

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, February 19, 2013
TIME: 1:00 —3:30 p.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 322 Brandes (Similar CS/H 179)	Eminent Domain Proceedings; Revising the distribution of interest on certain deposits held by clerks of court in eminent domain proceedings, etc. JU 02/19/2013 Fav/CS CA AP	Fav/CS Yeas 9 Nays 0
2	SB 492 Hukill (Identical H 583)	Estates; Providing an exception to property held by agents and fiduciaries; providing that property held by fiduciaries under trust instruments is presumed unclaimed under certain circumstances; specifying that a certain subsection does not require a caveator to be served with formal notice of its own petition for administration; providing provisions relating to gifts to lawyers and other disqualified persons; providing for in rem jurisdiction and personal jurisdiction over a trustee, beneficiary, or other person, etc. JU 02/19/2013 Fav/CS BI	Fav/CS Yeas 9 Nays 0
3	SB 530 Thrasher (Similar H 693)	Dispute Resolution; Revising the short title of the "Florida Arbitration Code" to the "Revised Florida Arbitration Code"; providing that an agreement may waive or vary the effect of statutory arbitration provisions; requiring a court to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate; providing that a person waives any objection to lack of or insufficiency of notice by appearing at the arbitration hearing; requiring certain disclosures of interests and relationships by a person before accepting appointment as an arbitrator, etc. JU 02/19/2013 Fav/CS RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 19, 2013, 1:00 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 628 Joyner	Driver Licenses; Authorizing a justice, judge, or designated employee to access reproductions of driver license images as part of the official work of a court, etc. JU 02/19/2013 Favorable TR RC	Favorable Yeas 9 Nays 0
5	Workshop - Discussion and testimony on Civil Litigation Reform issues as follows: (no vote to be taken):		
	Whether the test for the admissibility of scientific expert testimony in civil cases should be based on the Frye standard or the Daubert standard.		Discussed
	Whether an award of damages for medical expenses in a negligence action should be based on actual amounts paid, rather than billed.		Discussed
	Whether any changes are warranted for causes of action based on bad faith by an insurer.		Discussed
<hr/> Other Related Meeting Documents <hr/>			

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 322

INTRODUCER: Committee on Judiciary and Senator Brandes

SUBJECT: Eminent Domain Proceedings

DATE: February 20, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.	_____	_____	CA	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

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

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 322 requires a clerk of court to pay the owner of property taken by eminent domain at least some of the interest earned on the deposit securing payment for the property. Under existing law, the clerk must pay 90 percent of the interest earned exclusively to the petitioner.

Under this bill, the clerk may distribute interest to the defendant or the petitioner, or both, depending upon the outcome of the case.

The remaining 10 percent of interest earned on deposits stays with the clerk, and this does not change under the bill.

This bill only affects interest earned on deposits in quick, or accelerated takings. A quick taking occurs when a governmental entity takes physical possession of property prior to a final judgment in an eminent domain case. Currently, the defendant, or property owner, receives none of the interest, although the defendant has already been deprived of the use of the property.

This bill substantially amends section 74.051, Florida Statutes.

II. Present Situation:

Constitutional Provisions on Takings

The Fifth Amendment of the United States Constitution applies to the states through the Fourteenth Amendment and provides, in part: “nor shall private property be taken for public use, without just compensation.¹”

Similarly, the Florida Constitution states that: “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.²”

Florida Law on Eminent Domain

Florida affords generous treatment to private property owners, or defendants in eminent domain proceedings. In Florida, the owner is entitled to full and fair compensation.³ Compensation is generally the payment of the fair market value of the property.⁴ Fair market value is considered to be based upon what a willing buyer would pay to a willing seller.⁵ Also, the petitioner must always pay attorney’s fees and reasonable costs to the defendant.⁶ Reasonable costs include appraisal fees and, if business damages are involved, an accountant’s fee.⁷ Defendants also have the right to a jury trial.⁸

Eminent domain is effected in one of two ways. The first is through the traditional eminent domain process. The second is considered a quick taking, and occurs when the governmental entity takes immediate possession of the property before the completion of the judicial procedure. A “taking” of property is considered to result from a physical invasion or a regulatory imposition.⁹

Traditional Eminent Domain

The process for traditional eminent domain is as follows:

- Upon the filing of the petition, the clerk of the court issues a summons to the defendants (private property owners) listed in the filing. The defendants must show cause why the identified property should not be taken.¹⁰
- If a defendant challenges the action, the parties proceed to jury trial. The trial is given priority scheduling over other civil actions.¹¹

¹ U.S.C.A. CONST. AMEND V.

² FLA. CONST., art. X., s. 6(a).

³ Debra Herman and Jorge Martinez-Esteve, *The Admissibility of Dedication Requirements in Condemnation Cases: No Longer the Road Less Traveled*, 85 Nov. FLA. B.J. 20, 21 (Nov. 2011).

⁴ *Id.*

⁵ *Id.*

⁶ Section 73.091(1), F.S.

⁷ *Id.*

⁸ Section 73.071(1), F.S.

⁹ *Alachua Land Investors, LLC v. City of Gainesville*, 2013 WL 363376, at *2 (Fla. 1st DCA 2013).

¹⁰ Section 73.031(1), F.S.

¹¹ Section 73.071(1), F.S.

- At the trial, the jury determines the amount of compensation to be paid.¹² The amount of compensation is determined as of the earlier of the date of trial, or the date that title passes.¹³
- The judgment of the court provides that the title to the property vests in the petitioner when the money listed on the jury verdict is paid or secured by deposit.¹⁴
- Within 20 days after the date of judgment, the petitioner must deposit the amount of the verdict into the court registry.¹⁵

Eminent Domain Through a Quick Taking

The second type of eminent domain is called a “quick taking.” Public entities that have the right to take possession and title before the entry of final judgment in the case must file a declaration of taking. The declaration must contain a good faith estimate of the value of the property.¹⁶

If the court determines that the petitioner is entitled to possession of the property before final judgment, it must enter an order requiring the petitioner to deposit money in an amount that will fully secure and compensate the defendant. These monies are deposited into the court registry.¹⁷ The order of taking is not effective until the deposit is made in the court registry. The clerk is authorized to invest the deposit before its release to earn the highest interest rate possible. Ninety percent of any interest earned is paid to the petitioner.¹⁸ The remaining interest remains in the registry of the court.¹⁹

The procedures are the same for both traditional and quick takings regarding service of process, opportunity for hearing, due process, and other rights of the defendant.²⁰

Case Law on Interest on Deposits in a Court Registry

In the 2008 case of *Mallards Cove v. Pittman*, the circuit court struck down as unconstitutional the part of s. 74.051(4), F.S., which requires that the 90 percent of the interest earned on the deposit be paid to the petitioner.²¹ In the case, the clerk distributed interest to the public entity. The court found, specifically, that the requirement to pay the interest to the petitioner constitutes an unconstitutional taking under the Fifth and Fourteenth Amendments of the United States Constitution. As such, the defendant was entitled to the interest. The court based its decision on the reasoning of the United States Supreme Court in its review of a Florida Supreme Court decision in *Webb’s Fabulous Pharmacies v. Beckwith*.²² In *Webb’s*, the clerk exacted a fee for court services in addition to retaining the interest earned on deposits in the court registry. This

¹² Section 73.071(3), F.S.

¹³ Section 73.071(2), F.S.

¹⁴ Section 73.101, F.S.

¹⁵ Section 73.111, F.S.

¹⁶ Section 74.031, F.S.

¹⁷ Section 74.051(2), F.S.

¹⁸ Section 74.051(4), F.S.

¹⁹ *Brock v. Bowein*, 99 So. 3d 580, 582 (Fla. 2d DCA 2012). Section 28.33, F.S., authorizes the clerk to retain 10 percent of the interest earned on deposits in the registry of the court, as a “reasonable management investment fee.”

²⁰ Sections 74.021, 74.041, and 74.051, F.S.

²¹ *Mallards Cove LLP v. Jed Pittman, Clerk of the Circuit Ct. of Pasco County*, Case No. 51-2008-CA-7689 (2011).

²² *Webb’s Fabulous Pharmacies v. Beckwith*, 449 U.S. 155 (1980).

case involved a sale of assets between two companies. The court required an interpleader²³ fund to be set up to protect monies for creditors, as the seller's debts appeared to exceed the purchase price of the assets at the time of closing.²⁴

At the time of the case, the clerk had access to monies under two different provisions in law:

- Section 28.24, F.S. This statute authorized a clerk's fee through an administrative fee in the amount of 1 percent of the first \$500 and ½ percent of the remainder for receiving funds into the registry.²⁵ In this case, the fee came to \$9,228.74. That amount came out at the time of deposit.
- Section 28.33, F.S.: Regarding interest on the deposit, this section of law provided that "All interest accruing from moneys deposited shall be deemed income of the office of the clerk."²⁶ The interest in this case totaled more than \$100,000.²⁷

The Court took issue with the clerk exacting, in essence, two fees for the same deposit. In declaring the interest earned on the money while it was in the registry of the court private property, the Court ruled that the deposit "was property held only for the ultimate benefit of Webb's creditors, not for the benefit of the court and not for the benefit of the county. And it was held only for the purpose of making a fair distribution among those creditors."²⁸

The case was not reviewed by a higher court. Therefore, it is unknown whether a higher court would find unconstitutional the same language in s. 74.051 (4), F.S., as the *Mallards* court, and if so, upon what basis.

III. Effect of Proposed Changes:

Currently, s. 74.051, F.S., requires that 90 percent of the interest earned on security deposits with the court registry in eminent domain cases be paid to the petitioner. This bill changes the recipient of the interest from the petitioner to the ultimate owner of the deposit.

The clerk can pay either the petitioner or the defendant interest from the deposit, depending upon the outcome of the case. The clerk can also distribute interest to both the petitioner and the defendant, if the petitioner overpaid the deposit. If each party is entitled to a share of the deposit, the amount of interest will be allocated accordingly, based on the ownership interests in the deposit.

This bill takes effect July 1, 2013.

²³ The term "interpleader" is defined as "A suit to determine a right to property held by a usually disinterested third party (called a *stakeholder*) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. Typically, a stakeholder initiates an interpleader both to determine who should receive the property and to avoid multiple liability." BLACK'S LAW DICTIONARY (9th ed. 2009).

²⁴ *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. at 156.

²⁵ Section 28.24(14), F.S. This provision is no longer in the law. Instead, s. 28.24, F.S., provides a laundry list of set fees for various clerk services.

²⁶ Section 28.33, F.S. (enacted as ch. 73-282, §1, L.O.F.)

²⁷ *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. at 158.

²⁸ *Id.* at 161, 165.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Data is not available to determine whether this bill may 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.

Article VII, s. 18 (b) of the Florida Constitution, prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.9 million for FY 2012-13) are exempt.

As is discussed below in the Tax/Fee Issues Section, the bill’s effect on revenues is uncertain. The Revenue Estimating Conference (REC) has not met to review the fiscal impact of SB 322. Estimates from the REC may clarify whether the bill is a mandate or exempt. If the bill is not exempt as having an insufficient fiscal impact, it may require a two-thirds vote of the membership of each chamber to become law.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

According to the Florida Department of Transportation (FDOT), since 1986, the FDOT has collected \$8,177,860 in interest earned on deposits in eminent domain proceedings. In the last 3 years, however, collections have declined significantly to only \$17,452.²⁹ The fiscal impact on local entities is unknown as of the date of this analysis.

B. Private Sector Impact:

This bill may have a positive fiscal impact on private property owners whose property is taken through eminent domain. They will receive the benefit of some, or all of the interest earned on deposits made into a clerk’s registry during quick takings.

²⁹ Florida Dept. of Transportation, *SB 322 Bill Analysis* (2013) (on file with the Senate Committee on Judiciary).

C. **Government Sector Impact:**

Under this bill, governmental entities that are parties to a taking will receive less money from interest earned on deposits made into a clerk's registry.

The bill does not affect the amount of interest that may be retained by a clerk of court.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**

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

CS by Judiciary on February 19, 2013:

The committee substitute provides for distributions on interest earned on deposits made in the court registry to be allocated, rather than apportioned, based on the ultimate ownership in the deposit.

B. **Amendments:**

None.



462250

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2013	.	
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	.	
	.	

The Committee on Judiciary (Gardiner) recommended the following:

Senate Amendment

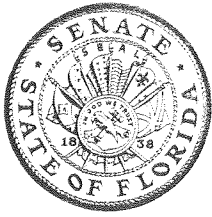
Delete line 25
and insert:
interest earned shall be allocated in accordance with the

By Senator Brandes

22-00502-13

2013322__

1 A bill to be entitled
2 An act relating to eminent domain proceedings;
3 amending s. 74.051, F.S.; revising the distribution of
4 interest on certain deposits held by clerks of court
5 in eminent domain proceedings; providing an effective
6 date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (4) of section 74.051, Florida
11 Statutes, is amended to read:
12 74.051 Hearing on order of taking.-
13 (4) The court may fix the time within which and the terms
14 upon which the defendants shall be required to surrender
15 possession to the petitioner, which time of possession shall be
16 upon deposit for those defendants failing to file a request for
17 hearing as provided herein. The order of taking shall not become
18 effective unless the deposit of the required sum is made in the
19 registry of the court. If the deposit is not made within 20 days
20 from the date of the order of taking, the order shall be void
21 and of no further effect. The clerk is authorized to invest such
22 deposits so as to earn the highest interest obtainable under the
23 circumstances in state or national financial institutions in
24 Florida insured by the Federal Government. Ninety percent of the
25 interest earned shall be apportioned in accordance with the
26 ultimate ownership in the deposit ~~paid to the petitioner.~~
27 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Transportation, *Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Education
Health Policy

SELECT COMMITTEE:
Select Committee on Patient Protection
and Affordable Care Act

SENATOR JEFF BRANDES

22nd District

February 18, 2013

Tom Lee, Chairman
418 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Lee:

I respectfully request that my legislative assistant Chris Spencer be permitted to present my bill, SB 322 regarding eminent domain, before the Judiciary Committee on Tuesday, February 19th and 1:00PM in my absence.

I appreciate your consideration of this request; please contact me should you have any questions or concerns.

Sincerely,


Jeff Brandes

CC: Tom Cibula



REPLY TO:

- 3637 Fourth Street North, Suite 101, St. Petersburg, Florida 33704-1300 (727) 552-2745
- 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
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 492

INTRODUCER: Senator Hukill

SUBJECT: Estates

DATE: February 21, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Shankle	Cibula	JU	Fav/CS
2.			BI	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

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

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

Amendments were recommended

Significant amendments were recommended

I. Summary:

- CS/SB 492 makes a number of changes to the Florida Probate Code, which were recommended by the Real Property, Probate, and Trust Law Section of The Florida Bar. These changes include:
- Eliminating a requirement that an estate file a tax return for an estate tax when no tax is due.
 - Reducing to 2 years from 5 years the time period in which property held in a trust is presumed to be unclaimed property and payable to the Department of Financial Services.
 - Providing that a caveator is not required serve notice on his or herself when he or she submits a petition for administration of an estate.
 - Making void, with certain exceptions, any gift received by a lawyer, or a relative of the lawyer, from a written instrument that the lawyer prepared.
 - Requiring that a clerk of court, upon receipt of a will, keep the will in its original form for 20 years.
 - Expanding the long-arm jurisdiction of Florida Courts to adjudicate trust disputes.
 - Removing conflicts between statute and the Florida Rules of Civil procedure over *forum non conveniens*.
 - Requiring that a trustee provide a trust accounting to beneficiaries at least once a year.

This bill substantially amends the following sections of the Florida Statutes: 198.13, 717.101, 717.112, 731.110, 731.703, 732.901, 736.0103, 736.0202, 736.0813, 607.0802, 731.201, 733.212, 736.0802, 736.08125, and 738.104.

This bill creates the following sections of the Florida Statutes: 717.1125, 732.0806, and 736.02025.

This bill repeals sections 736.0205 and 736.0807(4) of the Florida Statutes.

II. Present Situation:

Estate Taxes

Under the American Taxpayer Relief Act of 2012, the Internal Revenue Code does not provide a federal tax credit for the amount an individual pays in state death taxes or state generation-skipping taxes.¹ Under the Florida Constitution, the state may not tax estates in excess of the amount of federal credit provided by the Internal Revenue Code.² Because federal law does not authorize federal credits for state death taxes or state generation-skipping taxes, no taxes for either are owed under s. 198.02, F.S., or 198.021, F.S.³ However, even though the Florida Constitution effectively prohibits a Florida estate tax, s. 198.13, F.S., requires any estate of a decedent dying after December 31, 2012, to file a tax return with the Florida Department of Revenue.⁴

Unclaimed Property

Chapter 717, F.S., details how to determine whether property held by a fiduciary is unclaimed and how to dispose of it. This includes trustees of trust administered pursuant to chapter 736, F.S., of the Florida Statutes. Currently, any intangible property or income held in a fiduciary capacity for the benefit of another is presumed unclaimed if within 5 years after the property becomes distributable the owner has not interacted with the property. Interaction includes increasing or decreasing the principal, accepting payment of the principal or income, communicating with fiduciary about the property, or otherwise indicating interest as evidenced by a record on file with the fiduciary.⁵

Once the 5-year period elapses, the trustee may file a petition with the Department of Financial Services and request that the department accept custody of the property.⁶ Upon delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property. As long as the person who delivers the property to the department has done so in good faith, he or she is relieved of any liability to manage the property.⁷

¹ American Taxpayer Relief Act of 2012, Pub. Law No. 112-240, H.R. 8, 112th Cong. (Jan. 2, 2013).

² FLA. CONST. art VII, s. 5.

³ Sections 198.02, F.S. and 198.021, F.S.

⁴ Section 198.13, F.S.

⁵ Section 717.112(1), F.S.

⁶ Section 717.117(5), F.S.

⁷ Section 717.1201(5), F.S.

Caveat Notice Requirements

Section 731.110, F.S., allows an interested party to file a caveat with the circuit court preventing an estate from being administered or a will from being submitted to probate without formal notice being served on the caveator.⁸ Based on the wording of the statute, if the caveator files for administration of the estate some courts have required the caveator to file notice on him or herself.⁹

Gifts to Lawyers

Under the Rules Regulating the Florida Bar, a lawyer “shall not solicit any substantial gift from a client, including a testamentary gift or prepare on behalf of a client an instrument giving the lawyer or person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to client.”¹⁰ However, Florida courts have found that, with no prohibition in statute, a violation of Rule 4-1.8(c), R. Regulating Fla. Bar, does not render a gift to the lawyer void.¹¹ Instead, an interested party must show fraud, undue influence, or duress in the creation of the will to have the gift voided.¹²

Retention of Original Wills and Codicils

Under s. 732.901, F.S., all original wills must be deposited by the will’s custodian with the clerk of court having venue over the estate, within 10 days of learning of the decedent’s death.¹³ The clerk must retain the original will for safekeeping for 20 years.¹⁴ However, the Florida Supreme Court is currently considering changes to the Rules of Judicial Administration which, once a probate proceeding is initiated, may allow for the clerk to create an electronic copy of the will and destroy the original.¹⁵

Jurisdiction over Trustees and Trust Beneficiaries

Current Florida law does not contain a comprehensive long-arm statute for litigation relating to a trust. The Florida Supreme Court, following decisions by the United States Supreme Court, has ruled that if there is a statute authorizing jurisdiction and if the defendant has sufficient minimum contacts with Florida such that maintaining the suit does not offend traditional notions of fair play and substantial justice, a Florida court may exercise jurisdiction over the defendant.¹⁶ The minimum contacts test is a factual analysis insuring that a defendant’s constitutional right to due process is not violated.¹⁷ The statute authorizing the jurisdiction is called a long-arm statute.

⁸ Sections 731.110(1) and 731.110(3), F.S.

⁹ Real Property, Probate, and Trust Law Section of The Florida Bar, *White paper: Proposed Amendment to s. 731.110(3)*, Fla. Stat. (2013) (on file with the Senate Committee on Judiciary).

¹⁰ R. Regulating Fla. Bar 4-1.8(c).

¹¹ *Agee v. Brown*, 73 So. 3d 882, 886 (Fla. 4th DCA 2011).

¹² *Id.*

¹³ Section 732.901(1), F.S.

¹⁴ Florida Dep’t of State, *General Records Schedule GS11 for Clerks of Court* (January 1, 2010), available at <http://dliis.dos.state.fl.us/barm/genschedules/GS11-2010.pdf>.

¹⁵ Real Property, Probate, and Trust Law Section of The Florida Bar, *White paper: Proposed Amendment to s. 732.901*, Fla. Stat. (2013) (on file with the Senate Committee on Judiciary).

¹⁶ *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 500-501 (Fla. 1989).

¹⁷ *Id.* at 500.

The Real Property, Probate, and Trust Law Section of The Florida Bar is concerned that the long-arm statute in s. 48.193(1), F.S., is too generic to authorize jurisdiction over all necessary parties in a trust dispute, including nonresidents.¹⁸ Section 736.0202(1), F.S., allows Florida courts to acquire personal jurisdiction over nonresidents if he or she accept a trusteeship of a trust having its principal place of administration in Florida, or he or she moves the principal place of administration of a trust to Florida. However, this leaves a number of scenarios in which Florida courts do not have express authority for jurisdiction over all necessary parties. Examples of necessary parties unaccounted for by s. 736.0202(1), F.S., include a beneficiary who accepts compensation from a trust or a person who performs a service for a trust, if the trust has its principle place of business in Florida.

While on its face, s. 736.0205, F.S., appears to be a statute establishing jurisdiction, courts have interpreted it to be a *forum non conveniens* statute that requires a court to determine the “most appropriate forum” in which a case should proceed.¹⁹ Courts have suggested that the statute shifts to the plaintiff the burden of proving that the choice of venue is appropriate.²⁰ However, this conflicts with Florida Rule of Civil Procedure 1.061 which provides that the defendant has the burden of pleading and proving the facts necessary to obtain a change of venue. Thus, the relationship between the statute and the rule of civil procedure creates confusion as to the correct placement of burden of proof for *forum non conveniens* issues.

Trust Accounting

Under current Florida law, a trustee of an irrevocable trust must provide an annual accounting of the trust to every beneficiary. The accounting must address the cash and property transactions in the accounting period and what trust assets are currently on hand.²¹

III. Effect of Proposed Changes:

Estate Tax

The bill amends s. 198.13, F.S., eliminating the requirement that an estate with a decedent dying after December 31, 2012, file a tax return with the Florida Department of Revenue.

Unclaimed property held in Trust (Sections 1, 2, and 3)

The bill creates s. 717.1125, F.S., which reduces to 2 years from 5 years the time period after which property held in a trust is presumed to be unclaimed property and payable to the Department of Financial Services. However, the bill amends s. 717.112(1), F.S., to preserve existing procedures for a personal representative of an estate to deposit unclaimed funds into the registry of the court.

¹⁸ Real Property, Probate and Trust Law Section of the Florida Bar, *White paper: Proposed Statutes on Acquiring Jurisdiction over Trustees and Trust Beneficiaries and Repealing s. 736.0205* (2013) (on file with the Senate Committee on Judiciary).

¹⁹ *In Re: Estate of McMillian*, 603 So. 2d 685, 688 (Fla. 1st DCA 1992).

²⁰ *Id.*

²¹ Sections 736.0813 and 736.01835, F.S.

