

<b>Tab 1</b>	<b>CS/SB 590</b> by <b>CF, Detert (CO-INTRODUCERS) Gaetz</b> ; (Compare to H 0673) Adoption					
560534	D	S	RCS	JU, Simmons	Delete everything after	01/12 04:42 PM
<b>Tab 2</b>	<b>SB 972</b> by <b>Lee</b> ; (Identical to H 0967) Family Law					
<b>Tab 3</b>	<b>SB 996</b> by <b>Negron</b> ; (Similar to CS/H 0003) Civil Remedies for Terrorism					
<b>Tab 4</b>	<b>SB 1042</b> by <b>Simmons</b> ; (Similar to CS/H 0503) Judgment Debts					
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Diaz de la Portilla, Chair**  
**Senator Ring, Vice Chair**

**MEETING DATE:** Tuesday, January 12, 2016  
**TIME:** 3:00—4:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 590</b> Children, Families, and Elder Affairs / Detert (Compare H 673)	Adoption; Revising the circumstances under which an adoption consent is valid, binding, and enforceable; requiring a court to determine, under certain circumstances, whether a change of placement of a child is in the child's best interests, rather than whether the change of placement is appropriate; revising when a court must provide written notice to a parent of specified information, etc.  CF      11/19/2015 Fav/CS JU      01/12/2016 Fav/CS FP	Fav/CS Yeas 10 Nays 0
2	<b>SB 972</b> Lee (Identical H 967, Compare S 250)	Family Law; Citing this act as the "Collaborative Law Process Act"; providing that a collaborative law process begins when the parties enter into a collaborative law participation agreement; prohibiting a tribunal from ordering a party to participate in a collaborative law process over the party's objection; providing for confidentiality of communications made during the collaborative law process, etc.  JU      01/12/2016 Favorable RC	Favorable Yeas 10 Nays 0
3	<b>SB 996</b> Negron (Similar CS/H 3)	Civil Remedies for Terrorism; Creating a cause of action for acts relating to terrorism; specifying a measure of damages; prohibiting claims by specified individuals; providing for attorney fees and costs, etc.  JU      01/12/2016 Favorable ACJ FP	Favorable Yeas 10 Nays 0
4	<b>SB 1042</b> Simmons (Similar CS/H 503)	Judgment Debts; Specifying the parties who may obtain possession of property that is being levied on; revising the circumstances under which third-party claims must be taken to trial; revising the legal procedure for proceedings supplementary to execution; providing additional discovery in proceedings supplementary, etc.  JU      01/12/2016 Fav/CS RC	Fav/CS Yeas 10 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, January 12, 2016, 3:00—4:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	Other Related Meeting Documents		

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 590

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senator Detert

SUBJECT: Adoption

DATE: January 13, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 590 reduces the authority or influence of a parent to select a prospective adoptive parent for his or her child if the parent is in the process of losing his or her parental rights in a dependency proceeding. Under existing law, the dependency process starts with the filing of a petition alleging that a child has been abandoned, abused, or neglected by the child’s parent or parents or a legal custodian. While the dependency case is pending, an adoption entity may intervene on behalf of the child’s parent to have a child placed in the home of a prospective adoptive parent selected by the parent. The bill provides a timeline for the court to hold a final hearing on a motion to intervene and to issue a written final order. The timeline may not apply if good cause or mutual agreement of the parties warrants otherwise.

As under existing law, the bill requires a court to consider the best interests of the child when selecting a prospective adoptive parent from among competing prospective adoptive parents. However, the bill changes what a court must consider in determining the child’s best interests. Under existing law, a court must consider “the rights of the parent to determine an appropriate placement for a child, the permanency offered, the child’s binding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships.”<sup>1</sup> Under the bill, the court must consider factors including the “rights of the parent

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<sup>1</sup> Section 63.082(6)(e), F.S.

based on the well-being of the child,” the permanency offered by a placement, the continuity of the current placement, sibling relationships, and the preferences of the child.

Although the bill limits a parent’s right to choose an adoptive parent, the bill requires parents to be given written notice of the right to participate in a private adoption plan at an earlier stage of the dependency proceedings. Current law does not require a court to notify a parent of these rights until just prior to the filing of a petition for termination of parental rights. Moving up the time of notice might expedite the permanent placement of a child.

Current law provides that a parent’s consent to an adoption is valid for children who are in the custody of the Department of Children and Families. This bill expressly allows a parent to consent when a child is under the supervision of the DCF, or is otherwise subject to the jurisdiction of the dependency court.

Once the court determines that potential adoptive parents are properly qualified and that adoption appears to be in the best interests of the child, current law requires the court to order an immediate transfer of custody of the child to potential adoptive parents. Rather than require immediate transfer of the child, the bill authorizes the court to establish reasonable requirements to allow the child a reasonable period of time to transition to final custody with the adoptive parents. This provision provides the court flexibility in determining transfer on a case-by-case basis.

## **II. Present Situation:**

### **The Department of Children and Families and Dependency**

Chapter 39, F.S., governs child protection for the state. Chapter 63, F.S., addresses adoption. The Department of Children and Families (DCF) investigates all allegations of abuse, neglect, and abandonment.<sup>2</sup> The DCF may file a petition with the circuit court to place the child in shelter and enter an adjudication that the child is dependent.

A child who is dependent is a child found by the court:

- (a) To have been abandoned, abused, or neglected by the child’s parent or parents or legal custodians;
- (b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;
- (c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;
- (d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

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<sup>2</sup> Section 39.301(1), F.S.

- (e) To have no parent or legal custodians capable of providing supervision and care;
- (f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians; or
- (g) To have been sexually exploited and to have no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care.<sup>3</sup>

If the court adjudicates the child as dependent, the child is placed in the state's care.<sup>4</sup> When a child is placed in the state's care the state "acts in the protective and provisional role of in loco parentis" or in place of the parent for the child.<sup>5</sup>

### ***Dependency Proceedings***

The purpose of dependency proceedings is for the court to determine if allegations of child abuse, abandonment, or neglect stated in a petition filed by the DCF or other interested person are true.<sup>6</sup> If the court finds the allegations to be true, the court will direct a course of action to protect a child. A course of action is provided through a written case plan, which may include requiring a parent, legal guardian, or a child into treatment and services, dependency mediation, and placement of a child in protective supervision.<sup>7</sup>

Dependency proceedings may include a shelter hearing, an arraignment on dependency, an adjudication of dependency hearing, a disposition hearing, and a hearing on the termination of parental rights.

### **Detention or Shelter Determination of a Child**

A shelter hearing is a proceeding in which a court determines whether probable cause exists to keep a child in a home other than the parent's or a facility pending further investigation of the circumstances leading to the detention of a child.<sup>8</sup> The circumstances in which a child may be detained or taken into custody by DCF are limited.

A hospital administrator or licensed health care professional may detain a child without parental consent if returning the child to the parent or caregiver presents an imminent danger to the child. If the child is detained, the medical provider must immediately notify the DCF. Upon receiving notification, the DCF must immediately notify the parents or legal custodians that their child is being detained and begin a child protective investigation.<sup>9</sup>

Alternatively, a law enforcement officer may take a child into custody, if probable cause exists that:

- The child has been abused, neglected, or abandoned, or suffers from or is in imminent danger of illness or injury due to abuse, neglect, or abandonment;

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<sup>3</sup> Section 39.01(15), F.S.

<sup>4</sup> Section 39.501(1) and (2), F.S.

<sup>5</sup> *Buckner v. Family Services of Central Florida, Inc.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

<sup>6</sup> Section 39.501(1) and (2), F.S.

<sup>7</sup> Section 39.501(1)(b), F.S.

<sup>8</sup> *See s. 39.001(72)*, F.S.

<sup>9</sup> Section 39.395, F.S.

- The parent or legal custodian of the child has materially violated a condition of placement ordered by the court; or
- The child has no parent, legal custodian, or responsible adult relative immediately known and able to provide care.<sup>10</sup>

If a child is taken custody, the attorney representing the DCF must request a hearing within 24 hours after the removal of the child.<sup>11</sup> A child may not be held in a shelter for more than 24 hours unless a court orders the child to remain in the shelter after a shelter hearing.<sup>12</sup>

#### Hearings on Arraignment and Adjudication of Dependency

The purpose of an arraignment hearing is for a parent to admit, deny, or consent to findings of dependency that are alleged in the petition for dependency.<sup>13</sup> Within 28 days after a child has been sheltered, the court must hold an arraignment hearing on the petition for dependency.<sup>14</sup> If a parent or legal guardian denies an allegation in the petition, the court must hold an adjudicatory hearing within 30 days.<sup>15</sup> If the court finds the child dependent at the adjudicatory hearing and the child is placed in out-of-home care, the court must first consider placement of the child with relatives.<sup>16</sup> If a child cannot remain safely in the original home and no adult relative is available for temporary, legal custody, the state may place the child with an adult willing to care for the child under the protective supervision of the DCF.<sup>17</sup> Placement of the child to the temporary, legal custody of the DCF invests the DCF with the rights and responsibilities of a legal custodian.<sup>18</sup>

#### **Disposition Hearing**

A court must hold a disposition hearing after any of the following:

- The court enters an adjudication of dependency;
- The parents or legal custodian consent to the finding of dependency or admit the allegations in the petition; or
- The parents or legal custodians have failed to appear at the arraignment hearing after being properly noticed, or are unable to be found despite a diligent search.<sup>19</sup>

The purpose of the disposition hearing is to determine a course of treatment and services and placement of the child under protective supervision.<sup>20</sup> After the disposition hearing, the court may hold a postdisposition hearing to change the temporary legal custody or conditions of

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<sup>10</sup> Section 39.401(1)(b), F.S.

<sup>11</sup> Section 39.401(3)(b), F.S.

<sup>12</sup> Section 39.402(8)(a), F.S.

<sup>13</sup> Section 39.506(1), F.S.

<sup>14</sup> If any party has requested a demand for early filing, the court must hold the arraignment hearing within 7 days after the date of filing of the petition Section 39.506(1), F.S.

<sup>15</sup> Section 39.506(1), F.S.

<sup>16</sup> Section 39.507(7)(c), F.S.

<sup>17</sup> Section 39.521(3)(c), F.S.

<sup>18</sup> Section 39.521(3)(d), F.S.

<sup>19</sup> Section 39.521(1), F.S.

<sup>20</sup> Section 39.521(1)(b), F.S.

protective supervision.<sup>21</sup> In determining whether to order a change in custody, the court must base its decision on the best interest of the child. As a factor of the best interest standard, the court must consider the continuity of the child's placement in the same out-of-home residence.<sup>22</sup>

#### Hearing on a Termination of Parental Rights

If an attorney for the DCF decides that a termination of parental rights is appropriate, the DCF must allege in a petition for a termination of parental rights one of the following grounds:

- The parent or parents voluntarily executed a written surrender of the child to the DCF for adoption;
- The parent or parents have abandoned the child;
- The parent or parents through their conduct demonstrate that continuing involvement threatens the child's life, safety, or well-being irrespective of the provision of services;
- The parent's status of incarceration is harmful to the child based on the length of time the parent is expected to be unavailable to the child or the nature of the criminal history of the parent;
- The parent or parents have failed to substantially comply with a case plan;
- The parent or parents have engaged in egregious conduct that threatens the child's life, safety, or well-being, such as subjecting the child to sexual abuse;
- The parent or parents have committed certain criminal acts, including having to register as a sexual predator;
- The parental rights of a parent of a sibling have been terminated involuntarily;
- The parent or parents have an extensive history of unsuccessfully treated substance abuse; including exposing the child in utero to a controlled substance or alcohol; or
- The child was conceived as a result of sexual battery by the parent.<sup>23</sup>

The DCF must file a petition to terminate parental rights within 60 days after the following if:

- The child is not returned to the physical custody of the parents within 12 months after the child was sheltered or adjudicated dependent, whichever is first;
- A petition for termination of parental rights has not otherwise been filed, and the child has been in out-of-home care in the responsibility of the state for 12 of the most recent 22 months;
- A parent has been convicted of the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or another child of the parent; or
- A court determines that reasonable efforts to reunify the child and parent are not required.<sup>24</sup>

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<sup>21</sup> Section 39.522, F.S.

<sup>22</sup> Section 39.522(1), F.S.

<sup>23</sup> Section 39.806(1), F.S.

<sup>24</sup> Section 39.8055(1), F.S. Exceptions to the requirement to file a termination of parental rights include the following: the child is being cared for by a qualifying relative or that the DCF provides a compelling reason that filing such a petition is not in the best interests of the child. Compelling reasons include that: adoption is not the appropriate permanency goal for the child; no grounds to file a petition to terminate parental rights exist; the child is an unaccompanied refugee minor; international legal obligations or compelling foreign-policy reasons preclude terminating parental rights; or the department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home. Section 39.8055(2), F.S.



### Adoption

If the DCF is given custody of a child for a subsequent adoption under chapter 39, F.S., the DCF may place the child with a licensed adoption agency, a registered child-caring agency, or a family home for prospective adoption.<sup>25</sup> Prospective adoptive parents may not file a petition for adoption until the court has entered a judgment terminating parental rights.

In instances in which a child is adjudicated dependent but parental rights have not yet been terminated, a parent may consent to place a minor with an adoption entity or qualified adoptive parents. The court considers consent given in these circumstances to be valid, binding, and enforceable.<sup>26</sup> After the parent gives consent, the adoption entity may intervene in the dependency case and provide the court with a copy of the preliminary home study of the prospective adoptive parents and other evidence of the suitability of the placement.<sup>27</sup> The dependency court will hold a hearing to review documents in support of intervention and determine whether a change in placement is appropriate.<sup>28</sup>

In determining whether the child's best interests are served by transferring custody to the prospective adoptive parent selected by the child's parent, the court must consider the rights of the parent to determine an appropriate placement, the permanency offered, the child's bonding to the potential adoptive home, and the importance of maintaining sibling relationships, if any.<sup>29</sup>

If a court determines that a prospective adoptive parent is properly qualified to adopt the child and that adoption appears to be in the best interests of the child, the court must immediately order the transfer of the custody of the child to prospective adoptive parents.<sup>30</sup>

### **Parental Rights to Select a Prospective Adoptive Parent**

In the case of *In re Adoption of K.A.G.*, 152 So. 3d 1271 (Fla. 5th DCA 2014), the DCF instituted dependency proceedings and filed a shelter petition on behalf of a child whose father awaited trial for murdering the child's mother. The child was placed in the temporary custody of his maternal aunt and her fiancé. After the DCF petitioned to involuntarily terminate parental rights, the paternal grandmother petitioned to terminate the father's parental rights and adopt the child. The father had given written consent to terminate parental rights and for the grandmother to adopt the child.<sup>31</sup>

The trial court ruled that the father's consent to terminate parental rights was conditional on allowing the grandmother to adopt the child. Therefore, the Aunt did not have the required consent to proceed with her petition for adoption.<sup>32</sup> The appeals court agreed with the trial court that the father's consent was properly conditional.<sup>33</sup> The court held that under these

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<sup>25</sup> Section 39.812(1), F.S.

<sup>26</sup> Section 63.082(6)(a), F.S.

<sup>27</sup> Section 63.082(6)(b), F.S.

<sup>28</sup> Section 63.082(6)(c), F.S.

<sup>29</sup> Section 63.082(e), F.S.

<sup>30</sup> Section 63.082(6)(d), F.S.

<sup>31</sup> *Id.* at 1271.

<sup>32</sup> *Id.* at 1272.

<sup>33</sup> *Id.* at 1276.

circumstances, the court must analyze the best interest of the child through whether “the birth parent’s choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives.”<sup>34</sup>

### ***Due Process Protections for Parents***

A parent who is a party in a dependency action is entitled to due process safeguards. A parent must receive notice of all proceedings or hearings involving the child.<sup>35</sup> Notice of shelter hearings<sup>36</sup> or hearings resulting from medical emergencies must approximate actual notice. Notice by summons is required for other hearings or proceedings before the dependency court.<sup>37</sup>

During a dependency proceeding, a court may decide that a child’s reunification with his or her parent is not viable. In those circumstances, the adoption of the child would often be in the child’s best interest. However, once reunification is no longer viable, but before the parent’s parental rights are terminated, the court must provide written notice to the parent of his or her right to participate in a private adoption plan.

At each stage of dependency proceedings, parents have the right to counsel appointed by the court if the parents are indigent.<sup>38</sup>

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

The bill reduces the authority or influence of a parent who is in the process of losing parental rights to select a prospective adoptive parent for his or her child.

Under existing law, an adoption entity may intervene in dependency proceedings to have a child who is under the supervision of the DCF placed in the home of a prospective adoptive parent selected by the child’s parent. As under existing law, the bill requires a court to determine the best interests of the child in deciding where a child should be placed. However, the bill changes what a court must consider in determining the child’s best interests. Under existing law, a court must consider “the rights of the parent to determine an appropriate placement for a child, the permanency offered, the child’s bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships.”<sup>39</sup> The bill preserves as a factor the rights of the parent, but requires the rights of the parent to be based on the well-being of the child. This change appears to limit parental choice of a potential adoptive parent. The bill also requires the court to consider the reasonable preferences and wishes of a child, provided that the child is sufficiently mature enough to express a preference.

The bill attempts to expedite the final placement of a child in an adoptive home in two ways.

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<sup>34</sup> *Id.* at 1276, n. 4.

<sup>35</sup> Section 39.502(1), F.S.

<sup>36</sup> A shelter hearing is a hearing in which the court determines whether there is probable cause for keeping a child in shelter status pending investigation of the case. Section 39.01(71), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> Section 39.013(1) and (9)(a), F.S. In fact, the State Constitution requires greater due process than the federal provision, including the appointment of counsel in every case. *M.E.K. v. R.L.K.*, 921 So. 2d 787, 790 (Fla. 5th DCA 2006).

<sup>39</sup> Section 63.082(6)(e), F.S.

First, the bill requires parents to be given notice of the right to participate in a private adoption plan at an earlier stage of the dependency proceedings. Current law requires parental notice to be given just prior to the filing of a petition for termination of parental rights. The bill requires the court to provide written notice to a parent earlier in the process, at the time of arraignment, in addition to other significant markers of the dependency process. Moving up the time of notice might expedite the permanent placement of a child.

In addition to requiring parental notice to be given earlier in the dependency process, the bill imposes a timeline on the court for holding a final hearing on a motion to intervene and issuing a written final order. Under the bill, the court must hold the final hearing on the motion to intervene and change of placement of the child within 30 days after the motion is filed. Additionally, the court must issue a written final order within 15 days after the hearing. The timeline may not apply if good cause or mutual agreement of the parties warrants otherwise.

