

Tab 1	SB 28 by Montford; (Similar to CS/H 06527) Relief of Christopher Cannon by the City of Tallahassee						
347486	A	S	RCS	JU, Montford	Delete L.100 - 102:	02/13 06:07 PM	
Tab 2	SB 112 by Campbell; (Identical to H 00573) Involuntary Examinations Under the Baker Act						
Tab 3	CS/SB 300 by GO, Rouson (CO-INTRODUCERS) Campbell; (Similar to CS/H 00307) Florida Commission on Human Relations						
Tab 4	SB 750 by Perry; (Identical to H 00273) Public Records						
510198	D	S	RCS	JU, Perry	Delete everything after	02/14 11:34 AM	
876508	AA	S	RCS	JU, Perry	Delete L.13 - 30:	02/14 11:34 AM	
Tab 5	SB 918 by Grimsley; (Similar to H 01195) Clerks of Circuit Court						
950782	D	S	RCS	JU, Grimsley	Delete everything after	02/15 04:34 PM	
Tab 6	CS/SB 1230 by CJ, Baxley; (Similar to CS/H 01401) Criminal Judgments						
Tab 7	CS/SB 1256 by CJ, Brandes; (Similar to CS/H 01249) Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices						
594522	A	S	RCS	JU, Brandes	Delete L.150 - 297:	02/14 03:16 PM	
Tab 8	SB 1384 by Brandes; (Similar to H 07061) Jurisdiction of the County Court						
122416	D	S	RCS	JU, Brandes	Delete everything after	02/15 05:46 PM	
Tab 9	CS/SB 706 by CJ, Steube (CO-INTRODUCERS) Grimsley; (Identical to CS/H 00957) Crime Stoppers Organizations						
854106	A	S	RCS	JU, Steube	Delete L.29 - 71:	02/14 11:30 AM	
Tab 10	SB 952 by Steube (CO-INTRODUCERS) Hutson, Perry, Hukill; (Compare to CS/H 00473) Cruelty to Animals						
Tab 11	SB 1076 by Steube; (Similar to H 01219) Franchises						
566792	D	S	RCS	JU, Steube	Delete everything after	02/14 11:43 AM	
Tab 12	SB 1142 by Steube; (Similar to CS/H 01065) Expunction of Criminal History Records						
280316	D	S	RS	JU, Steube	Delete everything after	02/14 11:30 AM	
710312	SD	S	RCS	JU, Steube	Delete everything after	02/14 11:30 AM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Steube, Chair
Senator Benacquisto, Vice Chair

MEETING DATE: Tuesday, February 13, 2018
TIME: 2:00—4:00 p.m.
PLACE: *Toni Jennings Committee Room, 110 Senate Office Building*

