17:23 PM Amendment Barcode No. 882434 presented
5:17:46 PM Amendment Barcode No. 244652 withdrawn
5:18:00 PM Question from Senator Gibson
5:18:07 PM Response by Senator Simmons
5:20:40 PM Follow-up question from Senator Gibson
5:21:40 PM Response by Senator Simmons
5:22:53 PM Follow-up question from Senator Gibson
5:23:05 PM Response by Senator Simmons
5:23:47 PM Speaker Honorable Stacy Scott, Public Defender, 8th Circuit, Florida Public Defender Association, Inc.
5:24:12 PM Phil Archer, State Attorney - 18th Circuit, Florida Prosecuting Attorneys Association waives in support
5:24:18 PM Marion Hammer, National Rifle Association & Unified Sportsmen of Florida waives in support
5:24:24 PM Speaker Katie Browder, Moms Demand Action in opposition
5:26:32 PM Kelly Quintero, League of Women Voters of Florida in opposition
5:27:41 PM Debate by Senator Gibson
5:29:31 PM Senator Simmons closes
5:29:38 PM Roll call
5:30:28 PM CS/SB 1052 reported favorably
5:31:06 PM SB 1320 presented by Senator Stargel
5:31:56 PM Senator Stargel waives closure
5:32:01 PM Roll call
5:32:07 PM SB 1320 reported favorably
5:32:32 PM SB 1330 presented by Senator Stargel
5:32:51 PM Amendment Barcode No. 701632 presented
5:33:44 PM Amendment adopted
5:33:49 PM Question from Senator Gibson
5:34:09 PM Response by Senator Stargel
5:34:15 PM Follow-up question from Senator Gibson
5:35:02 PM Response by Senator Stargel
5:36:58 PM Speaker Doug Bell, Florida Chapter American Academy of Pediatrics in opposition
5:38:11 PM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in support
5:38:18 PM Kelly Quintero, Legislative Advocate, League of Women Voters waives in opposition
5:38:23 PM Speaker Marion Hammer, NRA & Unified Sportsmen of Florida in support
5:38:53 PM Phil Archer, State Attorney - 18th Circuit waives in support
5:39:02 PM Speaker Michelle Gajda, Moms Demand Action in opposition
5:40:24 PM Jacob Elpern waives in opposition
5:40:30 PM David Shepp, Polk County Sheriff's office waives in support
5:40:35 PM Amber Kelly, Director of Policy & Communications, FL Family Action waives in support
5:40:44 PM Senator Stargel closes

5:40:48 PM Roll call
5:41:28 PM CS/SB 1330 reported favorably
5:41:55 PM SB 680 presented by Senator Baxley
5:42:33 PM Amendment Barcode No. 725954 presented
5:43:07 PM Amendment adopted
5:43:18 PM David Griffin, Government Payment Services waives in opposition
5:43:25 PM Janet Collins, Florida Bail Agents Association waives in support
5:43:31 PM Barney Bishop, Florida Smart Justice Alliance waives in support
5:43:41 PM Kelly Mallette, Palmetto Surety waives in support
5:43:51 PM Debate by Senator Thurston
5:43:59 PM Response by Senator Baxley
5:45:20 PM Follow-up question from Senator Thurston
5:45:24 PM Response by Senator Baxley
5:45:42 PM Senator Baxley closes on CS/SB 680
5:45:51 PM Roll call
5:46:21 PM CS/SB 680 reported favorably
5:46:43 PM CS/SB 624 presented by Senator Steube
5:47:23 PM Amendment No. 230698 presented
5:48:04 PM Question from Senator Thurston
5:48:13 PM Response by Senator Steube
5:49:21 PM Question from Senator Powell
5:49:29 PM Response by Chairman Steube
5:51:02 PM Follow-up question from Senator Powell
5:51:09 PM Response by Chairman Steube
5:51:52 PM Question from Senator Bracy
5:52:06 PM Response by Chairman Steube
5:52:32 PM Speaker Matt Puckett, Florida Police Benevolent Association
5:54:27 PM Response by Chairman Steube
5:55:06 PM Response by Mr. Puckett
5:55:19 PM Amendment adopted
5:55:26 PM Matt Dunagan, Deputy Director, Florida Sheriffs Association waives in support
5:55:34 PM
5:55:34 PM Barney Bishop, Florida Smart Justice Alliance waives in support
5:55:38 PM David Bernhardt waives in support
5:55:47 PM Gary Bradford, Government Relations, Florida Police Benevolent Association in support
5:55:51 PM Senator Steube waives closure
5:56:01 PM Roll call
5:56:08 PM CS/CS/SB 624 reported favorably
5:56:28 PM Senator Benacquisto made motion to TP'd SB 262
5:56:45 PM Senator Garcia moves to be shown in the affirmative on 672 and 300
5:56:52 PM Senator Bracy moves to change vote on SB 1320 to a yes vote
5:57:16 PM Meeting adjourned