Current law provides that a parent's consent to an adoption is valid for children who are in the custody of the DCF. This bill expressly expands the circumstances in which a parent may consent for the adoption of a child in dependency proceedings by allowing a parent to consent when a child is under the supervision of the DCF, or otherwise subject to the jurisdiction of the dependency court. Children whose cases are under DCF supervision would include children who are in relative care.

After the final hearing on the motion to intervene, if the court finds both that the prospective adoptive parents are properly qualified and that the adoption is in the best interests of the child, the court must order the transfer of custody of the child to the prospective adoptive parents. Current law requires the court to immediately transfer the custody of a child to the prospective adoptive parents. The bill instead authorizes the court to establish a reasonable timeline to transition custody pending adoption. This provision provides the court flexibility in determining transfer on a case-by-case basis.

The bill takes effect July 1, 2016.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**D. Other Constitutional Issues:**

The United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the “fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.” Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental rights without a finding of clear and convincing evidence that termination is warranted.<sup>40</sup> Other due process rights include notice and appointment of counsel for indigent parents.<sup>41</sup>

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Based on an analysis of the CS/SB 590, the Office of the State Courts Administrator indicates that an impact on judicial or court workload may result from the bill. Current law recognizes as valid, binding, and enforceable adoption consent from a parent for a child who is in the custody of the DCF. This bill recognizes parental consent for adoption for children who are not just in the custody of the DCF, but also under the supervision of the DCF or otherwise under the jurisdiction of the dependency court. Expanding the pool of cases may increase the number of adoptions. However, OSCA reports that it cannot accurately determine the fiscal impact due to the unavailability of data needed to quantifiably establish any impact.<sup>42</sup> OSCA further notes that the expedited timeframes to act on motions by an adoption entity may affect judicial workloads. However, any impact is unknown at this time.<sup>43</sup>

The Department of Children and Families does not expect a fiscal impact from the bill.<sup>44</sup>

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<sup>40</sup> *Id.* at 756, 769.

<sup>41</sup> *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).

<sup>42</sup> The Office of the State Courts Administrator, *2016 Judicial Impact Statement for CS/SB 590* (Dec. 21, 2015) (on file with the Senate Committee on Judiciary).

<sup>43</sup> Email from Alexis Rojas, The Office of the State Courts Administrator (Jan. 12, 2016) (on file with the Senate Committee on Judiciary).

<sup>44</sup> The Department of Children and Families, *2016 Agency Legislative Bill Analysis for CS/SB 590* (Dec. 8, 2015)(on file with the Senate Committee on Judiciary).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 63.082, Florida Statutes.

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

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

**CS/CS by Judiciary Committee on January 12, 2016:**

- Expands conditions in which adoption consent by a parent is valid, binding, and enforceable by the court based on a child being under the jurisdiction of the dependency court;
- Provides a timeline for the court to hold a final hearing on a motion to intervene and issue a written final order in response to motions by an adoption entity;
- Redefines for purposes of transferring custody of a child to prospective adoption parents the standard of the best interests of the child by:
  - Restoring the rights of the parent as a factor of best interest, provided that it is based on the well-being of the child;
  - Adding as a factor the preferences of the child, if the child is sufficiently mature to express a preference; and
  - Increasing the amount of information a court may use to determine what is best for the child.
- Authorizes the court to establish reasonable requirements and timeframes for the transfer of final custody of a child to prospective adoptive parents pending adoption.
- Clarifies that the court must provide written notice to a parent of his or her right to participate at three different phases of dependency proceedings: at the arraignment hearing, in the order that approves the case plan, and in the order that changes the permanency goal to adoption.

**CS by Children, Families, and Elder Affairs Committee on November 19, 2015:**

- Allows a parent to execute a consent for placement of a minor that is under the supervision of the department with an adoption entity or qualified prospective adoptive parents and that the consent is valid, binding, and enforceable by the court.
- Revises the standard of review used by the court when making a determination of a change of placement of a child from the appropriateness of the placement to the best interests of the child.
- Ensures that the biological parent is provided written notice of his or her right to participate in a private adoption plan at the arraignment hearing held pursuant to s. 39.506, in the order approving the case plan pursuant to s. 39.603, or in the order

that changes the permanency goal to adoption and terminates the parental rights pursuant to s. 39.621, F.S.

**B. Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2016	.	
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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (6) of section 63.082, Florida  
Statutes, is amended to read:

63.082 Execution of consent to adoption or affidavit of  
nonpaternity; family social and medical history; revocation of  
consent.—

(6) (a) If a parent executes a consent for placement of a  
minor with an adoption entity or qualified prospective adoptive



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12 parents and the minor child is under the supervision in the  
13 custody of the department, or otherwise subject to the  
14 jurisdiction of the dependency court as a result of the entry of  
15 a shelter order petition, a dependency petition, or a petition  
16 for termination of parental rights pursuant to ch. 39, but  
17 parental rights have not yet been terminated, the adoption  
18 consent is valid, binding, and enforceable by the court.

19 (b) Upon execution of the consent of the parent, the  
20 adoption entity shall be permitted to intervene in the  
21 dependency case as a party in interest and must provide the  
22 court that acquired jurisdiction over the minor, pursuant to the  
23 shelter or dependency petition filed by the department, a copy  
24 of the preliminary home study of the prospective adoptive  
25 parents and any other evidence of the suitability of the  
26 placement. The preliminary home study must be maintained with  
27 strictest confidentiality within the dependency court file and  
28 the department's file. A preliminary home study must be provided  
29 to the court in all cases in which an adoption entity has  
30 intervened pursuant to this section. Unless the court has  
31 concerns regarding the qualifications of the home study  
32 provider, or concerns that the home study may not be adequate to  
33 determine the best interests of the child, the home study  
34 provided by the adoption entity shall be deemed to be sufficient  
35 and no additional home study needs to be performed by the  
36 department.

37 (c) If an adoption entity files a motion to intervene in  
38 the dependency case in accordance with this chapter, the  
39 dependency court shall promptly grant a hearing to determine  
40 whether the adoption entity has filed the required documents to





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41 be permitted to intervene and whether a change of placement of  
42 the child is in the best interests of the child appropriate.  
43 Absent good cause or mutual agreement of the parties, the final  
44 hearing on the motion to intervene and change of placement of  
45 the child must be held within 30 days after the filing of the  
46 motion and a written final order shall be filed within 15 days  
47 after the hearing.

48 (d) After consideration of all relevant factors, including  
49 those set forth in paragraph (e) below, the court determines  
50 ~~Upon a determination by the court~~ that the prospective adoptive  
51 parents are properly qualified to adopt the minor child and that  
52 the adoption ~~is appears to be~~ in the best interests of the minor  
53 child, the court shall promptly immediately order the transfer  
54 of custody of the minor child to the prospective adoptive  
55 parents, under the supervision of the adoption entity. The court  
56 may establish reasonable requirements for the transfer of  
57 custody in the transfer order, including a reasonable period of  
58 time to transition final custody to the prospective adoptive  
59 parents. The adoption entity shall thereafter provide monthly  
60 supervision reports to the department until finalization of the  
61 adoption. If the child has been determined to be dependent by  
62 the court, the department shall provide information to the  
63 prospective adoptive parents at the time they receive placement  
64 of the dependent child regarding approved parent training  
65 classes available within the community. The department shall  
66 file with the court an acknowledgment of the parent's receipt of  
67 the information regarding approved parent training classes  
68 available within the community.

69 (e) In determining whether the best interests of the child



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70 are served by transferring the custody of the minor child to the  
71 prospective adoptive parent selected by the parent or adoption  
72 entity, the court shall consider all relevant factors,  
73 including, but not limited to, the rights of the parent based on  
74 the well-being of ~~to determine an appropriate placement for~~ the  
75 child, the permanency offered, the established bonded  
76 relationship of the child's bonding and the current caregiver in  
77 ~~with~~ any potential adoptive home in which ~~that~~ the child has  
78 been residing ~~in~~, the stability of the home in which the child  
79 has been residing as well as the desirability of maintaining  
80 continuity of placement, ~~and~~ the importance of maintaining  
81 sibling relationships, if possible, the reasonable preferences  
82 and wishes of the child, if the court deems the child to be of  
83 sufficient maturity, understanding, and experience to express a  
84 preference, whether a petition for termination of parental  
85 rights has been filed pursuant to s. 39.806(1)(f), (g), or (h),  
86 and what is best for the child.

87 (f) The adoption entity shall be responsible for keeping  
88 the dependency court informed of the status of the adoption  
89 proceedings at least every 90 days from the date of the order  
90 changing placement of the child until the date of finalization  
91 of the adoption.

92 (g) At the arraignment hearing held pursuant to s. 39.506,  
93 in the order that approves the case plan pursuant to s.  
94 39.603, and in the order that changes the permanency goal to  
95 adoption pursuant to s. 39.621 ~~In all dependency proceedings,~~  
96 ~~after it is determined that reunification is not a viable~~  
97 ~~alternative and prior to the filing of a petition for~~  
98 ~~termination of parental rights~~, the court shall provide written



560534

99 notice to advise the biological parent who is a party to the  
100 case of his or her ~~the~~ right to participate in a private  
101 adoption plan including written notice of the factors provided  
102 in paragraph (e).

103 Section 2. This act shall take effect July 1, 2016.

104

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

106 And the title is amended as follows:

107 Delete everything before the enacting clause  
108 and insert:

109 A bill to be entitled  
110 An act relating to adoption; amending s. 63.082, F.S.;  
111 revising the circumstances under which an adoption  
112 consent is valid, binding, and enforceable; requiring  
113 a court to determine, under certain circumstances,  
114 whether a change of placement of a child is in the  
115 child's best interests, rather than whether the change  
116 of placement is appropriate; deleting a determination  
117 that a court must consider under certain  
118 circumstances; revising when a court must provide  
119 written notice to a parent of specified information;  
120 providing an effective date.

By the Committee on Children, Families, and Elder Affairs; and  
Senator Detert

586-01457-16

2016590c1

1 A bill to be entitled  
2 An act relating to adoption; amending s. 63.082, F.S.;  
3 revising the circumstances under which an adoption  
4 consent is valid, binding, and enforceable; requiring  
5 a court to determine, under certain circumstances,  
6 whether a change of placement of a child is in the  
7 child's best interests, rather than whether the change  
8 of placement is appropriate; deleting a determination  
9 that a court must consider under certain  
10 circumstances; revising when a court must provide  
11 written notice to a parent of specified information;  
12 providing an effective date.  
13  
14 Be It Enacted by the Legislature of the State of Florida:  
15  
16 Section 1. Subsection (6) of section 63.082, Florida  
17 Statutes, is amended to read:  
18 63.082 Execution of consent to adoption or affidavit of  
19 nonpaternity; family social and medical history; revocation of  
20 consent.—  
21 (6) (a) If a parent executes a consent for placement of a  
22 minor with an adoption entity or qualified prospective adoptive  
23 parents and the minor child is under the supervision in the  
24 ~~custody~~ of the department, ~~but parental rights have not yet been~~  
25 ~~terminated~~, the adoption consent is valid, binding, and  
26 enforceable by the court.  
27 (b) Upon execution of the consent of the parent, the  
28 adoption entity shall be permitted to intervene in the  
29 dependency case as a party in interest and must provide the

Page 1 of 4

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

586-01457-16

2016590c1

30 court that acquired jurisdiction over the minor, pursuant to the  
31 shelter or dependency petition filed by the department, a copy  
32 of the preliminary home study of the prospective adoptive  
33 parents and any other evidence of the suitability of the  
34 placement. The preliminary home study must be maintained with  
35 strictest confidentiality within the dependency court file and  
36 the department's file. A preliminary home study must be provided  
37 to the court in all cases in which an adoption entity has  
38 intervened pursuant to this section. Unless the court has  
39 concerns regarding the qualifications of the home study  
40 provider, or concerns that the home study may not be adequate to  
41 determine the best interests of the child, the home study  
42 provided by the adoption entity shall be deemed to be sufficient  
43 and no additional home study needs to be performed by the  
44 department.  
45 (c) If an adoption entity files a motion to intervene in  
46 the dependency case in accordance with this chapter, the  
47 dependency court shall promptly grant a hearing to determine  
48 whether the adoption entity has filed the required documents to  
49 be permitted to intervene and whether a change of placement of  
50 the child is in the best interests of the child pursuant to s.  
51 39.522(1) ~~appropriate~~.  
52 (d) Upon a determination by the court that the prospective  
53 adoptive parents are properly qualified to adopt the minor child  
54 and that the adoption ~~is appears to be~~ in the best interests of  
55 the minor child, the court shall immediately order the transfer  
56 of custody of the minor child to the prospective adoptive  
57 parents, under the supervision of the adoption entity. The  
58 adoption entity shall thereafter provide monthly supervision

Page 2 of 4

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

586-01457-16

2016590c1

59 reports to the department until finalization of the adoption. If  
 60 the child has been determined to be dependent by the court, the  
 61 department shall provide information to the prospective adoptive  
 62 parents at the time they receive placement of the dependent  
 63 child regarding approved parent training classes available  
 64 within the community. The department shall file with the court  
 65 an acknowledgment of the parent's receipt of the information  
 66 regarding approved parent training classes available within the  
 67 community.

68 ~~(e) In determining whether the best interests of the child~~  
 69 ~~are served by transferring the custody of the minor child to the~~  
 70 ~~prospective adoptive parent selected by the parent, the court~~  
 71 ~~shall consider the rights of the parent to determine an~~  
 72 ~~appropriate placement for the child, the permanency offered, the~~  
 73 ~~child's bonding with any potential adoptive home that the child~~  
 74 ~~has been residing in, and the importance of maintaining sibling~~  
 75 ~~relationships, if possible.~~

76 (e)(f) The adoption entity shall be responsible for keeping  
 77 the dependency court informed of the status of the adoption  
 78 proceedings at least every 90 days from the date of the order  
 79 changing placement of the child until the date of finalization  
 80 of the adoption.

81 (f)(g) At the arraignment hearing held pursuant to s.  
 82 39.506, in the order that approves the case plan pursuant to s.  
 83 39.603, or in the order that changes the permanency goal to  
 84 adoption and terminates the parental rights pursuant to s.  
 85 39.621 ~~In all dependency proceedings, after it is determined~~  
 86 ~~that reunification is not a viable alternative and prior to the~~  
 87 ~~filing of a petition for termination of parental rights, the~~

Page 3 of 4

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

586-01457-16

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88 court shall provide written notice to advise the biological  
 89 parent who is a party to the case of his or her ~~the~~ right to  
 90 participate in a private adoption plan.

91 Section 2. This act shall take effect July 1, 2016.

Page 4 of 4

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Miguel Diaz de la Portilla, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** November 19, 2015

---

I respectfully request that **Senate Bill #590**, relating to Adoptions, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

---

Senator Nancy C. Detert  
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

January 12th 2016

Meeting Date

SB 590

Bill Number (if applicable)

Topic Adoption Intervention

Amendment Barcode (if applicable)

Name Alan Abramowitz

Job Title Executive Director

Address 600 South Calhoun

Phone 850.241.3232

Street

Tallahassee

Florida

32399

Email Alan.Abramowitz@gal.fl.gov

City

State

Zip

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

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

Representing Statewide Guardian ad Litem Program

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.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/12/16  
Meeting Date

SB 590  
Bill Number (if applicable)

Topic Adoption

Amendment Barcode (if applicable)

Name Nikki Fried

Job Title Attorney

Address 3980 W. Broward Blvd

Phone 954-734-3799

Street Fl. Lauderdale Fl 33312  
City State Zip

Email nfried@wbdnycast.com

Speaking:  For  Against  Information

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

Representing Florida's children first

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

January 12th 2016

SB 590

*Meeting Date*

*Bill Number (if applicable)*

Topic Adoption Intervention

*Amendment Barcode (if applicable)*

Name Thomas Croom

Job Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

*Street*

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*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)

January 12th 2016

Meeting Date

SB 590

Bill Number (if applicable)

Topic Adoption Intervention

Amendment Barcode (if applicable)

Name melissa Maddox

Job Title

Address Street

Phone

City

State

Zip

Email

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

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

Representing

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

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/12/16

Meeting Date

590

Bill Number (if applicable)

Topic Adoption

Amendment Barcode (if applicable)

Name Robert Holroyd

Job Title Government Affairs Manager

Address 6600 W. Commercial Blvd.

Phone 954-377-1677

Street

Landerhill

FL

33319

City

State

Zip

Email RHolroyd@csc.broward.org

Speaking:  For  Against  Information

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

Representing Children's Services Council of Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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)

1/12/16  
Meeting Date

590  
Bill Number (if applicable)

Topic ADOPTION

Amendment Barcode (if applicable)

Name DIANA RAGBER

Job Title DIRECTOR, PUBLIC POLICY

Address 3100 SW 53RD AVE #3111 FLOOR  
Street

Phone 305 571 5718

MIAMI FL 33127  
City State Zip

Email diana@thechildrenstrong.org

Speaking:  For  Against  Information

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

Representing THE CHILDREN'S STRONG

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2-12-16  
Meeting Date

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

590  
Bill Number (if applicable)

Topic Adoption

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title

Address 111 S. Magnolia DR  
Tallahassee FL  
Street City State Zip

Phone 850-425-2600

Email cmackin@lawforhis.org

Speaking:  For  Against  Information

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

Representing The Children's Campaign

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 972

INTRODUCER: Senator Lee

SUBJECT: Family Law

DATE: January 11, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	_____	_____	<u>RC</u>	_____

---

**I. Summary:**

SB 972 establishes the Collaborative Law Process Act as the framework for a collaborative law process to facilitate the out-of-court settlement of dissolution of marriage and paternity cases. The process is a type of alternative dispute resolution, which employs collaborative attorneys, mental health professionals, and financial specialists to help the parties reach a consensus. The terms of the process are contained in a collaborative law participation agreement between the parties.

Under the bill, issues that may be resolved through the collaborative process, include but are not limited to:

- Alimony and child support;
- Marital property distribution;
- Child custody and visitation;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

The bill also defines under what circumstances the collaborative law process begins and ends. The collaborative law process begins when the parties enter into a collaborative law participation agreement. Under the bill, parties may enter into a collaborative law participation agreement before filing a petition with the court or while an action is pending. The bill also allows for the partial resolution of issues collaboratively, with the remainder to be resolved through the traditional adversarial process.

Under the bill, collaborative law communications, which are communications made as part of the collaborative process, are generally confidential and privileged from disclosure, not subject to discovery in a subsequent court proceeding, and inadmissible as evidence. However, the bill provides exceptions to the privilege.

The effect of the bill is contingent upon the adoption of implementing rules by the Florida Supreme Court.

## II. Present Situation:

### Collaborative Law Process

The collaborative law process, a type of alternative dispute resolution, is designed to facilitate the out-of-court settlement of dissolution of marriage cases. The process employs collaborative attorneys, mental health professionals, and financial specialists to help the parties reach consensus. The parties, attorneys, and team of professionals negotiate various terms, such as the distribution of property, alimony, and child visitation and support. A collaborative law participation agreement provides the structure for how the parties will proceed.