Caveat Notice Requirements (Section 4)

The bill amends s. 731.110, F.S., to clarify that a caveator is not required to serve formal notice of his or her own petition for administration of an estate on his or herself.

Gifts to Lawyers (Section 6)

The bill creates s. 732.806, F.S., which voids, with certain exceptions, any part of a written instrument that a lawyer prepared or supervised which makes a gift to a lawyer or a person related to the lawyer. However, the restriction on gifts does not affect:

- Gifts to a lawyer or other person if the lawyer or other person is related to the person making the gift.
- A written instrument appointing a lawyer, or other person related to the lawyer, as a fiduciary.
- Title to property acquired for value from a person who receives the property in violation of the restrictions on gifts.

The bill makes any provision of the instrument which attempts to waive s. 732.806, F.S., unenforceable. The bill also expressly provides that it does not preempt any other rights or remedies of interested parties which may be available in equity.

Retention of Original Wills and Codicils (Section 7)

The bill amends s. 732.901, F.S., in anticipation of changes to the Rules of Judicial Administration, clarifying that a clerk of court, upon receipt of a will, must keep the will in its original form for 20 years. Transferring and storing the will in an electronic format does not negate the requirement that the will be preserved in its original form. The bill also requires that a custodian supply only the last 4 digits of the testator's social security number to the clerk of court upon deposit of the will, instead of the entire number.

Jurisdiction Over Trustees and Trust Beneficiaries (Sections 8, 9, 10, 11, and 12)

The bill amends s. 736.0202(1), F.S., making it a standalone provision governing *in rem* jurisdiction over beneficiaries' interests in a trust. Additionally, the bill amends s. 736.0202(2), F.S., to create a comprehensive long-arm statute for litigation of trusts. It specifies acts or conduct that allows Florida courts to acquire personal jurisdiction over a nonresident trustee, trust beneficiary, or other person, as long as the constitutional due process requirement of minimum contacts with the state is met. These acts include:

- A trustee who accepts a trust if the principle place of business of the trust is in Florida.
- A trustee who moves a trust to Florida.
- A trustee who commits a breach of a trust in this state.
- A beneficiary or person who accepts distribution or compensation from a trust if the principle place of business of the trust is in Florida.
- A person who performs a service for a trust when the principle place of business of the trust is in Florida.

The bill also includes a catch-all provision that allows a court to exercise jurisdiction to the maximum extent permitted by the State Constitution or the Federal Constitution.

The bill creates s. 736.02025, F.S., which provides for service of process for the litigation of trust as laid out in chapter 48, F.S., the general statute on service of process.²² Section 736.02025, F.S., also provides for service of process by mail or commercial delivery service if the case involves an interest in trust property but does not seek a personal jurisdiction. Finally, it allows for service by first-class mail in certain limited circumstances.

The bill repeals s. 731.0205, F.S., which eliminates any potential conflicts between the statute and Rule 1.061 Fla. R. Civ. P. over *forum non conveniens*.

Trust Accounting (Section 13)

The bill amends s. 736.0813 F.S., to require that the trustee provide a trust accounting at least once a year from the date of the last accounting or, if there has been no previous accounting, the date that trustee became accountable.

Technical Changes (Sections 14, 15, 16, 17, 18, 19 and 20)

The bill amends ss. 607.0802, 731.201, 733.212, 736.0802, 736.08125, and 738.104, F.S., to conform cross-references to changes made by the bill.

The bill takes effect on October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²² See Chapter. 48, F.S.

B. Private Sector Impact:

The bill will prevent financial benefits from passing to a lawyer in favor other beneficiaries.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Judiciary on February 19, 2013:

The committee substitute deletes a requirement from s. 198.13, F.S., that an estate file a tax return with the Florida Department of Revenue even though no state estate tax is due.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
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	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Between lines 42 and 43
insert:

Section 1. Subsection (4) of section 198.13, Florida
Statutes, is amended to read:

198.13 Tax return to be made in certain cases; certificate
of nonliability.-

(4) Notwithstanding any other provisions of this section
and applicable to the estate of a decedent who dies after
December 31, 2004, if, upon the death of the decedent, a state
death tax credit or a generation-skipping transfer credit is not
allowable pursuant to the Internal Revenue Code of 1986, as



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14 amended:

15 (a) The personal representative of the estate is not
16 required to file a return under subsection (1) in connection
17 with the estate.

18 (b) The person who would otherwise be required to file a
19 return reporting a generation-skipping transfer under subsection
20 (3) is not required to file such a return in connection with the
21 estate.

22
23 ~~The provisions of this subsection do not apply to estates of~~
24 ~~decedents dying after December 31, 2012.~~

25
26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 Delete line 2

29 and insert:

30 An act relating to estates; amending s. 198.13, F.S.;

31 deleting a provision that provides that certain

32 information relating to a state death tax credit or a

33 generation-skipping transfer credit is not applicable

34 to estates of decedents dying after a specific date;

35 amending s. 717.101, F.S.;

By Senator Hukill

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1 A bill to be entitled
 2 An act relating to estates; amending s. 717.101, F.S.;
 3 providing a definition; amending s. 717.112, F.S.;
 4 providing an exception to property held by agents and
 5 fiduciaries; creating s. 717.1125, F.S.; providing
 6 that property held by fiduciaries under trust
 7 instruments is presumed unclaimed under certain
 8 circumstances; amending s. 731.110, F.S.; specifying
 9 that a certain subsection does not require a caveator
 10 to be served with formal notice of its own petition
 11 for administration; amending s. 732.703, F.S.;
 12 revising language regarding instruments governed by
 13 the laws of a different state; creating s. 732.806,
 14 F.S.; providing provisions relating to gifts to
 15 lawyers and other disqualified persons; amending s.
 16 732.901, F.S.; requiring the custodian of a will to
 17 supply the testator's date of death or the last four
 18 digits of the testator's social security number upon
 19 deposit; providing that an original will submitted
 20 with a pleading is considered to be deposited with the
 21 clerk; requiring the clerk to retain and preserve the
 22 original will in its original form for a certain
 23 period of time; amending s. 736.0103, F.S.; providing
 24 definitions; amending s. 736.0202, F.S.; providing for
 25 in rem jurisdiction and personal jurisdiction over a
 26 trustee, beneficiary, or other person; deleting a
 27 provision referring to other methods of obtaining
 28 jurisdiction; creating s. 736.02025, F.S.; providing
 29 provisions for methods of service of process in

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30 actions involving trusts and trust beneficiaries;
 31 repealing s. 736.0205, F.S., relating to trust
 32 proceedings and the dismissal of matters relating to
 33 foreign trusts; repealing s. 736.0807(4), F.S.,
 34 relating to delegation of powers by a trustee;
 35 amending s. 736.0813, F.S.; clarifying the duties of a
 36 trustee to provide a trust accounting; amending ss.
 37 607.0802, 731.201, 733.212, 736.0802, 736.08125, and
 38 738.104, F.S.; conforming cross-references; providing
 39 an effective date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Present subsections (22) and (23) of section
 44 717.101, Florida Statutes, are redesignated as subsections (23)
 45 and (24), respectively, and a new subsection (22) is added to
 46 that section, to read:

47 717.101 Definitions.—As used in this chapter, unless the
 48 context otherwise requires:

49 (22) "Trust instrument" means a trust instrument as defined
 50 in s. 736.0103.

51 Section 2. Subsection (1) of section 717.112, Florida
 52 Statutes, is amended to read:

53 717.112 Property held by agents and fiduciaries.—

54 (1) Except as provided in ss. 717.1125 and 733.816, all
 55 intangible property and any income or increment thereon held in
 56 a fiduciary capacity for the benefit of another person is
 57 presumed unclaimed unless the owner has within 5 years after it
 58 has become payable or distributable increased or decreased the

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 59 principal, accepted payment of principal or income, communicated
 60 concerning the property, or otherwise indicated an interest as
 61 evidenced by a memorandum or other record on file with the
 62 fiduciary.

63 Section 3. Section 717.1125, Florida Statutes, is created
 64 to read:

65 717.1125 Property held by fiduciaries under trust
 66 instruments.—All tangible and intangible property and any income
 67 or increment thereon held in a fiduciary capacity for the
 68 benefit of another person under a trust instrument is presumed
 69 unclaimed unless the owner has, within 2 years after it has
 70 become payable or distributable, increased or decreased the
 71 principal, accepted payment of principal or income, communicated
 72 concerning the property, or otherwise indicated an interest as
 73 evidenced by a memorandum or other record on file with the
 74 fiduciary.

75 Section 4. Subsection (3) of section 731.110, Florida
 76 Statutes, is amended to read:

77 731.110 Caveat; proceedings.—

78 (3) If a caveat has been filed by an interested person
 79 other than a creditor, the court may not admit a will of the
 80 decedent to probate or appoint a personal representative until
 81 formal notice of the petition for administration has been served
 82 on the caveator or the caveator's designated agent and the
 83 caveator has had the opportunity to participate in proceedings
 84 on the petition, as provided by the Florida Probate Rules. This
 85 subsection does not require a caveator to be served with formal
 86 notice of its own petition for administration.

87 Section 5. Subsection (4) of section 732.703, Florida

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 88 Statutes, is amended to read:

89 732.703 Effect of divorce, dissolution, or invalidity of
 90 marriage on disposition of certain assets at death.—

91 (4) Subsection (2) does not apply:

92 (a) To the extent that controlling federal law provides
 93 otherwise;

94 (b) If the governing instrument is signed by the decedent,
 95 or on behalf of the decedent, after the order of dissolution or
 96 order declaring the marriage invalid and such governing
 97 instrument expressly provides that benefits will be payable to
 98 the decedent's former spouse;

99 (c) To the extent a will or trust governs the disposition
 100 of the assets and s. 732.507(2) or s. 736.1105 ~~736.1005~~ applies;

101 (d) If the order of dissolution or order declaring the
 102 marriage invalid requires that the decedent acquire or maintain
 103 the asset for the benefit of a former spouse or children of the
 104 marriage, payable upon the death of the decedent either outright
 105 or in trust, only if other assets of the decedent fulfilling
 106 such a requirement for the benefit of the former spouse or
 107 children of the marriage do not exist upon the death of the
 108 decedent;

109 (e) If, under the terms of the order of dissolution or
 110 order declaring the marriage invalid, the decedent could not
 111 have unilaterally terminated or modified the ownership of the
 112 asset, or its disposition upon the death of the decedent;

113 (f) If the designation of the decedent's former spouse as a
 114 beneficiary is irrevocable under applicable law;

115 (g) If the governing instrument ~~directing the disposition~~
 116 ~~of the asset at death~~ is governed by the laws of a state other

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117 than this state;

118 (h) To an asset held in two or more names as to which the
119 death of one coowner vests ownership of the asset in the
120 surviving coowner or coowners;

121 (i) If the decedent remarries the person whose interest
122 would otherwise have been revoked under this section and the
123 decedent and that person are married to one another at the time
124 of the decedent's death; or

125 (j) To state-administered retirement plans under chapter
126 121.

127 Section 6. Section 732.806, Florida Statutes, is created to
128 read:

129 732.806 Gifts to lawyers and other disqualified persons.-

130 (1) Any part of a written instrument which makes a gift to
131 a lawyer or a person related to the lawyer is void if the lawyer
132 prepared or supervised the execution of the written instrument,
133 or solicited the gift, unless the lawyer or other recipient of
134 the gift is related to the person making the gift.

135 (2) This section is not applicable to a provision in a
136 written instrument appointing a lawyer, or a person related to
137 the lawyer, as a fiduciary.

138 (3) A provision in a written instrument purporting to waive
139 the application of this section is unenforceable.

140 (4) If property distributed in kind, or a security interest
141 in that property, is acquired by a purchaser or lender for value
142 from a person who has received a gift in violation of this
143 section, the purchaser or lender takes title free of any claims
144 arising under this section and incurs no personal liability by
145 reason of this section, whether or not the gift is void under

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146 this section.

147 (5) In all actions brought under this section, the court
148 must award taxable costs as in chancery actions, including
149 attorney fees. When awarding taxable costs and attorney fees
150 under this section, the court may direct payment from a party's
151 interest in the estate or trust, or enter a judgment that may be
152 satisfied from other property of the party, or both. Attorney
153 fees and costs may not be awarded against a party who, in good
154 faith, initiates an action under this section to declare a gift
155 void.

156 (6) If a part of a written instrument is invalid by reason
157 of this section, the invalid part is severable and may not
158 affect any other part of the written instrument which can be
159 given effect, including a term that makes an alternate or
160 substitute gift. In the case of a power of appointment, this
161 section does not affect the power to appoint in favor of persons
162 other than the lawyer or a person related to the lawyer.

163 (7) For purposes of this section:

164 (a) A lawyer is deemed to have prepared, or supervised the
165 execution of, a written instrument if the preparation, or
166 supervision of the execution, of the written instrument was
167 performed by an employee or lawyer employed by the same firm as
168 the lawyer.

169 (b) A person is "related" to an individual if, at the time
170 the lawyer prepared or supervised the execution of the written
171 instrument or solicited the gift, the person is:

172 1. A spouse of the individual;

173 2. A lineal ascendant or descendant of the individual;

174 3. A sibling of the individual;

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175 4. A relative of the individual or of the individual's
 176 spouse with whom the lawyer maintains a close, familial
 177 relationship;

178 5. A spouse of a person described in subparagraph 2.,
 179 subparagraph 3., or subparagraph 4.; or

180 6. A person who cohabitates with the individual.

181 (c) The term "written instrument" includes, but is not
 182 limited to, a will, a trust, a deed, a document exercising a
 183 power of appointment, or a beneficiary designation under a life
 184 insurance contract or any other contractual arrangement that
 185 creates an ownership interest or permits the naming of a
 186 beneficiary.

187 (d) The term "gift" includes an inter vivos gift, a
 188 testamentary transfer of real or personal property or any
 189 interest therein, and the power to make such a transfer
 190 regardless of whether the gift is outright or in trust;
 191 regardless of when the transfer is to take effect; and
 192 regardless of whether the power is held in a fiduciary or
 193 nonfiduciary capacity.

194 (8) The rights and remedies granted in this section are in
 195 addition to any other rights or remedies a person may have at
 196 law or in equity.

197 Section 7. Section 732.901, Florida Statutes, is amended to
 198 read:

199 732.901 Production of wills.-

200 (1) The custodian of a will must deposit the will with the
 201 clerk of the court having venue of the estate of the decedent
 202 within 10 days after receiving information that the testator is
 203 dead. The custodian must supply the testator's date of death or

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204 the last four digits of the testator's social security number to
 205 the clerk upon deposit.

206 (2) Upon petition and notice, the custodian of any will may
 207 be compelled to produce and deposit the will ~~as provided in~~
 208 ~~subsection (1)~~. All costs, damages, and a reasonable attorney's
 209 fee shall be adjudged to petitioner against the delinquent
 210 custodian if the court finds that the custodian had no just or
 211 reasonable cause for failing to deposit the will.

212 (3) An original will submitted to the clerk with a petition
 213 or other pleading is deemed to have been deposited with the
 214 clerk.

215 (4) Upon receipt, the clerk shall retain and preserve the
 216 original will in its original form for at least 20 years. If the
 217 probate of a will is initiated, the original will may be
 218 maintained by the clerk with the other pleadings during the
 219 pendency of the proceedings, but the will must at all times be
 220 retained in its original form for the remainder of the 20-year
 221 period whether or not the will is admitted to probate or the
 222 proceedings are terminated. Transforming and storing a will on
 223 film, microfilm, magnetic, electronic, optical, or other
 224 substitute media or recording a will onto an electronic record-
 225 keeping system, whether or not in accordance with the standards
 226 adopted by the Supreme Court of Florida, or permanently
 227 recording a will does not eliminate the requirement to preserve
 228 the original will.

229 (5) For purposes of this section, the term "will" includes
 230 a separate writing as described in s. 732.515.

231 Section 8. Present subsections (6) through (11) of section
 232 736.0103, Florida Statutes, are redesignated as subsections (7)

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 233 through (12), respectively, present subsections (12) through
 234 (21) of that section are redesignated as subsections (14)
 235 through (23), respectively, and new subsections (6) and (13) are
 236 added to that section, to read:

237 736.0103 Definitions.—Unless the context otherwise
 238 requires, in this code:

239 (6) "Distributee" means a beneficiary who is currently
 240 entitled to receive a distribution.

241 (13) "Permissible distributee" means a beneficiary who is
 242 currently eligible to receive a distribution.

243 Section 9. Section 736.0202, Florida Statutes, is amended
 244 to read:

245 736.0202 Jurisdiction over trustee and beneficiary.—

246 (1) IN REM JURISDICTION.—Any beneficiary ~~By accepting the~~
 247 ~~trusteeship~~ of a trust having its principal place of
 248 administration in this state is subject ~~or by moving the~~
 249 ~~principal place of administration to this state, the trustee~~
 250 ~~submits personally to the jurisdiction of the courts of this~~
 251 ~~state to the extent of the beneficiary's interest in regarding~~
 252 ~~any matter involving the trust.~~

253 (2) PERSONAL JURISDICTION.—

254 (a) Any trustee, trust beneficiary, or other person,
 255 whether or not a citizen or resident of this state, who
 256 personally or through an agent does any of the following acts
 257 related to a trust, submits to the jurisdiction of the courts of
 258 this state involving that trust: With respect to their interests
 259 ~~in the trust, the beneficiaries of a trust having its principal~~
 260 ~~place of administration in this state are subject to the~~
 261 ~~jurisdiction of the courts of this state regarding any matter~~

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 262 ~~involving the trust. By accepting a distribution from such a~~
 263 ~~trust, the recipient submits personally to the jurisdiction of~~
 264 ~~the courts of this state regarding any matter involving the~~
 265 ~~distribution.~~

266 1. Accepts trusteeship of a trust having its principal
 267 place of administration in this state at the time of acceptance.

268 2. Moves the principal place of administration of a trust
 269 to this state.

270 3. Serves as trustee of a trust created by a settlor who
 271 was a resident of this state at the time of creation of the
 272 trust or serves as trustee of a trust having its principal place
 273 of administration in this state.

274 4. Accepts or exercises a delegation of powers or duties
 275 from the trustee of a trust having its principal place of
 276 administration in this state.

277 5. Commits a breach of trust in this state, or commits a
 278 breach of trust with respect to a trust having its principal
 279 place of administration in this state at the time of the breach.

280 6. Accepts compensation from a trust having its principal
 281 place of administration in this state.

282 7. Performs any act or service for a trust having its
 283 principal place of administration in this state.

284 8. Accepts a distribution from a trust having its principal
 285 place of administration in this state with respect to any matter
 286 involving the distribution.

287 (b) A court of this state may exercise personal
 288 jurisdiction over a trustee, trust beneficiary, or other person,
 289 whether found within or outside the state, to the maximum extent
 290 permitted by the State Constitution or the Federal Constitution.

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291 ~~(3) This section does not preclude other methods of~~
 292 ~~obtaining jurisdiction over a trustee, beneficiary, or other~~
 293 ~~person receiving property from the trust.~~

294 Section 10. Section 736.02025, Florida Statutes, is created
 295 to read:

296 736.02025 Service of process.—

297 (1) Except as otherwise provided in this section, service
 298 of process upon any person may be made as provided in chapter
 299 48.

300 (2) Where only in rem or quasi in rem relief is sought
 301 against a person in a matter involving a trust, service of
 302 process on that person may be made by sending a copy of the
 303 summons and complaint by any commercial delivery service
 304 requiring a signed receipt or by any form of mail requiring a
 305 signed receipt. Service under this subsection shall be complete
 306 upon signing of a receipt by the addressee or by any person
 307 authorized to receive service of a summons on behalf of the
 308 addressee as provided in chapter 48. Proof of service shall be
 309 by verified statement of the person serving the summons, to
 310 which must be attached the signed receipt or other evidence
 311 satisfactory to the court that delivery was made to the
 312 addressee or other authorized person.

313 (3) Under any of the following circumstances, service of
 314 original process pursuant to subsection (2) may be made by
 315 first-class mail:

316 (a) If registered or certified mail service to the
 317 addressee is unavailable and if delivery by commercial delivery
 318 service is also unavailable.

319 (b) If delivery is attempted and is refused by the

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320 addressee.

321 (c) If delivery by mail requiring a signed receipt is
 322 unclaimed after notice to the addressee by the delivering
 323 entity.

324 (4) If service of process is obtained under subsection (3),
 325 proof of service shall be made by verified statement of the
 326 person serving the summons. The verified statement must state
 327 the basis for service by first-class mail, the date of mailing,
 328 and the address to which the mail was sent.

329 Section 11. Section 736.0205, Florida Statutes, is
 330 repealed.

331 Section 12. Subsection (4) of section 736.0807, Florida
 332 Statutes, is repealed.

333 Section 13. Paragraph (d) of subsection (1) of section
 334 736.0813, Florida Statutes, is amended to read:

335 736.0813 Duty to inform and account.—The trustee shall keep
 336 the qualified beneficiaries of the trust reasonably informed of
 337 the trust and its administration.

338 (1) The trustee's duty to inform and account includes, but
 339 is not limited to, the following:

340 (d) A trustee of an irrevocable trust shall provide a trust
 341 accounting, as set forth in s. 736.08135, from the date of the
 342 last accounting or, if none, from the date on which the trustee
 343 became accountable, to each qualified beneficiary at least
 344 annually and on termination of the trust or on change of the
 345 trustee.

346 Paragraphs (a) and (b) do not apply to an irrevocable trust
 347 created before the effective date of this code, or to a

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349 revocable trust that becomes irrevocable before the effective
350 date of this code. Paragraph (a) does not apply to a trustee who
351 accepts a trusteeship before the effective date of this code.

352 Section 14. Subsection (2) of section 607.0802, Florida
353 Statutes, is amended to read:

354 607.0802 Qualifications of directors.—

355 (2) In the event that the eligibility to serve as a member
356 of the board of directors of a condominium association,
357 cooperative association, homeowners' association, or mobile home
358 owners' association is restricted to membership in such
359 association and membership is appurtenant to ownership of a
360 unit, parcel, or mobile home, a grantor of a trust described in
361 s. 733.707(3), or a qualified beneficiary as defined in s.
362 736.0103(~~14~~) of a trust which owns a unit, parcel, or mobile
363 home shall be deemed a member of the association and eligible to
364 serve as a director of the condominium association, cooperative
365 association, homeowners' association, or mobile home owners'
366 association, provided that said beneficiary occupies the unit,
367 parcel, or mobile home.

368 Section 15. Subsections (2) and (11) of section 731.201,
369 Florida Statutes, are amended to read:

370 731.201 General definitions.—Subject to additional
371 definitions in subsequent chapters that are applicable to
372 specific chapters or parts, and unless the context otherwise
373 requires, in this code, in s. 409.9101, and in chapters 736,
374 738, 739, and 744, the term:

375 (2) "Beneficiary" means heir at law in an intestate estate
376 and devisee in a testate estate. The term "beneficiary" does not
377 apply to an heir at law or a devisee after that person's

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378 interest in the estate has been satisfied. In the case of a
379 devise to an existing trust or trustee, or to a trust or trustee
380 described by will, the trustee is a beneficiary of the estate.
381 Except as otherwise provided in this subsection, the beneficiary
382 of the trust is not a beneficiary of the estate of which that
383 trust or the trustee of that trust is a beneficiary. However, if
384 each trustee is also a personal representative of the estate,
385 each qualified beneficiary of the trust as defined in s.

386 736.0103(~~14~~) shall be regarded as a beneficiary of the estate.

387 (11) "Devisee" means a person designated in a will or trust
388 to receive a devise. Except as otherwise provided in this
389 subsection, in the case of a devise to an existing trust or
390 trustee, or to a trust or trustee of a trust described by will,
391 the trust or trustee, rather than the beneficiaries of the
392 trust, is the devisee. However, if each trustee is also a
393 personal representative of the estate, each qualified
394 beneficiary of the trust as defined in s. 736.0103(~~14~~) shall be
395 regarded as a devisee.

396 Section 16. Subsection (1) of section 733.212, Florida
397 Statutes, is amended to read:

398 733.212 Notice of administration; filing of objections.—

399 (1) The personal representative shall promptly serve a copy
400 of the notice of administration on the following persons who are
401 known to the personal representative:

402 (a) The decedent's surviving spouse;

403 (b) Beneficiaries;

404 (c) The trustee of any trust described in s. 733.707(3) and
405 each qualified beneficiary of the trust as defined in s.

406 736.0103(~~14~~), if each trustee is also a personal representative

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407 of the estate; and

408 (d) Persons who may be entitled to exempt property

409

410 in the manner provided for service of formal notice, unless
411 served under s. 733.2123. The personal representative may
412 similarly serve a copy of the notice on any devisees under a
413 known prior will or heirs or others who claim or may claim an
414 interest in the estate.

415 Section 17. Paragraph (f) of subsection (5) of section
416 736.0802, Florida Statutes, is amended to read:

417 736.0802 Duty of loyalty.—

418 (5)

419 (f)1. The trustee of a trust as defined in s. 731.201 may
420 request authority to invest in investment instruments described
421 in this subsection other than a qualified investment instrument,
422 by providing to all qualified beneficiaries a written request
423 containing the following:

424 a. The name, telephone number, street address, and mailing
425 address of the trustee and of any individuals who may be
426 contacted for further information.

427 b. A statement that the investment or investments cannot be
428 made without the consent of a majority of each class of the
429 qualified beneficiaries.

430 c. A statement that, if a majority of each class of
431 qualified beneficiaries consent, the trustee will have the right
432 to make investments in investment instruments, as defined in s.
433 660.25(6), which are owned or controlled by the trustee or its
434 affiliate, or from which the trustee or its affiliate receives
435 compensation for providing services in a capacity other than as

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436 trustee, that such investment instruments may include investment
437 instruments sold primarily to trust accounts, and that the
438 trustee or its affiliate may receive fees in addition to the
439 trustee's compensation for administering the trust.

440 d. A statement that the consent may be withdrawn
441 prospectively at any time by written notice given by a majority
442 of any class of the qualified beneficiaries.

443

444 A statement by the trustee is not delivered if the statement is
445 accompanied by another written communication other than a
446 written communication by the trustee that refers only to the
447 statement.

448 2. For purposes of paragraph (e) and this paragraph:

449 a. "Majority of the qualified beneficiaries" means:

450 (I) If at the time the determination is made there are one
451 or more beneficiaries as described in s. 736.0103(16)(c)
452 ~~736.0103(14)(e)~~, at least a majority in interest of the
453 beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~,
454 at least a majority in interest of the beneficiaries described
455 in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, and at least a majority
456 in interest of the beneficiaries described in s. 736.0103(16)(c)
457 ~~736.0103(14)(e)~~, if the interests of the beneficiaries are
458 reasonably ascertainable; otherwise, a majority in number of
459 each such class; or

460 (II) If there is no beneficiary as described in s.
461 736.0103(16)(c) ~~736.0103(14)(e)~~, at least a majority in interest
462 of the beneficiaries described in s. 736.0103(16)(a)
463 ~~736.0103(14)(a)~~ and at least a majority in interest of the
464 beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~,

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

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465 if the interests of the beneficiaries are reasonably
466 ascertainable; otherwise, a majority in number of each such
467 class.

468 b. "Qualified investment instrument" means a mutual fund,
469 common trust fund, or money market fund described in and
470 governed by s. 736.0816(3).

471 c. An irrevocable trust is created upon execution of the
472 trust instrument. If a trust that was revocable when created
473 thereafter becomes irrevocable, the irrevocable trust is created
474 when the right of revocation terminates.

475 Section 18. Paragraph (a) of subsection (2) of section
476 736.08125, Florida Statutes, is amended to read:

477 736.08125 Protection of successor trustees.-

478 (2) For the purposes of this section, the term:

479 (a) "Eligible beneficiaries" means:

480 1. At the time the determination is made, if there are one
481 or more beneficiaries as described in s. 736.0103(16)(c)

482 ~~736.0103(14)(e)~~, the beneficiaries described in s.

483 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

484 2. If there is no beneficiary as described in s.

485 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in
486 s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

487 Section 19. Paragraph (d) of subsection (9) of section
488 738.104, Florida Statutes, is amended to read:

489 738.104 Trustee's power to adjust.-

490 (9)

491 (d) For purposes of subsection (8) and this subsection, the
492 term:

493 1. "Eligible beneficiaries" means:

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494 a. If at the time the determination is made there are one
495 or more beneficiaries described in s. 736.0103(16)(c)
496 ~~736.0103(14)(e)~~, the beneficiaries described in s.
497 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

498 b. If there is no beneficiary described in s.
499 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in
500 s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

501 2. "Super majority of the eligible beneficiaries" means:

502 a. If at the time the determination is made there are one
503 or more beneficiaries described in s. 736.0103(16)(c)
504 ~~736.0103(14)(e)~~, at least two-thirds in interest of the
505 beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ or
506 two-thirds in interest of the beneficiaries described in s.
507 736.0103(16)(c) ~~736.0103(14)(e)~~, if the interests of the
508 beneficiaries are reasonably ascertainable; otherwise, it means
509 two-thirds in number of either such class; or

510 b. If there is no beneficiary described in s.
511 736.0103(16)(c) ~~736.0103(14)(e)~~, at least two-thirds in interest
512 of the beneficiaries described in s. 736.0103(16)(a)
513 ~~736.0103(14)(a)~~ or two-thirds in interest of the beneficiaries
514 described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, if the
515 interests of the beneficiaries are reasonably ascertainable,
516 otherwise, two-thirds in number of either such class.

517 Section 20. This act shall take effect October 1, 2013.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/13

Meeting Date

Topic Support the Estates Bill

Bill Number SB492
(if applicable)

Name Martha Edenfield

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address PO Box 10095
Street

Phone 850-222-3533

Tallahassee FL 32302
City State Zip

E-mail martha@penningtonlaw.com

Speaking: For Against Information

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 530

INTRODUCER: Judiciary Committee and Senator Thrasher

SUBJECT: Dispute Resolution

DATE: February 20, 2013 REVISED: _____

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

Please see Section VIII. for Additional Information:

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

I. Summary:

CS/SB 530 creates the Revised Florida Arbitration Code based on a 2000 model act. The original act, the Florida Arbitration Code (FAC) was passed in 1957 and subsequently revised in 1967. Since 1967, the FAC has gone mostly unchanged. The bill includes concepts that were not included in the original act, such as the ability of arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, required conflict disclosures by arbitrators, immunity of arbitrators, and other substantive changes to the law. The bill lays out a detailed framework for arbitration conducted under Florida law and repeals sections of the existing FAC, the substantive concepts of which are subsumed by the revised act.

This bill substantially amends the following sections of the Florida Statutes: 682.01, 682.02, 682.03, 682.04, 682.05, 682.06, 682.07, 682.08, 682.09, 682.10, 682.11, 682.12, 682.13, 682.14, 682.15, 682.19, 682.20, 440.1926, 489.1402, and 731.401.

This bill creates the following sections of the Florida Statutes: 682.011, 682.012, 682.013, 682.014, 682.015, 682.031, 682.032, 682.033, 682.041, 682.051, 682.081, 682.181, 682.23, and 682.25.

This bill repeals the following sections of the Florida Statutes: 682.16, 682.17, 682.18, 682.21, and 682.22.

II. Present Situation:

Florida traditionally has favored arbitration. In 1957, the Legislature enacted the Florida Arbitration Code (FAC),¹ which prescribes a framework governing the rights and procedures under arbitration agreements, including the enforceability of arbitration agreements. It was subsequently amended in 1967,² but remains largely unchanged. The FAC is based on the 1955 Uniform Arbitration Act (UAA). Alternative dispute resolution has been recognized as a viable alternative to litigation in a court or jury trial, and it historically has been attractive for the resolution of commercial business disputes.

Florida Arbitration Code

The FAC governs agreements to arbitrate where interstate commerce is not implicated.³ The FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, appointment of arbitrators, arbitration hearing process and procedure, entry and enforcement of arbitration awards, and appeals.

Under the FAC, Florida courts have held that the determination of whether any dispute is subject to arbitration should be resolved in favor of arbitration.⁴ A court's role in deciding whether to compel arbitration is limited to three gateway issues to determine the enforceability of an arbitration agreement: (1) whether a valid written agreement to arbitrate exists; (2) whether an arbitrable issue exists; and (3) whether the right to arbitration has been waived.⁵ The FAC applies in arbitration cases only to the extent that it is not in conflict with federal law.⁶

Arbitration Generally

Arbitration is an alternative dispute resolution process in which parties "subm[it] a dispute to one or more impartial persons for a final and binding decision."⁷ Arbitration is intended to be a speedy and economical alternative to court litigation, which is often slow, time-consuming, and expensive.⁸ Parties to arbitration voluntarily give up substantial safeguards that litigants in court

¹ See ch. 682, F.S., and chapter 57-402, Laws of Fla.

² Chapter 67-254, Laws of Fla.

³ *O'Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).

⁴ Michael Cavendish, *The Concept of Arbitrability Under the Florida Arbitration Code*, 82 FLA. B.J. 18, 20 (Nov. 2008) (citing *Waterhouse Constr. Group, Inc. v. 5891 S.W. 64th Street, LLC*, 949 So. 2d 1095, 1099 (Fla. 3d DCA 2007)).

⁵ *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 636 (Fla. 1999).

⁶ *Powertel, Inc. v. Bexley*, 743 So. 2d 570, 573 (Fla. 1st DCA 1999), review denied, 763 So. 2d 1044 (Fla. 2000), and *Florida Power Corp. v. Casselberry*, 793 So. 2d 1174, 1179 (Fla. 5th DCA 2001).

⁷ See the definition of "arbitration" at the website of the American Arbitration Association, http://www.adr.org/aaa/faces/services/disputeresolutionservices/arbitration.jsessionid=2jX0RZLCyKPV4wMPSrcvCkSmCLsbXCrlZvRsLrhVNnhFChmSSnKj!-1600829671?_afLoop=832669183421451&_afWindowMode=0&_afWindowId=null (last visited Jan. 11, 2013).

⁸ *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009).

proceedings enjoy, which may include the discovery process where parties obtain information from one another.⁹

Federal Arbitration Act

Congress enacted the Federal Arbitration Act (FAA) in 1925 to establish, in part, the enforceability of pre-dispute arbitration agreements involving interstate commerce.¹⁰ The United States Supreme Court has recognized that with the passage of the FAA, Congress expressed intent for courts to enforce arbitration agreements and to place these agreements on an equal footing with other contracts.¹¹ The FAA established a federal policy that favors and encourages the use of arbitration to resolve disputes. Due to this federal policy, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power to use in noncommercial consumer contracts.¹²

III. Effect of Proposed Changes:

This bill largely adopts the provisions of the 2000 revision of the Uniform Arbitration Act, as approved by the National Conference of Commissioners on Uniform State Laws.¹³ The bill significantly amends or repeals each section of the existing Florida Arbitration Code, and amends s. 682.01, F.S., to rename the chapter as the "Revised Florida Arbitration Code." This bill also creates s. 682.011, F.S., to provide definitions.

Notice

The bill creates s. 682.012, F.S., to provide notice requirements. Notice is provided by taking reasonable action to inform the other person, regardless of actual knowledge. Actual knowledge or receipt of notice is sufficient. Additionally, the delivery of a notice to the person's residence or place of business, or another location held out by the person as a place of delivery, is sufficient to provide notice.

Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised act. The revised act applies prospectively for agreements to arbitrate made on or after the effective date. It also applies retroactively if all parties agree to apply the revised act. The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before the effective date of the act, July 1, 2013. Beginning July 1, 2016, an agreement to arbitrate will be subject to the Revised Florida Arbitration Act.

⁹ Amanda Perwin, *Mandatory Binding Arbitration: Civil Injustice By Corporate America*, White Paper for the Center for Justice & Democracy, No. 13 (August 2005), available at <http://centerjd.org/content/white-paper-mandatory-binding-arbitration-civil-injustice-corporate-america> (last visited Jan. 11, 2013).

¹⁰ See 9 U.S.C.A. ss. 1-16.

¹¹ *Allied-Bruce Terminix Cos, Inc. v. Dobson*, 513 U.S. 265, 270-271 (1995).

¹² Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47 AM. BUS. L.J. 361, 366 (Fall 2010).

¹³ See Business Law Section of The Florida Bar, *Analysis of Proposed Revisions to the Florida Arbitration Code* (2012) (on file with the Senate Committee on Judiciary).

Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., to indicate that although the revised act is a default statute, “the parties’ autonomy as expressed in their agreements concerning an arbitration normally should control the arbitration.”¹⁴ However, there are some provisions that the parties cannot waive before a dispute arises or cannot waive at any point.¹⁵ Parties may not waive the right to judicial relief, the right to a provisional remedy, jurisdiction of the courts, the right to appeal, the right to notice, the right to disclosure, or the right to an attorney, before a controversy arises. Parties may not waive other requirements at any time which would fundamentally undermine the arbitration agreement.

Judicial Relief

The bill creates s. 682.015, F.S., providing that a petition for judicial relief must be made to the court in a manner provided by law or by the rules of court. Notice of an initial petition to the court must be provided in a manner consistent with the service of a summons in a civil action. Other motions must be made in the manner provided by law or by the rules of court for serving motions in pending cases.

Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that exist at law or in equity for the revocation of a contract. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration may continue during a court challenge of the arbitration agreement pending final resolution unless the court orders otherwise.

Compelling or Staying Arbitration

The bill amends s. 682.03, F.S., providing that if a party with a valid agreement to arbitrate fails to appear or does not oppose a motion to compel arbitration, the court must order the arbitration. If the refusing party opposes the motion, the court must decide the issue and order arbitration unless it finds that there is no enforceable agreement to arbitrate the matter. If the court finds that there is no enforceable agreement to arbitrate, then it may not order the parties to arbitrate. However, the court may not refuse to order arbitration on the merits of the claim.

The motion to compel arbitration may be made in any court having jurisdiction. However, if the controversy is already pending in court, the motion to compel arbitration must be made in the court where the controversy is pending. If a pending case exists, the court must halt the judicial proceeding until it renders a final decision regarding arbitrability. If the court orders arbitration, the judicial proceeding must be stayed pending arbitration.

¹⁴ *Id.* at 9.

¹⁵ *Id.* at 9.

Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely manner or provide an adequate remedy.

If an arbitrator awards a provisional remedy for injunctive or equitable relief, the arbitrator must state the factual findings and legal basis for the award. A party may seek to confirm or vacate a provisional remedy for injunctive or equitable relief in a court

Initiation of Arbitration

The bill creates s. 682.032, F.S., providing that a person initiates arbitration by providing notice by the manner agreed to by the parties, or by certified mail if the agreement does not provide for a method of notice, or by a method allowed by law or rules of court for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. Unless a party objects for lack of notice by the beginning of the arbitration hearing, notice challenges are waived if the party appears at the hearing.

Consolidation of Separate Arbitration Proceedings

The bill creates s. 682.033, F.S., providing several conditions upon which a court may consolidate separate arbitration proceedings:

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if separate arbitration proceedings occur; and
- Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court may consolidate some claims while allowing other claims to be resolved separately. However, the court may not order consolidation if the agreement to arbitrate prohibits consolidation.

Appointment of Arbitrators by the Court

The bill amends s. 682.04, F.S., to provide conditions for the court to appoint arbitrators. The court, on motion, must appoint one or more arbitrators if the parties have not agreed on a method or the agreed upon method fails, or one or more parties failed to respond to the demand for

arbitration or an arbitrator fails to act and a successor has not been appointed. The court must not appoint an arbitrator with a known, direct, and material interest in the outcome of the arbitration or a relationship to a party if the agreement calls for a neutral arbitrator.

Disclosure by Arbitrator

The bill amends s. 682.041, F.S., providing that before accepting appointment, an arbitrator must disclose potential conflicts or impartiality including financial or relationship conflicts. The arbitrator must continue to disclose any facts that may affect the arbitrator's impartiality that the arbitrator learns after accepting the appointment. Upon disclosure, if a party objects to the appointment or continued service, the objection may be grounds for vacating an award. If the arbitrator did not disclose a fact as required, the court may vacate an award upon timely objection by a party. An arbitrator who does not disclose an interest in the outcome of the arbitration is presumed to act with evident partiality. Substantial compliance with agreed upon procedures is a condition precedent to a motion to vacate an award on these grounds.

Majority Action by Arbitrators

The bill amends s. 682.05, F.S., providing that if there is more than one arbitrator; powers of the arbitrator must be exercised by a majority of the arbitrators.

Immunity of Arbitrator

The bill creates s. 682.051, F.S., granting arbitrators immunity from civil liability to the same extent as judges acting in a judicial capacity. Failure of an arbitrator to disclose conflicts does not waive immunity. Arbitrators cannot be compelled to testify about occurrences during arbitration except to determine the claim of an arbitrator against a party or to a hearing on a motion to vacate an award if the moving party establishes prima facie that a ground for vacating the award exists. An arbitrator sued by a party must be awarded attorney fees and other reasonable expenses of litigation if the court decides that the arbitrator has immunity.

Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary disposition if the parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least five days notice prior to the beginning of the hearing. The arbitrator then may control the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

Representation by Attorney

The bill amends s. 682.07, F.S., providing that a party to an arbitration proceeding may be represented by an attorney.

Witnesses, Subpoenas, and Depositions

The bill amends s. 682.08, F.S., providing that an arbitrator has the authority to issue a subpoena in the same manner as a court in a civil action. Arbitrators may allow discovery and depositions of witnesses and may determine the conditions under which discovery and depositions may be taken. An arbitrator may also issue a protective order to prevent disclosure of privileged or confidential information, trade secrets, or other protected information, to the same extent as a court could in a civil action. Subpoena laws apply to arbitration proceedings, and out of state subpoenas are treated like they would be in a civil action.

Judicial Enforcement of Preaward Ruling by Arbitrator

The bill creates s. 682.081, F.S., to establish that preaward rulings by an arbitrator may be incorporated into the ruling on motion by the prevailing party, and the court must then summarily decide the motion and issue an order.

A party to a provisional remedy for injunctive or equitable relief issued by an arbitrator may motion a court to confirm or vacate the remedy. The court must confirm an award of a provisional remedy if the award satisfies the legal standards for awarding a party injunctive or equitable relief. If the award for injunctive or equitable relief fails to satisfy such legal standards, the court must vacate the provisional remedy.

Award

The bill amends s. 682.09, F.S., to provide that an arbitrator must make a signed record of an award and provide a copy to each party. The award must be made within the time specified by the agreement to arbitrate or within the time ordered by the court. The time may be extended by a court order or by agreement of the parties to the arbitration.

Change of Award by Arbitrator

The bill amends s. 682.10, F.S., to provide conditions to modify or correct an award. The arbitrator may correct an award when a miscalculation or problem of form, but not substance, results in an incorrect initial award. The arbitrator may also modify the award if the arbitrator has not yet made a final and definite award, or to clarify the award. A motion to change or modify an award must be made and notice provided within 20 days of the moving party receiving notice of the award. A motion to object to the award on any other basis must be made within 10 days of receipt of the notice of the award.

Remedies, Fees, and Expenses of Arbitration Proceeding

The bill amends s. 682.11, F.S., providing that arbitrators may award punitive damages and attorney fees to the same extent they would be available in a civil action, but the arbitrator must justify such damages in the award. An arbitrator has broad authority to impose all other remedies, regardless of whether a court would provide similar remedies in a civil action.

Confirming or Vacating an Award

The bill amends s. 682.12, F.S., providing that after an award is granted, a party may make a motion to the court for an order to confirm the award.

The bill amends s. 682.13, F.S., providing conditions upon which a court may vacate an award:

- Evident partiality by an arbitrator appointed as a neutral arbitrator;
- Corruption by an arbitrator;
- Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- An arbitrator refused to postpone the hearing upon showing of sufficient cause of postponement;
- An arbitrator refused to consider material evidence;
- An arbitrator conducted the hearing contrary to the act so as to substantially prejudice the rights of a party to the arbitration proceeding;
- An arbitrator exceeded his or her powers;
- There was no agreement to arbitrate, unless the moving party participated in the hearing without objection; or
- The arbitration was conducted without proper notice so as to substantially prejudice the rights of a party to the arbitration proceeding.

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party knew or should have known of such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

Modification or Correction of Award

The bill amends s. 682.14, F.S., providing the court must modify or correct an award if:

- A miscalculation of figures or mistake in the description of any person, thing, or property referred to in the award is evident;
- The arbitrator awarded something not submitted in the arbitration and making such a correction will not affect the merits of the decision; or
- The award is imperfect as a matter of form, not substance.

If the application is granted, the court must modify and correct the award. If not, the court must confirm the award.

Judgment or Decree on Award

The bill amends s. 682.15, F.S., requiring the court, upon granting an order confirming, vacating, modifying, or correcting an award, to enter an order as if for a civil judgment. The court may allow reasonable costs of the motion and subsequent judicial proceedings. On motion by the prevailing party, the court may add reasonable attorney fees and expenses.

Jurisdiction

The bill creates s. 682.181, F.S., providing a court with jurisdiction over the controversy has the right to enforce an agreement to arbitrate. An agreement to arbitrate in this state confers exclusive jurisdiction on the court to enter judgment on an award.

Venue

The bill amends s. 682.19, F.S., providing that a petition for judicial relief under this act must be filed in the county specified in the agreement to arbitrate, unless a hearing has already been held, in which case the petition must be filed in that court. Otherwise, the petition may be filed in any Florida county in which an adverse party has a residence or a place of business. If no adverse party has a residence or place of business in Florida, the petition may be filed in any Florida county.

Appeals

The bill amends s. 682.20, F.S., providing for appeals from:

- An order denying an application to compel arbitration;
- An order granting a motion to stay arbitration;
- An order confirming an award;
- An order denying confirmation of an award except in certain circumstances;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to this act.

Appeals are taken in the same manner and to the same extent as from orders or judgments in a civil action.

Electronic Signatures in Global and National Commerce Act

The bill creates s. 682.23, F.S., providing that the revised act conforms to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act.¹⁶

Disputes Excluded

The bill creates s. 682.25, F.S., providing that the revised act does not apply to any dispute involving child custody, visitation, or child support.

Rule of Construction for Will or Trust Disputes

The bill provides a rule of construction that a requirement in a will or trust to arbitrate is subject to the Revised Florida Arbitration Code.

¹⁶ 15 U.S.C. s. 7002.