Once the parties reach agreement on a disputed matter, they sign and file with the court the marital settlement agreement.

The purported benefits of a collaborative divorce are that the process hastens resolution of disputed issues and that the total expenses of the parties are less than the parties would incur in traditional litigation. Although a comparison of costs is not available, the International Academy of Collaborative Professionals (IACP) studied 933 cases in which the parties agreed to the collaborative process.<sup>1</sup>

The IACP found that:

- Eighty percent of all collaborative cases resolved within 1 year;
- Eighty six percent of the cases studied were resolved with a formal agreement and no court appearances; and
- The average fees for all professionals totaled \$24,185.<sup>2</sup>

Some jurisdictions disfavor the collaborative process for cases involving domestic violence, substance abuse, or severe mental illness.<sup>3</sup>

### History of Collaborative Law Movement

The collaborative law movement, starting in 1990, began to significantly expand after 2000.<sup>4</sup> Known as an interdisciplinary dispute resolution process, collaborative law envisions a collaborative team of professionals assembled to assist the divorcing couple in negotiating resolution of their issues.

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<sup>1</sup> The International Academy of Collaborative Professionals has more than 4,000 professionals as members from 24 countries. John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. AM. ACAD. MATRIM. LAW. 411, 430 (2012).

<sup>2</sup> Glen L. Rabenn, Marc R. Bertone, and Paul J. Toohey, *Collaborative Divorce – A Follow Up*, 55-APR Orange County Law 32, 36 (Apr. 2013).

<sup>3</sup> *Id.* at 36.

<sup>4</sup> John Lande and Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20, 22 (Jan. 2013).

In the United States, at least 30,000 attorneys and family professionals have been trained in the collaborative process.<sup>5</sup>

### **Uniform Collaborative Law Act of 2009**

In the United States, the Uniform Law Commission established the Uniform Collaborative Law Act of 2009 (amended in 2010). According to the ULC:

Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. The process is intended to promote full and open disclosure and, as is the case in mediation, information disclosed ... is privileged against use in any subsequent litigation. ... Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethics opinions. The Uniform Collaborative Law Rules/Act (UCLR/A) is intended to create a uniform national framework for the use of Collaborative Law; one which includes important consumer protections and enforceable privilege provisions.<sup>6</sup>

Thirteen states, Alabama, Arizona, District of Columbia, Hawaii, Maryland, Michigan, Montana, Nevada, New Jersey, Ohio, Texas, Utah, and Washington have enacted the Uniform Collaborative Law Act.<sup>7</sup> Nine states, including Florida, address the collaborative process through local court rules.<sup>8</sup>

An essential component of the Uniform Collaborative Law Act (UCLA) is the mandatory disqualification of the collaborative attorneys if the parties fail to reach an agreement or intend to engage in contested litigation. Once both collaborative lawyers are disqualified from further representation, the parties must start again with new counsel. “The disqualification provision thus creates incentives for parties and Collaborative lawyers to settle.”<sup>9</sup>

At least three sections of the American Bar Association have approved the UCLA—the Section of Dispute Resolution, the Section of Individual Right & Responsibilities, and the Family Law Section.<sup>10</sup> However, in 2011 when the ULC submitted the UCLA to the American Bar Association’s House of Delegates for approval, it was rejected. The disqualification provision appears to have been the primary basis for the ABA’s decision. Those within the ABA who

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<sup>5</sup> Lande, *supra* note 1, at 430.

<sup>6</sup> Uniform Law Commission, *Uniform Collaborative Law Rules/Act Short Summary* (on file with the Senate Judiciary Committee).

<sup>7</sup> *Legislative Fact Sheet*, <http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act> (last visited Jan. 5, 2016).

<sup>8</sup> Alabama, California, Florida, Indiana, Kansas, Louisiana, Maryland, Minnesota, and Wisconsin. Email correspondence with Meghan McCann, National Conference of State Legislatures (Feb. 19, 2015). At least four judicial circuits in Florida have adopted local court rules on collaborative law. These are the 9th, 11th, 13th, and 18th judicial circuits. Other circuits may however recognize the collaborative process in the absence of issuing a formal administrative order.

<sup>9</sup> Lande, *supra* note 4 at 429.

<sup>10</sup> New Jersey Law Revision Commission, *Final Report Relating to New Jersey Family Collaborative Law Act*, 5 (Jul. 23, 2013), <http://www.lawrev.state.nj.us/ucla/njfclaFR0723131500.pdf>.



objected to the UCLA have stated that the disqualification provision unfairly enables one party to disqualify the other party's attorney simply by terminating the collaborative process or initiating litigation.<sup>11</sup>

### **Florida Court System**

In the 1990s, the court system began to move towards establishing family law divisions and support services to accommodate families in conflict. In 2001, the Florida Supreme Court adopted the Model Family Court Initiative. This action by the Court combined all family cases, including dependency, adoption, paternity, dissolution of marriage, and child custody into the jurisdiction of a specially designated family court. The Court noted the need for these cases to have a "system that provide[s] nonadversarial alternatives and flexibility of alternatives; a system that preserve[s] rather than destroy[s] family relationships; ... and a system that facilitate[s] the process chosen by the parties."<sup>12</sup> The court also noted the need to fully staff a mediation program, anticipating that mediation can resolve a high percentage of disputes.<sup>13</sup>

In 2012, the Florida Family Law Rules committee proposed to the Florida Supreme Court a new rule 12.745, to be known as the Collaborative Process Rule.<sup>14</sup> In declining to adopt the rule, the court explained:

Given the possibility of legislative action addressing the use of the collaborative law process and the fact that certain foundations, such as training or certification of attorneys for participation in the process, have not yet been laid, we conclude that the adoption of a court rule on the subject at this time would be premature.<sup>15</sup>

Although the Florida Supreme Court has not adopted rules on collaborative law, at least four judicial circuits in Florida have adopted local court rules on collaborative law through an administrative order. These are the 9th, 11th, 13th, and 18th judicial circuits. Each of the administrative orders includes the requirement that an attorney disqualify himself or herself if the collaborative process is unsuccessful. Other circuits have recognized the collaborative process in the absence of issuing a formal administrative order.

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

#### **Collaborative Law Process Act**

This bill establishes the Collaborative Law Process Act as a basic framework for the collaborative law process, for use in dissolution of marriage and paternity cases. The collaborative law process, a type of alternative dispute resolution, is designed to facilitate the out-of-court settlement of dissolution of marriage cases. The process employs collaborative

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<sup>11</sup> Andrew J. Meyer, *The Uniform Collaborative Law Act: Statutory Framework and the Struggle for Approval by the American Bar Association*, 4 Y.B. ON ARB. & MEDIATION 212, 216 (2012).

<sup>12</sup> *In re Report of Family Court Steering Committee*, 794 So. 2d 518, 523 (Fla. 2001).

<sup>13</sup> *Id.* at 520.

<sup>14</sup> *In Re: Amendments to the Florida Family Law Rules of Procedure*, 84 So. 3d 257 (March 15, 2012).

<sup>15</sup> *Id.*

attorneys, mental health professionals, and financial specialists to help the parties reach agreement.

By placing the Act in law, the bill offers another kind of alternative dispute resolution, besides mediation, to parties involved in dissolution of marriage and parentage cases. However, unlike mediation, which may be court-ordered, participation in the collaborative process is voluntary.<sup>16</sup>

The authority for the collaborative process provided in the bill is limited to issues governed by chapter 61, F.S. (Dissolution of Marriage; Support; Time-sharing) and chapter 742, F.S. (Determination of Parentage). More specifically, the following issues are proper issues for resolution through the collaborative law process:

- Marriage, divorce, dissolution, annulment, and marital property distribution;
- Child custody, visitation, parenting plan, and parenting time;
- Alimony, maintenance, child support;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

### **Beginning and End of Collaborative Process**

The bill defines the circumstances in which a collaborative law case begins and ends. The collaborative law process begins when the parties enter into a collaborative law participation agreement. The agreement governs the terms of how the process will proceed. Parties may enter into the agreement before or after petitioning a court for the dissolution of marriage or determination of parentage.

The collaborative law process concludes when issues are resolved and the parties sign the agreement. But the bill also allows for the collaborative law process to partially resolve the issues. If partially resolved, parties agree to reserve remaining issues for the judicial process.

Alternatively, a collaborative law process may terminate before any issues are resolved. The collaborative law process terminates when a party:

- Provides notice to the other parties that the process has ended;
- Begins a court proceeding without consent of the other party, or asks the court to place the proceeding on a court calendar;
- Initiates a pleading, motion, order to show cause, or requests a conference with a court; or
- Discharges a collaborative attorney or a collaborative attorney withdraws as counsel.

The bill allows the process to continue if a party hires a successor collaborative attorney to replace his or her previous attorney. The unrepresented party must hire, and identify in the agreement, a successor collaborative attorney within 30 days after providing notice that the party is unrepresented.

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<sup>16</sup> Section 61.183(1), F.S., provides, in part: “In any proceeding in which the issues of parental responsibility, primary residence, access to, visitation with, or support of a child are contested, the court may refer the parties to mediation . . . .”

In allowing parties to begin the process before or after filing a petition, partially resolve issues, and hire successor collaborative attorneys, parties can customize the process as they see fit.

### **Mandatory Disqualification**

This bill does not provide for mandatory disqualification of the collaborative attorneys if the process does not result in an agreement. Therefore, the primary incentive to encourage resolution is not in the bill. Although the bill conforms to the Uniform Collaborative Law Act in other respects, the failure to include mandatory disqualification is a significant departure from the UCLA. However, the Supreme Court could include the disqualification requirement in its implementing rules.

The bill also departs from local court rules on collaborative divorce. All circuits in which courts have adopted local rules on the collaborative process require counsel to withdraw from further representation if the process breaks down and an agreement is not reached.<sup>17</sup>

### **Confidentiality and Privilege**

The bill generally provides that collaborative law communications are confidential and privileged from disclosure. As such, communications made during the collaborative law process are not subject to discovery or admissible as evidence.

The bill identifies a number of exceptions to the privilege. The privilege does not apply to communications if:

- The parties agree to waive privilege.
- A person makes a prejudicial statement during the collaborative law process. In this instance, preclusion applies to enable the person prejudiced to respond to the statement.
- A participant makes statements available to the public under the state's public records law or made during a meeting of the process that is required to be open to the public.
- A participant makes a threat, or describes a plan to inflict bodily injury.
- A participant makes a statement that is intentionally used to plan, commit, attempt to commit, or conceal a crime.
- A person seeks to introduce the statement in a claim or complaint of professional misconduct or malpractice arising from the collaborative law process.
- A person seeks to introduce the statement to prove or disprove abuse, neglect, abandonment, or exploitation of children or adults unless the Department of Children and Families is involved.
- A court finds that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in confidentiality, and the communication is sought or offered in a felony proceeding or a proceeding involving contract disputes.

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<sup>17</sup> Order Authorizing Collaborative Process Dispute Resolution Model in the Ninth Judicial Circuit of Florida, Fla. Admin. Order No. 2008-06 (Mar. 28, 2008); *In re: Authorizing the Collaborative Process Dispute Resolution Model in the Eleventh Judicial Circuit of Florida*, Fla. Admin Order No. 07-08 (Oct. 2007); Collaborative Family Law Practice, Fla. Admin. Order No. S-2012-041 (Jul. 31, 2012); *In re: Domestic Relations—Collaborative Conflict Resolution in Dissolution of Marriage Cases*, Fla. Admin. Order No. 14-04 Amended (Feb. 23, 2014) (on file with the Senate Judiciary Committee).

Other than the discrete categories of exceptions to the privilege, the bill provides a broad level of confidentiality and protection from disclosure to collaborative law communications. Additionally, disclosure is limited to only the part of the communication needed for the purpose of the disclosure. Parties will be encouraged to communicate openly during the collaborative law process.

### **Rule Adoption by the Florida Supreme Court**

Although the bill becomes law July 1, 2016, its provisions do not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility.

## **IV. Constitutional Issues:**

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

This bill does not contain a mandate because the bill does not affect cities or counties.

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

None.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

Although some family law attorneys already practice collaborative law in the state, the bill could theoretically expand the use of collaborative law as an alternative to traditional litigation in dissolution of marriage cases. To the extent that collaborative law reduces costs of litigation, parties undergoing divorce could benefit financially from electing to proceed in a collaborative manner.

### **C. Government Sector Impact:**

The Office of the State Courts Administrator (OSCA) indicates that the bill could potentially decrease judicial workload due to fewer filings, hearings, and contested issues. Some judicial workload, however, could result from *in camera* hearings regarding privilege determinations. Due to the unavailability of data needed to quantifiably establish the impact on judicial or court workload, fiscal impact is indeterminate.<sup>18</sup>

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<sup>18</sup> Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Dec. 21, 2015).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 61.55, 61.56, 61.57, and 61.58.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

By Senator Lee

24-00824A-16

2016972\_\_

1 A bill to be entitled  
 2 An act relating to family law; providing a short  
 3 title; providing a directive to the Division of Law  
 4 Revision and Information; providing legislative  
 5 findings; creating s. 61.55, F.S.; providing a  
 6 purpose; creating s. 61.56, F.S.; defining terms;  
 7 creating s. 61.57, F.S.; providing that a  
 8 collaborative law process begins when the parties  
 9 enter into a collaborative law participation  
 10 agreement; prohibiting a tribunal from ordering a  
 11 party to participate in a collaborative law process  
 12 over the party's objection; providing the conditions  
 13 under which a collaborative law process concludes,  
 14 terminates, or continues; creating s. 61.58, F.S.;  
 15 providing for confidentiality of communications made  
 16 during the collaborative law process; providing  
 17 exceptions; providing that specified provisions do not  
 18 take effect until 30 days after the Florida Supreme  
 19 Court adopts rules of procedure and professional  
 20 responsibility; providing a contingent effective date;  
 21 providing effective dates.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

24  
 25 Section 1. This act may be cited as the "Collaborative Law  
 26 Process Act."

27 Section 2. The Division of Law Revision and Information is  
 28 directed to create part III of chapter 61, Florida Statutes,  
 29 consisting of ss. 61.55-61.58, Florida Statutes, to be entitled

Page 1 of 10

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24-00824A-16

2016972\_\_

30 the "Collaborative Law Process Act."  
 31 Section 3. The Legislature finds and declares that the  
 32 purpose of part III of chapter 61, Florida Statutes, is to:  
 33 (1) Create a uniform system of practice for a collaborative  
 34 law process for proceedings under chapters 61 and 742, Florida  
 35 Statutes.  
 36 (2) Encourage the peaceful resolution of disputes and the  
 37 early settlement of pending litigation through voluntary  
 38 settlement procedures.  
 39 (3) Preserve the working relationship between parties to a  
 40 dispute through a nonadversarial method that reduces the  
 41 emotional and financial toll of litigation.  
 42 Section 4. Section 61.55, Florida Statutes, is created to  
 43 read:  
 44 61.55 Purpose.—The purpose of this part is to create a  
 45 uniform system of practice for the collaborative law process in  
 46 this state. It is the policy of this state to encourage the  
 47 peaceful resolution of disputes and the early resolution of  
 48 pending litigation through a voluntary settlement process. The  
 49 collaborative law process is a unique nonadversarial process  
 50 that preserves a working relationship between the parties and  
 51 reduces the emotional and financial toll of litigation.  
 52 Section 5. Section 61.56, Florida Statutes, is created to  
 53 read:  
 54 61.56 Definitions.—As used in this part, the term:  
 55 (1) "Collaborative attorney" means an attorney who  
 56 represents a party in a collaborative law process.  
 57 (2) "Collaborative law communication" means an oral or  
 58 written statement, including a statement made in a record, or

Page 2 of 10

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24-00824A-16

2016972\_\_

59 nonverbal conduct that:

60 (a) Is made in the conduct of or in the course of  
61 participating in, continuing, or reconvening for a collaborative  
62 law process; and

63 (b) Occurs after the parties sign a collaborative law  
64 participation agreement and before the collaborative law process  
65 is concluded or terminated.

66 (3) "Collaborative law participation agreement" means an  
67 agreement between persons to participate in a collaborative law  
68 process.

69 (4) "Collaborative law process" means a process intended to  
70 resolve a collaborative matter without intervention by a  
71 tribunal and in which persons sign a collaborative law  
72 participation agreement and are represented by collaborative  
73 attorneys.

74 (5) "Collaborative matter" means a dispute, a transaction,  
75 a claim, a problem, or an issue for resolution, including a  
76 dispute, a claim, or an issue in a proceeding which is described  
77 in a collaborative law participation agreement and arises under  
78 chapter 61 or chapter 742, including, but not limited to:

79 (a) Marriage, divorce, dissolution, annulment, and marital  
80 property distribution.

81 (b) Child custody, visitation, parenting plan, and  
82 parenting time.

83 (c) Alimony, maintenance, and child support.

84 (d) Parental relocation with a child.

85 (e) Parentage and paternity.

86 (f) Premarital, marital, and postmarital agreements.

87 (6) "Law firm" means:

Page 3 of 10

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24-00824A-16

2016972\_\_

88 (a) One or more attorneys who practice law in a  
89 partnership, professional corporation, sole proprietorship,  
90 limited liability company, or association; or

91 (b) One or more attorneys employed in a legal services  
92 organization, the legal department of a corporation or other  
93 organization, or the legal department of a governmental entity,  
94 subdivision, agency, or instrumentality.

95 (7) "Nonparty participant" means a person, other than a  
96 party and the party's collaborative attorney, who participates  
97 in a collaborative law process.

98 (8) "Party" means a person who signs a collaborative law  
99 participation agreement and whose consent is necessary to  
100 resolve a collaborative matter.

101 (9) "Person" means an individual; a corporation; a business  
102 trust; an estate; a trust; a partnership; a limited liability  
103 company; an association; a joint venture; a public corporation;  
104 a government or governmental subdivision, agency, or  
105 instrumentality; or any other legal or commercial entity.

106 (10) "Proceeding" means a judicial, an administrative, an  
107 arbitral, or any other adjudicative process before a tribunal,  
108 including related prehearing and posthearing motions,  
109 conferences, and discovery.

110 (11) "Prospective party" means a person who discusses with  
111 a prospective collaborative attorney the possibility of signing  
112 a collaborative law participation agreement.

113 (12) "Record" means information that is inscribed on a  
114 tangible medium or that is stored in an electronic or other  
115 medium and is retrievable in perceivable form.

116 (13) "Related to a collaborative matter" means involving

Page 4 of 10

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24-00824A-16

2016972\_\_

117 the same parties, transaction or occurrence, nucleus of  
 118 operative fact, dispute, claim, or issue as the collaborative  
 119 matter.

120 (14) "Sign" means, with present intent to authenticate or  
 121 adopt a record, to:

122 (a) Execute or adopt a tangible symbol; or

123 (b) Attach to or logically associate with the record an  
 124 electronic symbol, sound, or process.

125 (15) "Tribunal" means a court, an arbitrator, an  
 126 administrative agency, or other body acting in an adjudicative  
 127 capacity which, after presentation of evidence or legal  
 128 argument, has jurisdiction to render a decision affecting a  
 129 party's interests in a matter.

130 Section 6. Section 61.57, Florida Statutes, is created to  
 131 read:

132 61.57 Beginning, concluding, and terminating a  
 133 collaborative law process.—

134 (1) The collaborative law process begins, regardless of  
 135 whether a legal proceeding is pending, when the parties enter  
 136 into a collaborative law participation agreement.

137 (2) A tribunal may not order a party to participate in a  
 138 collaborative law process over that party's objection.

139 (3) A collaborative law process is concluded by any of the  
 140 following:

141 (a) Resolution of a collaborative matter as evidenced by a  
 142 signed record;

143 (b) Resolution of a part of the collaborative matter,  
 144 evidenced by a signed record, in which the parties agree that  
 145 the remaining parts of the collaborative matter will not be

24-00824A-16

2016972\_\_

146 resolved in the collaborative law process; or

147 (c) Termination of the collaborative law process.

148 (4) A collaborative law process terminates when a party:

149 (a) Gives notice to the other parties in a record that the  
 150 collaborative law process is concluded;

151 (b) Begins a proceeding related to a collaborative matter  
 152 without the consent of all parties;

153 (c) Initiates a pleading, a motion, an order to show cause,  
 154 or a request for a conference with a tribunal in a pending  
 155 proceeding related to a collaborative matter;

156 (d) Requests that the proceeding be put on the tribunal's  
 157 active calendar in a pending proceeding related to a  
 158 collaborative matter;

159 (e) Takes similar action requiring notice to be sent to the  
 160 parties in a pending proceeding related to a collaborative  
 161 matter; or

162 (f) Discharges a collaborative attorney or a collaborative  
 163 attorney withdraws from further representation of a party,  
 164 except as otherwise provided in subsection (7).

165 (5) A party's collaborative attorney shall give prompt  
 166 notice to all other parties in a record of a discharge or  
 167 withdrawal.

168 (6) A party may terminate a collaborative law process with  
 169 or without cause.

170 (7) Notwithstanding the discharge or withdrawal of a  
 171 collaborative attorney, the collaborative law process continues  
 172 if, not later than 30 days after the date that the notice of the  
 173 discharge or withdrawal of a collaborative attorney required by  
 174 subsection (5) is sent to the parties:



24-00824A-16

2016972\_\_

175 (a) The unrepresented party engages a successor  
 176 collaborative attorney;

177 (b) The parties consent to continue the collaborative law  
 178 process by reaffirming the collaborative law participation  
 179 agreement in a signed record;

180 (c) The collaborative law participation agreement is  
 181 amended to identify the successor collaborative attorney in a  
 182 signed record; and

183 (d) The successor collaborative attorney confirms his or  
 184 her representation of a party in the collaborative law  
 185 participation agreement in a signed record.

186 (8) A collaborative law process does not conclude if, with  
 187 the consent of the parties, a party requests a tribunal to  
 188 approve a resolution of a collaborative matter or any part  
 189 thereof as evidenced by a signed record.

190 (9) A collaborative law participation agreement may provide  
 191 additional methods for concluding a collaborative law process.

192 Section 7. Section 61.58, Florida Statutes, is created to  
 193 read:

194 61.58 Confidentiality of a collaborative law  
 195 communication.—Except as provided in this section, a  
 196 collaborative law communication is confidential to the extent  
 197 agreed by the parties in a signed record or as otherwise  
 198 provided by law.

199 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW  
 200 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

201 (a) Subject to subsections (2) and (3), a collaborative law  
 202 communication is privileged as provided under paragraph (b), is  
 203 not subject to discovery, and is not admissible into evidence.

Page 7 of 10

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24-00824A-16

2016972\_\_

204 (b) In a proceeding, the following privileges apply:

205 1. A party may refuse to disclose, and may prevent another  
 206 person from disclosing, a collaborative law communication.

207 2. A nonparty participant may refuse to disclose, and may  
 208 prevent another person from disclosing, a collaborative law  
 209 communication of a nonparty participant.

210 (c) Evidence or information that is otherwise admissible or  
 211 subject to discovery does not become inadmissible or protected  
 212 from discovery solely because of its disclosure or use in a  
 213 collaborative law process.

214 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

215 (a) A privilege under subsection (1) may be waived orally  
 216 or in a record during a proceeding if it is expressly waived by  
 217 all parties and, in the case of the privilege of a nonparty  
 218 participant, if it is expressly waived by the nonparty  
 219 participant.

220 (b) A person who makes a disclosure or representation about  
 221 a collaborative law communication that prejudices another person  
 222 in a proceeding may not assert a privilege under subsection (1).  
 223 This preclusion applies only to the extent necessary for the  
 224 person prejudiced to respond to the disclosure or  
 225 representation.

226 (3) LIMITS OF PRIVILEGE.—

227 (a) A privilege under subsection (1) does not apply to a  
 228 collaborative law communication that is:

229 1. Available to the public under chapter 119 or made during  
 230 a session of a collaborative law process that is open, or is  
 231 required by law to be open, to the public;

232 2. A threat, or statement of a plan, to inflict bodily

Page 8 of 10

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24-00824A-16

2016972\_\_

233 injury or commit a crime of violence;

234 3. Intentionally used to plan a crime, commit or attempt to  
 235 commit a crime, or conceal an ongoing crime or ongoing criminal  
 236 activity; or

237 4. In an agreement resulting from the collaborative law  
 238 process, as evidenced by a record signed by all parties to the  
 239 agreement.

240 (b) The privilege under subsection (1) for a collaborative  
 241 law communication does not apply to the extent that such  
 242 collaborative law communication is:

243 1. Sought or offered to prove or disprove a claim or  
 244 complaint of professional misconduct or malpractice arising from  
 245 or relating to a collaborative law process; or

246 2. Sought or offered to prove or disprove abuse, neglect,  
 247 abandonment, or exploitation of a child or an adult unless the  
 248 Department of Children and Families is a party to or otherwise  
 249 participates in the process.

250 (c) A privilege under subsection (1) does not apply if a  
 251 tribunal finds, after a hearing in camera, that the party  
 252 seeking discovery or the proponent of the evidence has shown  
 253 that the evidence is not otherwise available, the need for the  
 254 evidence substantially outweighs the interest in protecting  
 255 confidentiality, and the collaborative law communication is  
 256 sought or offered in:

257 1. A proceeding involving a felony; or

258 2. A proceeding seeking rescission or reformation of a  
 259 contract arising out of the collaborative law process or in  
 260 which a defense is asserted to avoid liability on the contract.

261 (d) If a collaborative law communication is subject to an

24-00824A-16

2016972\_\_

262 exception under paragraph (b) or paragraph (c), only the part of  
 263 the collaborative law communication necessary for the  
 264 application of the exception may be disclosed or admitted.

265 (e) Disclosure or admission of evidence excepted from the  
 266 privilege under paragraph (b) or paragraph (c) does not make the  
 267 evidence or any other collaborative law communication  
 268 discoverable or admissible for any other purpose.

269 (f) The privilege under subsection (1) does not apply if  
 270 the parties agree in advance in a signed record, or if a record  
 271 of a proceeding reflects agreement by the parties, that all or  
 272 part of a collaborative law process is not privileged. This  
 273 paragraph does not apply to a collaborative law communication  
 274 made by a person who did not receive actual notice of the  
 275 collaborative law participation agreement before the  
 276 communication was made.

277 Section 8. Sections 61.55-61.58, Florida Statutes, as  
 278 created by this act, shall not take effect until 30 days after  
 279 the Florida Supreme Court adopts rules of procedure and  
 280 professional responsibility consistent with this act.

281 Section 9. Except as otherwise expressly provided in this  
 282 act, this act shall take effect July 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓  
**COMMITTEES:**  
Appropriations, *Chair*  
Appropriations Subcommittee on General  
Government  
Banking and Insurance  
Reapportionment  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Budget Commission,  
*Alternating Chair*

**SENATOR TOM LEE**  
24th District

December 15, 2015

The Honorable Miguel Diaz de la Portilla  
Senate Committee on Judiciary, Chair  
406 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Diaz de la Portilla,

I respectfully request that SB 972 related to *Family Law*, be placed on the Senate Committee on Judiciary agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Tom Lee".

Tom Lee  
Senator, District 24

Cc: Tom Cibula, Staff Director

**REPLY TO:**

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 996

INTRODUCER: Senator Negron

SUBJECT: Civil Remedies for Terrorism

DATE: January 11, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Favorable</b>
2.			ACJ	
3.			FP	

---

**I. Summary:**

SB 996 creates a civil cause of action for a person who is injured by an act of terrorism or by a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to three times the actual damages sustained, a minimum of \$1,000, and reasonable attorney fees and court costs at the trial and appellate levels. In contrast, a defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. The bill does not limit any other right to recover attorney fees or costs established in any other provisions of law.

A person who participates in the act of terrorism and is injured may not bring a claim under the cause of action authorized by the bill.

**II. Present Situation:**

**Torts**

A tort is a civil wrong for which the person harmed may seek a remedy, generally in the form of damages. A basic purpose of tort law is to allow the wronged person to be compensated for his or her injury by the person responsible for the wrong. The burden of loss is shifted from the injured person to the one who is at fault. While some acts may, at the same time, be both a crime and a tort, the crime is committed against the public and redress is pursued by the state. The tort, however, is a private injury and redress is pursued by the injured party in a civil suit.<sup>1</sup>

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<sup>1</sup> 55 FLA. JUR 2D TORTS s. 1 (2015).

An intentional tort is committed by a person who acts with general or specific intent to harm someone<sup>2</sup> or engages in conduct that is substantially certain to bring about injury or death.<sup>3</sup> Some general examples of intentional torts are assault, battery, false imprisonment, fraud, intentional infliction of emotional distress, and invasion of privacy. Beyond the usual economic and non-economic damages, a defendant may also be held liable for punitive damages if there is a finding that the defendant was personally guilty of intentional misconduct or gross negligence.<sup>4</sup>

While the statutes do not provide a specific cause of action for someone in Florida to recover for injuries sustained by terrorism, it is arguable that a cause of action might be made for battery.

### **Civil Remedies for Criminal Practices in Chapter 772**

Civil remedies are provided as redress for certain criminal practices enumerated in chapter 772, F.S. A civil cause of action is provided for any person who proves by clear and convincing evidence that he or she has been injured by someone who has received proceeds derived from a pattern of criminal activity.<sup>5</sup> The criminal activity referred to includes offenses relating to the manufacture, distribution, and use of explosives, homicide, assault and battery, kidnapping, weapons and firearms, arson, computer-related crimes, bribery, and the obstruction of justice.<sup>6</sup>

While punitive damages are not generally recoverable for claims arising under chapter 772, F.S., a prevailing plaintiff may recover threefold, or treble, the actual damages and a minimum of \$200 in damages, or \$1,000 under the Drug Dealer Liability Act, as well as attorney fees and court costs at trial and on appeal.<sup>7</sup> A defendant, however, is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that was without substantial fact or legal support. The court is precluded from considering whether the opposing party is able to pay fees and costs.<sup>8</sup>

If a civil remedy is applied under chapter 772, it does not preclude the application of any other remedy, whether civil or criminal, under any other provision of law.<sup>9</sup> Additionally, if a defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that is the basis of the plaintiff's civil cause of action under chapter 772, F.S., the defendant is estopped as if the plaintiff had been a party in the state's criminal action.<sup>10</sup>

### **Terrorism**

Terrorism is defined in the Florida Criminal Code as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of the state or of the United

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<sup>2</sup> BLACK'S LAW DICTIONARY (14th ed. 2014).

<sup>3</sup> 55 FLA. JUR 2D TORTS s. 6 (2015).

<sup>4</sup> Section 768.72(2), F.S.

<sup>5</sup> Sections 772.103(1) and 772.104, F.S.

<sup>6</sup> Section 772.102(1), F.S. By definition, "criminal activity" means to commit, attempt to commit, conspire to commit, or solicit, coerce, or intimidate another person to commit the list of crimes in s. 772.102(1)(a).

<sup>7</sup> Sections 772.104(1), 772.11(1), and 772.12, F.S.

<sup>8</sup> Section 772.104(3), F.S.

<sup>9</sup> Section 772.18, F.S.

<sup>10</sup> Section 772.14, F.S.

States or involves a violation of s. 815.06, F.S., relating to offenses against users of computers and electronic devices, and:

- Is intended to intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through the destruction of property, assassination, murder, kidnapping, or aircraft piracy.<sup>11</sup>

Terrorism is a predicate act for the crime of capital murder, it is not an independent crime in the statutes.<sup>12</sup> If someone is convicted of committing a felony or misdemeanor that facilitated or furthered an act of terrorism, the court is required to reclassify the felony or misdemeanor to the next higher degree.<sup>13</sup> Also, if the underlying crime is a first-degree misdemeanor or greater, the offense severity ranking is increased, thereby increasing the defendant's potential sentence.<sup>14</sup>

### **Federal Terrorism Statute**

SB 996 is structured similarly to the federal Antiterrorism Act of 1990.<sup>15</sup> The federal legislation also provides for the recovery of treble damages, cost of the suit, and attorney fees, but differs in that the injury sustained by the claimant must be for an act of international terrorism. The international provision requires that the act "occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished . . . ."<sup>16</sup>

### **Liability for Intentional Torts**

Under the doctrine of joint and several liability, all of the defendants at fault for a plaintiff's damages are responsible for the total of each defendant's fault.<sup>17</sup> With a few exceptions, s. 768.81, F.S., generally abolished the application of the doctrine. One of the exceptions allows the doctrine of joint and several liability to apply to "any action based upon an intentional tort."<sup>18</sup>

### **Attorney Fees and Sanctions for Raising Unsupported Claims or Defenses**

Section 57.105, F.S., generally authorizes a court to award reasonable attorney fees, including prejudgment interest to the prevailing party from the losing party and the losing party's attorney for unsupported claims and defenses presented to the court. The statute further provides that its remedies are supplemental to other sanctions available under law or court rules.<sup>19</sup>

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<sup>11</sup> Section 775.30, F.S.

<sup>12</sup> Section 782.04(1)(a)2.r., (3)r., and (4)s., F.S.

<sup>13</sup> Section 775.31(1), F.S.

<sup>14</sup> Section 775.31(2), F.S.

<sup>15</sup> 18 U.S.C. s. 2331 *et. seq.*

<sup>16</sup> 18 U.S.C. s. 2331(1)(C).

<sup>17</sup> *Louisville & N. R. Co. v. Allen*, 65 So. 8 (1914).

<sup>18</sup> Section 768.81(4), F.S.

<sup>19</sup> Section 57.105(6), F.S.

### Similar Legislation in Other States

Private William “Andy” Long, U.S. Army, was killed in uniform outside of an Arkansas Army recruiting office on June 1, 2009. Another soldier was wounded in the shooting but survived. The defendant in the case claimed to be a terrorist and had traveled to Yemen and Somalia. In 2011, he pleaded guilty to capital murder and attempted capital murder and received a life sentence with no possibility of parole.<sup>20</sup> Because of this incident, legislation has been enacted in Louisiana, Arkansas, Kansas, Tennessee, and North Carolina that permits victims of terrorist acts to recover damages as proposed in this legislation.<sup>21</sup>

### III. Effect of Proposed Changes:

SB 996 creates a civil cause of action for a person who is injured by an act of terrorism or by a violation of a law that facilitates or furthers an act of terrorism. A successful plaintiff is entitled to three times the actual damages sustained, a minimum of \$1,000, and reasonable attorney fees and court costs at the trial and appellate levels. A person who participates in the act of terrorism and is injured may not bring a claim under this statute.

A defendant is entitled to recover reasonable attorney fees and court costs at the trial and appellate levels if it is determined that the claimant raised a claim that is not supported factually or legally.

When a court awards attorney fees and costs under the bill, it may not consider whether the opposing party is able to pay the fees and costs. This new remedy does not limit any other right to recover attorney fees or costs established in any other provisions of law.

Because terrorism is an intentional tort and because the doctrine of joint and several liability applies to actions based on an intentional tort, a defendant who was a minor participant in an act of terrorism may be liable for all of a plaintiff’s damages.<sup>22</sup>

The bill takes effect July 1, 2016.

### IV. Constitutional Issues:

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

None.

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

None.

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<sup>20</sup> Arkansas News, *Senate approves ‘Andy’s Law’*, April 1, 2013 available at <http://arkansasnews.com/sections/news/senate-approves-%E2%80%98andy%E2%80%99s-law%E2%80%99.html>.

<sup>21</sup> Center for Security Policy, *Andy’s Law Signed by Governor McCrory in North Carolina*, (Aug. 24, 2015) available at <https://www.centerforsecuritypolicy.org/2015/08/24/andys-law-signed-by-governor-mccrory-in-north-carolina/>.

<sup>22</sup> See s. 768.81(4), F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may provide a remedy for lawsuits for damages caused by terrorism when an international component does not exist or cannot be proven. An international component is required for lawsuits for damages for terrorism under federal law.

C. Government Sector Impact:

The impact on the courts will be based on the number of lawsuits filed which cannot be known.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates s. 772.13 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.



By Senator Negrón

32-00932A-16

2016996\_\_

1 A bill to be entitled  
 2 An act relating to civil remedies for terrorism;  
 3 creating s. 772.13, F.S.; creating a cause of action  
 4 for acts relating to terrorism; specifying a measure  
 5 of damages; prohibiting claims by specified  
 6 individuals; providing for attorney fees and costs;  
 7 providing an effective date.

8  
 9 Be It Enacted by the Legislature of the State of Florida:

10  
 11 Section 1. Section 772.13, Florida Statutes, is created to  
 12 read:

13 772.13 Civil remedy for terrorism or facilitation or  
 14 furthering terrorism.-

15 (1) Any person who has been injured by reason of an act of  
 16 terrorism as defined in s. 775.30 or a violation of any law for  
 17 which the penalty is increased under s. 775.31 for facilitating  
 18 or furthering terrorism shall have a cause of action for  
 19 threefold the actual damages sustained and, in any such action,  
 20 is entitled to minimum damages in the amount of \$1,000, and  
 21 reasonable attorney fees and court costs in the trial and  
 22 appellate courts.