Repeal of Provisions in Florida Arbitration Code

The bill repeals s. 682.16, F.S., providing for the docketing of certain arbitration documents filed with the clerks of court.

The bill repeals s. 682.17, F.S., providing for certain motions to a court under the Florida Arbitration Code.

The bill repeals s. 682.18, F.S., specifying the jurisdiction of courts for certain arbitration matters under the Florida Arbitration Code and providing a definition of “court.”

The bill repeals s. 682.21, F.S., providing that the Florida Arbitration Code applies only to agreements made subsequent to the effective date of the code.

The bill repeals s. 682.22, F.S., which provides a severability clause for the application of the Florida Arbitration Code.

Statutory Cross-references

The bill amends ss. 440.1926, 489.144, and 731.401, F.S., to correct cross-references to the revised act.

Effective Date

The bill takes effect July 1, 2013.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator (OSCA) completed a fiscal impact on the bill. According to OSCA, the fiscal impact on the courts cannot be precisely quantified, but OSCA anticipates judicial workload will not increase as a result of the bill if a corresponding increase in the use of arbitration proceedings results in fewer cases going to trial.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

CS by Judiciary on February 19, 2013:

The committee substitute corrects some drafting errors that were in the original bill. In addition, the committee substitute provides a rule of construction that a requirement to arbitrate will or trust disputes is subject to the Revised Florida Arbitration Code. The amendment also clarifies that after June 30, 2016, all agreements to arbitrate, regardless of the date executed, will be subject to the Revised Florida Arbitration Code.

B. Amendments:

None.

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

¹⁷ Office of the State Courts Administrator, 2013 Judicial Impact Statement SB 530 (Feb. 14, 2013) (on file with the Senate Committee on Judiciary).



398634

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2013	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 197 - 1098

and insert:

(2) Until June 30, 2016, the Revised Florida Arbitration Code governs an agreement to arbitrate made before July 1, 2013, if all the parties to the agreement or to the arbitration proceeding so agree in a record. Otherwise, such agreements shall be governed by the applicable law existing at the time the parties entered into the agreement.

(3) The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before July 1, 2013.



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14 (4) Beginning July 1, 2016, an agreement to arbitrate shall
15 be subject to the Revised Florida Arbitration Code

16 Section 5. Section 682.014, Florida Statutes, is created to
17 read:

18 682.014 Effect of agreement to arbitrate; nonwaivable
19 provisions.-

20 (1) Except as otherwise provided in subsections (2) and
21 (3), a party to an agreement to arbitrate or to an arbitration
22 proceeding may waive, or the parties may vary the effect of, the
23 requirements of this chapter to the extent permitted by law.

24 (2) Before a controversy arises that is subject to an
25 agreement to arbitrate, a party to the agreement may not:

26 (a) Waive or agree to vary the effect of the requirements
27 of:

28 1. Commencing a petition for judicial relief under s.
29 682.015(1);

30 2. Making agreements to arbitrate valid, enforceable, and
31 irrevocable under s. 682.02(1);

32 3. Permitting provisional remedies under s. 682.031;

33 4. Conferring authority on arbitrators to issue subpoenas
34 and permit depositions under s. 682.08(1) or (2);

35 5. Conferring jurisdiction under s. 682.181; or

36 6. Stating the bases for appeal under s. 682.20;

37 (b) Agree to unreasonably restrict the right under s.
38 682.032 to notice of the initiation of an arbitration
39 proceeding;

40 (c) Agree to unreasonably restrict the right under s.
41 682.041 to disclosure of any facts by a neutral arbitrator; or

42 (d) Waive the right under s. 682.07 of a party to an



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43 agreement to arbitrate to be represented by an attorney at any
44 proceeding or hearing under this chapter, but an employer and a
45 labor organization may waive the right to representation by an
46 attorney in a labor arbitration.

47 (3) A party to an agreement to arbitrate or arbitration
48 proceeding may not waive, or the parties may not vary the effect
49 of, the requirements in this section or:

50 (a) The applicability of this chapter, the Revised Florida
51 Arbitration Code, under s. 682.013(1) or (4);

52 (b) The availability of proceedings to compel or stay
53 arbitration under s. 682.03;

54 (c) The immunity conferred on arbitrators and arbitration
55 organizations under s. 682.051;

56 (d) A party's right to seek judicial enforcement of an
57 arbitration preaward ruling under s. 682.081;

58 (e) The authority conferred on an arbitrator to change an
59 award under s. 682.10(4) or (5);

60 (f) The remedies provided under s. 682.12;

61 (g) The grounds for vacating an arbitration award under s.
62 682.13;

63 (h) The grounds for modifying an arbitration award under s.
64 682.14;

65 (i) The validity and enforceability of a judgment or decree
66 based on an award under s. 682.15(1) or (2);

67 (j) The validity of the Electronic Signatures in Global and
68 National Commerce Act under s. 682.23; or

69 (k) The effect of excluding from arbitration under this
70 chapter disputes involving child custody, visitation, or child
71 support under s. 682.25.



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72 Section 6. Section 682.015, Florida Statutes, is created to
73 read:

74 682.015 Petition for judicial relief.-

75 (1) Except as otherwise provided in s. 682.20, a petition
76 for judicial relief under this chapter must be made to the court
77 and heard in the manner provided by law or rule of court for
78 making and hearing motions.

79 (2) Unless a civil action involving the agreement to
80 arbitrate is pending, notice of an initial petition to the court
81 under this chapter must be served in the manner provided by law
82 for the service of a summons in a civil action. Otherwise,
83 notice of the motion must be given in the manner provided by law
84 or rule of court for serving motions in pending cases.

85 Section 7. Section 682.02, Florida Statutes, is amended to
86 read:

87 682.02 Arbitration agreements made valid, irrevocable, and
88 enforceable; scope.-

89 (1) An agreement contained in a record to submit to
90 arbitration any existing or subsequent controversy arising
91 between the parties to the agreement is valid, enforceable, and
92 irrevocable except upon a ground that exists at law or in equity
93 for the revocation of a contract.

94 (2) The court shall decide whether an agreement to
95 arbitrate exists or a controversy is subject to an agreement to
96 arbitrate.

97 (3) An arbitrator shall decide whether a condition
98 precedent to arbitrability has been fulfilled and whether a
99 contract containing a valid agreement to arbitrate is
100 enforceable.



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101 (4) If a party to a judicial proceeding challenges the
102 existence of, or claims that a controversy is not subject to, an
103 agreement to arbitrate, the arbitration proceeding may continue
104 pending final resolution of the issue by the court, unless the
105 court otherwise orders.

106 ~~(5) Two or more parties may agree in writing to submit to~~
107 ~~arbitration any controversy existing between them at the time of~~
108 ~~the agreement, or they may include in a written contract a~~
109 ~~provision for the settlement by arbitration of any controversy~~
110 ~~thereafter arising between them relating to such contract or the~~
111 ~~failure or refusal to perform the whole or any part thereof.~~

112 This section also applies to written interlocal agreements under
113 ss. 163.01 and 373.713 in which two or more parties agree to
114 submit to arbitration any controversy between them concerning
115 water use permit applications and other matters, regardless of
116 whether or not the water management district with jurisdiction
117 over the subject application is a party to the interlocal
118 agreement or a participant in the arbitration. ~~Such agreement or~~
119 ~~provision shall be valid, enforceable, and irrevocable without~~
120 ~~regard to the justiciable character of the controversy; provided~~
121 ~~that this act shall not apply to any such agreement or provision~~
122 ~~to arbitrate in which it is stipulated that this law shall not~~
123 ~~apply or to any arbitration or award thereunder.~~

124 Section 8. Section 682.03, Florida Statutes, is amended to
125 read:

126 682.03 Proceedings to compel and to stay arbitration.—

127 (1) On motion of a person showing an agreement to arbitrate
128 and alleging another person's refusal to arbitrate pursuant to
129 the agreement:



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130 (a) If the refusing party does not appear or does not
131 oppose the motion, the court shall order the parties to
132 arbitrate.

133 (b) If the refusing party opposes the motion, the court
134 shall proceed summarily to decide the issue and order the
135 parties to arbitrate unless it finds that there is no
136 enforceable agreement to arbitrate. A party to an agreement or
137 provision for arbitration subject to this law claiming the
138 neglect or refusal of another party thereto to comply therewith
139 may make application to the court for an order directing the
140 parties to proceed with arbitration in accordance with the terms
141 thereof. If the court is satisfied that no substantial issue
142 exists as to the making of the agreement or provision, it shall
143 grant the application. If the court shall find that a
144 substantial issue is raised as to the making of the agreement or
145 provision, it shall summarily hear and determine the issue and,
146 according to its determination, shall grant or deny the
147 application.

148 (2) On motion of a person alleging that an arbitration
149 proceeding has been initiated or threatened but that there is no
150 agreement to arbitrate, the court shall proceed summarily to
151 decide the issue. If the court finds that there is an
152 enforceable agreement to arbitrate, it shall order the parties
153 to arbitrate. If an issue referable to arbitration under an
154 agreement or provision for arbitration subject to this law
155 becomes involved in an action or proceeding pending in a court
156 having jurisdiction to hear an application under subsection (1),
157 such application shall be made in said court. Otherwise and
158 subject to s. 682.19, such application may be made in any court



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159 ~~of competent jurisdiction.~~

160 (3) If the court finds that there is no enforceable
161 agreement to arbitrate, it may not order the parties to
162 arbitrate pursuant to subsection (1) or subsection (2). ~~Any~~
163 ~~action or proceeding involving an issue subject to arbitration~~
164 ~~under this law shall be stayed if an order for arbitration or an~~
165 ~~application therefor has been made under this section or, if the~~
166 ~~issue is severable, the stay may be with respect thereto only.~~
167 ~~When the application is made in such action or proceeding, the~~
168 ~~order for arbitration shall include such stay.~~

169 (4) The court may not refuse to order arbitration because
170 the claim subject to arbitration lacks merit or grounds for the
171 claim have not been established. ~~On application the court may~~
172 ~~stay an arbitration proceeding commenced or about to be~~
173 ~~commenced, if it shall find that no agreement or provision for~~
174 ~~arbitration subject to this law exists between the party making~~
175 ~~the application and the party causing the arbitration to be had.~~
176 ~~The court shall summarily hear and determine the issue of the~~
177 ~~making of the agreement or provision and, according to its~~
178 ~~determination, shall grant or deny the application.~~

179 (5) If a proceeding involving a claim referable to
180 arbitration under an alleged agreement to arbitrate is pending
181 in court, a motion under this section must be made in that
182 court. Otherwise, a motion under this section may be made in any
183 court as provided in s. 682.19. ~~An order for arbitration shall~~
184 ~~not be refused on the ground that the claim in issue lacks merit~~
185 ~~or bona fides or because any fault or grounds for the claim~~
186 ~~sought to be arbitrated have not been shown.~~

187 (6) If a party makes a motion to the court to order



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188 arbitration, the court on just terms shall stay any judicial
189 proceeding that involves a claim alleged to be subject to the
190 arbitration until the court renders a final decision under this
191 section.

192 (7) If the court orders arbitration, the court on just
193 terms shall stay any judicial proceeding that involves a claim
194 subject to the arbitration. If a claim subject to the
195 arbitration is severable, the court may limit the stay to that
196 claim.

197 Section 9. Section 682.031, Florida Statutes, is created to
198 read:

199 682.031 Provisional remedies.—

200 (1) Before an arbitrator is appointed and is authorized and
201 able to act, the court, upon motion of a party to an arbitration
202 proceeding and for good cause shown, may enter an order for
203 provisional remedies to protect the effectiveness of the
204 arbitration proceeding to the same extent and under the same
205 conditions as if the controversy were the subject of a civil
206 action.

207 (2) After an arbitrator is appointed and is authorized and
208 able to act:

209 (a) The arbitrator may issue such orders for provisional
210 remedies, including interim awards, as the arbitrator finds
211 necessary to protect the effectiveness of the arbitration
212 proceeding and to promote the fair and expeditious resolution of
213 the controversy, to the same extent and under the same
214 conditions as if the controversy were the subject of a civil
215 action.

216 (b) A party to an arbitration proceeding may move the court



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217 for a provisional remedy only if the matter is urgent and the
218 arbitrator is not able to act timely or the arbitrator cannot
219 provide an adequate remedy.

220 (3) A party does not waive a right of arbitration by making
221 a motion under this section.

222 (4) If an arbitrator awards a provisional remedy for
223 injunctive or equitable relief, the arbitrator shall state in
224 the award the factual findings and legal basis for the award.

225 (5) A party may seek to confirm or vacate a provisional
226 remedy award for injunctive or equitable relief under s.
227 682.081.

228 Section 10. Section 682.032, Florida Statutes, is created
229 to read:

230 682.032 Initiation of arbitration.-

231 (1) A person initiates an arbitration proceeding by giving
232 notice in a record to the other parties to the agreement to
233 arbitrate in the agreed manner between the parties or, in the
234 absence of agreement, by certified or registered mail, return
235 receipt requested and obtained, or by service as authorized for
236 the commencement of a civil action. The notice must describe the
237 nature of the controversy and the remedy sought.

238 (2) Unless a person objects for lack or insufficiency of
239 notice under s. 682.06(3) not later than the beginning of the
240 arbitration hearing, the person by appearing at the hearing
241 waives any objection to lack of or insufficiency of notice.

242 Section 11. Section 682.033, Florida Statutes, is created
243 to read:

244 682.033 Consolidation of separate arbitration proceedings.-

245 (1) Except as otherwise provided in subsection (3), upon



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246 motion of a party to an agreement to arbitrate or to an
247 arbitration proceeding, the court may order consolidation of
248 separate arbitration proceedings as to all or some of the claims
249 if:

250 (a) There are separate agreements to arbitrate or separate
251 arbitration proceedings between the same persons or one of them
252 is a party to a separate agreement to arbitrate or a separate
253 arbitration proceeding with a third person;

254 (b) The claims subject to the agreements to arbitrate arise
255 in substantial part from the same transaction or series of
256 related transactions;

257 (c) The existence of a common issue of law or fact creates
258 the possibility of conflicting decisions in the separate
259 arbitration proceedings; and

260 (d) Prejudice resulting from a failure to consolidate is
261 not outweighed by the risk of undue delay or prejudice to the
262 rights of or hardship to parties opposing consolidation.

263 (2) The court may order consolidation of separate
264 arbitration proceedings as to some claims and allow other claims
265 to be resolved in separate arbitration proceedings.

266 (3) The court may not order consolidation of the claims of
267 a party to an agreement to arbitrate if the agreement prohibits
268 consolidation.

269 Section 12. Section 682.04, Florida Statutes, is amended to
270 read:

271 682.04 Appointment of arbitrators by court.—

272 (1) If the parties to an agreement to arbitrate agree on ~~or~~
273 ~~provision for arbitration subject to this law provides a method~~
274 for appointing the ~~appointment~~ of arbitrators ~~or an umpire~~, this



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275 method must ~~shall~~ be followed, unless the method fails.

276 (2) The court, on motion of a party to an arbitration
277 agreement, shall appoint one or more arbitrators, if:

278 (a) The parties have not agreed on a method;

279 (b) The agreed method fails;

280 (c) One or more of the parties failed to respond to the
281 demand for arbitration; or

282 (d) An arbitrator fails to act and a successor has not been
283 appointed.

284 (3) In the absence thereof, or if the agreed method fails
285 or for any reason cannot be followed, or if an arbitrator or
286 umpire who has been appointed fails to act and his or her
287 successor has not been duly appointed, the court, on application
288 of a party to such agreement or provision shall appoint one or
289 more arbitrators or an umpire. An arbitrator or umpire so
290 appointed has all the shall have like powers of an arbitrator
291 designated as if named or provided for in the agreement to
292 arbitrate appointed pursuant to the agreed method or provision.

293 (4) An individual who has a known, direct, and material
294 interest in the outcome of the arbitration proceeding or a
295 known, existing, and substantial relationship with a party may
296 not serve as an arbitrator required by an agreement to be
297 neutral.

298 Section 13. Section 682.041, Florida Statutes, is created
299 to read:

300 682.041 Disclosure by arbitrator.—

301 (1) Before accepting appointment, an individual who is
302 requested to serve as an arbitrator, after making a reasonable
303 inquiry, shall disclose to all parties to the agreement to



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304 arbitrate and arbitration proceeding and to any other
305 arbitrators any known facts that a reasonable person would
306 consider likely to affect the person's impartiality as an
307 arbitrator in the arbitration proceeding, including:

308 (a) A financial or personal interest in the outcome of the
309 arbitration proceeding.

310 (b) An existing or past relationship with any of the
311 parties to the agreement to arbitrate or the arbitration
312 proceeding, their counsel or representative, a witness, or
313 another arbitrator.

314 (2) An arbitrator has a continuing obligation to disclose
315 to all parties to the agreement to arbitrate and arbitration
316 proceeding and to any other arbitrators any facts that the
317 arbitrator learns after accepting appointment that a reasonable
318 person would consider likely to affect the impartiality of the
319 arbitrator.

320 (3) If an arbitrator discloses a fact required by
321 subsection (1) or subsection (2) to be disclosed and a party
322 timely objects to the appointment or continued service of the
323 arbitrator based upon the fact disclosed, the objection may be a
324 ground under s. 682.13(1)(b) for vacating an award made by the
325 arbitrator.

326 (4) If the arbitrator did not disclose a fact as required
327 by subsection (1) or subsection (2), upon timely objection by a
328 party, the court may vacate an award under s. 682.13(1)(b).

329 (5) An arbitrator appointed as a neutral arbitrator who
330 does not disclose a known, direct, and material interest in the
331 outcome of the arbitration proceeding or a known, existing, and
332 substantial relationship with a party is presumed to act with



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333 evident partiality under s. 682.13(1)(b).

334 (6) If the parties to an arbitration proceeding agree to
335 the procedures of an arbitration organization or any other
336 procedures for challenges to arbitrators before an award is
337 made, substantial compliance with those procedures is a
338 condition precedent to a motion to vacate an award on that
339 ground under s. 682.13(1)(b).

340 Section 14. Section 682.05, Florida Statutes, is amended to
341 read:

342 682.05 Majority action by arbitrators.—If there is more
343 than one arbitrator, the powers of an arbitrator must be
344 exercised by a majority of the arbitrators, but all of the
345 arbitrators shall conduct the hearing under s. 682.06(3). The
346 ~~powers of the arbitrators may be exercised by a majority of~~
347 ~~their number unless otherwise provided in the agreement or~~
348 ~~provision for arbitration.~~

349 Section 15. Section 682.051, Florida Statutes, is created
350 to read:

351 682.051 Immunity of arbitrator; competency to testify;
352 attorney fees and costs.—

353 (1) An arbitrator or an arbitration organization acting in
354 that capacity is immune from civil liability to the same extent
355 as a judge of a court of this state acting in a judicial
356 capacity.

357 (2) The immunity afforded under this section supplements
358 any immunity under other law.

359 (3) The failure of an arbitrator to make a disclosure
360 required by s. 682.041 does not cause any loss of immunity under
361 this section.



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362 (4) In a judicial, administrative, or similar proceeding,
363 an arbitrator or representative of an arbitration organization
364 is not competent to testify, and may not be required to produce
365 records as to any statement, conduct, decision, or ruling
366 occurring during the arbitration proceeding, to the same extent
367 as a judge of a court of this state acting in a judicial
368 capacity. This subsection does not apply:

369 (a) To the extent necessary to determine the claim of an
370 arbitrator, arbitration organization, or representative of the
371 arbitration organization against a party to the arbitration
372 proceeding; or

373 (b) To a hearing on a motion to vacate an award under s.
374 682.13(1)(a) or (b) if the movant establishes prima facie that a
375 ground for vacating the award exists.

376 (5) If a person commences a civil action against an
377 arbitrator, arbitration organization, or representative of an
378 arbitration organization arising from the services of the
379 arbitrator, organization, or representative or if a person seeks
380 to compel an arbitrator or a representative of an arbitration
381 organization to testify or produce records in violation of
382 subsection (4), and the court decides that the arbitrator,
383 arbitration organization, or representative of an arbitration
384 organization is immune from civil liability or that the
385 arbitrator or representative of the organization is not
386 competent to testify, the court shall award to the arbitrator,
387 organization, or representative reasonable attorney fees and
388 other reasonable expenses of litigation.

389 Section 16. Section 682.06, Florida Statutes, is amended to
390 read:



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391 682.06 Hearing.—

392 (1) An arbitrator may conduct an arbitration in such manner
393 as the arbitrator considers appropriate for a fair and
394 expeditious disposition of the proceeding. The arbitrator's
395 authority includes the power to hold conferences with the
396 parties to the arbitration proceeding before the hearing and,
397 among other matters, determine the admissibility, relevance,
398 materiality, and weight of any evidence. Unless otherwise
399 provided by the agreement or provision for arbitration:

400 ~~(1)(a) The arbitrators shall appoint a time and place for~~
401 ~~the hearing and cause notification to the parties to be served~~
402 ~~personally or by registered or certified mail not less than 5~~
403 ~~days before the hearing. Appearance at the hearing waives a~~
404 ~~party's right to such notice. The arbitrators may adjourn their~~
405 ~~hearing from time to time upon their own motion and shall do so~~
406 ~~upon the request of any party to the arbitration for good cause~~
407 ~~shown, provided that no adjournment or postponement of their~~
408 ~~hearing shall extend beyond the date fixed in the agreement or~~
409 ~~provision for making the award unless the parties consent to a~~
410 ~~later date. An umpire authorized to hear and decide the cause~~
411 ~~upon failure of the arbitrators to agree upon an award shall, in~~
412 ~~the course of his or her jurisdiction, have like powers and be~~
413 ~~subject to like limitations thereon.~~

414 ~~(b) The arbitrators, or umpire in the course of his or her~~
415 ~~jurisdiction, may hear and decide the controversy upon the~~
416 ~~evidence produced notwithstanding the failure or refusal of a~~
417 ~~party duly notified of the time and place of the hearing to~~
418 ~~appear. The court on application may direct the arbitrators, or~~
419 ~~the umpire in the course of his or her jurisdiction, to proceed~~



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420 ~~promptly with the hearing and making of the award.~~

421 (2) An arbitrator may decide a request for summary
422 disposition of a claim or particular issue:

423 (a) If all interested parties agree; or

424 (b) Upon request of one party to the arbitration

425 proceeding, if that party gives notice to all other parties to

426 the proceeding and the other parties have a reasonable

427 opportunity to respond. ~~The parties are entitled to be heard, to~~

428 ~~present evidence material to the controversy and to cross-~~

429 ~~examine witnesses appearing at the hearing.~~

430 (3) If an arbitrator orders a hearing, the arbitrator shall

431 set a time and place and give notice of the hearing not less

432 than 5 days before the hearing begins. Unless a party to the

433 arbitration proceeding makes an objection to lack or

434 insufficiency of notice not later than the beginning of the

435 hearing, the party's appearance at the hearing waives the

436 objection. Upon request of a party to the arbitration proceeding

437 and for good cause shown, or upon the arbitrator's own

438 initiative, the arbitrator may adjourn the hearing from time to

439 time as necessary, but may not postpone the hearing to a time

440 later than that fixed by the agreement to arbitrate for making

441 the award unless the parties to the arbitration proceeding

442 consent to a later date. The arbitrator may hear and decide the

443 controversy upon the evidence produced although a party who was

444 duly notified of the arbitration proceeding did not appear. The

445 court, on request, may direct the arbitrator to conduct the

446 hearing promptly and render a timely decision. ~~The hearing shall~~

447 ~~be conducted by all of the arbitrators but a majority may~~

448 ~~determine any question and render a final award. An umpire~~



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449 ~~authorized to hear and decide the cause upon the failure of the~~
450 ~~arbitrators to agree upon an award shall sit with the~~
451 ~~arbitrators throughout their hearing but shall not be counted as~~
452 ~~a part of their quorum or in the making of their award. If,~~
453 ~~during the course of the hearing, an arbitrator for any reason~~
454 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~
455 ~~appointed to act as neutrals may continue with the hearing and~~
456 ~~determination of the controversy.~~

457 (4) At a hearing under subsection (3), a party to the
458 arbitration proceeding has a right to be heard, to present
459 evidence material to the controversy, and to cross-examine
460 witnesses appearing at the hearing.