23 (2) A person injured by reason of his or her participation  
 24 in the same act or transaction that resulted in the act of  
 25 terrorism or the defendant's penalty reclassification pursuant  
 26 to s. 775.31 may not bring a claim under this section.

27 (3) The defendant shall be entitled to recover reasonable  
 28 attorney fees and court costs in the trial and appellate courts  
 29 upon a finding that the claimant raised a claim which was

Page 1 of 2

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

32-00932A-16

2016996\_\_

30 without support in fact or law. In awarding attorney fees and  
 31 costs under this section, the court shall not consider the  
 32 ability of the opposing party to pay such fees and costs.

33 (4) Nothing under this section shall be interpreted as  
 34 limiting any right to recover attorney fees or costs provided  
 35 under other provisions of law.

36 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓  
COMMITTEES:  
Appropriations Subcommittee on Criminal and  
Civil Justice, *Chair*  
Appropriations  
Banking and Insurance  
Ethics and Elections  
Higher Education  
Regulated Industries  
Rules

SENATOR JOE NEGRON  
32nd District

December 17, 2015

Miguel Diaz de la Portilla, Chair  
Committee on Judiciary  
515 Knott Building  
404 S Monroe Street  
Tallahassee, FL 32399-1100

Re: Senate Bill 996

Dear Chairman Diaz de la Portilla:

I would like to request Senate Bill 996 relating to civil remedies for terrorism be placed on the agenda for the next scheduled committee meeting.

Thank you for your consideration of this request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Joe Negron".

Joe Negron  
State Senator  
District 32

JN/hd

c: Tom Cibula, Staff Director

REPLY TO:

- 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1042

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Judgment Debts

DATE: January 12, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1042 revises chapter 56, F.S., titled Final Process, which regulates how a creditor may collect a judgment against a debtor. The chapter also includes a statute governing proceedings supplementary which provides a judgment creditor a mechanism to investigate and discover assets that a judgment debtor may have improperly concealed to third parties.

This bill amends chapter 56, F.S., by:

- Providing a new definitions section at the beginning of the chapter for uniform usage throughout the chapter;
- Moving the discovery provisions in current law into a single section and providing that the discovery provisions are in addition to the discovery provisions found in the rules of civil procedure;
- Establishing a procedure for bringing non-parties to the original action into proceedings supplementary by a notice to appear that describes the property at issue, notifies the third-party of the right to a jury trial, and requires the third-party to serve an answer within a time set by the court;
- Providing that a claim under the Uniform Fraudulent Transfer Act which is raised during proceedings supplementary must be initiated by a supplemental complaint and that those claims are governed by the Uniform Fraudulent Transfer Act and the rules of civil procedure; and
- Providing that a person who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to penalties imposed by the court.

## II. Present Situation:

### Chapter 56, Final Process

Chapter 56, F.S., titled “Final Process,” contains the framework for executing or enforcing the final judgment after a court determines that a creditor is entitled to recover from a debtor. Also contained in that chapter is a statute governing proceedings supplementary, which provides a judgment creditor a procedural mechanism to investigate assets of the judgment debtor that might be available to satisfy the judgment. These proceedings also permit the discovery of assets that may have been transferred improperly by a judgment debtor to third parties. Proceedings supplementary are separate and distinct from other actions under the Uniform Fraudulent Transfer Act (UFTA), codified in chapter 726, F.S. A defendant in an action under the UFTA is entitled to greater procedural protections and must be served with an actual complaint as opposed to a notice to appear in a supplementary proceeding.

Proceedings supplementary did not exist at common law. In order for a creditor to discover and execute on a judgment debtor’s assets, he or she had to institute a parallel proceeding, a creditor’s bill in chancery, to prevent the fraudulent disposal of the debtor’s property before the debt was reduced to judgment. In 1919, the Legislature passed the proceedings supplementary statute to streamline the process and avoid the step of requiring a judgment creditor to initiate the completely separate action.<sup>1</sup> In 1935, The Florida Supreme Court noted that the provisions were intended to provide the circuit court with broad discretionary powers to carry out the complete “intent and purpose of the proceedings supplementary to execution” and grant the circuit courts the authority to harness all of a defendant’s property or property rights “however fraudulently conveyed, covered up, or concealed,” even those held or possessed by third parties.<sup>2</sup> Under proceedings supplementary, a judgment creditor has the right to implead, or bring into the action, third parties in possession of property belonging to the judgment debtor, even though the third party was not involved in the original action.

One court more recently noted that proceedings supplementary afford “speedy and direct proceedings” to be held in the same court where the judgment was recovered to better afford the judgment creditor with the most complete relief possible to satisfy the judgment.<sup>3</sup> Statutory proceedings supplementary are post-judgment proceedings. They allow a creditor to effectuate a judgment lien that already exists and are not separate, independent causes of action.<sup>4</sup>

### Proceedings Supplementary Task Force

Recognizing that the proceedings supplementary section of the Florida Statutes remained virtually unchanged over the last decades, the Proceedings Supplementary Task Force was formed in 2013 by the Business Law Section of The Florida Bar to review and recommend

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<sup>1</sup> Benjamin H. Brodsky, *Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*, The Florida Bar Journal, Dec. 1012, at 28, available at [https://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/a29338fa50f7a88085257ac2007494de!OpenDocument&Highlight=0,brodsky\\*](https://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/a29338fa50f7a88085257ac2007494de!OpenDocument&Highlight=0,brodsky*).

<sup>2</sup> *State ex rel. Phoenix Tax Title Corp. v. Viney*, 120 Fla 657, 663, 163 So. 57, 163 So. 57, 60 (1935). As noted in the Brodsky article above.

<sup>3</sup> *Zureikat v. Shaibani*, 944 So. 2d 1019 (Fla. 5th DCA 2006).

<sup>4</sup> *Id.* at 1022.

changes to the statute governing proceedings supplementary and other provisions of chapter 56, F.S.<sup>5</sup> After 2 years of work, the task force has recommended the changes that constitute SB 1042. According to the Business Law Section, these changes are procedural and do not represent substantive changes to any part of chapter 56, F.S.<sup>6</sup>

### III. Effect of Proposed Changes:

The bill makes organizational changes to chapter 56, F.S., governing final process, while updating and clarifying several definitions for uniformity. The chapter currently does not contain a definitions section, but the bill provides a new section of definitions.

#### Definitions and Terms

Section 1 creates a new and separate definitions section to establish uniform definitions of terms and terms used in chapter 56, F.S. This section identifies each party involved in the proceedings supplementary according to terms currently used in case law, and promotes a better understanding of the application of chapter 56.<sup>7</sup> Relevant changes in terminology include:

- When appropriate, “judgment debtor” replaces the terms “defendant” and “defendant in execution.” Judgment debtor is defined as a person who is liable for a judgment, an order, or a decree subject to execution in chapter 56, F.S.
- The term “judgment creditor” replaces the terms “plaintiff,” and “plaintiff in execution.” A judgment creditor is defined as the holder of an unsatisfied judgment, order, or decree for the payment of money, including a transferee or surety, who has the right to control and collect the judgment.
- “Corporate judgment debtor” replaces the term “corporation.” The term is defined as a person who is a judgment debtor, not including an individual, an estate, or a trust other than a business trust.
- A “levying creditor” is defined as a judgment creditor who levies on property.
- A definition of “person” is added to include an individual, partnership, corporation, association, or one of several other entities, all of which mirror verbatim the definition of person in s. 726.102(1), F.S. dealing with fraudulent transfers.

#### Discovery in Proceedings Supplementary

Under current law, the discovery tools available to a judgment creditor in proceedings supplementary, such as requiring a judgment debtor to be examined before the court, are spread around in s. 56.29, F.S., making it confusing as to whether they are generally available or whether they are a prerequisite to proceedings supplementary.<sup>8</sup> The bill moves the discovery provisions currently in s. 56.29, F.S., to a newly created s. 56.30, F.S., which bears the catch line “Discovery in proceedings supplementary.” The new provisions in s. 56.30, F.S., provide clearly

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<sup>5</sup> Some provisions were amended in 2014.

<sup>6</sup> Business Law Section of The Florida Bar, *White Paper: Analysis of Proposed Amendments to Chapter 56* (2015) (on file with the Senate Committee on Judiciary). According to this white paper, the task force was formed after the publication of Benjamin Brodsky’s article published in *The Florida Bar Journal* and referenced in footnote 1 above.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Business Law Section of The Florida Bar, *supra* note 6, at 7.

identifiable discovery procedures for proceedings supplementary. They are the same as current law with the following additions:

- The discovery provisions in s. 56.30, F.S., are in addition to any other discovery allowed under the rules of civil procedure.
- A judgment debtor may be required to appear for examination before the court in the county of the judgment debtor's residence or principal place of business.
- A court's examination of a judgment debtor may occur before a notice to appear is issued to third parties.
- A corporate judgment debtor may send a designee having knowledge of the property subject to execution to be examined by the court.

### **Notification and Examination of Third-Parties**

As discussed earlier, proceeding supplementary permit the discovery of assets that may have been transferred or concealed by a judgment debtor in an attempt to prevent creditors from satisfying a final judgment. These efforts to conceal assets generally involve third-parties who were not involved in the initial underlying case. The current process for bringing these third-parties into the proceeding in s. 56.29(2), F.S., has caused confusion and raised due process concerns among participants.

This bill amends s. 56.29(2), F.S., to create a uniform procedure for bringing non-parties into proceedings supplementary. A judgment creditor, in its motion to initiate proceedings supplementary, must describe any property of the judgment debtor, not exempt from execution, which may be applied toward satisfaction of the judgment. After proceedings supplementary have been initiated, the court then must issue a notice to appear to third-parties informing them that property in their possession or control may be subject to execution and applied to satisfy a judgment. Service of the notice to appear makes them parties to the proceedings supplementary. The new notice to appear must be served by a process server. The notice must describe with reasonable specificity the property at issue, require the third-party to serve an answering affidavit within a specified time to be determined by the court which is not less than 7 business days, unless reduced by the court for good cause, and require the third-party to assert any defenses in the responding affidavit. The notice to appear must also inform the third-party that penalties may be imposed for failure to timely file an affidavit and that he or she has the right to a jury trial.<sup>9</sup>

### **Uniform Fraudulent Transfer Act Claims**

Current s. 56.29(5), F.S., permits judgment creditors to file claims under the Uniform Fraudulent Transfers Act<sup>10</sup> (UFTA) in proceedings supplementary. The bill moves this provision from s. 56.29(5), F.S., to the newly-created s. 56.29(9), F.S. To underscore that UFTA claims are distinct from proceedings supplementary, the bill provides that UFTA claims must be initiated by a supplemental complaint and served as provided by the rules of civil procedure. The claims under the supplemental complaint are subject to chapter 726, F.S., and the rules of civil procedure. The bill also requires the clerk of court to provide the parties with a parallel case number that the parties will use for the UFTA action.

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<sup>9</sup> See s. 56.29(2), F.S. and note 6 *supra*.

<sup>10</sup> Chapter 726, F.S.

### **Defenses or Claims Raised Solely for Delay**

Current section 56.16, F.S., provides that a person, referred to as a claimant, other than the judgment debtor, who claims any property levied on by the judgment creditor, may file an affidavit stating the claim. Under sections 56.16 and 56.18, F.S., if the court determines that the claimant's asserted claim on the property was brought for the purpose of delay, the judgment creditor may be awarded damages not to exceed 20 percent of the value of the property claimed. Consistently, the bill amends ss. 56.16, 56.18, and 56.29, F.S., to provide that a person served with a notice to appear in proceedings supplementary and who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to the penalties provided in ss. 56.16 and 56.18, F.S.

### **Other Effects of the Bill**

The bill amends s. 56.021, F.S., to provide that an execution may be issued upon an "order," in addition to a judgment or decree. This is a codification of existing case law<sup>11</sup> and practice.

Newly renumbered s. 56.29(6), F.S., is amended to provide that the procedures and remedies available under ss. 56.16-56.20, F.S., related to third-party claims and executions against third-parties, also apply to orders, judgments, and writs issued pursuant to the proceedings supplementary process.

The bill also makes technical and conforming corrections.

### **Effective Date**

The bill takes effect July 1, 2016.

## **IV. Constitutional Issues:**

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

None.

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

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>11</sup> See *Davidson v. Seegar*, 15 Fla. 671 (Fla. 1876).

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Office of the State Courts Administrator stated that the fiscal impact of this legislation cannot be accurately determined because data is unavailable to quantify the effect it will have on judicial time and workload resulting from the changes to chapter 56, F.S. The Office did note that the clarifying language in the bill might assist the courts handling proceedings supplementary and may contribute to a reduction in the expenditure of judicial time.<sup>12</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 56.011, 56.021, 56.041, 56.071, 56.09, 56.10, 56.12, 56.15, 56.16, 56.18, 56.19, 56.20, 56.22, 56.26, 56.27, 56.28, 56.29, and 56.30.

This bill creates section 56.001 of the Florida Statutes.

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

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

**CS by Judiciary on January 12, 2016:**

The committee substitute adds a definition of “person” in section 1, the new definitions section for chapter 56, F.S. Language is also added in section 18, s. 56.29(9), F.S., to provide that UFTA claims initiated in a supplemental complaint must be served as provided by the rules of civil procedure and that the UFTA claims are subject to chapter 726, F.S., and the rules of civil procedure.

<sup>12</sup> Office of the State Courts Administrator, *2016 Judicial Impact Statement for SB 1042*, (Jan 11, 2016) (on file with the Senate Committee on Judiciary).



The majority of the differences between the committee substitute and the original bill are generally stylistic changes that represent the different drafting styles and rules between House and Senate Bill Drafting. The committee substitute, except for several minor grammatical differences, conforms the Senate bill to CS/HB 503.

**B. Amendments:**

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2016	.	
	.	
	.	
	.	

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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 56.0101, Florida Statutes, is created to  
read:

56.0101 Definitions.—As used in this chapter, the term:

(1) "Claimant" means any person other than the judgment  
debtor who claims any property levied on.

(2) "Corporate judgment debtor" means a judgment debtor  
other than an individual, an estate, or a trust that is not a



753766

12 business trust.

13 (3) "Judgment creditor" means the holder of an unsatisfied  
14 judgment, order, or decree for the payment of money, including a  
15 transferee or a surety having the right to control and collect  
16 the judgment under s. 55.13.

17 (4) "Judgment debtor" means each person who is liable on a  
18 judgment, an order, or a decree subject to execution under this  
19 chapter.

20 (5) "Levying creditor" means the levying judgment creditor.

21 (6) "Person" means an individual, partnership, corporation,  
22 association, organization, government or governmental  
23 subdivision or agency, business trust, estate, trust, or any  
24 other legal or commercial entity.

25 (7) "Relative" means an individual related by consanguinity  
26 within the third degree as determined by the common law, a  
27 spouse, or an individual related to a spouse within the third  
28 degree as determined by the common law, and includes an  
29 individual in an adoptive relationship within the third degree.

30 Section 2. Section 56.011, Florida Statutes, is amended to  
31 read:

32 56.011 Executions; ~~capias ad satisfaciendum abolished.~~  
33 ~~In no case shall~~ A capias ad satisfaciendum may not be issued upon  
34 a judgment, nor ~~may shall~~ the body of any person ~~defendant~~ be  
35 subject to arrest or confinement for the payment of money,  
36 except ~~it be~~ for fines imposed by lawful authority.

37 Section 3. Section 56.021, Florida Statutes, is amended to  
38 read:

39 56.021 Executions; issuance and return, alias, etc.—When  
40 issued, an execution is valid and effective during the life of



753766

41 the judgment, order, or decree on which it is issued. When fully  
42 paid, the officer executing it shall make his or her return and  
43 file it in the court which issued the execution. If the  
44 execution is lost or destroyed, the party entitled thereto may  
45 have an alias, pluries or other copies on making proof of such  
46 loss or destruction by affidavit and filing it in the court  
47 issuing the execution.

48 Section 4. Subsection (1) of section 56.041, Florida  
49 Statutes, is amended to read:

50 56.041 Executions; collection and return.—

51 (1) All executions shall be returnable when satisfied, and  
52 the officers to whom they are delivered shall collect the  
53 amounts thereof as soon as possible and shall furnish the  
54 judgment debtor ~~defendant~~ with a satisfaction of judgment. All  
55 receipts shall be endorsed on the execution.

56 Section 5. Section 56.071, Florida Statutes, is amended to  
57 read:

58 56.071 Executions on equities of redemption; discovery of  
59 value.—On motion made by the person ~~party~~ causing a levy to be  
60 made on an equity of redemption, the court from which the  
61 execution issued shall order the mortgagor, mortgagee, and all  
62 other persons interested in the mortgaged property levied on to  
63 appear and be examined about the amount remaining due on the  
64 mortgage, the amount that has been paid, the person ~~party~~ to  
65 whom that amount has been paid, and the date when that amount  
66 was paid so that the value of the equity of redemption may be  
67 ascertained before the property is sold. The court may appoint a  
68 general or special magistrate to conduct the examination. This  
69 section shall also apply to the interest of and personal



753766

70 property in possession of a vendee under a retained title  
71 contract or conditional sales contract.

72 Section 6. Section 56.09, Florida Statutes, is amended to  
73 read:

74 56.09 Executions against corporate judgment debtors  
75 ~~corporations~~; generally.—On any judgment against a corporate  
76 judgment debtor, the judgment creditor corporation plaintiff may  
77 have an execution levied on the current money as well as on the  
78 goods and chattels, lands and tenements of the corporate  
79 judgment debtor said corporation.

80 Section 7. Section 56.10, Florida Statutes, is amended to  
81 read:

82 56.10 Executions against corporate judgment debtors  
83 ~~corporations~~; receivership.—If an execution cannot be satisfied  
84 in whole or in part for lack of property of the corporate  
85 judgment debtor defendant corporation subject to levy and sale,  
86 on motion of the judgment creditor the circuit court in chancery  
87 within whose circuit such corporate judgment debtor corporation  
88 is or has been doing business, or in which any of its effects  
89 are found, may sequester the property, things in action, goods  
90 and chattels of the corporate judgment debtor corporation for  
91 the purpose of enforcing the judgment, and may appoint a  
92 receiver for the corporate judgment debtor corporation. A  
93 receiver so appointed is subject to the rules prescribed by law  
94 for receivers of the property of other judgment debtors. His or  
95 her power shall extend throughout the state.

96 Section 8. Section 56.12, Florida Statutes, is amended to  
97 read:

98 56.12 Executions; levy, forthcoming bond.—If a judgment



753766

99 ~~debtor defendant in execution~~ wants to retake possession of any  
100 property levied on, the judgment debtor ~~he or she~~ may do so by  
101 executing a bond with surety to be approved by the officer in  
102 favor of the judgment creditor ~~plaintiff~~ in a sum double the  
103 value of the property retaken as fixed by the officer holding  
104 the execution and conditioned that the property will be  
105 forthcoming on the day of sale stated in the bond.

106 Section 9. Section 56.15, Florida Statutes, is amended to  
107 read:

108 56.15 Executions; stay of illegal writs.—If any execution  
109 issues illegally, the judgment debtor ~~defendant in execution~~ may  
110 obtain a stay by making and delivering an affidavit to the  
111 officer having the execution, stating the illegality and whether  
112 any part of the execution is due, with a bond with surety  
113 payable to the judgment creditor ~~plaintiff~~ in double the amount  
114 of the execution or the part of which a stay is sought  
115 conditioned to pay the execution or part claimed to be illegal  
116 and any damages for delay if the affidavit is not well founded.  
117 On receipt of such affidavit and bond the officer shall stay  
118 proceedings on the execution and return the bond and affidavit  
119 to the court from which the execution issued. The court shall  
120 pass on the question of illegality as soon as possible. If the  
121 execution is adjudged illegal in any part, the court shall stay  
122 it as to the part but if it is adjudged legal in whole or in  
123 part, the court shall enter judgment against the principal and  
124 surety on such bond for the amount of so much of the execution  
125 as is adjudged to be legal and execution shall issue thereon.

126 Section 10. Section 56.16, Florida Statutes, is amended to  
127 read:



753766

128           56.16 Executions; claims of third parties to property  
129 levied on.—If any person, including a person to whom a Notice to  
130 Appear has been issued pursuant to s. 56.29(2), other than the  
131 judgment debtor ~~defendant in execution~~ claims any property  
132 levied on, he or she may obtain possession of the property by  
133 filing with the officer having the execution an affidavit by the  
134 claimant, or the claimant's ~~himself or herself, his or her~~ agent  
135 or attorney, that the property claimed belongs to the claimant  
136 ~~him or her~~ and by furnishing the officer a bond with surety to  
137 be approved by the officer in favor of the judgment creditor  
138 ~~plaintiff~~ in double the value of the goods claimed as the value  
139 is fixed by the officer and conditioned to deliver said property  
140 on demand of said officer if it is adjudged to be the property  
141 of the judgment debtor ~~defendant in execution~~ and to pay the  
142 judgment creditor ~~plaintiff~~ all damages found against the  
143 claimant ~~him or her~~ if it appears that the claim was interposed  
144 for the purpose of delay.

145           Section 11. Section 56.18, Florida Statutes, is amended to  
146 read:

147           56.18 Executions; trial of claims of third persons.—As soon  
148 as possible after the return, or after service of a Notice to  
149 Appear pursuant to s. 56.29(2), a jury, if not waived, shall be  
150 impaneled to try the right of property. If the verdict is in  
151 favor of the judgment creditor ~~plaintiff~~ and it appears that the  
152 claim brought pursuant to s. 56.16 was interposed for delay, the  
153 judgment creditor ~~plaintiff~~ may be awarded reasonable damages,  
154 not exceeding 20 percent of the value of the property claimed.  
155 If the claimant denies in writing under oath filed at least 3  
156 days before the trial, the correctness of the appraisalment of



753766

157 the value of the property by the officer levying the execution,  
158 and the verdict is in favor of the judgment creditor ~~plaintiff~~,  
159 the jury if not waived, shall fix the value of each item  
160 thereof, or of the items covered by such denial.

161 Section 12. Section 56.19, Florida Statutes, is amended to  
162 read:

163 56.19 Judgments upon claims of third persons.—Upon the  
164 verdict of the jury, the court shall enter judgment deciding the  
165 right of property, and if the verdict is for the judgment  
166 creditor ~~plaintiff~~, awarding a recovery by the judgment creditor  
167 ~~plaintiff~~ from the claimant ~~defendant~~ and the claimant's ~~his or~~  
168 ~~her~~ sureties, of the value (as fixed by the officer, or as fixed  
169 by the jury if fixed by it) of such parts of the property as the  
170 jury may have found subject to execution that were delivered to  
171 the claimant, and awarding separately such damages as ~~the jury~~  
172 may ~~be~~ have awarded under s. 56.18, and of all costs attending  
173 the presentation and trial of the claim.

174 Section 13. Section 56.20, Florida Statutes, is amended to  
175 read:

176 56.20 Executions on judgments against third person  
177 claimants.—If the execution issued on the judgment is not paid,  
178 it shall be satisfied in the usual manner unless on demand of  
179 the officer holding it, the principal and surety in the claim  
180 bond deliver the property released under the claim bond to the  
181 officer and pay him or her the damages and costs awarded to the  
182 judgment creditor ~~plaintiff~~. If the property is returned to the  
183 officer but damages and costs are not paid, execution shall be  
184 enforced for the damages and costs. If part of the property is  
185 returned to the officer, the execution shall be enforced for the





753766

186 value, fixed as aforesaid, of that not returned. All property  
187 returned shall be sold under the original execution against the  
188 judgment debtor ~~original defendant~~.

189 Section 14. Section 56.22, Florida Statutes, is amended to  
190 read:

191 56.22 Execution sales; ~~time, date, and place of sale.~~—

192 (1) All sales of property under legal process shall take  
193 place at the time, date, and place advertised in the notice of  
194 the sheriff's sale on any day of the week except Saturday and  
195 Sunday and shall continue from day to day until such property is  
196 disposed of.

197 (2) Property not effectively disposed of at the initial  
198 sheriff's sale may be readvertised, as provided in s. 56.21,  
199 upon receipt of an additional deposit to cover costs incurred in  
200 connection with the maintenance of the property under legal  
201 process. If ~~In the event~~ no additional deposit is received by  
202 the sheriff, the property may be returned to the judgment debtor  
203 ~~defendant~~; if the judgment debtor ~~defendant~~ refuses to accept  
204 such property, the property may be returned to a third party,  
205 such as a lienholder, upon presentation of a proper court order  
206 directing such return. If the property cannot be returned as  
207 described in this subsection ~~none of the above can be~~  
208 ~~accomplished~~, such property shall be disposed of as unclaimed or  
209 abandoned.

210 Section 15. Section 56.26, Florida Statutes, is amended to  
211 read:

212 56.26 Executions; mandamus to force levy and sale.—When an  
213 officer holds an unsatisfied execution and refuses to levy on  
214 property liable thereunder and on which it is his or her duty to



753766

215 levy or having levied, refuses to advertise and sell the  
216 property levied on, the judgment creditor ~~plaintiff in execution~~  
217 is entitled to an alternative writ of mandamus requiring the  
218 officer to levy such execution or advertise and sell the  
219 property levied on, or both, as the case may be.

220 Section 16. Subsection (1) and paragraph (a) of subsection  
221 (4) of section 56.27, Florida Statutes, are amended to read:

222 56.27 Executions; payment of money collected.—

223 (1) All money received under executions shall be paid, in  
224 the order prescribed, to the following: the sheriff, for costs;  
225 the levying creditor in the amount of \$500 as liquidated  
226 expenses; and the priority lienholder under s. 55.10(1) and (2),  
227 s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an  
228 affidavit required by subsection (4), or the levying creditor's  
229 ~~his or her~~ attorney, in satisfaction of the judgment lien, if  
230 the judgment lien has not lapsed at the time of the levy. The  
231 receipt of the attorney shall be a release of the officer paying  
232 the money to him or her. If the name of more than one attorney  
233 appears in the court file, the money shall be paid to the  
234 attorney who originally commenced the action or who made the  
235 original defense unless the file shows that another attorney has  
236 been substituted.

237 (4) Before the date of the first publication or posting of  
238 the notice of sale provided for under s. 56.21, at the time of  
239 the levy request to the sheriff, the levying creditor shall  
240 deliver to the sheriff an affidavit setting forth all of the  
241 following as to the judgment debtor:

242 (a) For a personal property levy, an attestation by the  
243 levying creditor or the levying creditor's attorney of record



753766

244 that he or she has reviewed the database or judgment lien  
245 records established in accordance with ss. 55.201-55.209 and  
246 that the information contained in the affidavit based on that  
247 review is true and correct. For a real property levy in  
248 accordance with s. 55.10(1) and (2), an attestation by the  
249 levying creditor or the levying creditor's ~~his or her~~ attorney  
250 of record that he or she has reviewed the records of the clerk  
251 of the court of the county where the property is situated, or  
252 that he or she has performed or reviewed a title search, and  
253 that the information contained in the affidavit, including a  
254 disclosure of all judgment liens, mortgages, financing  
255 statements, tax warrants, and other liens against the real  
256 property, based on that review or title search is true and  
257 correct.

258 Section 17. Section 56.28, Florida Statutes, is amended to  
259 read:

260 56.28 Executions; failure of officer to pay over moneys  
261 collected.—If any officer collecting money under execution fails  
262 or refuses to pay it over within 30 days after it has been  
263 received by him or her, or within 10 days after demand by the  
264 levying creditor or the levying creditor's ~~plaintiff or his or~~  
265 ~~her~~ attorney of record made in writing and delivered during  
266 regular business hours to the civil process bureau, the officer  
267 is liable to pay the same and 20 percent damages, to be  
268 recovered by motion in court.

269 Section 18. Section 56.29, Florida Statutes, is amended to  
270 read:

271 56.29 Proceedings supplementary.—

272 (1) When any judgment creditor ~~person or entity~~ holds an



753766

273 unsatisfied judgment or judgment lien obtained under chapter 55,  
274 the judgment creditor ~~holder or judgment lienholder~~ may file a  
275 motion and an affidavit so stating, identifying, if applicable,  
276 the issuing court, the case number, and the unsatisfied amount  
277 of the judgment or judgment lien, including accrued costs and  
278 interest, and stating that the execution is valid and  
279 outstanding, and thereupon the judgment creditor ~~holder or~~  
280 ~~judgment lienholder~~ is entitled to these proceedings  
281 supplementary to execution.

282       (2) The judgment creditor shall, in the motion described in  
283 subsection (1) or in a supplemental affidavit, describe any  
284 property of the judgment debtor not exempt from execution in the  
285 hands of any person or any property, debt, or other obligation  
286 due to the judgment debtor which may be applied toward the  
287 satisfaction of the judgment. Upon filing of the motion and  
288 affidavits that property of the judgment debtor, or any debt, or  
289 other obligation due to the judgment debtor in the custody or  
290 control of any other person may be applied to satisfy the  
291 judgment, then the court shall issue a Notice to Appear. The  
292 Notice to Appear shall direct such person to file an affidavit,  
293 as provided in s. 56.16, with the court by a date certain, which  
294 date shall not be less than 7 business days from the date of  
295 service of the Notice to Appear, stating why the property, debt,  
296 or other obligation should not be applied to satisfy the  
297 judgment. For good cause shown, the court may shorten the time  
298 for serving an affidavit. The Notice to Appear must describe  
299 with reasonable particularity the property, debt, or other  
300 obligation that may be available to satisfy the judgment, must  
301 provide such person with the opportunity to present defenses,



753766

302 and must indicate that discovery as provided under the rules of  
303 civil procedure is available and that there is a right to a jury  
304 trial as provided in s. 56.18. The Notice to Appear must be  
305 served as provided for in chapter 48. A responding affidavit  
306 must raise any fact or defense opposing application of the  
307 property described in the Notice to Appear to satisfy the  
308 judgment, including legal defenses, such as lack of personal  
309 jurisdiction. Legal defenses need not be filed under oath but  
310 must be served contemporaneously with the affidavit ~~On such~~  
311 ~~plaintiff's motion the court shall require the defendant in~~  
312 ~~execution to appear before it or a general or special magistrate~~  
313 ~~at a time and place specified by the order in the county of the~~  
314 ~~defendant's residence to be examined concerning his or her~~  
315 ~~property.~~

316 ~~(3) The order shall be served in a reasonable time before~~  
317 ~~the date of the examination in the manner provided for service~~  
318 ~~of summons or may be served on such defendant or his or her~~  
319 ~~attorney as provided for service of papers in the rules of civil~~  
320 ~~procedure.~~

321 ~~(4) Testimony shall be under oath, shall be comprehensive~~  
322 ~~and cover all matters and things pertaining to the business and~~  
323 ~~financial interests of defendant which may tend to show what~~  
324 ~~property he or she has and its location. Any testimony tending~~  
325 ~~directly or indirectly to aid in satisfying the execution is~~  
326 ~~admissible. A corporation must attend and answer by an officer~~  
327 ~~who may be specified in the order. Examination of witnesses~~  
328 ~~shall be as at trial and any party may call other witnesses.~~

329 ~~(5) The court may order any property of the judgment~~  
330 ~~debtor, not exempt from execution, in the hands of any person,~~



753766

331 ~~or any property, debt, or other obligation due to the judgment~~  
332 ~~debtor, to be applied toward the satisfaction of the judgment~~  
333 ~~debt. The court may entertain claims concerning the judgment~~  
334 ~~debtor's assets brought under chapter 726 and enter any order or~~  
335 ~~judgment, including a money judgment against any initial or~~  
336 ~~subsequent transferee, in connection therewith, irrespective of~~  
337 ~~whether the transferee has retained the property. Claims under~~  
338 ~~chapter 726 are subject to the provisions of chapter 726 and~~  
339 ~~applicable rules of civil procedure.~~

340       (3)~~(6)~~(a) When, within 1 year before the service of process  
341 on the judgment debtor in the original proceeding or action ~~him~~  
342 ~~or her~~, the judgment debtor ~~defendant~~ has had title to, or paid  
343 the purchase price of, any personal property to which the  
344 judgment debtor's ~~defendant's~~ spouse, any relative, or any  
345 person on confidential terms with the judgment debtor ~~defendant~~  
346 claims title and right of possession ~~at the time of examination,~~  
347 the judgment debtor ~~defendant~~ has the burden of proof to  
348 establish that such transfer or gift ~~from him or her~~ was not  
349 made to delay, hinder, or defraud creditors.

350       (b) When any gift, transfer, assignment or other conveyance  
351 of personal property has been made or contrived by the judgment  
352 debtor to delay, hinder, or defraud creditors, the court shall  
353 order the gift, transfer, assignment or other conveyance to be  
354 void and direct the sheriff to take the property to satisfy the  
355 execution. This does not authorize seizure of property exempted  
356 from levy and sale under execution or property which has passed  
357 to a bona fide purchaser for value and without notice. Any  
358 person aggrieved by the levy or Notice to Appear may proceed  
359 under ss. 56.16-56.20.



753766

360        (4)~~(7)~~ At any time the court may refer the proceeding to a  
361 general or special magistrate who may be directed to report  
362 findings of law or fact, or both. The general or special  
363 magistrate has all the powers thereof, including the power to  
364 issue subpoena, and shall be paid the fees provided by the court  
365 law.

366        (5)~~(8)~~ A party or a witness examined under these provisions  
367 is not excused from answering a question on the ground that the  
368 answer will tend to show him or her guilty of the commission of  
369 a fraud, or prove that he or she has been a party or privy to,  
370 or knowing of a conveyance, assignment, transfer, or other  
371 disposition of property for any purpose, or that the party or  
372 witness or another person claims to have title as against the  
373 judgment debtor ~~defendant~~ or to hold property derived from or  
374 through the judgment debtor ~~defendant~~, or to be discharged from  
375 the payment of a debt which was due to the judgment debtor  
376 ~~defendant~~ or to a person on ~~in his or her~~ behalf of the judgment  
377 debtor. An answer cannot be used as evidence against the person  
378 so answering in any criminal proceeding.

379        (6)~~(9)~~ The court may order any property of the judgment  
380 debtor, not exempt from execution, or any property, debt, or  
381 other obligation due to the judgment debtor, in the hands of or  
382 under the control of any person subject to the Notice to Appear,  
383 to be levied upon and applied toward the satisfaction of the  
384 judgment debt. The court may enter any orders, judgments, or  
385 writs required to carry out the purpose of this section,  
386 including those orders necessary or proper to subject property  
387 or property rights of any judgment debtor to execution, and  
388 including entry of money judgments as provided in ss. 56.16-



753766

389 56.19 against any person to whom a Notice to Appear has been  
390 directed and over whom the court obtained personal jurisdiction  
391 ~~impleaded defendant~~ irrespective of whether such person  
392 ~~defendant~~ has retained the property, subject to ~~ss. 56.18 and~~  
393 ~~56.19 and~~ applicable principles of equity, and in accordance  
394 with chapters 76 and 77 and all applicable rules of civil  
395 procedure. Sections 56.16-56.20 apply to any order issued under  
396 this subsection.

397 (7) ~~(10)~~ Any person failing to obey any order issued under  
398 this section by a judge or general or special magistrate or  
399 failing to attend in response to a subpoena served on him or her  
400 may be held in contempt.

401 (8) ~~(11)~~ Costs for proceedings supplementary shall be taxed  
402 against the judgment debtor ~~defendant~~ as well as all other  
403 incidental costs determined to be reasonable and just by the  
404 court including, but not limited to, docketing the execution,  
405 sheriff's service fees, and court reporter's fees. Reasonable  
406 attorney ~~attorney's~~ fees may be taxed against the judgment  
407 debtor ~~defendant~~.

408 (9) The court may entertain claims concerning the judgment  
409 debtor's assets brought under chapter 726 and enter any order or  
410 judgment, including a money judgment against any initial or  
411 subsequent transferee, in connection therewith, irrespective of  
412 whether the transferee has retained the property. Claims under  
413 chapter 726 brought under this section shall be initiated by a  
414 supplemental complaint and served as provided by the rules of  
415 civil procedure, and the claims under the supplemental complaint  
416 are subject to chapter 726 and the rules of civil procedure. The  
417 clerk of the court shall docket a supplemental proceeding under





753766

418 the same case number assigned to the original complaint filed by  
419 the judgment creditor or the case number assigned to a judgment  
420 domesticated pursuant to s. 55.01, shall assign a separate  
421 supplemental proceeding number, and shall assign such  
422 supplemental proceeding to the same division and judge assigned  
423 to the main case or domesticated judgment.

424 Section 19. Section 56.30, Florida Statutes, is created to  
425 read:

426 56.30 Discovery in proceedings supplementary.—

427 (1) In addition to any other discovery permitted under the  
428 rules of civil procedure, on the judgment creditor's motion the  
429 court shall require the judgment debtor to appear before it or a  
430 general or special magistrate at a time and place specified by  
431 the order in the county of the judgment debtor's residence or  
432 principal place of business to be examined concerning property  
433 subject to execution. This examination may occur before issuance  
434 of a Notice to Appear.

435 (2) The order shall be served in a reasonable time before  
436 the date of the examination in the manner provided for service  
437 of summons or may be served on the judgment debtor or the  
438 judgment debtor's attorney of record as provided for service of  
439 papers in the rules of civil procedure.