461 (5) If an arbitrator ceases or is unable to act during the
462 arbitration proceeding, a replacement arbitrator must be
463 appointed in accordance with s. 682.04 to continue the
464 proceeding and to resolve the controversy.

465 Section 17. Section 682.07, Florida Statutes, is amended to
466 read:

467 682.07 Representation by attorney.—A party has the right to
468 be represented by an attorney at any arbitration proceeding or
469 hearing under this law. ~~A waiver thereof prior to the proceeding~~
470 ~~or hearing is ineffective.~~

471 Section 18. Section 682.08, Florida Statutes, is amended to
472 read:

473 682.08 Witnesses, subpoenas, depositions.—

474 (1) An arbitrator may issue a subpoena for the attendance
475 of a witness and for the production of records and other
476 evidence at any hearing and may administer oaths. A subpoena
477 must be served in the manner for service of subpoenas in a civil



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478 action and, upon motion to the court by a party to the
479 arbitration proceeding or the arbitrator, enforced in the manner
480 for enforcement of subpoenas in a civil action. Arbitrators, or
481 ~~an umpire authorized to hear and decide the cause upon failure~~
482 ~~of the arbitrators to agree upon an award, in the course of her~~
483 ~~or his jurisdiction, may issue subpoenas for the attendance of~~
484 ~~witnesses and for the production of books, records, documents~~
485 ~~and other evidence, and shall have the power to administer~~
486 ~~oaths. Subpoenas so issued shall be served, and upon application~~
487 ~~to the court by a party to the arbitration or the arbitrators,~~
488 ~~or the umpire, enforced in the manner provided by law for the~~
489 ~~service and enforcement of subpoenas in a civil action.~~

490 (2) In order to make the proceedings fair, expeditious, and
491 cost effective, upon request of a party to, or a witness in, an
492 arbitration proceeding, an arbitrator may permit a deposition of
493 any witness to be taken for use as evidence at the hearing,
494 including a witness who cannot be subpoenaed for or is unable to
495 attend a hearing. The arbitrator shall determine the conditions
496 under which the deposition is taken. On application of a party
497 ~~to the arbitration and for use as evidence, the arbitrators, or~~
498 ~~the umpire in the course of her or his jurisdiction, may permit~~
499 ~~a deposition to be taken, in the manner and upon the terms~~
500 ~~designated by them or her or him of a witness who cannot be~~
501 ~~subpoenaed or is unable to attend the hearing.~~

502 (3) An arbitrator may permit such discovery as the
503 arbitrator decides is appropriate in the circumstances, taking
504 into account the needs of the parties to the arbitration
505 proceeding and other affected persons and the desirability of
506 making the proceeding fair, expeditious, and cost effective. All



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507 ~~provisions of law compelling a person under subpoena to testify~~
508 ~~are applicable.~~

509 (4) If an arbitrator permits discovery under subsection
510 (3), the arbitrator may order a party to the arbitration
511 proceeding to comply with the arbitrator's discovery-related
512 orders, issue subpoenas for the attendance of a witness and for
513 the production of records and other evidence at a discovery
514 proceeding, and take action against a noncomplying party to the
515 extent a court could if the controversy were the subject of a
516 civil action in this state.

517 (5) An arbitrator may issue a protective order to prevent
518 the disclosure of privileged information, confidential
519 information, trade secrets, and other information protected from
520 disclosure to the extent a court could if the controversy were
521 the subject of a civil action in this state.

522 (6) All laws compelling a person under subpoena to testify
523 and all fees for attending a judicial proceeding, a deposition,
524 or a discovery proceeding as a witness apply to an arbitration
525 proceeding as if the controversy were the subject of a civil
526 action in this state.

527 (7) The court may enforce a subpoena or discovery-related
528 order for the attendance of a witness within this state and for
529 the production of records and other evidence issued by an
530 arbitrator in connection with an arbitration proceeding in
531 another state upon conditions determined by the court so as to
532 make the arbitration proceeding fair, expeditious, and cost
533 effective. A subpoena or discovery-related order issued by an
534 arbitrator in another state must be served in the manner
535 provided by law for service of subpoenas in a civil action in



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536 this state and, upon motion to the court by a party to the
537 arbitration proceeding or the arbitrator, enforced in the manner
538 provided by law for enforcement of subpoenas in a civil action
539 in this state.

540 (8) ~~(4)~~ Fees for attendance as a witness shall be the same
541 as for a witness in the circuit court.

542 Section 19. Section 682.081, Florida Statutes, is created
543 to read:

544 682.081 Judicial enforcement of preaward ruling by
545 arbitrator.—

546 (1) Except as provided in subsection (2), if an arbitrator
547 makes a preaward ruling in favor of a party to the arbitration
548 proceeding, the party may request that the arbitrator
549 incorporate the ruling into an award under s. 682.12. A
550 prevailing party may make a motion to the court for an expedited
551 order to confirm the award under s. 682.12, in which case the
552 court shall summarily decide the motion. The court shall issue
553 an order to confirm the award unless the court vacates,
554 modifies, or corrects the award under s. 682.13 or s. 682.14.

555 (2) A party to a provisional remedy award for injunctive or
556 equitable relief may make a motion to the court seeking to
557 confirm or vacate the provisional remedy award.

558 (a) The court shall confirm a provisional remedy award for
559 injunctive or equitable relief if the award satisfies the legal
560 standards for awarding a party injunctive or equitable relief.

561 (b) The court shall vacate a provisional remedy award for
562 injunctive or equitable relief which fails to satisfy the legal
563 standards for awarding a party injunctive or equitable relief.

564 Section 20. Section 682.09, Florida Statutes, is amended to



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565 read:

566 682.09 Award.—

567 (1) An arbitrator shall make a record of an award. The
568 record must be signed or otherwise authenticated by any
569 arbitrator who concurs with the award. The arbitrator or the
570 arbitration organization shall give notice of the award,
571 including a copy of the award, to each party to the arbitration
572 proceeding. The award shall be in writing and shall be signed by
573 the arbitrators joining in the award or by the umpire in the
574 course of his or her jurisdiction. They or he or she shall
575 deliver a copy to each party to the arbitration either
576 personally or by registered or certified mail, or as provided in
577 the agreement or provision.

578 (2) An award must be made within the time specified by the
579 agreement to arbitrate or, if not specified therein, within the
580 time ordered by the court. The court may extend, or the parties
581 to the arbitration proceeding may agree in a record to extend,
582 the time. The court or the parties may do so within or after the
583 time specified or ordered. A party waives any objection that an
584 award was not timely made unless the party gives notice of the
585 objection to the arbitrator before receiving notice of the
586 award. An award shall be made within the time fixed therefor by
587 the agreement or provision for arbitration or, if not so fixed,
588 within such time as the court may order on application of a
589 party to the arbitration. The parties may, by written agreement,
590 extend the time either before or after the expiration thereof.
591 Any objection that an award was not made within the time
592 required is waived unless the objecting party notifies the
593 arbitrators or umpire in writing of his or her objection prior



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594 ~~to the delivery of the award to him or her.~~

595 Section 21. Section 682.10, Florida Statutes, is amended to
596 read:

597 682.10 Change of award by arbitrators ~~or umpire.~~

598 (1) On motion to an arbitrator by a party to an arbitration
599 proceeding, the arbitrator may modify or correct an award:

600 (a) Upon a ground stated in s. 682.14(1) (a) or (c);

601 (b) Because the arbitrator has not made a final and
602 definite award upon a claim submitted by the parties to the
603 arbitration proceeding; or

604 (c) To clarify the award.

605 (2) A motion under subsection (1) must be made and notice
606 given to all parties within 20 days after the movant receives
607 notice of the award.

608 (3) A party to the arbitration proceeding must give notice
609 of any objection to the motion within 10 days after receipt of
610 the notice.

611 (4) If a motion to the court is pending under s. 682.12, s.
612 682.13, or s. 682.14, the court may submit the claim to the
613 arbitrator to consider whether to modify or correct the award:

614 (a) Upon a ground stated in s. 682.14(1) (a) or (c);

615 (b) Because the arbitrator has not made a final and
616 definite award upon a claim submitted by the parties to the
617 arbitration proceeding; or

618 (c) To clarify the award.

619 (5) An award modified or corrected pursuant to this section
620 is subject to ss. 682.09(1), 682.12, 682.13, and 682.14. ~~On~~
621 application of a party to the arbitration, or if an application
622 to the court is pending under s. 682.12, s. 682.13 or s. 682.14,



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623 ~~on submission to the arbitrators, or to the umpire in the case~~
624 ~~of an umpire's award, by the court under such conditions as the~~
625 ~~court may order, the arbitrators or umpire may modify or correct~~
626 ~~the award upon the grounds stated in s. 682.14(1)(a) and (c) or~~
627 ~~for the purpose of clarifying the award. The application shall~~
628 ~~be made within 20 days after delivery of the award to the~~
629 ~~applicant. Written notice thereof shall be given forthwith to~~
630 ~~the other party to the arbitration, stating that he or she must~~
631 ~~serve his or her objections thereto, if any, within 10 days from~~
632 ~~the notice. The award so modified or corrected is subject to the~~
633 ~~provisions of ss. 682.12-682.14.~~

634 Section 22. Section 682.11, Florida Statutes, is amended to
635 read:

636 682.11 Remedies; fees and expenses of arbitration
637 proceeding.—

638 (1) An arbitrator may award punitive damages or other
639 exemplary relief if such an award is authorized by law in a
640 civil action involving the same claim and the evidence produced
641 at the hearing justifies the award under the legal standards
642 otherwise applicable to the claim.

643 (2) An arbitrator may award reasonable attorney fees and
644 other reasonable expenses of arbitration if such an award is
645 authorized by law in a civil action involving the same claim or
646 by the agreement of the parties to the arbitration proceeding.

647 (3) As to all remedies other than those authorized by
648 subsections (1) and (2), an arbitrator may order such remedies
649 as the arbitrator considers just and appropriate under the
650 circumstances of the arbitration proceeding. The fact that such
651 a remedy could not or would not be granted by the court is not a



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652 ground for refusing to confirm an award under s. 682.12 or for
653 vacating an award under s. 682.13.

654 (4) An arbitrator's expenses and fees, together with other
655 expenses, must be paid as provided in the award.

656 (5) If an arbitrator awards punitive damages or other
657 exemplary relief under subsection (1), the arbitrator shall
658 specify in the award the basis in fact justifying and the basis
659 in law authorizing the award and state separately the amount of
660 the punitive damages or other exemplary relief. Unless otherwise
661 provided in the agreement or provision for arbitration, the
662 arbitrators' and umpire's expenses and fees, together with other
663 expenses, not including counsel fees, incurred in the conduct of
664 the arbitration, shall be paid as provided in the award.

665 Section 23. Section 682.12, Florida Statutes, is amended to
666 read:

667 682.12 Confirmation of an award.—After a party to an
668 arbitration proceeding receives notice of an award, the party
669 may make a motion to the court for an order confirming the award
670 at which time the court shall issue a confirming order unless
671 the award is modified or corrected pursuant to s. 682.10 or s.
672 682.14 or is vacated pursuant to s. 682.13. Upon application of
673 a party to the arbitration, the court shall confirm an award,
674 unless within the time limits hereinafter imposed grounds are
675 urged for vacating or modifying or correcting the award, in
676 which case the court shall proceed as provided in ss. 682.13 and
677 682.14.

678 Section 24. Section 682.13, Florida Statutes, is amended to
679 read:

680 682.13 Vacating an award.—



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681 (1) Upon motion application of a party to an arbitration
682 proceeding, the court shall vacate an arbitration award if when:

683 (a) The award was procured by corruption, fraud, or other
684 undue means;~~-~~

685 (b) There was:

686 1. Evident partiality by an arbitrator appointed as a
687 neutral arbitrator;

688 2. Corruption by an arbitrator; or

689 3. Misconduct by an arbitrator prejudicing the rights of a
690 party to the arbitration proceeding; or corruption in any of the
691 arbitrators or umpire or misconduct prejudicing the rights of
692 any party.

693 (c) An arbitrator refused to postpone the hearing upon
694 showing of sufficient cause for postponement, refused to hear
695 evidence material to the controversy, or otherwise conducted the
696 hearing contrary to s. 682.06, so as to prejudice substantially
697 the rights of a party to the arbitration proceeding; The
698 arbitrators or the umpire in the course of her or his
699 jurisdiction exceeded their powers.

700 (d) An arbitrator exceeded the arbitrator's powers; The
701 arbitrators or the umpire in the course of her or his
702 jurisdiction refused to postpone the hearing upon sufficient
703 cause being shown therefor or refused to hear evidence material
704 to the controversy or otherwise so conducted the hearing,
705 contrary to the provisions of s. 682.06, as to prejudice
706 substantially the rights of a party.

707 (e) There was no agreement to arbitrate, unless the person
708 participated in the arbitration proceeding without raising the
709 objection under s. 682.06(3) not later than the beginning of the



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710 arbitration hearing; ~~There was no agreement or provision for~~
711 ~~arbitration subject to this law, unless the matter was~~
712 ~~determined in proceedings under s. 682.03 and unless the party~~
713 ~~participated in the arbitration hearing without raising the~~
714 ~~objection.~~

715 (f) The arbitration was conducted without proper notice of
716 the initiation of an arbitration as required in s. 682.032 so as
717 to prejudice substantially the rights of a party to the
718 arbitration proceeding.

719 ~~But the fact that the relief was such that it could not or would~~
720 ~~not be granted by a court of law or equity is not ground for~~
721 ~~vacating or refusing to confirm the award.~~

722 (2) A motion under this section must be filed within 90
723 days after the movant receives notice of the award pursuant to
724 s. 682.09 or within 90 days after the movant receives notice of
725 a modified or corrected award pursuant to s. 682.10, unless the
726 movant alleges that the award was procured by corruption, fraud,
727 or other undue means, in which case the motion must be made
728 within 90 days after the ground is known or by the exercise of
729 reasonable care would have been known by the movant. An
730 ~~application under this section shall be made within 90 days~~
731 ~~after delivery of a copy of the award to the applicant, except~~
732 ~~that, if predicated upon corruption, fraud or other undue means,~~
733 ~~it shall be made within 90 days after such grounds are known or~~
734 ~~should have been known.~~

735 (3) If the court vacates an award on a ground other than
736 that set forth in paragraph (1)(e), it may order a rehearing. If
737 the award is vacated on a ground stated in paragraph (1)(a) or
738 paragraph (1)(b), the rehearing must be before a new arbitrator.



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739 If the award is vacated on a ground stated in paragraph (1)(c),
740 paragraph (1)(d), or paragraph (1)(f), the rehearing may be
741 before the arbitrator who made the award or the arbitrator's
742 successor. The arbitrator must render the decision in the
743 rehearing within the same time as that provided in s. 682.09(2)
744 for an award. In vacating the award on grounds other than those
745 stated in paragraph (1)(e), the court may order a rehearing
746 before new arbitrators chosen as provided in the agreement or
747 provision for arbitration or by the court in accordance with s.
748 682.04, or, if the award is vacated on grounds set forth in
749 paragraphs (1)(e) and (d), the court may order a rehearing
750 before the arbitrators or umpire who made the award or their
751 successors appointed in accordance with s. 682.04. The time
752 within which the agreement or provision for arbitration requires
753 the award to be made is applicable to the rehearing and
754 commences from the date of the order therefor.

755 (4) If a motion ~~the application~~ to vacate is denied and no
756 motion to modify or correct the award is pending, the court
757 shall confirm the award.

758 Section 25. Section 682.14, Florida Statutes, is amended to
759 read:

760 682.14 Modification or correction of award.—

761 (1) Upon motion made within 90 days after the movant
762 receives notice of the award pursuant to s. 682.09 or within 90
763 days after the movant receives notice of a modified or corrected
764 award pursuant to s. 682.10, the court shall modify or correct
765 the award if ~~Upon application made within 90 days after delivery~~
766 ~~of a copy of the award to the applicant, the court shall modify~~
767 ~~or correct the award when:~~



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768 (a) There is an evident miscalculation of figures or an
769 evident mistake in the description of any person, thing, or
770 property referred to in the award.

771 (b) The arbitrators ~~or umpire~~ have awarded upon a matter
772 not submitted in the arbitration ~~to them or him or her~~ and the
773 award may be corrected without affecting the merits of the
774 decision upon the issues submitted.

775 (c) The award is imperfect as a matter of form, not
776 affecting the merits of the controversy.

777 (2) If the motion ~~application~~ is granted, the court shall
778 modify and correct the award ~~so as to effect its intent~~ and
779 ~~shall~~ confirm the award as so modified and corrected. Otherwise,
780 unless a motion to vacate the award under s. 682.13 is pending,
781 the court shall confirm the award as made.

782 (3) A motion ~~An application~~ to modify or correct an award
783 may be joined in the alternative with a motion ~~an application~~ to
784 vacate the award under s. 682.13.

785 Section 26. Section 682.15, Florida Statutes, is amended to
786 read:

787 682.15 Judgment or decree on award.—

788 (1) Upon granting an order confirming, vacating without
789 directing a rehearing, modifying, or correcting an award, the
790 court shall enter a judgment in conformity therewith. The
791 judgment may be recorded, docketed, and enforced as any other
792 judgment in a civil action.

793 (2) A court may allow reasonable costs of the motion and
794 subsequent judicial proceedings.

795 (3) On motion of a prevailing party to a contested judicial
796 proceeding under s. 682.12, s. 682.13, or s. 682.14, the court



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797 may add reasonable attorney fees and other reasonable expenses
798 of litigation incurred in a judicial proceeding after the award
799 is made to a judgment confirming, vacating without directing a
800 rehearing, modifying, or correcting an award. ~~Upon the granting~~
801 ~~of an order confirming, modifying or correcting an award,~~
802 ~~judgment or decree shall be entered in conformity therewith and~~
803 ~~be enforced as any other judgment or decree. Costs of the~~
804 ~~application and of the proceedings subsequent thereto, and~~
805 ~~disbursements may be awarded by the court.~~

806 Section 27. Section 682.16, Florida Statutes, is repealed.

807 Section 28. Section 682.17, Florida Statutes, is repealed.

808 Section 29. Section 682.18, Florida Statutes, is repealed.

809 Section 30. Section 682.181, Florida Statutes, is created
810 to read:

811 682.181 Jurisdiction.—

812 (1) A court of this state having jurisdiction over the
813 controversy and the parties may enforce an agreement to
814 arbitrate.

815 (2) An agreement to arbitrate providing for arbitration in
816 this state confers exclusive jurisdiction on the court to enter
817 judgment on an award under this chapter.

818 Section 31. Section 682.19, Florida Statutes, is amended to
819 read:

820 682.19 Venue.—A petition pursuant to s. 682.015 must be
821 filed in the court of the county in which the agreement to
822 arbitrate specifies the arbitration hearing is to be held or, if
823 the hearing has been held, in the court of the county in which
824 it was held. Otherwise, the petition may be made in the court of
825 any county in which an adverse party resides or has a place of



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826 business or, if no adverse party has a residence or place of
827 business in this state, in the court of any county in this
828 state. All subsequent petitions must be made in the court
829 hearing the initial petition unless the court otherwise directs.

830 ~~Any application under this law may be made to the court of the~~
831 ~~county in which the other party to the agreement or provision~~
832 ~~for arbitration resides or has a place of business, or, if she~~
833 ~~or he has no residence or place of business in this state, then~~
834 ~~to the court of any county. All applications under this law~~
835 ~~subsequent to an initial application shall be made to the court~~
836 ~~hearing the initial application unless it shall order otherwise.~~

837 Section 32. Section 682.20, Florida Statutes, is amended to
838 read:

839 682.20 Appeals.—

840 (1) An appeal may be taken from:

841 (a) An order denying a motion ~~an application~~ to compel
842 arbitration made under s. 682.03.

843 (b) An order granting a motion ~~an application~~ to stay
844 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

845 (c) An order confirming ~~or denying confirmation of~~ an
846 award.

847 (d) An order denying confirmation of an award unless the
848 court has entered an order under s. 682.10(4) or s. 682.13. All
849 other orders denying confirmation of an award are final orders.

850 (e) ~~(d)~~ An order modifying or correcting an award.

851 (f) ~~(e)~~ An order vacating an award without directing a
852 rehearing.

853 (g) ~~(f)~~ A judgment or decree entered pursuant to this
854 chapter ~~the provisions of this law.~~



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855 (2) The appeal shall be taken in the manner and to the same
856 extent as from orders or judgments in a civil action.

857 Section 33. Section 682.21, Florida Statutes, is repealed.

858 Section 34. Section 682.22, Florida Statutes, is repealed.

859 Section 35. Section 682.23, Florida Statutes, is created to
860 read:

861 682.23 Relationship to Electronic Signatures in Global and
862 National Commerce Act.—The provisions of this chapter governing
863 the legal effect, validity, and enforceability of electronic
864 records or electronic signatures and of contracts performed with
865 the use of such records or signatures conform to the
866 requirements of s. 102 of the Electronic Signatures in Global
867 and National Commerce Act, 15 U.S.C. s. 7002.

868 Section 36. Section 682.25, Florida Statutes, is created to
869 read:

870 682.25 Disputes excluded.—This chapter does not apply to
871 any dispute involving child custody, visitation, or child
872 support.

873 Section 37. Subsection (2) of section 731.401, Florida
874 Statutes, is amended to read:

875 731.401 Arbitration of disputes.—

876 (2) Unless otherwise specified in the will or trust, a will
877 or trust provision requiring arbitration shall be presumed to
878 require binding arbitration under chapter 682, the Revised
879 Florida Arbitration Code. If an arbitration enforceable under
880 this section is governed under chapter 682, the arbitration
881 provision in the will or trust shall be treated as an agreement
882 for the purposes of applying chapter 682 s. 44.104.

883 Section 38. Section 440.1926, Florida Statutes, is amended



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884 to read:

885 440.1926 Alternate dispute resolution; claim arbitration.-
886 Notwithstanding any other provision of this chapter, the
887 employer, carrier, and employee may mutually agree to seek
888 consent from a judge of compensation claims to enter into
889 binding claim arbitration in lieu of any other remedy provided
890 for in this chapter to resolve all issues in dispute regarding
891 an injury. Arbitrations agreed to pursuant to this section shall
892 be governed by chapter 682, the Revised Florida Arbitration
893 Code, except that, notwithstanding any provision in chapter 682,
894 the term "court" shall mean a judge of compensation claims. An
895 arbitration award in accordance with this section is ~~shall be~~
896 enforceable in the same manner and with the same powers as any
897 final compensation order.