440 (3) Testimony shall be under oath, shall be comprehensive,  
441 and cover all matters and things pertaining to the business and  
442 financial interests of the judgment debtor which may tend to  
443 show what property the judgment debtor has and its location. Any  
444 testimony tending directly or indirectly to aid in satisfying  
445 the execution is admissible. A corporate judgment debtor must  
446 attend and answer by a designee with knowledge or an identified



753766

447 officer or manager who may be specified in the order.  
448 Examination of witnesses shall be as at trial and any party may  
449 call other witnesses to be examined concerning property that may  
450 be subject to execution.

451 Section 20. This act shall take effect July 1, 2016.

452

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

454 And the title is amended as follows:

455 Delete everything before the enacting clause  
456 and insert:

457

A bill to be entitled

458

An act relating to judgments; creating s. 56.0101,

459

F.S.; providing definitions for purposes of ch. 56,

460

F.S.; amending s. 56.011, F.S.; revising terminology;

461

amending s. 56.021, F.S.; providing that an execution

462

is valid and effective during the life of the order on

463

which it is issued; amending ss. 56.041, 56.071,

464

56.09, 56.10, 56.12, and 56.15, F.S.; revising

465

terminology; amending s. 56.16, F.S.; specifying that

466

persons to whom a Notice to Appear has been issued may

467

obtain possession of property levied on by complying

468

with certain procedures; revising terminology;

469

amending s. 56.18, F.S.; specifying that a jury, if

470

not waived, should be empaneled as soon as possible

471

after service of a Notice to Appear; revising

472

terminology; amending ss. 56.19, 56.20, 56.22, 56.26,

473

56.27, and 56.28, F.S.; revising terminology; amending

474

s. 56.29, F.S.; revising terminology; providing for

475

the issuance of a Notice to Appear; providing



753766

476 requirements for such a notice; providing for service;  
477 providing for requirements for a responding affidavit;  
478 deleting provisions relating to examinations  
479 concerning property; providing for fraudulent transfer  
480 claims; creating s. 56.30, F.S.; providing for  
481 discovery in proceedings supplementary; providing an  
482 effective date.  
483

By Senator Simmons

10-00660-16

20161042\_\_

1 A bill to be entitled  
 2 An act relating to judgment debts; creating s. 56.001,  
 3 F.S.; defining terms; amending ss. 56.011, 56.021,  
 4 56.041, 56.071, 56.09, 56.10, 56.12, 56.15, F.S.;  
 5 conforming provisions to changes made by the act;  
 6 making technical changes; amending s. 56.16, F.S.;  
 7 specifying the parties who may obtain possession of  
 8 property that is being levied on; conforming  
 9 provisions to changes made by the act; making  
 10 technical changes; amending s. 56.18, F.S.; revising  
 11 the circumstances under which third-party claims must  
 12 be taken to trial; conforming provisions to changes  
 13 made by the act; amending ss. 56.19, 56.20, 56.22,  
 14 56.26, 56.27, and 56.28, F.S.; conforming provisions  
 15 to changes made by the act; making technical changes;  
 16 amending s. 56.29, F.S.; conforming provisions to  
 17 changes made by the act; making technical changes;  
 18 revising the legal procedure for proceedings  
 19 supplementary to execution; requiring the judgment  
 20 creditor to describe certain property in a motion and  
 21 supplemental affidavit; requiring the court to issue a  
 22 notice to appear by a certain date; providing  
 23 requirements for such notice and responding affidavit;  
 24 specifying the persons against whom a court may enter  
 25 an order, a judgment, or a writ under certain  
 26 circumstances; providing applicability; authorizing  
 27 the court to preside over claims concerning the  
 28 judgment debtor's assets and to enter certain orders  
 29 and judgments; prescribing certain duties to the clerk

Page 1 of 18

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

10-00660-16

20161042\_\_

30 of the court relating to supplemental proceedings;  
 31 creating s. 56.30, F.S.; providing additional  
 32 discovery in proceedings supplementary; specifying the  
 33 procedure for additional discovery; providing an  
 34 effective date.  
 35

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

37  
 38 Section 1. Section 56.001, Florida Statutes, is created to  
 39 read:

40 56.001 Definitions.—As used in this chapter, the term:

41 (1) "Claimant" means a person, other than a judgment  
 42 debtor, who makes a claim against property that is subject to a  
 43 levy.

44 (2) "Corporate judgment debtor" means a person who is a  
 45 judgment debtor, not including an individual, an estate, or a  
 46 trust other than a business trust.

47 (3) "Judgment creditor" means the holder of an unsatisfied  
 48 judgment, order, or decree for the payment of money, including a  
 49 transferee or surety, who has the right to control and collect  
 50 the judgment under s. 55.13.

51 (4) "Judgment debtor" means a person who is liable for a  
 52 judgment, an order, or a decree subject to execution under this  
 53 chapter.

54 (5) "Levying creditor" means a judgment creditor who levies  
 55 on property.

56 (6) "Relative" means an individual related within the third  
 57 degree of consanguinity, a spouse or an individual related to  
 58 the spouse within the third degree of consanguinity, or an

Page 2 of 18

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10-00660-16

20161042\_\_

59 individual adopted within the third degree of consanguinity.

60 Section 2. Section 56.011, Florida Statutes, is amended to  
61 read:

62 56.011 Executions; capias ad satisfaciendum abolished.—~~In~~  
63 ~~no case shall~~ A capias ad satisfaciendum may not be issued upon  
64 a judgment, and a person may not ~~nor shall the body of any~~  
65 ~~defendant~~ be subject to arrest or confinement for the payment of  
66 money, except ~~it be~~ for the payment of fines imposed by a lawful  
67 authority.

68 Section 3. Section 56.021, Florida Statutes, is amended to  
69 read:

70 56.021 Executions; issuance and return, alias, etc.—~~When~~  
71 ~~issued,~~ An execution is valid and effective during the life of  
72 the judgment, order, or decree on which it is issued. When the  
73 execution is fully paid, the executing officer executing it  
74 shall make his or her return and file it in the court that which  
75 issued the execution. If the execution is lost or destroyed, the  
76 party entitled to the execution ~~there~~ may have an alias,  
77 pluries, or other copies made after proving ~~on making proof of~~  
78 such loss or destruction by affidavit and filing the affidavit  
79 ~~it~~ in the court that issued ~~issuing~~ the execution.

80 Section 4. Subsection (1) of section 56.041, Florida  
81 Statutes, is amended to read:

82 56.041 Executions; collection and return.—

83 (1) An execution is ~~All executions shall be~~ returnable  
84 after satisfaction when satisfied, and the officer ~~officers~~ to  
85 whom a satisfaction is ~~they are~~ delivered shall collect the  
86 amount of the satisfaction ~~amounts thereof~~ as soon as possible  
87 and shall furnish the judgment debtor ~~defendant~~ with a

Page 3 of 18

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10-00660-16

20161042\_\_

88 satisfaction of judgment. All receipts must ~~shall~~ be endorsed on  
89 the execution.

90 Section 5. Section 56.071, Florida Statutes, is amended to  
91 read:

92 56.071 Executions on equities of redemption; discovery of  
93 value.—On motion made by the person party causing a levy to be  
94 made on an equity of redemption, the court from which the  
95 execution issued shall order the mortgagor, the mortgagee, and  
96 all other persons interested in the mortgaged property levied on  
97 to appear and be examined about the amount remaining due on the  
98 mortgage, the amount that has been paid, the person party to  
99 whom payment has been made ~~that amount has been paid,~~ and the  
100 date on which payment was made ~~when that amount was paid~~ so that  
101 the value of the equity of redemption may be ascertained before  
102 the property is sold. The court may appoint a general or special  
103 magistrate to conduct the examination. This section applies  
104 ~~shall also apply to~~ interests in personal property ~~the interest~~  
105 ~~of~~ and personal property in the possession of a vendee under a  
106 retained title contract or conditional sales contract.

107 Section 6. Section 56.09, Florida Statutes, is amended to  
108 read:

109 56.09 Executions against corporate judgment debtors  
110 ~~corporations;~~ generally.—A judgment creditor ~~On any judgment~~  
111 ~~against a corporation plaintiff~~ may have an execution levied on  
112 the current money, as well as on the goods and chattels, and  
113 lands and tenements of a corporate judgment debtor ~~said~~  
114 ~~corporation.~~

115 Section 7. Section 56.10, Florida Statutes, is amended to  
116 read:

Page 4 of 18

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10-00660-16

20161042\_\_

117 56.10 Executions against corporate judgment debtors  
 118 ~~corporations~~; receivership.-If an execution cannot be satisfied  
 119 in whole or in part due to the corporate judgment debtor's ~~for~~  
 120 lack of property ~~of the defendant corporation subject to levy~~  
 121 ~~and sale, on motion of the judgment creditor~~ the circuit court  
 122 with jurisdiction over the corporate judgment debtor in chancery  
 123 ~~within whose circuit such corporation is or has been doing~~  
 124 ~~business, or in which any of its effects are found, may, on~~  
 125 motion of the judgment creditor, seize sequesterate the property,  
 126 things in action, or goods and chattels of the corporate  
 127 judgment debtor corporation for the purpose of enforcing the  
 128 judgment, and may appoint a receiver for the corporate judgment  
 129 debtor corporation. An appointed ~~A~~ receiver ~~so appointed~~ is  
 130 subject to the rules prescribed by law for receivers of the  
 131 property of other judgment debtors, and ~~his or her~~ authority  
 132 extends statewide ~~power shall extend throughout the state.~~

133 Section 8. Section 56.12, Florida Statutes, is amended to  
 134 read:

135 56.12 Executions; levy, forthcoming bond.-If a judgment  
 136 debtor defendant in execution wishes wants to retake possession  
 137 of any property levied on, the judgment debtor ~~he or she~~ may do  
 138 so by executing a bond with surety, subject to approval ~~to be~~  
 139 ~~approved by an~~ the officer, in favor of the judgment creditor  
 140 for plaintiff in a sum double the value of the property retaken,  
 141 as determined fixed by the officer holding the execution, and  
 142 conditioned on that the availability of the property will be  
 143 forthcoming on the day of sale stated in the bond.

144 Section 9. Section 56.15, Florida Statutes, is amended to  
 145 read:

Page 5 of 18

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10-00660-16

20161042\_\_

146 56.15 Executions; stay of illegal writs.-If an any  
 147 execution ~~is issued issues~~ illegally, the judgment debtor  
 148 ~~defendant in execution~~ may obtain a stay by making and  
 149 delivering an affidavit to the officer who has having the  
 150 execution which states, stating the illegality and whether any  
 151 part of the execution is due, with a bond with surety payable to  
 152 the judgment creditor for plaintiff in double the amount of the  
 153 execution or the part of which a stay is sought conditioned to  
 154 pay the execution or part claimed to be illegal and any damages  
 155 for delay if the affidavit is not well founded. On receipt of  
 156 such affidavit and bond the officer shall stay proceedings on  
 157 the execution and return the bond and affidavit to the court  
 158 that issued from which the execution ~~issued~~. The court shall  
 159 pass on the question of illegality as soon as possible. If the  
 160 execution is adjudged illegal in any part, the court shall stay  
 161 it as to the part but if it is adjudged legal in whole or in  
 162 part, the court shall enter judgment against the principal and  
 163 surety on such bond for the amount ~~of so much~~ of the execution  
 164 as is adjudged to be legal and execution shall issue thereon.

165 Section 10. Section 56.16, Florida Statutes, is amended to  
 166 read:

167 56.16 Executions; claims of third parties to property  
 168 levied on.-If a any person, including the person issued a notice  
 169 to appear but excluding other than the judgment debtor,  
 170 ~~defendant in execution~~ claims any property levied on, the  
 171 claimant he or she may obtain possession of the property by:  
 172 (1) Filing with the officer who has having the execution an  
 173 affidavit, made by the claimant or the claimant's himself or  
 174 herself, his or her agent or attorney, which states that the

Page 6 of 18

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10-00660-16

20161042\_\_

175 property ~~elaimed~~ belongs to the claimant; him or her and  
 176 (2) by Furnishing the officer who has the execution a bond  
 177 with surety, subject to approval ~~be approved~~ by the officer, in  
 178 favor of the judgment creditor for plaintiff in double the value  
 179 of the goods claimed, as determined ~~the value is fixed~~ by the  
 180 officer, which is and ~~conditioned on delivery of to deliver~~ said  
 181 property on the demand of the said officer if the property it is  
 182 adjudged to be the property of the judgment debtor defendant in  
 183 execution and payment to the judgment creditor of pay plaintiff  
 184 all damages assessed found against the claimant, him or her if  
 185 it appears that the claim was made ~~interposed~~ for the purpose of  
 186 delay.

187 Section 11. Section 56.18, Florida Statutes, is amended to  
 188 read:

189 56.18 Executions; trial of claims of third persons.—As soon  
 190 as possible after the return, or after service of a notice to  
 191 appear, a jury, if not waived, shall be impaneled to try the  
 192 right of property. If a the verdict is issued in favor of the  
 193 judgment creditor plaintiff and it is found appears that the  
 194 claim brought pursuant to s. 56.16 was made ~~interposed~~ for the  
 195 purpose of delay, the judgment creditor plaintiff may be awarded  
 196 reasonable damages, not to exceed ~~exceeding~~ 20 percent of the  
 197 value of the property claimed. If the claimant files a sworn  
 198 affidavit denies in writing under oath filed at least 3 days  
 199 before the trial which denies, the correctness of the appraisal  
 200 appraisement of the value of the property by the officer levying  
 201 the execution, and a the verdict is issued in favor of the  
 202 judgment creditor plaintiff, the jury, if not waived, shall fix  
 203 the value of the individual items that are the subject of the

10-00660-16

20161042\_\_

204 denial each item thereof, or the total value of the items  
 205 covered by such denial.

206 Section 12. Section 56.19, Florida Statutes, is amended to  
 207 read:

208 56.19 Judgments upon claims of third persons.—Upon the  
 209 verdict of the jury, the court shall enter a judgment deciding  
 210 the right of property, and If the verdict is for the judgment  
 211 creditor plaintiff, the court shall award ~~awarding~~ a recovery by  
 212 the judgment creditor plaintiff from the claimant defendant and  
 213 the claimant's his or her sureties, of the value ~~(as fixed by~~  
 214 ~~the officer, or as fixed by the jury if fixed by it)~~ of the such  
 215 parts of the property that as the jury determined was may have  
 216 found subject to the execution which was delivered to the  
 217 claimant, any and awarding separately such damages as the jury  
 218 may have awarded by the jury under s. 56.18, and ~~of~~ all costs  
 219 associated with attending the presentation and trial of the  
 220 claim. The value of such property shall be determined by the  
 221 jury, if the jury makes a determination of value, or, in the  
 222 absence of such a determination, by the officer who has the  
 223 execution.

224 Section 13. Section 56.20, Florida Statutes, is amended to  
 225 read:

226 56.20 Executions on judgments against third-party third  
 227 person claimants.—If the execution issued on the judgment is not  
 228 paid, it shall be satisfied in the usual manner unless, on  
 229 demand of the officer holding it, the principal and surety in  
 230 the claim bond deliver the property released under the claim  
 231 bond to the officer and pay him or her the damages and costs  
 232 awarded to the judgment creditor plaintiff. If the property is

10-00660-16

20161042\_\_

233 returned to the officer but damages and costs are not paid,  
 234 execution shall be enforced for the damages and costs. If part  
 235 of the property is returned to the officer, the execution shall  
 236 be enforced for the value, fixed as aforesaid, of that not  
 237 returned. All property returned shall be sold under the original  
 238 execution against the judgment debtor ~~original defendant~~.

239 Section 14. Section 56.22, Florida Statutes, is amended to  
 240 read:

241 56.22 Execution sales; time, date, and place of sale.—All  
 242 sales of property under legal process must ~~shall~~ take place at  
 243 the time, date, and place advertised in the notice of the  
 244 sheriff's sale on any day of the week except Saturday and Sunday  
 245 and must ~~shall~~ continue from day to day until such property is  
 246 disposed of. Property not effectively disposed of at the initial  
 247 sheriff's sale may be readvertised, as provided in s. 56.21,  
 248 upon receipt of an additional deposit to cover costs incurred in  
 249 connection with the maintenance of the property under legal  
 250 process. ~~If in the event~~ no additional deposit is received by  
 251 the sheriff, the property may be returned to the judgment debtor  
 252 ~~defendant~~; if the judgment debtor ~~defendant~~ refuses to accept  
 253 such property, the property may be returned to a third party,  
 254 such as a lienholder, upon presentation of a proper court order  
 255 directing such return. If none of the above can be accomplished,  
 256 such property shall be disposed of as unclaimed or abandoned.

257 Section 15. Section 56.26, Florida Statutes, is amended to  
 258 read:

259 56.26 Executions; mandamus to force levy and sale.—When an  
 260 officer holds an unsatisfied execution and refuses to levy on  
 261 property ~~liable thereunder and~~ on which it is his or her duty to

10-00660-16

20161042\_\_

262 levy or having levied, refuses to advertise and sell the  
 263 property levied on, the judgment creditor plaintiff in execution  
 264 is entitled to an alternative writ of mandamus requiring the  
 265 officer to levy such execution or advertise and sell the  
 266 property levied on, or both, as the case may be.

267 Section 16. Subsections (1) and (4) of section 56.27,  
 268 Florida Statutes, are amended to read:

269 56.27 Executions; payment of money collected.—

270 (1) All money received under executions shall be paid, in  
 271 the order prescribed, to the following: the sheriff, for costs;  
 272 the levying creditor in the amount of \$500 as liquidated  
 273 expenses; and the priority lienholder under s. 55.10(1) and (2),  
 274 s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an  
 275 affidavit required by subsection (4), or the levying creditor's  
 276 ~~his or her~~ attorney, in satisfaction of the judgment lien, if  
 277 the judgment lien has not lapsed at the time of the levy. The  
 278 receipt of the attorney is ~~shall be~~ a release of the officer  
 279 paying the money to him or her. If the name of more than one  
 280 attorney appears in the court file, the money shall be paid to  
 281 the attorney who originally commenced the action or who made the  
 282 original defense unless the file shows that another attorney has  
 283 been substituted.

284 (4) At the time of the levy request to the sheriff, before  
 285 the date of the first publication ~~or posting~~ of the notice of  
 286 sale provided for under s. 56.21, ~~at the time of the levy~~  
 287 ~~request to the sheriff,~~ the levying creditor shall deliver to  
 288 the sheriff an affidavit setting forth all of the following as  
 289 to the judgment debtor:

290 (a) For a personal property levy, an attestation by the



10-00660-16

20161042\_\_

291 levying creditor or the levying creditor's attorney of record  
 292 that he or she has reviewed the database or judgment lien  
 293 records established in accordance with ss. 55.201-55.209 and  
 294 that the information contained in the affidavit based on that  
 295 review is true and correct. For a real property levy in  
 296 accordance with s. 55.10(1) and (2), an attestation by the  
 297 levying creditor or the levying creditor's ~~his or her~~ attorney  
 298 of record that he or she has reviewed the records of the clerk  
 299 of the court of the county where the property is situated, or  
 300 that he or she has performed or reviewed a title search, and  
 301 that the information contained in the affidavit, including a  
 302 disclosure of all judgment liens, mortgages, financing  
 303 statements, tax warrants, and other liens against the real  
 304 property, based on the ~~that~~ review or title search is true and  
 305 correct.