898 Section 39. Paragraph (a) of subsection (1) of section
899 489.1402, Florida Statutes, is amended to read:

900 489.1402 Homeowners' Construction Recovery Fund;
901 definitions.-

902 (1) The following definitions apply to ss. 489.140-489.144:

903 (a) "Arbitration" means alternative dispute resolution
904 entered into between a claimant and a contractor either pursuant
905 to a construction contract that contains a mandatory arbitration
906 clause or through any binding arbitration under chapter 682, the
907 Revised Florida Arbitration Code.

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

909 And the title is amended as follows:

910 Delete line 146

911 and insert:

912 support; amending s. 731, 401, F.S.; providing for



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913 application of the act to an arbitration provision in
914 a will or trust; amending ss. 440.1926 and 489.1402,

By Senator Thrasher

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1 A bill to be entitled
 2 An act relating to dispute resolution; amending s.
 3 682.01, F.S.; revising the short title of the "Florida
 4 Arbitration Code" to the "Revised Florida Arbitration
 5 Code"; creating s. 682.011, F.S.; providing
 6 definitions; creating s. 682.012, F.S.; specifying how
 7 a person gives notice to another person and how a
 8 person receives notice; creating s. 682.013, F.S.;
 9 specifying the applicability of the revised code;
 10 creating s. 682.014, F.S.; providing that an agreement
 11 may waive or vary the effect of statutory arbitration
 12 provisions; providing exceptions; creating s. 682.015,
 13 F.S.; providing for petitions for judicial relief;
 14 providing for service of notice of an initial petition
 15 for such relief; amending s. 682.02, F.S.; revising
 16 provisions relating to the making of arbitration
 17 agreements; requiring a court to decide whether an
 18 agreement to arbitrate exists or a controversy is
 19 subject to an agreement to arbitrate; providing for
 20 determination of specified issues by an arbitrator;
 21 providing for continuation of an arbitration
 22 proceeding pending resolution of certain issues by a
 23 court; revising provisions relating to applicability
 24 of provisions to certain interlocal agreements;
 25 amending s. 682.03, F.S.; revising provisions relating
 26 to proceedings to compel and to stay arbitration;
 27 creating s. 682.031, F.S.; providing for a court to
 28 order provisional remedies before an arbitrator is
 29 appointed and is authorized and able to act; providing

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

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30 for orders for provisional remedies by an arbitrator;
 31 providing that a party does not waive a right of
 32 arbitration by seeking provisional remedies in court;
 33 creating s. 682.032, F.S.; providing for initiation of
 34 arbitration; providing that a person waives any
 35 objection to lack of or insufficiency of notice by
 36 appearing at the arbitration hearing; providing an
 37 exception; creating s. 682.033, F.S.; providing for
 38 consolidation of separate arbitration proceedings as
 39 to all or some of the claims in certain circumstances;
 40 prohibiting consolidation if the agreement prohibits
 41 consolidation; amending s. 682.04, F.S.; revising
 42 provisions relating to appointment of an arbitrator;
 43 prohibiting an individual who has an interest in the
 44 outcome of an arbitration from serving as a neutral
 45 arbitrator; creating s. 682.041, F.S.; requiring
 46 certain disclosures of interests and relationships by
 47 a person before accepting appointment as an
 48 arbitrator; providing a continuing obligation to make
 49 such disclosures; providing for objections to an
 50 arbitrator based on information disclosed; providing
 51 for vacation of an award if an arbitrator failed to
 52 disclose a fact as required; providing that an
 53 arbitrator appointed as a neutral arbitrator who does
 54 not disclose certain interests or relationships is
 55 presumed to act with partiality for specified
 56 purposes; requiring parties to substantially comply
 57 with agreed-to procedures of an arbitration
 58 organization or any other procedures for challenges to

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59 arbitrators before an award is made in order to seek
 60 vacation of an award on specified grounds; amending s.
 61 682.05, F.S.; requiring that if there is more than one
 62 arbitrator, the powers of an arbitrator must be
 63 exercised by a majority of the arbitrators; requiring
 64 all arbitrators to conduct the arbitration hearing;
 65 creating s. 682.051, F.S.; providing immunity from
 66 civil liability for an arbitrator or an arbitration
 67 organization acting in that capacity; providing that
 68 this immunity is supplemental to any immunity under
 69 other law; providing that failure to make a required
 70 disclosure does not remove immunity; providing that an
 71 arbitrator or representative of an arbitration
 72 organization is not competent to testify and may not
 73 be required to produce records concerning the
 74 arbitration; providing exceptions; providing for
 75 awarding an arbitrator, arbitration organization, or
 76 representative of an arbitration organization with
 77 reasonable attorney fees and expenses of litigation
 78 under certain circumstances; amending s. 682.06, F.S.;
 79 revising provisions relating to the conduct of
 80 arbitration hearings; providing for summary
 81 disposition, notice of hearings, adjournment, and
 82 rights of a party to the arbitration proceeding;
 83 requiring appointment of a replacement arbitrator in
 84 certain circumstances; amending s. 682.07, F.S.;
 85 providing that a party to an arbitration proceeding
 86 may be represented by an attorney; amending s. 682.08,
 87 F.S.; revising provisions relating to the issuance,

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88 service, and enforcement of subpoenas; revising
 89 provisions relating to depositions; authorizing an
 90 arbitrator to permit discovery in certain
 91 circumstances; authorizing an arbitrator to order
 92 compliance with discovery; authorizing protective
 93 orders by an arbitrator; providing for applicability
 94 of laws compelling a person under subpoena to testify
 95 and all fees for attending a judicial proceeding, a
 96 deposition, or a discovery proceeding as a witness;
 97 providing for court enforcement of a subpoena or
 98 discovery-related order; providing for witness fees;
 99 creating s. 682.081, F.S.; providing for judicial
 100 enforcement of a preaward ruling by an arbitrator in
 101 certain circumstances; providing exceptions; amending
 102 s. 682.09, F.S.; revising provisions relating to the
 103 record needed for an award; revising provisions
 104 relating to the time within which an award must be
 105 made; amending s. 682.10, F.S.; revising provisions
 106 relating to requirements for a motion to modify or
 107 correct an award; amending s. 682.11, F.S.; revising
 108 provisions relating to fees and expenses of
 109 arbitration; authorizing punitive damages and other
 110 exemplary relief and remedies; amending s. 682.12,
 111 F.S.; revising provisions relating to confirmation of
 112 an award; amending s. 682.13, F.S.; revising
 113 provisions relating to grounds for vacating an award;
 114 revising provisions relating to a motion for vacating
 115 an award; providing for a rehearing in certain
 116 circumstances; amending s. 682.14, F.S.; revising

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117 provisions relating to the time for moving to modify
 118 or correct an award; deleting references to the term
 119 "umpire"; revising a provision concerning confirmation
 120 of awards; amending s. 682.15, F.S.; revising
 121 provisions relating to a court order confirming,
 122 vacating without directing a rehearing, modifying, or
 123 correcting an award; providing for award of costs and
 124 attorney fees in certain circumstances; repealing s.
 125 682.16, F.S., relating to judgment roll and docketing
 126 of certain orders; repealing s. 682.17, F.S., relating
 127 to application to court; repealing s. 682.18, F.S.,
 128 relating to the definition of the term "court" and
 129 jurisdiction; creating s. 682.181, F.S.; providing for
 130 jurisdiction relating to the revised code; amending s.
 131 682.19, F.S.; revising provisions relating to venue
 132 for actions relating to the code; amending s. 682.20,
 133 F.S.; providing that an appeal may be taken from an
 134 order denying confirmation of an award unless the
 135 court has entered an order under specified provisions;
 136 providing that all other orders denying confirmation
 137 of an award are final orders; repealing s. 682.21,
 138 F.S., relating to the previous code not applying
 139 retroactively; repealing s. 682.22, F.S., relating to
 140 conflict of laws; creating s. 682.23, F.S.; specifying
 141 the relationship of the code to the Electronic
 142 Signatures in Global and National Commerce Act;
 143 providing for applicability; creating s. 682.25, F.S.;
 144 providing that the revised code does not apply to any
 145 dispute involving child custody, visitation, or child

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146 support; amending ss. 440.1926, 489.1402, and 731.401,
 147 F.S.; conforming cross-references; providing an
 148 effective date.

149
 150 Be It Enacted by the Legislature of the State of Florida:

151
 152 Section 1. Section 682.01, Florida Statutes, is amended to
 153 read:

154 682.01 Short title Florida Arbitration Code.—This chapter
 155 Sections ~~682.01~~ ~~682.22~~ may be cited as the "Revised Florida
 156 Arbitration Code."

157 Section 2. Section 682.011, Florida Statutes, is created to
 158 read:

159 682.011 Definitions.—As used in this chapter, the term:

160 (1) "Arbitration organization" means an association,
 161 agency, board, commission, or other entity that is neutral and
 162 initiates, sponsors, or administers an arbitration proceeding or
 163 is involved in the appointment of an arbitrator.

164 (2) "Arbitrator" means an individual appointed to render an
 165 award, alone or with others, in a controversy that is subject to
 166 an agreement to arbitrate.

167 (3) "Court" means a court of competent jurisdiction in this
 168 state.

169 (4) "Knowledge" means actual knowledge.

170 (5) "Person" means an individual, corporation, business
 171 trust, estate, trust, partnership, limited liability company,
 172 association, joint venture, or government; governmental
 173 subdivision, agency, or instrumentality; public corporation; or
 174 any other legal or commercial entity.

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175 (6) "Record" means information that is inscribed on a
 176 tangible medium or that is stored in an electronic or other
 177 medium and is retrievable in perceivable form.

178 Section 3. Section 682.012, Florida Statutes, is created to
 179 read:

180 682.012 Notice.—

181 (1) Except as otherwise provided in this chapter, a person
 182 gives notice to another person by taking action that is
 183 reasonably necessary to inform the other person in ordinary
 184 course, whether or not the other person acquires knowledge of
 185 the notice.

186 (2) A person has notice if the person has knowledge of the
 187 notice or has received notice.

188 (3) A person receives notice when it comes to the person's
 189 attention or the notice is delivered at the person's place of
 190 residence or place of business, or at another location held out
 191 by the person as a place of delivery of such communications.

192 Section 4. Section 682.013, Florida Statutes, is created to
 193 read:

194 682.013 Applicability of revised code.—

195 (1) The Revised Florida Arbitration Code governs an
 196 agreement to arbitrate made on or after July 1, 2013.

197 (2) The Revised Florida Arbitration Code governs an
 198 agreement to arbitrate made before July 1, 2013, if all the
 199 parties to the agreement or to the arbitration proceeding so
 200 agree in a record. Otherwise, such agreements shall be governed
 201 by the applicable law existing at the time the parties entered
 202 into the agreement.

203 (3) The Revised Florida Arbitration Code does not affect an

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204 action or proceeding commenced or right accrued before July 1,
 205 2013.

206 (4) Beginning July 1, 2016, an agreement to arbitrate shall
 207 be subject to the then-applicable law governing agreements to
 208 arbitrate.

209 Section 5. Section 682.014, Florida Statutes, is created to
 210 read:

211 682.014 Effect of agreement to arbitrate; nonwaivable
 212 provisions.—

213 (1) Except as otherwise provided in subsections (2) and
 214 (3), a party to an agreement to arbitrate or to an arbitration
 215 proceeding may waive, or the parties may vary the effect of, the
 216 requirements of this chapter to the extent permitted by law.

217 (2) Before a controversy arises that is subject to an
 218 agreement to arbitrate, a party to the agreement may not:

219 (a) Waive or agree to vary the effect of the requirements
 220 of:

221 1. Commencing a petition for judicial relief under s.
 222 682.015(1);

223 2. Making agreements to arbitrate valid, enforceable, and
 224 irrevocable under s. 682.02(1);

225 3. Permitting provisional remedies under s. 682.031;

226 4. Conferring authority on arbitrators to issue subpoenas
 227 and permit depositions under s. 682.08(1) or (2);

228 5. Conferring jurisdiction under s. 682.181; or

229 6. Stating the bases for appeal under s. 682.20;

230 (b) Agree to unreasonably restrict the right under s.

231 682.032 to notice of the initiation of an arbitration
 232 proceeding;

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233 (c) Agree to unreasonably restrict the right under s.
 234 682.041 to disclosure of any facts by a neutral arbitrator; or
 235 (d) Waive the right under s. 682.07 of a party to an
 236 agreement to arbitrate to be represented by an attorney at any
 237 proceeding or hearing under this chapter, but an employer and a
 238 labor organization may waive the right to representation by an
 239 attorney in a labor arbitration.
 240 (3) A party to an agreement to arbitrate or arbitration
 241 proceeding may not waive, or the parties may not vary the effect
 242 of, the requirements in this section or:
 243 (a) The applicability of this chapter, the Revised Florida
 244 Arbitration Code, under s. 682.013(1) or (4);
 245 (b) The availability of proceedings to compel or stay
 246 arbitration under s. 682.03;
 247 (c) The immunity conferred on arbitrators and arbitration
 248 organizations under s. 682.051;
 249 (d) A party's right to seek judicial enforcement of an
 250 arbitration preaward ruling under s. 682.081;
 251 (e) The authority conferred on an arbitrator to change an
 252 award under s. 682.10(4) or (5);
 253 (f) The remedies provided under s. 682.12;
 254 (g) The grounds for vacating an arbitration award under s.
 255 682.13;
 256 (h) The grounds for modifying an arbitration award under s.
 257 682.14;
 258 (i) The validity and enforceability of a judgment or decree
 259 based on an award under s. 682.15(1) or (2);
 260 (j) The validity of the Electronic Signatures in Global and
 261 National Commerce Act under s. 682.23; or

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262 (k) The excluded disputes involving child custody,
 263 visitation, or child support under s. 682.25.
 264 Section 6. Section 682.015, Florida Statutes, is created to
 265 read:
 266 682.015 Petition for judicial relief.—
 267 (1) Except as otherwise provided in s. 682.20, a petition
 268 for judicial relief under this chapter must be made to the court
 269 and heard in the manner provided by law or rule of court for
 270 making and hearing motions.
 271 (2) Unless a civil action involving the agreement to
 272 arbitrate is pending, notice of an initial petition to the court
 273 under this chapter must be served in the manner provided by law
 274 for the service of a summons in a civil action. Otherwise,
 275 notice of the motion must be given in the manner provided by law
 276 or rule of court for serving motions in pending cases.
 277 Section 7. Section 682.02, Florida Statutes, is amended to
 278 read:
 279 682.02 Arbitration agreements made valid, irrevocable, and
 280 enforceable; scope.—
 281 (1) An agreement contained in a record to submit to
 282 arbitration any existing or subsequent controversy arising
 283 between the parties to the agreement is valid, enforceable, and
 284 irrevocable except upon a ground that exists at law or in equity
 285 for the revocation of a contract.
 286 (2) The court shall decide whether an agreement to
 287 arbitrate exists or a controversy is subject to an agreement to
 288 arbitrate.
 289 (3) An arbitrator shall decide whether a condition
 290 precedent to arbitrability has been fulfilled and whether a

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291 contract containing a valid agreement to arbitrate is
 292 enforceable.

293 (4) If a party to a judicial proceeding challenges the
 294 existence of, or claims that a controversy is not subject to, an
 295 agreement to arbitrate, the arbitration proceeding may continue
 296 pending final resolution of the issue by the court, unless the
 297 court otherwise orders.

298 ~~(5) Two or more parties may agree in writing to submit to~~
 299 ~~arbitration any controversy existing between them at the time of~~
 300 ~~the agreement, or they may include in a written contract a~~
 301 ~~provision for the settlement by arbitration of any controversy~~
 302 ~~thereafter arising between them relating to such contract or the~~
 303 ~~failure or refusal to perform the whole or any part thereof.~~

304 This section also applies to written interlocal agreements under
 305 ss. 163.01 and 373.713 in which two or more parties agree to
 306 submit to arbitration any controversy between them concerning
 307 water use permit motions ~~applications~~ and other matters,
 308 regardless of whether or not the water management district with
 309 jurisdiction over the subject motion ~~application~~ is a party to
 310 the interlocal agreement or a participant in the arbitration.
 311 ~~Such agreement or provision shall be valid, enforceable, and~~
 312 ~~irrevocable without regard to the justiciable character of the~~
 313 ~~controversy; provided that this act shall not apply to any such~~
 314 ~~agreement or provision to arbitrate in which it is stipulated~~
 315 ~~that this law shall not apply or to any arbitration or award~~
 316 ~~thereunder.~~

317 Section 8. Section 682.03, Florida Statutes, is amended to
 318 read:

319 682.03 Proceedings to compel and to stay arbitration.-

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320 (1) On motion of a person showing an agreement to arbitrate
 321 and alleging another person's refusal to arbitrate pursuant to
 322 the agreement:

323 (a) If the refusing party does not appear or does not
 324 oppose the motion, the court shall order the parties to
 325 arbitrate.

326 (b) If the refusing party opposes the motion, the court
 327 shall proceed summarily to decide the issue and order the
 328 parties to arbitrate unless it finds that there is no
 329 enforceable agreement to arbitrate. A party to an agreement or
 330 provision for arbitration subject to this law claiming the
 331 neglect or refusal of another party thereto to comply therewith
 332 may make application to the court for an order directing the
 333 parties to proceed with arbitration in accordance with the terms
 334 thereof. If the court is satisfied that no substantial issue
 335 exists as to the making of the agreement or provision, it shall
 336 grant the application. If the court shall find that a
 337 substantial issue is raised as to the making of the agreement or
 338 provision, it shall summarily hear and determine the issue and,
 339 according to its determination, shall grant or deny the
 340 application.

341 (2) On motion of a person alleging that an arbitration
 342 proceeding has been initiated or threatened but that there is no
 343 agreement to arbitrate, the court shall proceed summarily to
 344 decide the issue. If the court finds that there is an
 345 enforceable agreement to arbitrate, it shall order the parties
 346 to arbitrate. If an issue referable to arbitration under an
 347 agreement or provision for arbitration subject to this law
 348 becomes involved in an action or proceeding pending in a court

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349 having jurisdiction to hear an application under subsection (1),
 350 such application shall be made in said court. Otherwise and
 351 subject to s. 682.19, such application may be made in any court
 352 of competent jurisdiction.

353 (3) If the court finds that there is no enforceable
 354 agreement to arbitrate, it may not order the parties to
 355 arbitrate pursuant to subsection (1) or subsection (2). Any
 356 action or proceeding involving an issue subject to arbitration
 357 under this law shall be stayed if an order for arbitration or an
 358 application therefor has been made under this section or, if the
 359 issue is severable, the stay may be with respect thereto only.
 360 When the application is made in such action or proceeding, the
 361 order for arbitration shall include such stay.

362 (4) The court may not refuse to order arbitration because
 363 the claim subject to arbitration lacks merit or grounds for the
 364 claim have not been established. On application the court may
 365 stay an arbitration proceeding commenced or about to be
 366 commenced, if it shall find that no agreement or provision for
 367 arbitration subject to this law exists between the party making
 368 the application and the party causing the arbitration to be had.
 369 The court shall summarily hear and determine the issue of the
 370 making of the agreement or provision and, according to its
 371 determination, shall grant or deny the application.

372 (5) If a proceeding involving a claim referable to
 373 arbitration under an alleged agreement to arbitrate is pending
 374 in court, a motion under this section must be made in that
 375 court. Otherwise, a motion under this section may be made in any
 376 court as provided in s. 682.19. An order for arbitration shall
 377 not be refused on the ground that the claim in issue lacks merit

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378 ~~or bona fides or because any fault or grounds for the claim~~
 379 ~~sought to be arbitrated have not been shown.~~

380 (6) If a party makes a motion to the court to order
 381 arbitration, the court on just terms shall stay any judicial
 382 proceeding that involves a claim alleged to be subject to the
 383 arbitration until the court renders a final decision under this
 384 section.

385 (7) If the court orders arbitration, the court on just
 386 terms shall stay any judicial proceeding that involves a claim
 387 subject to the arbitration. If a claim subject to the
 388 arbitration is severable, the court may limit the stay to that
 389 claim.

390 Section 9. Section 682.031, Florida Statutes, is created to
 391 read:

392 682.031 Provisional remedies.—

393 (1) Before an arbitrator is appointed and is authorized and
 394 able to act, the court, upon motion of a party to an arbitration
 395 proceeding and for good cause shown, may enter an order for
 396 provisional remedies to protect the effectiveness of the
 397 arbitration proceeding to the same extent and under the same
 398 conditions as if the controversy were the subject of a civil
 399 action.

400 (2) After an arbitrator is appointed and is authorized and
 401 able to act:

402 (a) The arbitrator may issue such orders for provisional
 403 remedies, including interim awards, as the arbitrator finds
 404 necessary to protect the effectiveness of the arbitration
 405 proceeding and to promote the fair and expeditious resolution of
 406 the controversy, to the same extent and under the same

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407 conditions as if the controversy were the subject of a civil
408 action.

409 (b) A party to an arbitration proceeding may move the court
410 for a provisional remedy only if the matter is urgent and the
411 arbitrator is not able to act timely or the arbitrator cannot
412 provide an adequate remedy.

413 (3) A party does not waive a right of arbitration by making
414 a motion under this section.

415 (4) If an arbitrator awards a provisional remedy for
416 injunctive or equitable relief, the arbitrator shall state in
417 the award the factual findings and legal basis for the award.

418 (5) A party may seek to confirm or vacate a provisional
419 remedy award for injunctive or equitable relief under s.
420 682.081.

421 Section 10. Section 682.032, Florida Statutes, is created
422 to read:

423 682.032 Initiation of arbitration.-

424 (1) A person initiates an arbitration proceeding by giving
425 notice in a record to the other parties to the agreement to
426 arbitrate in the agreed manner between the parties or, in the
427 absence of agreement, by certified or registered mail, return
428 receipt requested and obtained, or by service as authorized for
429 the commencement of a civil action. The notice must describe the
430 nature of the controversy and the remedy sought.

431 (2) Unless a person objects for lack or insufficiency of
432 notice under s. 682.06(3) not later than the beginning of the
433 arbitration hearing, the person by appearing at the hearing
434 waives any objection to lack of or insufficiency of notice.

435 Section 11. Section 682.033, Florida Statutes, is created

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436 to read:

437 682.033 Consolidation of separate arbitration proceedings.-

438 (1) Except as otherwise provided in subsection (3), upon
439 motion of a party to an agreement to arbitrate or to an
440 arbitration proceeding, the court may order consolidation of
441 separate arbitration proceedings as to all or some of the claims
442 if:

443 (a) There are separate agreements to arbitrate or separate
444 arbitration proceedings between the same persons or one of them
445 is a party to a separate agreement to arbitrate or a separate
446 arbitration proceeding with a third person;

447 (b) The claims subject to the agreements to arbitrate arise
448 in substantial part from the same transaction or series of
449 related transactions;

450 (c) The existence of a common issue of law or fact creates
451 the possibility of conflicting decisions in the separate
452 arbitration proceedings; and

453 (d) Prejudice resulting from a failure to consolidate is
454 not outweighed by the risk of undue delay or prejudice to the
455 rights of or hardship to parties opposing consolidation.