306 (b) The information required under s. 55.203(1) and (2) for  
 307 each judgment lien certificate indexed under the name of the  
 308 judgment debtor as to each judgment creditor; the file number  
 309 assigned to the record of the original and, if any, the second  
 310 judgment lien; and the date of filing for each judgment lien  
 311 certificate under s. 55.202 or s. 55.204(3). For each judgment  
 312 lien recorded on real property, the information contained in the  
 313 certified copy of recordation of lien under s. 55.10(1) and (2),  
 314 and for each other lien recorded on real property, the name and  
 315 address of the lienholder as shown in the copy of the recorded  
 316 lien disclosed by the title search.

317 (c) A statement that the levying creditor either does not  
 318 have any other levy in process or, if another levy is in  
 319 process, the levying creditor believes in good faith that the

Page 11 of 18

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10-00660-16

20161042\_\_

320 total value of the property under execution does not exceed the  
 321 amount of outstanding judgments.

322 Section 17. Section 56.28, Florida Statutes, is amended to  
 323 read:

324 56.28 Executions; failure of officer to pay ~~over~~ moneys  
 325 collected.—If an ~~any~~ officer collecting money under execution  
 326 fails or refuses to pay it to the levying creditor or the  
 327 levying creditor's attorney of record ~~over~~ within 30 days after  
 328 it has been received by him or her, or within 10 days after a  
 329 demand by the levying creditor or the levying creditor's  
 330 plaintiff or his or her attorney of record made in writing and  
 331 delivered during regular business hours to the civil process  
 332 bureau, the officer is liable to pay the same and 20 percent  
 333 damages, to be recovered by motion in court.

334 Section 18. Section 56.29, Florida Statutes, is amended to  
 335 read:

336 56.29 Proceedings supplementary.—

337 (1) When a judgment creditor ~~any person or entity~~ holds an  
 338 unsatisfied judgment or judgment lien obtained under chapter 55,  
 339 the judgment holder or judgment lienholder may file a motion and  
 340 an affidavit ~~so stating~~, identifying, ~~if applicable~~, the issuing  
 341 court, the case number, and the unsatisfied amount of the  
 342 judgment or judgment lien, including accrued costs and interest,  
 343 and stating that the execution is valid and outstanding, and  
 344 ~~thereupon~~ the judgment creditor holder or judgment lienholder is  
 345 entitled to these proceedings supplementary to execution.

346 (2) The judgment creditor must describe in a motion and  
 347 supplemental affidavit any property of the judgment debtor which  
 348 is not exempt from execution, and any property, debt, or other

Page 12 of 18

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10-00660-16 20161042\_\_

349 obligation due to the judgment debtor which may be applied  
 350 toward the satisfaction of the judgment. Such property of the  
 351 judgment debtor, debt, or other obligation due to the judgment  
 352 debtor in the custody or control of another person may be  
 353 applied to satisfy the judgment. The court shall issue a notice  
 354 to appear to direct such person to file an affidavit pursuant to  
 355 s. 56.16 by a date certain, which date may not be less than 7  
 356 business days after the date of service of the notice to appear,  
 357 stating why the property, debt, or other obligation in his or  
 358 her control should not be applied to satisfy the judgment. The  
 359 court may shorten the time for serving an affidavit for good  
 360 cause. The notice to appear must describe with reasonable  
 361 specificity the property, debt, or other obligation that may be  
 362 available to satisfy the judgment and must provide the person in  
 363 control of the judgment debtor's property, debt, or other  
 364 obligation the opportunity to present defenses, to pursue  
 365 discovery as provided under the rules of civil procedure, and to  
 366 have a jury trial, as provided in s. 56.18. A responding  
 367 affidavit must raise any fact or defense opposing application of  
 368 the property described in the notice to appear to satisfy the  
 369 judgment, including legal defenses, such as lack of personal  
 370 jurisdiction. Legal defenses need not be filed under oath but  
 371 must be served contemporaneously with the affidavit. On such  
 372 plaintiff's motion the court shall require the defendant in  
 373 execution to appear before it or a general or special magistrate  
 374 at a time and place specified by the order in the county of the  
 375 defendant's residence to be examined concerning his or her  
 376 property.

377 (3) ~~The order shall be served in a reasonable time before~~

10-00660-16 20161042\_\_

378 ~~the date of the examination in the manner provided for service~~  
 379 ~~of summons or may be served on such defendant or his or her~~  
 380 ~~attorney as provided for service of papers in the rules of civil~~  
 381 ~~procedure.~~  
 382 ~~(4) Testimony shall be under oath, shall be comprehensive~~  
 383 ~~and cover all matters and things pertaining to the business and~~  
 384 ~~financial interests of defendant which may tend to show what~~  
 385 ~~property he or she has and its location. Any testimony tending~~  
 386 ~~directly or indirectly to aid in satisfying the execution is~~  
 387 ~~admissible. A corporation must attend and answer by an officer~~  
 388 ~~who may be specified in the order. Examination of witnesses~~  
 389 ~~shall be as at trial and any party may call other witnesses.~~  
 390 ~~(5) The court may order any property of the judgment~~  
 391 ~~debtor, not exempt from execution, in the hands of any person,~~  
 392 ~~or any property, debt, or other obligation due to the judgment~~  
 393 ~~debtor, to be applied toward the satisfaction of the judgment~~  
 394 ~~debt. The court may entertain claims concerning the judgment~~  
 395 ~~debtor's assets brought under chapter 726 and enter any order or~~  
 396 ~~judgment, including a money judgment against any initial or~~  
 397 ~~subsequent transferee, in connection therewith, irrespective of~~  
 398 ~~whether the transferee has retained the property. Claims under~~  
 399 ~~chapter 726 are subject to the provisions of chapter 726 and~~  
 400 ~~applicable rules of civil procedure.~~  
 401 ~~(6) (a) When, within 1 year before the service of process on~~  
 402 ~~the judgment debtor him or her, the judgment debtor defendant~~  
 403 ~~has had title to, or paid the purchase price of, any personal~~  
 404 ~~property to which the judgment debtor's defendant's spouse, any~~  
 405 ~~relative, or any person on confidential terms with the judgment~~  
 406 ~~debtor defendant claims title and right of possession at the~~

10-00660-16

20161042\_\_

407 ~~time of examination~~, the judgment debtor defendant has the  
 408 burden of proof to establish that such transfer or gift ~~from him~~  
 409 ~~or her~~ was not made to delay, hinder, or defraud creditors.

410 (b) When a ~~any~~ gift, transfer, assignment, or other  
 411 conveyance of personal property has been made or contrived by  
 412 the judgment debtor to delay, hinder, or defraud creditors, the  
 413 court shall declare ~~order~~ the gift, transfer, assignment, or  
 414 other conveyance to be void and direct the sheriff to take the  
 415 property to satisfy the execution. ~~However, This does not~~  
 416 ~~authorize seizure of~~ property exempted from levy and sale under  
 417 execution or property that which has passed to a bona fide  
 418 purchaser for value and without notice may not be seized under  
 419 this paragraph. Any person aggrieved by the levy or notice to  
 420 appear may proceed under ss. 56.16-56.20.

421 (4)(7) At any time, the court may refer the proceeding to a  
 422 general or special magistrate who may be directed to report  
 423 findings of law or fact, ~~or both~~. The general or special  
 424 magistrate has all the powers of the court ~~thereof~~, including  
 425 the power to issue a subpoena, and shall be paid the fees  
 426 provided by the court law.

427 (5)(8) A party or a witness examined under this section  
 428 ~~these provisions~~ is not excused from answering a question on the  
 429 ground that the answer will tend to show him or her guilty of  
 430 the commission of a fraud, or prove that he or she has been a  
 431 party or privy to, or knowing of a conveyance, assignment,  
 432 transfer, or other disposition of property for any purpose, or  
 433 that the party or witness or another person claims to have title  
 434 as against the judgment debtor defendant or to hold property  
 435 derived from or through the judgment debtor defendant, or to be

10-00660-16

20161042\_\_

436 discharged from the payment of a debt that which was due to the  
 437 judgment debtor defendant or to a person on ~~in his or her~~ behalf  
 438 of the judgment debtor. An answer cannot be used as evidence  
 439 against such ~~the~~ person ~~se-answering~~ in any criminal proceeding.

440 (6)(9) The court may order any property of the judgment  
 441 debtor which is not exempt from execution, or any property,  
 442 debt, or other obligation due to the judgment debtor, which is  
 443 in the possession or under the control of any person subject to  
 444 the notice to appear, to be levied on and applied toward the  
 445 satisfaction of the judgment debt. The court may enter any  
 446 orders, judgments, or writs required to carry out the purpose of  
 447 this section, including those orders necessary or proper to  
 448 subject property or property rights of any judgment debtor to  
 449 execution, ~~and~~ including entry of money judgments as provided in  
 450 ss. 56.16-56.19 against any person to whom a notice to appear  
 451 has been directed and over whom the court has obtained personal  
 452 jurisdiction, impleaded defendant irrespective of whether such  
 453 person defendant has retained the property, subject to ~~ss. 56.18~~  
 454 ~~and 56.19~~ and applicable principles of equity, and in accordance  
 455 with chapters 76 and 77 and applicable rules of civil procedure.  
 456 Sections 56.16-56.20 apply to any order issued under this  
 457 subsection.

458 (7)(10) Any person who fails ~~failing~~ to obey an ~~any~~ order  
 459 issued under this section by a judge or general or special  
 460 magistrate or who fails ~~failing~~ to appear ~~attend~~ in response to  
 461 a subpoena ~~served on him or her~~ may be held in contempt.

462 (8)(11) Costs for proceedings supplementary shall be taxed  
 463 against the judgment debtor defendant as well as all other  
 464 incidental costs determined to be reasonable and just by the

10-00660-16 20161042\_\_  
 465 court including, but not limited to, docketing the execution,  
 466 sheriff's service fees, and court reporter's fees. Reasonable  
 467 ~~attorney~~ attorney's fees may be taxed against the judgment  
 468 debtor ~~defendant~~.

469 (9) The court may preside over claims concerning the  
 470 judgment debtor's assets brought under chapter 726 and enter any  
 471 order or judgment, including a money judgment against an initial  
 472 or subsequent transferee, in connection therewith, irrespective  
 473 of whether the transferee has retained the property. Claims  
 474 under chapter 726 brought under this section shall be initiated  
 475 by a supplemental complaint. The clerk of the court shall docket  
 476 a supplemental proceeding under the same case number assigned to  
 477 the original complaint filed by the judgment creditor, the case  
 478 number assigned to a domesticated judgment, and a distinct  
 479 supplemental proceeding number and shall assign it to the same  
 480 division and judge assigned to the original case or domesticated  
 481 judgment.

482 Section 19. Section 56.30, Florida Statutes, is created to  
 483 read:

484 56.30 Discovery in proceedings supplementary.—

485 (1) In addition to any other discovery allowed under the  
 486 rules of civil procedure, on the motion of the judgment  
 487 creditor, the court shall require the judgment debtor to appear  
 488 to be examined concerning property subject to execution by the  
 489 court or a general or special magistrate at a specified time and  
 490 place in the county of the judgment debtor's residence or  
 491 principal place of business. This examination may occur before  
 492 the issuance of a notice to appear.

493 (2) The order must be served within a reasonable time

10-00660-16 20161042\_\_  
 494 before the date of the examination in the manner provided for  
 495 service of summons or may be served on the judgment debtor or  
 496 the judgment debtor's attorney of record.

497 (3) Testimony must be under oath and cover all matters  
 498 pertaining to the business and financial interests of the  
 499 judgment debtor which may identify property owned by the  
 500 judgment debtor and the location of such property. Any testimony  
 501 that directly or indirectly aids in satisfying the execution is  
 502 admissible. Testimony of a corporate judgment debtor must be  
 503 from a designee with knowledge or an identified officer or a  
 504 manager specified in the order. Examination of witnesses is as  
 505 at trial, and any party may call other witnesses to be examined  
 506 concerning property that may be subject to execution.

507 Section 20. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator Miguel Diaz de la Portilla, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** January 5, 2016

---

I respectfully request that **Senate Bill 1042**, relating to Judgement Debts, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

---

Senator David Simmons  
Florida Senate, District 10

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/12/16

*Meeting Date*

1042

*Bill Number (if applicable)*

Topic Judgment Debts

*Amendment Barcode (if applicable)*

Name <sup>Mr.</sup> Michel Weisz

Job Title Attorney

Address 1450 Brickell Ave Ste 1900

Phone 305-714-4362

*Street*

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FL

33131-3453

Email MWeisz@bergersingerman.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Business Law Section of The Florida Bar

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

# CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee Judge:

Started: 1/12/2016 3:02:32 PM

Ends: 1/12/2016 3:36:30 PM Length: 00:33:59

3:02:31 PM Meeting called to order by Chair Diaz de la Portilla  
3:02:37 PM Roll call by Administrative Assistant Joyce Butler  
3:02:49 PM Quorum present  
3:03:02 PM Comments from Chair Diaz de la Portilla  
3:03:10 PM Tab 1 - CS/SB 590 introduced by Chair Diaz de la Portilla  
3:03:24 PM Explanation of CS/SB 590, Adoption by Senator Detert  
3:04:36 PM Comments from Chair Diaz de la Portilla regarding Amendment 560534  
3:04:56 PM Explanation of Strike-all amendment 560534 by Senator Detert  
3:05:52 PM Comments from Chair Diaz de la Portilla  
3:06:09 PM Question from Senator Soto  
3:06:22 PM Response from Senator Detert  
3:07:38 PM Follow-up question from Senator Soto  
3:07:51 PM Response from Barbara Crosier  
3:08:03 PM Question from Senator Joyner  
3:08:08 PM Response from Senator Detert  
3:08:33 PM Response from Ms. Barbara Crosier  
3:08:52 PM Alan Abramowitz, Statewide Guardian Ad Litem Program waives in support  
3:08:58 PM Nikki Fried, Attorney, Florida Children First waives in support  
3:09:05 PM Thomas Crooms waives in support  
3:09:13 PM Melissa Maddox waives in support  
3:09:18 PM Robert Holroyd, Governmental Affairs Manager, Children's Services Council of Broward County waives in support  
3:09:29 PM Diana Ragbeer, Director, Public Policy, The Children's Trust waives in support  
3:09:36 PM Colleen Mackin, The Children's Campaign waives in support  
3:09:46 PM Comments from Chair Diaz de la Portilla  
3:09:53 PM Question from Senator Joyner  
3:10:18 PM Response from Cindy Brown  
3:10:37 PM Comments Chair Diaz de la Portilla  
3:10:43 PM Closure waived on Amendment 560534 by Senator Detert  
3:10:50 PM Amendment 560534 adopted without objection  
3:11:00 PM Closure on S/CS/SB 590 by Senator Detert  
3:11:20 PM Roll call on CS/CS/SB 590 by Administrative Assistant Joyce Butler  
3:11:37 PM CS/CS/SB 590 reported favorably  
3:11:48 PM Tab 3, SB 996 introduced by Chair Diaz de la Portilla  
3:12:06 PM Explanation of SB 996, Civil Remedies for Terrorism by Senator Negron  
3:12:15 PM Comments from Chair Diaz de la Portilla  
3:12:20 PM Question from Senator Bean  
3:12:26 PM Response from Senator Negron  
3:13:25 PM Comments from Chair Diaz de la Portilla  
3:13:33 PM Question from Senator Soto  
3:14:00 PM Closure waived by Senator Negron  
3:14:04 PM Roll call on SB 996 by Administrative Assistant Joyce Butler

**3:14:10 PM** SB 996 reported favorably  
**3:14:23 PM** Tab 4, SB 1042 introduced by Chair Diaz de la Portilla  
**3:14:43 PM** Explanation of SB 142, Judgment Debts by Senator Simmons  
**3:16:24 PM** Comments from Chair Diaz de la Portilla  
**3:16:28 PM** Response from Senator Simmons regarding Amendment 753766  
**3:16:59 PM** Comments from Chair regarding Amendment 753766  
**3:17:12 PM** Question from Senator Soto  
**3:17:17 PM** Response from Senator Simmons  
**3:18:44 PM** Follow-up question from Senator Soto  
**3:18:53 PM** Response from Senator Simmons  
**3:19:39 PM** Comments from Chair Diaz de la Portilla  
**3:19:53 PM** Michel Weisz, Attorney, The Business Law Section of the Florida Bar waives in support  
**3:20:13 PM** Comments from Chair Diaz de la Portilla  
**3:20:23 PM** Closure on Amendment 753766 waived by Senator Simmons  
**3:20:30 PM** Amendment 753766 adopted  
**3:20:52 PM** Closure waived on bill as amended by Senator Simmons  
**3:20:58 PM** Roll call on CS/SB 1042 by Administrative Assistant Joyce Butler  
**3:21:10 PM** CS/SB 1042 reported favorably  
**3:21:22 PM** Tab 2, SB 972 introduced by Chair Diaz de la Portilla  
**3:21:32 PM** Explanation of SB 972 by Senator Lee  
**3:23:40 PM** Comments from Chair Diaz de la Portilla  
**3:23:45 PM** Question from Senator Ring  
**3:23:51 PM** Response from Senator Lee  
**3:24:50 PM** Question from Senator Joyner  
**3:24:55 PM** Response from Senator Lee  
**3:25:03 PM** Comments from Chair Diaz de la Portilla  
**3:25:25 PM** Question from Senator Simmons  
**3:25:44 PM** Response from Senator Lee  
**3:26:51 PM** Comments from Chair Diaz de la Portilla  
**3:27:04 PM** Question from Senator Ring  
**3:29:02 PM** Comments from Chair Diaz de la Portilla  
**3:29:28 PM** Question/comments from Senator Joyner  
**3:31:44 PM** Comments from Senator Simmons  
**3:32:34 PM** Comments from Chair Diaz de la Portilla  
**3:33:23 PM** Closure by Senator Lee  
**3:35:45 PM** Roll call on SB972 by Administrative Assistant Joyce Butler  
**3:35:54 PM** SB 972 reported favorably  
**3:36:09 PM** Comments from Chair Diaz de la Portilla  
**3:36:12 PM** Senator Bean moves to adjourn