456 (2) The court may order consolidation of separate
457 arbitration proceedings as to some claims and allow other claims
458 to be resolved in separate arbitration proceedings.

459 (3) The court may not order consolidation of the claims of
460 a party to an agreement to arbitrate if the agreement prohibits
461 consolidation.

462 Section 12. Section 682.04, Florida Statutes, is amended to
463 read:

464 682.04 Appointment of arbitrators by court.-

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465 (1) If the parties to an agreement to arbitrate agree on ~~or~~
 466 provision for arbitration subject to this law provides a method
 467 for appointing the appointment of arbitrators or an umpire, this
 468 method must ~~shall~~ be followed, unless the method fails.

469 (2) The court, on application of a party to an arbitration
 470 agreement, shall appoint one or more arbitrators, if:

471 (a) The parties have not agreed on a method;

472 (b) The agreed method fails;

473 (c) One or more of the parties failed to respond to the
 474 demand for arbitration; or

475 (d) An arbitrator fails to act and a successor has not been
 476 appointed.

477 (3) In the absence thereof, or if the agreed method fails
 478 or for any reason cannot be followed, or if an arbitrator or
 479 umpire who has been appointed fails to act and his or her
 480 successor has not been duly appointed, the court, on application
 481 of a party to such agreement or provision shall appoint one or
 482 more arbitrators or an umpire. An arbitrator or umpire so
 483 appointed ~~has all the~~ shall have like powers of an arbitrator
 484 designated as if named or provided for in the agreement to
 485 arbitrate appointed pursuant to the agreed method ~~or provision.~~

486 (4) An individual who has a known, direct, and material
 487 interest in the outcome of the arbitration proceeding or a
 488 known, existing, and substantial relationship with a party may
 489 not serve as an arbitrator required by an agreement to be
 490 neutral.

491 Section 13. Section 682.041, Florida Statutes, is created
 492 to read:

493 682.041 Disclosure by arbitrator.—

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494 (1) Before accepting appointment, an individual who is
 495 requested to serve as an arbitrator, after making a reasonable
 496 inquiry, shall disclose to all parties to the agreement to
 497 arbitrate and arbitration proceeding and to any other
 498 arbitrators any known facts that a reasonable person would
 499 consider likely to affect the person's impartiality as an
 500 arbitrator in the arbitration proceeding, including:

501 (a) A financial or personal interest in the outcome of the
 502 arbitration proceeding.

503 (b) An existing or past relationship with any of the
 504 parties to the agreement to arbitrate or the arbitration
 505 proceeding, their counsel or representative, a witness, or
 506 another arbitrator.

507 (2) An arbitrator has a continuing obligation to disclose
 508 to all parties to the agreement to arbitrate and arbitration
 509 proceeding and to any other arbitrators any facts that the
 510 arbitrator learns after accepting appointment that a reasonable
 511 person would consider likely to affect the impartiality of the
 512 arbitrator.

513 (3) If an arbitrator discloses a fact required by
 514 subsection (1) or subsection (2) to be disclosed and a party
 515 timely objects to the appointment or continued service of the
 516 arbitrator based upon the fact disclosed, the objection may be a
 517 ground under s. 682.13(1) (b) for vacating an award made by the
 518 arbitrator.

519 (4) If the arbitrator did not disclose a fact as required
 520 by subsection (1) or subsection (2), upon timely objection by a
 521 party, the court may vacate an award under s. 682.13(1) (b).

522 (5) An arbitrator appointed as a neutral arbitrator who

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 523 does not disclose a known, direct, and material interest in the
 524 outcome of the arbitration proceeding or a known, existing, and
 525 substantial relationship with a party is presumed to act with
 526 evident partiality under s. 682.13(1)(b).

527 (6) If the parties to an arbitration proceeding agree to
 528 the procedures of an arbitration organization or any other
 529 procedures for challenges to arbitrators before an award is
 530 made, substantial compliance with those procedures is a
 531 condition precedent to a motion to vacate an award on that
 532 ground under s. 682.13(1)(b).

533 Section 14. Section 682.05, Florida Statutes, is amended to
 534 read:

535 682.05 Majority action by arbitrators.—If there is more
 536 than one arbitrator, the powers of an arbitrator must be
 537 exercised by a majority of the arbitrators, but all of the
 538 arbitrators shall conduct the hearing under s. 682.06(3). The
 539 powers of the arbitrators may be exercised by a majority of
 540 their number unless otherwise provided in the agreement or
 541 provision for arbitration.

542 Section 15. Section 682.051, Florida Statutes, is created
 543 to read:

544 682.051 Immunity of arbitrator; competency to testify;
 545 attorney fees and costs.—

546 (1) An arbitrator or an arbitration organization acting in
 547 that capacity is immune from civil liability to the same extent
 548 as a judge of a court of this state acting in a judicial
 549 capacity.

550 (2) The immunity afforded under this section supplements
 551 any immunity under other law.

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 552 (3) The failure of an arbitrator to make a disclosure
 553 required by s. 682.041 does not cause any loss of immunity under
 554 this section.

555 (4) In a judicial, administrative, or similar proceeding,
 556 an arbitrator or representative of an arbitration organization
 557 is not competent to testify, and may not be required to produce
 558 records as to any statement, conduct, decision, or ruling
 559 occurring during the arbitration proceeding, to the same extent
 560 as a judge of a court of this state acting in a judicial
 561 capacity. This subsection does not apply:

562 (a) To the extent necessary to determine the claim of an
 563 arbitrator, arbitration organization, or representative of the
 564 arbitration organization against a party to the arbitration
 565 proceeding; or

566 (b) To a hearing on a motion to vacate an award under s.
 567 682.13(1)(a) or (b) if the movant establishes prima facie that a
 568 ground for vacating the award exists.

569 (5) If a person commences a civil action against an
 570 arbitrator, arbitration organization, or representative of an
 571 arbitration organization arising from the services of the
 572 arbitrator, organization, or representative or if a person seeks
 573 to compel an arbitrator or a representative of an arbitration
 574 organization to testify or produce records in violation of
 575 subsection (4), and the court decides that the arbitrator,
 576 arbitration organization, or representative of an arbitration
 577 organization is immune from civil liability or that the
 578 arbitrator or representative of the organization is not
 579 competent to testify, the court shall award to the arbitrator,
 580 organization, or representative reasonable attorney fees and

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581 other reasonable expenses of litigation.

582 Section 16. Section 682.06, Florida Statutes, is amended to
583 read:

584 682.06 Hearing.—

585 (1) An arbitrator may conduct an arbitration in such manner
586 as the arbitrator considers appropriate for a fair and
587 expeditious disposition of the proceeding. The arbitrator's
588 authority includes the power to hold conferences with the
589 parties to the arbitration proceeding before the hearing and,
590 among other matters, determine the admissibility, relevance,
591 materiality, and weight of any evidence. Unless otherwise
592 provided by the agreement or provision for arbitration:

593 ~~(1)(a) The arbitrators shall appoint a time and place for~~
594 ~~the hearing and cause notification to the parties to be served~~
595 ~~personally or by registered or certified mail not less than 5~~
596 ~~days before the hearing. Appearance at the hearing waives a~~
597 ~~party's right to such notice. The arbitrators may adjourn their~~
598 ~~hearing from time to time upon their own motion and shall do so~~
599 ~~upon the request of any party to the arbitration for good cause~~
600 ~~shown, provided that no adjournment or postponement of their~~
601 ~~hearing shall extend beyond the date fixed in the agreement or~~
602 ~~provision for making the award unless the parties consent to a~~
603 ~~later date. An umpire authorized to hear and decide the cause~~
604 ~~upon failure of the arbitrators to agree upon an award shall, in~~
605 ~~the course of his or her jurisdiction, have like powers and be~~
606 ~~subject to like limitations thereon.~~

607 ~~(b) The arbitrators, or umpire in the course of his or her~~
608 ~~jurisdiction, may hear and decide the controversy upon the~~
609 ~~evidence produced notwithstanding the failure or refusal of a~~

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610 ~~party duly notified of the time and place of the hearing to~~
611 ~~appear. The court on application may direct the arbitrators, or~~
612 ~~the umpire in the course of his or her jurisdiction, to proceed~~
613 ~~promptly with the hearing and making of the award.~~

614 (2) An arbitrator may decide a request for summary
615 disposition of a claim or particular issue:

616 (a) If all interested parties agree; or

617 (b) Upon request of one party to the arbitration
618 proceeding, if that party gives notice to all other parties to
619 the proceeding and the other parties have a reasonable
620 opportunity to respond. The parties are entitled to be heard, to
621 present evidence material to the controversy and to cross-
622 examine witnesses appearing at the hearing.

623 (3) If an arbitrator orders a hearing, the arbitrator shall
624 set a time and place and give notice of the hearing not less
625 than 5 days before the hearing begins. Unless a party to the
626 arbitration proceeding makes an objection to lack or
627 insufficiency of notice not later than the beginning of the
628 hearing, the party's appearance at the hearing waives the
629 objection. Upon request of a party to the arbitration proceeding
630 and for good cause shown, or upon the arbitrator's own
631 initiative, the arbitrator may adjourn the hearing from time to
632 time as necessary, but may not postpone the hearing to a time
633 later than that fixed by the agreement to arbitrate for making
634 the award unless the parties to the arbitration proceeding
635 consent to a later date. The arbitrator may hear and decide the
636 controversy upon the evidence produced although a party who was
637 duly notified of the arbitration proceeding did not appear. The
638 court, on request, may direct the arbitrator to conduct the

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639 ~~hearing promptly and render a timely decision. The hearing shall~~
 640 ~~be conducted by all of the arbitrators but a majority may~~
 641 ~~determine any question and render a final award. An umpire~~
 642 ~~authorized to hear and decide the cause upon the failure of the~~
 643 ~~arbitrators to agree upon an award shall sit with the~~
 644 ~~arbitrators throughout their hearing but shall not be counted as~~
 645 ~~a part of their quorum or in the making of their award. If,~~
 646 ~~during the course of the hearing, an arbitrator for any reason~~
 647 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~
 648 ~~appointed to act as neutrals may continue with the hearing and~~
 649 ~~determination of the controversy.~~

650 (4) At a hearing under subsection (3), a party to the
 651 arbitration proceeding has a right to be heard, to present
 652 evidence material to the controversy, and to cross-examine
 653 witnesses appearing at the hearing.

654 (5) If an arbitrator ceases or is unable to act during the
 655 arbitration proceeding, a replacement arbitrator must be
 656 appointed in accordance with s. 682.04 to continue the
 657 proceeding and to resolve the controversy.

658 Section 17. Section 682.07, Florida Statutes, is amended to
 659 read:

660 682.07 Representation by attorney.—A party to an
 661 arbitration proceeding may ~~has the right to~~ be represented by an
 662 attorney at any arbitration proceeding or hearing under this
 663 law. A waiver thereof prior to the proceeding or hearing is
 664 ineffective.

665 Section 18. Section 682.08, Florida Statutes, is amended to
 666 read:

667 682.08 Witnesses, subpoenas, depositions.—

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668 (1) An arbitrator may issue a subpoena for the attendance
 669 of a witness and for the production of records and other
 670 evidence at any hearing and may administer oaths. A subpoena
 671 must be served in the manner for service of subpoenas in a civil
 672 action and, upon motion to the court by a party to the
 673 arbitration proceeding or the arbitrator, enforced in the manner
 674 for enforcement of subpoenas in a civil action. Arbitrators, or
 675 an umpire authorized to hear and decide the cause upon failure
 676 of the arbitrators to agree upon an award, in the course of her
 677 or his jurisdiction, may issue subpoenas for the attendance of
 678 witnesses and for the production of books, records, documents
 679 and other evidence, and shall have the power to administer
 680 oaths. Subpoenas so issued shall be served, and upon application
 681 to the court by a party to the arbitration or the arbitrators,
 682 or the umpire, enforced in the manner provided by law for the
 683 service and enforcement of subpoenas in a civil action.

684 (2) In order to make the proceedings fair, expeditious, and
 685 cost effective, upon request of a party to, or a witness in, an
 686 arbitration proceeding, an arbitrator may permit a deposition of
 687 any witness to be taken for use as evidence at the hearing,
 688 including a witness who cannot be subpoenaed for or is unable to
 689 attend a hearing. The arbitrator shall determine the conditions
 690 under which the deposition is taken. On application of a party
 691 to the arbitration and for use as evidence, the arbitrators, or
 692 the umpire in the course of her or his jurisdiction, may permit
 693 a deposition to be taken, in the manner and upon the terms
 694 designated by them or her or him of a witness who cannot be
 695 subpoenaed or is unable to attend the hearing.

696 (3) An arbitrator may permit such discovery as the

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 697 arbitrator decides is appropriate in the circumstances, taking
 698 into account the needs of the parties to the arbitration
 699 proceeding and other affected persons and the desirability of
 700 making the proceeding fair, expeditious, and cost effective. All
 701 provisions of law compelling a person under subpoena to testify
 702 are applicable.

703 (4) If an arbitrator permits discovery under subsection
 704 (3), the arbitrator may order a party to the arbitration
 705 proceeding to comply with the arbitrator's discovery-related
 706 orders, issue subpoenas for the attendance of a witness and for
 707 the production of records and other evidence at a discovery
 708 proceeding, and take action against a noncomplying party to the
 709 extent a court could if the controversy were the subject of a
 710 civil action in this state.

711 (5) An arbitrator may issue a protective order to prevent
 712 the disclosure of privileged information, confidential
 713 information, trade secrets, and other information protected from
 714 disclosure to the extent a court could if the controversy were
 715 the subject of a civil action in this state.

716 (6) All laws compelling a person under subpoena to testify
 717 and all fees for attending a judicial proceeding, a deposition,
 718 or a discovery proceeding as a witness apply to an arbitration
 719 proceeding as if the controversy were the subject of a civil
 720 action in this state.

721 (7) The court may enforce a subpoena or discovery-related
 722 order for the attendance of a witness within this state and for
 723 the production of records and other evidence issued by an
 724 arbitrator in connection with an arbitration proceeding in
 725 another state upon conditions determined by the court so as to

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 726 make the arbitration proceeding fair, expeditious, and cost
 727 effective. A subpoena or discovery-related order issued by an
 728 arbitrator in another state must be served in the manner
 729 provided by law for service of subpoenas in a civil action in
 730 this state and, upon motion to the court by a party to the
 731 arbitration proceeding or the arbitrator, enforced in the manner
 732 provided by law for enforcement of subpoenas in a civil action
 733 in this state.

734 (8)(4) Fees for attendance as a witness shall be the same
 735 as for a witness in the circuit court.

736 Section 19. Section 682.081, Florida Statutes, is created
 737 to read:

738 682.081 Judicial enforcement of preaward ruling by
 739 arbitrator.—

740 (1) Except as provided in subsection (2), if an arbitrator
 741 makes a preaward ruling in favor of a party to the arbitration
 742 proceeding, the party may request that the arbitrator
 743 incorporate the ruling into an award under s. 682.12. A
 744 prevailing party may make a motion to the court for an expedited
 745 order to confirm the award under s. 682.12, in which case the
 746 court shall summarily decide the motion. The court shall issue
 747 an order to confirm the award unless the court vacates,
 748 modifies, or corrects the award under s. 682.13 or s. 682.14.

749 (2) A party to a provisional remedy award for injunctive or
 750 equitable relief may make a motion to the court seeking to
 751 confirm or vacate the provisional remedy award.

752 (a) The court shall confirm a provisional remedy award for
 753 injunctive or equitable relief if the award satisfies the legal
 754 standards for awarding a party injunctive or equitable relief.

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755 (b) The court shall vacate a provisional remedy award for
 756 injunctive or equitable relief which fails to satisfy the legal
 757 standards for awarding a party injunctive or equitable relief.

758 Section 20. Section 682.09, Florida Statutes, is amended to
 759 read:

760 682.09 Award.—

761 (1) An arbitrator shall make a record of an award. The
 762 record must be signed or otherwise authenticated by any
 763 arbitrator who concurs with the award. The arbitrator or the
 764 arbitration organization shall give notice of the award,
 765 including a copy of the award, to each party to the arbitration
 766 proceeding. The award shall be in writing and shall be signed by
 767 the arbitrators joining in the award or by the umpire in the
 768 course of his or her jurisdiction. They or he or she shall
 769 deliver a copy to each party to the arbitration either
 770 personally or by registered or certified mail, or as provided in
 771 the agreement or provision.

772 (2) An award must be made within the time specified by the
 773 agreement to arbitrate or, if not specified therein, within the
 774 time ordered by the court. The court may extend, or the parties
 775 to the arbitration proceeding may agree in a record to extend,
 776 the time. The court or the parties may do so within or after the
 777 time specified or ordered. A party waives any objection that an
 778 award was not timely made unless the party gives notice of the
 779 objection to the arbitrator before receiving notice of the
 780 award. An award shall be made within the time fixed therefor by
 781 the agreement or provision for arbitration or, if not so fixed,
 782 within such time as the court may order on application of a
 783 party to the arbitration. The parties may, by written agreement,

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784 ~~extend the time either before or after the expiration thereof.~~
 785 ~~Any objection that an award was not made within the time~~
 786 ~~required is waived unless the objecting party notifies the~~
 787 ~~arbitrators or umpire in writing of his or her objection prior~~
 788 ~~to the delivery of the award to him or her.~~

789 Section 21. Section 682.10, Florida Statutes, is amended to
 790 read:

791 682.10 Change of award by arbitrators ~~or umpire.~~—

792 (1) On motion to an arbitrator by a party to an arbitration
 793 proceeding, the arbitrator may modify or correct an award:

794 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

795 (b) Because the arbitrator has not made a final and
 796 definite award upon a claim submitted by the parties to the
 797 arbitration proceeding; or

798 (c) To clarify the award.

799 (2) A motion under subsection (1) must be made and notice
 800 given to all parties within 20 days after the movant receives
 801 notice of the award.

802 (3) A party to the arbitration proceeding must give notice
 803 of any objection to the motion within 10 days after receipt of
 804 the notice.

805 (4) If a motion to the court is pending under s. 682.12, s.
 806 682.13, or s. 682.14, the court may submit the claim to the
 807 arbitrator to consider whether to modify or correct the award:

808 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

809 (b) Because the arbitrator has not made a final and
 810 definite award upon a claim submitted by the parties to the
 811 arbitration proceeding; or

812 (c) To clarify the award.

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813 (5) An award modified or corrected pursuant to this section
 814 is subject to ss. 682.09(1), 682.12, 682.13, and 682.14. On
 815 application of a party to the arbitration, or if an application
 816 to the court is pending under s. 682.12, s. 682.13 or s. 682.14,
 817 on submission to the arbitrators, or to the umpire in the case
 818 of an umpire's award, by the court under such conditions as the
 819 court may order, the arbitrators or umpire may modify or correct
 820 the award upon the grounds stated in s. 682.14(1) (a) and (c) or
 821 for the purpose of clarifying the award. The application shall
 822 be made within 20 days after delivery of the award to the
 823 applicant. Written notice thereof shall be given forthwith to
 824 the other party to the arbitration, stating that he or she must
 825 serve his or her objections thereto, if any, within 10 days from
 826 the notice. The award so modified or corrected is subject to the
 827 provisions of ss. 682.12-682.14.

828 Section 22. Section 682.11, Florida Statutes, is amended to
 829 read:

830 682.11 Remedies; fees and expenses of arbitration
 831 proceeding.-

832 (1) An arbitrator may award punitive damages or other
 833 exemplary relief if such an award is authorized by law in a
 834 civil action involving the same claim and the evidence produced
 835 at the hearing justifies the award under the legal standards
 836 otherwise applicable to the claim.

837 (2) An arbitrator may award reasonable attorney fees and
 838 other reasonable expenses of arbitration if such an award is
 839 authorized by law in a civil action involving the same claim or
 840 by the agreement of the parties to the arbitration proceeding.

841 (3) As to all remedies other than those authorized by

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842 subsections (1) and (2), an arbitrator may order such remedies
 843 as the arbitrator considers just and appropriate under the
 844 circumstances of the arbitration proceeding. The fact that such
 845 a remedy could not or would not be granted by the court is not a
 846 ground for refusing to confirm an award under s. 682.12 or for
 847 vacating an award under s. 682.13.

848 (4) An arbitrator's expenses and fees, together with other
 849 expenses, must be paid as provided in the award.

850 (5) If an arbitrator awards punitive damages or other
 851 exemplary relief under subsection (1), the arbitrator shall
 852 specify in the award the basis in fact justifying and the basis
 853 in law authorizing the award and state separately the amount of
 854 the punitive damages or other exemplary relief. Unless otherwise
 855 provided in the agreement or provision for arbitration, the
 856 arbitrators' and umpire's expenses and fees, together with other
 857 expenses, not including counsel fees, incurred in the conduct of
 858 the arbitration, shall be paid as provided in the award.

859 Section 23. Section 682.12, Florida Statutes, is amended to
 860 read:

861 682.12 Confirmation of an award.-After a party to an
 862 arbitration proceeding receives notice of an award, the party
 863 may make a motion to the court for an order confirming the award
 864 at which time the court shall issue a confirming order unless
 865 the award is modified or corrected pursuant to s. 682.10 or s.
 866 682.14 or is vacated pursuant to s. 682.13. Upon application of
 867 a party to the arbitration, the court shall confirm an award,
 868 unless within the time limits hereinafter imposed grounds are
 869 urged for vacating or modifying or correcting the award, in
 870 which case the court shall proceed as provided in ss. 682.13 and

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871 ~~682.14.~~872 Section 24. Section 682.13, Florida Statutes, is amended to
873 read:

874 682.13 Vacating an award.—

875 (1) Upon motion application of a party to an arbitration
876 proceeding, the court shall vacate an arbitration award if when:877 (a) The award was procured by corruption, fraud, or other
878 undue means;—

879 (b) There was:

880 1. Evident partiality by an arbitrator appointed as a
881 neutral arbitrator;882 2. Corruption by an arbitrator; or883 3. Misconduct by an arbitrator prejudicing the rights of a
884 party to the arbitration proceeding; or corruption in any of the
885 arbitrators or umpire or misconduct prejudicing the rights of
886 any party.887 (c) An arbitrator refused to postpone the hearing upon
888 showing of sufficient cause for postponement, refused to hear
889 evidence material to the controversy, or otherwise conducted the
890 hearing contrary to s. 682.06, so as to prejudice substantially
891 the rights of a party to the arbitration proceeding; The
892 arbitrators or the umpire in the course of her or his
893 jurisdiction exceeded their powers.894 (d) An arbitrator exceeded the arbitrator's powers; The
895 arbitrators or the umpire in the course of her or his
896 jurisdiction refused to postpone the hearing upon sufficient
897 cause being shown therefor or refused to hear evidence material
898 to the controversy or otherwise so conducted the hearing,
899 contrary to the provisions of s. 682.06, as to prejudice

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900 ~~substantially the rights of a party.~~901 (e) There was no agreement to arbitrate, unless the person
902 participated in the arbitration proceeding without raising the
903 objection under s. 682.06(3) not later than the beginning of the
904 arbitration hearing; or There was no agreement or provision for
905 arbitration subject to this law, unless the matter was
906 determined in proceedings under s. 682.03 and unless the party
907 participated in the arbitration hearing without raising the
908 objection.909 (f) The arbitration was conducted without proper notice of
910 the initiation of an arbitration as required in s. 682.032 so as
911 to prejudice substantially the rights of a party to the
912 arbitration proceeding.913 ~~But the fact that the relief was such that it could not or would~~
914 ~~not be granted by a court of law or equity is not ground for~~
915 ~~vacating or refusing to confirm the award.~~916 (2) A motion under this section must be filed within 90
917 days after the movant receives notice of the award pursuant to
918 s. 682.09 or within 90 days after the movant receives notice of
919 a modified or corrected award pursuant to s. 682.10, unless the
920 movant alleges that the award was procured by corruption, fraud,
921 or other undue means, in which case the motion must be made
922 within 90 days after the ground is known or by the exercise of
923 reasonable care would have been known by the movant. An
924 application under this section shall be made within 90 days
925 after delivery of a copy of the award to the applicant, except
926 that, if predicated upon corruption, fraud or other undue means,
927 it shall be made within 90 days after such grounds are known or
928 should have been known.

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929 (3) If the court vacates an award on a ground other than
 930 that set forth in paragraph (1) (e), it may order a rehearing. If
 931 the award is vacated on a ground stated in paragraph (1) (a) or
 932 paragraph (1) (b), the rehearing must be before a new arbitrator.
 933 If the award is vacated on a ground stated in paragraph (1) (c),
 934 paragraph (1) (d), or paragraph (1) (f), the rehearing may be
 935 before the arbitrator who made the award or the arbitrator's
 936 successor. The arbitrator must render the decision in the
 937 rehearing within the same time as that provided in s. 682.09(2)
 938 for an award. In vacating the award on grounds other than those
 939 stated in paragraph (1) (e), the court may order a rehearing
 940 before new arbitrators chosen as provided in the agreement or
 941 provision for arbitration or by the court in accordance with s.
 942 682.04, or, if the award is vacated on grounds set forth in
 943 paragraphs (1) (c) and (d), the court may order a rehearing
 944 before the arbitrators or umpire who made the award or their
 945 successors appointed in accordance with s. 682.04. The time
 946 within which the agreement or provision for arbitration requires
 947 the award to be made is applicable to the rehearing and
 948 commences from the date of the order therefor.

949 (4) If a motion the application to vacate is denied and no
 950 motion to modify or correct the award is pending, the court
 951 shall confirm the award.

952 Section 25. Section 682.14, Florida Statutes, is amended to
 953 read:

954 682.14 Modification or correction of award.—

955 (1) Upon motion made within 90 days after the movant
 956 receives notice of the award pursuant to s. 682.09 or within 90
 957 days after the movant receives notice of a modified or corrected

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958 award pursuant to s. 682.10, the court shall modify or correct
 959 the award if Upon application made within 90 days after delivery
 960 of a copy of the award to the applicant, the court shall modify
 961 or correct the award when:

962 (a) There is an evident miscalculation of figures or an
 963 evident mistake in the description of any person, thing, or
 964 property referred to in the award.

965 (b) The arbitrators ~~or umpire~~ have awarded upon a matter
 966 not submitted in the arbitration to them or him or her and the
 967 award may be corrected without affecting the merits of the
 968 decision upon the issues submitted.

969 (c) The award is imperfect as a matter of form, not
 970 affecting the merits of the controversy.

971 (2) If the application is granted, the court shall modify
 972 and correct the award ~~so as to effect its intent~~ and shall
 973 confirm the award as so modified and corrected. Otherwise,
 974 unless a motion to vacate the award under s. 682.13 is pending,
 975 the court shall confirm the award as made.

976 (3) An application to modify or correct an award may be
 977 joined in the alternative with an application to vacate the
 978 award under s. 682.13.

979 Section 26. Section 682.15, Florida Statutes, is amended to
 980 read:

981 682.15 Judgment or decree on award.—

982 (1) Upon granting an order confirming, vacating without
 983 directing a rehearing, modifying, or correcting an award, the
 984 court shall enter a judgment in conformity therewith. The
 985 judgment may be recorded, docketed, and enforced as any other
 986 judgment in a civil action.

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987 (2) A court may allow reasonable costs of the motion and
 988 subsequent judicial proceedings.

989 (3) On motion of a prevailing party to a contested judicial
 990 proceeding under s. 682.12, s. 682.13, or s. 682.14, the court
 991 may add reasonable attorney fees and other reasonable expenses
 992 of litigation incurred in a judicial proceeding after the award
 993 is made to a judgment confirming, vacating without directing a
 994 rehearing, modifying, or correcting an award. ~~Upon the granting~~
 995 of an order confirming, modifying or correcting an award,
 996 judgment or decree shall be entered in conformity therewith and
 997 be enforced as any other judgment or decree. Costs of the
 998 application and of the proceedings subsequent thereto, and
 999 disbursements may be awarded by the court.

1000 Section 27. Section 682.16, Florida Statutes, is repealed.

1001 Section 28. Section 682.17, Florida Statutes, is repealed.

1002 Section 29. Section 682.18, Florida Statutes, is repealed.

1003 Section 30. Section 682.181, Florida Statutes, is created

1004 to read:

1005 682.181 Jurisdiction.—

1006 (1) A court of this state having jurisdiction over the
 1007 controversy and the parties may enforce an agreement to
 1008 arbitrate.

1009 (2) An agreement to arbitrate providing for arbitration in
 1010 this state confers exclusive jurisdiction on the court to enter
 1011 judgment on an award under this chapter.

1012 Section 31. Section 682.19, Florida Statutes, is amended to
 1013 read:

1014 682.19 Venue.—A petition pursuant to s. 682.015 must be
 1015 filed in the court of the county in which the agreement to

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1016 arbitrate specifies the arbitration hearing is to be held or, if
 1017 the hearing has been held, in the court of the county in which
 1018 it was held. Otherwise, the petition may be made in the court of
 1019 any county in which an adverse party resides or has a place of
 1020 business or, if no adverse party has a residence or place of
 1021 business in this state, in the court of any county in this
 1022 state. All subsequent petitions must be made in the court
 1023 hearing the initial petition unless the court otherwise directs.

1024 ~~Any application under this law may be made to the court of the~~
 1025 ~~county in which the other party to the agreement or provision~~
 1026 ~~for arbitration resides or has a place of business, or, if she~~
 1027 ~~or he has no residence or place of business in this state, then~~
 1028 ~~to the court of any county. All applications under this law~~
 1029 ~~subsequent to an initial application shall be made to the court~~
 1030 ~~hearing the initial application unless it shall order otherwise.~~

1031 Section 32. Section 682.20, Florida Statutes, is amended to
 1032 read:

1033 682.20 Appeals.—

1034 (1) An appeal may be taken from:

1035 (a) An order denying an application to compel arbitration
 1036 made under s. 682.03.

1037 (b) An order granting a ~~motion~~ ~~an application~~ to stay
 1038 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

1039 (c) An order confirming ~~or denying confirmation of~~ an
 1040 award.

1041 (d) An order denying confirmation of an award unless the
 1042 court has entered an order under s. 682.10(4) or s. 682.13. All
 1043 other orders denying confirmation of an award are final orders.

1044 ~~(e)~~ ~~(d)~~ An order modifying or correcting an award.

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1045 ~~(f)(e)~~ An order vacating an award without directing a
1046 rehearing.

1047 ~~(g)(f)~~ A judgment or decree entered pursuant to this
1048 ~~chapter the provisions of this law.~~

1049 (2) The appeal shall be taken in the manner and to the same
1050 extent as from orders or judgments in a civil action.

1051 Section 33. Section 682.21, Florida Statutes, is repealed.

1052 Section 34. Section 682.22, Florida Statutes, is repealed.

1053 Section 35. Section 682.23, Florida Statutes, is created to
1054 read:

1055 682.23 Relationship to Electronic Signatures in Global and
1056 National Commerce Act.—The provisions of this chapter governing
1057 the legal effect, validity, and enforceability of electronic
1058 records or electronic signatures and of contracts performed with
1059 the use of such records or signatures conform to the
1060 requirements of s. 102 of the Electronic Signatures in Global
1061 and National Commerce Act, 15 U.S.C. s. 7002.

1062 Section 36. Section 682.25, Florida Statutes, is created to
1063 read:

1064 682.25 Disputes excluded.—This chapter does not apply to
1065 any dispute involving child custody, visitation, or child
1066 support.

1067 Section 37. Section 440.1926, Florida Statutes, is amended
1068 to read:

1069 440.1926 Alternate dispute resolution; claim arbitration.—
1070 Notwithstanding any other provision of this chapter, the
1071 employer, carrier, and employee may mutually agree to seek
1072 consent from a judge of compensation claims to enter into
1073 binding claim arbitration in lieu of any other remedy provided

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1074 for in this chapter to resolve all issues in dispute regarding
1075 an injury. Arbitrations agreed to pursuant to this section shall
1076 be governed by chapter 682, the Revised Florida Arbitration
1077 Code, except that, notwithstanding any provision in chapter 682,
1078 the term "court" shall mean a judge of compensation claims. An
1079 arbitration award in accordance with this section ~~is shall be~~
1080 enforceable in the same manner and with the same powers as any
1081 final compensation order.

1082 Section 38. Paragraph (a) of subsection (1) of section
1083 489.1402, Florida Statutes, is amended to read:

1084 489.1402 Homeowners' Construction Recovery Fund;
1085 definitions.—

1086 (1) The following definitions apply to ss. 489.140-489.144:

1087 (a) "Arbitration" means alternative dispute resolution
1088 entered into between a claimant and a contractor either pursuant
1089 to a construction contract that contains a mandatory arbitration
1090 clause or through any binding arbitration under chapter 682, the
1091 Revised Florida Arbitration Code.

1092 Section 39. Subsection (2) of section 731.401, Florida
1093 Statutes, is amended to read:

1094 731.401 Arbitration of disputes.—

1095 (2) Unless otherwise specified in the will or trust, a will
1096 or trust provision requiring arbitration shall be presumed to
1097 require binding arbitration under chapter 682, the Revised
1098 Florida Arbitration Code ~~s. 44.104.~~

1099 Section 40. This act shall take effect July 1, 2013.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/13

Meeting Date

Topic ARBITRATION

Bill Number SB 530
(if applicable)

Name PAUL ANDERSON

Amendment Barcode _____
(if applicable)

Job Title ATTY

Address _____
Street

Phone 850-894-3000

City

State

Zip

E-mail Paul@becausejustice
matters.com

Speaking: For Against Information (AMENDMENT)

Representing FLA JUSTICE ASS.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/13

Meeting Date

Topic Arbitration

Bill Number 530
(if applicable)

Name Tammy Perdue

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 516 N. Adams St

Phone 850-224-7173

Street

TLH

City

FL

State

32301

Zip

E-mail tperdue@aif.com

Speaking: For Against Information

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2013
Meeting Date

Topic DISPUTE RESOLUTION/ Bill Number SB 530
Name JON POLENBERG Amendment Barcode _____ (if applicable)
Job Title ATTORNEY (if applicable)

Address 1351 Sawgrass Corp. Pkwy, Ste 101 Phone (954) 742-9995
FT Lauderdale, FL 33323 E-mail jpolenberg@polenbergcooper.com
Street City State Zip

Speaking: For Against Information
Representing BUSINESS LAW SECTION, THE FLORIDA BAR

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

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.
This form is part of the public record for this meeting. S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 628

INTRODUCER: Senator Joyner

SUBJECT: Driver Licenses

DATE: February 18, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Favorable
2.			TR	
3.			RC	
4.				
5.				
6.				

I. Summary:

SB 628 allows judges and certain employees of the state courts system to access copies of driver's licenses held by the Department of Highway Safety and Motor Vehicles (department). Currently, the department has no duty to share copies of driver's licenses with the judicial branch.

This bill substantially amends section 322.142, Florida Statutes.

II. Present Situation:

Driver's Licenses

The Department of Highway Safety and Motor Vehicles (department) must issue qualified applicants a driver's license at the time that the licensee successfully passes the required examinations and pays a fee.¹

The driver's license must contain:

- A color photograph or digital image of the licensee.
- The name of the state.
- An identification number uniquely assigned to the licensee.
- The licensee's full name, date of birth, and residence address.
- The licensee's gender and height.
- The dates of issuance and expiration of the license.

¹ Sections 322.14(1)(a) and 322.142(1), F.S.

- A signature line.
- The class of vehicle authorized and endorsements or restrictions.²

The department is authorized to maintain a film negative or print file pictures of licensees. The department must keep a record of the digital image and licensee signature, along with identifying data to retrieve the record.³

This information is exempt from disclosure requirements under public records laws. However, the file and digital record may be released for the following purposes:

- For the issuance of duplicate licenses; and
- For administrative purposes of the department.⁴

Records can also be released to the following parties for specific purposes:

- Law enforcement agencies.
- Department of Business and Professional Regulation.
- Department of State.
- Department of Revenue.
- Department of Children and Family Services.
- Department of Financial Services.⁵

The most recent change to this public records exemption was in 2010, when the exemption was narrowed. The Legislature authorized the Department of Children and Family Services to have access to the records for additional purposes related to public assistance and public assistance fraud investigations.⁶

The Office of State Courts Administrator

The Office of State Courts Administrator (OSCA) requested the changes provided in this bill. OSCA indicates a need for this legislation as follows:

By department policy, judges have access to [driver's license] photographs, and by past practice, some court-related employees have access. However, neither judges nor court-related employees are specifically delineated for access in the applicable statute. The [Department of Highway Safety and Motor Vehicles] has begun to interpret the statute more strictly, resulting in some court-related employees being unable to access the photographs.

....

The courts' Judicial Inquiry System (JIS) draws information from a number of data sources. Specifically, JIS offers the judiciary access to a streamlined dashboard in

² Section 322.14 (1)(a) and (b), F.S.

³ Section 322.142(4), F.S.

⁴ Section 322.142 (4), F.S.

⁵ Section 322.142 (4), F.S.

⁶ Section 1, ch. 2010-207, L.O.F. (CS/SB 962).

which a user may query multiple data sources through a single point of entry. One of the data sources that may be accessed through JIS is the system containing driver's license photographs maintained by DHSMV. However, some judges and court-related employees also may access the DHSMV system directly.⁷

According to OSCA, judges have had access to the records based on the statute's authority for release to law enforcement agencies. Still, OSCA is concerned that the department is more strictly interpreting the public records exemption for driver's license records, and judges are not currently authorized in the exemption to receive records. Additionally, the other judicial branch employees have encountered resistance in accessing these records.

Public Records

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁸ The records of the legislative, executive, and judicial branches are specifically included.⁹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119, F.S.,¹⁰ guarantees every person's right to inspect and copy any state or local government public record¹¹ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹²

Only the Legislature may create an exemption to public records.¹³ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁴

⁷ Office of the State Courts Administrator, *White Paper: Legislative Issue: Driver's License Photographs* (2013) (on file with the Senate Committee on Judiciary).

⁸ FLA. CONST., Art. I, s. 24(a).

⁹ *Id.*

¹⁰ Chapter 119, F.S.

¹¹ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)).

¹² Section 119.07(1)(a), F.S.

¹³ FLA. CONST., Art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

¹⁴ FLA. CONST., Art. I, s. 24(c).

Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁵ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁶

III. Effect of Proposed Changes:

This bill narrows the public records exemption for copies of driver's license files and digital records by expressly authorizing the following parties to receive copies as part of the official work of a court:

- A justice or judge of the state.
- An employee of the state courts system who holds a position that is designated in writing for access by the Supreme Court Chief Justice or a chief judge of a district or circuit court, or his or her designee.
- A government employee who performs functions for the state court system in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or their designee.

This bill updates obsolete references to the Department of Children and Family Services to the Department of Children and Families.¹⁷

The bill takes effect July 1, 2013.

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:

This bill narrows an existing public records exemption. It complies with the requirements of s. 24(c), Article I of the Florida Constitution. Because the bill does not create a new exemption, it does not require a statement of public necessity or two-thirds vote approval of each house for passage as required by s. 24(c), Article I of the Florida Constitution.

C. Trust Funds Restrictions:

None.

¹⁵ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁶ FLA. CONST., Art. I, s. 24(c).

¹⁷ Chapter 2012-84 (SB 2048).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

An insignificant positive fiscal impact may be associated with this bill in that the courts and OSCA employees may have easier access to these records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

By Senator Joyner

19-00516A-13

2013628__

A bill to be entitled

An act relating to driver licenses; amending s. 322.142, F.S.; authorizing a justice, judge, or designated employee to access reproductions of driver license images as part of the official work of a court; revising and clarifying provisions; providing an effective date.

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

Section 1. Subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and shall be made and issued only:

(a) For departmental administrative purposes;

(b) For the issuance of duplicate licenses;

(c) In response to law enforcement agency requests;

(d) To the Department of Business and Professional Regulation pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the Department of Business and Professional Regulation;

(e) To the Department of State pursuant to an interagency agreement to facilitate determinations of eligibility of voter

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2013628__

registration applicants and registered voters in accordance with ss. 98.045 and 98.075;

(f) To the Department of Revenue pursuant to an interagency agreement for use in establishing paternity and establishing, modifying, or enforcing support obligations in Title IV-D cases;

(g) To the Department of Children and ~~Families~~ Family Services pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415;

(h) To the Department of Children and ~~Families~~ Family Services pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations;

(i) To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims; ~~or~~

(j) To district medical examiners pursuant to an interagency agreement for the purpose of identifying a deceased individual, determining cause of death, and notifying next of kin of any investigations, including autopsies and other laboratory examinations, authorized in s. ~~406.11~~ 406.011; or

(k) To the following persons for the purpose of identifying a person as part of the official work of a court:

1. A justice or judge of this state;

2. An employee of the state courts system who works in a

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2013628

59 position that is designated in writing for access by the Chief
60 Justice of the Supreme Court or a chief judge of a district or
61 circuit court, or by his or her designee; or

62 3. A government employee who performs functions on behalf
63 of the state courts system in a position that is designated in
64 writing for access by the Chief Justice or a chief judge, or by
65 his or her designee.

66 Section 2. This act shall take effect July 1, 2013.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/13

Meeting Date

Topic Driver License

Bill Number 628 (if applicable)

Name Eric Maclure

Amendment Barcode (if applicable)

Job Title Dir, Community + Intergov. Relations, State Court

Admin. Office

Address 500 S. Duval

Phone 922-5692

Tallah, FL 32399 (Street, City, State, Zip)

E-mail macluree@flcourts.org

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

Representing State Courts System

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/13

Meeting Date

Topic Driver License

Bill Number 628
(if applicable)

Name Lisa Goodner

Amendment Barcode _____
(if applicable)

Job Title State Courts Administrator

Address 500 S. Dural

Phone 850-922-0581

Street

Tallah, FL 32399

E-mail goodnerl@flcourts.org

City

State

Zip

Speaking: For Against Information

Representing State Courts System

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-19-13

Meeting Date

Topic _____

Bill Number _____

(if applicable)

Name Andrew S. Connell, Jr.

Amendment Barcode _____

(if applicable)

Job Title Partner/Attorney - Litchfield Cavo, LLP

Address 600 Corporate Drive, #600

Phone (954) 816-4715

Street

Fort Lauderdale, FL 33334

City

State

Zip

E-mail aconnelljr@gmail.com

Speaking: For Against Information

Representing FJR 1

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/13
Meeting Date

Topic CIVIL JUSTICE REFORM

Bill Number WORKSHOP (if applicable)

Name GEORGE MEROS

Amendment Barcode (if applicable)

Job Title ATTORNEY

Address 301 SO. BRIDGEMAN

Phone 850 577-9898

Street
City TALLAHASSEE State FL Zip 32310

E-mail G.MEROS@PERAY-ROBINSON.COM

Speaking: For Against Information

Representing US CHAMBER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/13

Meeting Date

Topic Accuracy in Damages Bill Number _____ (if applicable)

Name Michael Mitchell Amendment Barcode _____ (if applicable)

Job Title Director of Government Relations

Address P.O. Box 407 Phone _____
Street

Lakeland FL 37802 E-mail _____
City State Zip

Speaking: For Against Information

Representing Public Super Markets, Inc.

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

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/2013
Meeting Date

Topic Expert Evidence Bill Number _____ (if applicable)
Name Mark Delegal Amendment Barcode _____ (if applicable)
Job Title Counsel
Address 215 S. Monroe Street #200 Phone 222-3533
THH FL 32301 E-mail _____
City State Zip

Speaking: For Against Information

Representing Florida Justice Reform Institute

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-19-13

Meeting Date

Topic JUSTICE / LEGAL REFORM

Bill Number _____
(if applicable)

Name MARK WILSON

Amendment Barcode _____
(if applicable)

Job Title PRESIDENT + CEO

Address 136 S. BROWNUGH

Phone 850-521-1200

TALLAHASSEE FL 32301
City State Zip

E-mail MWILSON@FLCHAMBER.COM

Speaking: For Against Information

Representing FLORIDA CHAMBER OF COMMERCE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/13
Meeting Date

Topic Bad Faith Bill Number _____ (if applicable)

Name BING KEARNEY Amendment Barcode _____ (if applicable)

Job Title _____

Address 9625 WES KEARNEY WAY Phone _____
Street
RIVERVIEW FL 33578 E-mail _____
City State Zip

Speaking: For Against Information

Representing TAIBF

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic INSURANCE BAD FAITH

Bill Number _____
(if applicable)

Name LEFFERTS MABIE

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1021 ROYAL PASS Rd

Phone 813 - 273 - 6811

Street

TAMPA

FL

33602

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing TAIBF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/18/13
Meeting Date

Topic DAUBERT vs FRYE

Bill Number CS 13-02
(if applicable)

Name GLENN HESS

Amendment Barcode
(if applicable)

Job Title STATE ATTORNEY 14TH CIR.

Address 421 N. MAGNOLIA AVE

Phone (850) 832-5566

Street PANAMA CITY FL 32401
City State Zip

E-mail judgehess@gmail.com

Speaking: For Against Information

Representing Florida PROSECUTING ATTORNIES 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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-19-13

Meeting Date

Topic Daubert Bill

Bill Number _____
(if applicable)

Name Troy Rafferty

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 316 S. Baylen

Phone 850 435 7163

Street

PENSACOLA FL 32501

City

State

Zip

E-mail Trafferty@levulaw.com

Speaking: For Against Information

Representing FJA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/19/13

Meeting Date

Topic Medical Paragels

Bill Number _____
(if applicable)

Name Alexander CLEM

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 20 No. Orange Ave.

Phone 407-420-3982

Street

Orlando FL 32801

City

State

Zip

E-mail aclem@forthepeople.com

Speaking: For Against Information

Representing FJA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-19-13

Meeting Date

Topic Medical Damages

Bill Number
(if applicable)

Name Matthew Posgay

Amendment Barcode
(if applicable)

Job Title attorney

Address 136 E. Bay St.
Street
Jacksonville, FL 32207
City State Zip

Phone 904-356-6071

E-mail mposgay@cockerlaw.com

Speaking: For Against Information

Representing FJA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/13
Meeting Date

Topic BAD FAITH

Bill Number _____
(if applicable)

Name FLED CUNNINGHAM

Amendment Barcode _____
(if applicable)

Job Title PAST PRESIDENT, FJA

Address _____
Street

Phone 561 676 3333

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing FJA

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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