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 28 Montford (Similar CS/H 6527)	Relief of Christopher Cannon by the City of Tallahassee; Providing for the relief of Christopher Cannon; providing an appropriation to compensate him for injuries and damages sustained as a result of the alleged negligence of the City of Tallahassee, etc. SM JU 02/13/2018 Fav/CS GO RC	Fav/CS Yeas 10 Nays 0
2	SB 112 Campbell (Identical H 573)	Involuntary Examinations Under the Baker Act; Authorizing physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that they have examined a person and find the person appears to meet the criteria for involuntary examination, etc. HP 01/23/2018 Favorable CF 02/06/2018 Favorable JU 02/13/2018 Favorable RC	Favorable Yeas 8 Nays 2
3	CS/SB 300 Governmental Oversight and Accountability / Rouson (Similar CS/H 307)	Florida Commission on Human Relations; Revising the length of time by which receipt of the complaint must be acknowledged and copies thereof provided to named parties; revising the length of time by which a complainant may file a complaint with the Public Employees Relations Commission following termination of the Florida Commission on Human Relations' investigation; requiring the commission to provide notice to an aggrieved person under certain circumstances, etc. GO 01/30/2018 Fav/CS JU 02/13/2018 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 13, 2018, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 750 Perry (Identical H 273)	Public Records; Prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request, etc. GO 01/10/2018 Favorable JU 01/18/2018 Temporarily Postponed JU 02/13/2018 Temporarily Postponed RC	Temporarily Postponed
5	SB 918 Grimsley (Similar H 1195)	Clerks of Circuit Court; Requiring records and books to be readily accessible at the county seat; requiring all driver improvement course providers, within 7 business days, to transmit the individual completion certificate, or related data sufficient to update the Comprehensive Case Information System, through the statewide e-filing portal to a specified clerk of circuit court, etc. TR 01/25/2018 Favorable JU 02/13/2018 Fav/CS RC	Fav/CS Yeas 8 Nays 2
6	CS/SB 1230 Criminal Justice / Baxley (Similar CS/H 1401)	Criminal Judgments; Requiring that judgments of guilty or not guilty of petit theft be in a written record or an electronic record with the judge's electronic signature, recorded by the clerk of the circuit court; requiring that for an electronic judgment of guilty, the fingerprints of a defendant be electronically captured and a certain certification be included; requiring that specified judgments of guilty be in a written record or an electronic record with the judge's electronic signature, recorded by the clerk of the circuit court, etc. CJ 02/06/2018 Fav/CS JU 02/13/2018 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 13, 2018, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1256 Criminal Justice / Brandes (Similar CS/H 1249)	Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices; Defining the terms "microphone-enabled household device" and "portable electronic communication device"; providing criminal penalties for the intentional and unlawful accessing without authorization of certain devices and obtaining wire, oral, or electronic communications stored within those devices; authorizing an investigative or law enforcement officer to apply to a judge of competent jurisdiction for a warrant, rather than an order, authorizing the acquisition of cellular-site location data, precise global positioning satellite location data, or historical global positioning satellite location data, etc. CJ 02/06/2018 Fav/CS JU 02/13/2018 Fav/CS RC	Fav/CS Yeas 10 Nays 0
8	SB 1384 Brandes (Similar H 7061)	Jurisdiction of the County Court; Increasing the limit of the amount in controversy in certain actions at law under which the county court has original jurisdiction of such actions; providing for adjustments to the limit at specified intervals due to inflation or deflation, etc. JU 02/13/2018 Fav/CS ACJ AP	Fav/CS Yeas 10 Nays 0
9	CS/SB 706 Criminal Justice / Steube (Identical CS/H 957)	Crime Stoppers Organizations; Prohibiting a person who engages in privileged communication, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors from being required to disclose privileged communications or produce protected information; authorizing a person charged with a criminal offense to petition the court to inspect the protected information under certain circumstances, etc. CJ 02/06/2018 Fav/CS JU 02/13/2018 Fav/CS RC	Fav/CS Yeas 9 Nays 1
10	SB 952 Steube (Compare CS/H 473, CS/CS/S 1576)	Cruelty to Animals; Citing this act as "Ponce's Law"; authorizing a court to prohibit certain offenders from owning or having contact with animals, etc. CJ 02/06/2018 Favorable JU 02/13/2018 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 13, 2018, 2:00—4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 1076 Steube (Similar H 1219)	Franchises; Designating the "Protect Florida Small Business Act"; prohibiting a franchisor from terminating or not renewing a franchise under certain circumstances; prohibiting a franchisor from denying certain persons the opportunity to participate in the ownership of a franchise for a specified period after the death of the franchisee or the death of a person controlling a majority interest in the franchise; requiring a franchisor and a franchisee to deal with each other in good faith; prohibiting waivers through certain contract provisions that would affect a person's rights to make a claim, etc. RI 01/30/2018 Favorable JU 02/06/2018 Temporarily Postponed JU 02/13/2018 Temporarily Postponed RC	Temporarily Postponed
12	SB 1142 Steube (Similar CS/H 1065, Compare CS/S 298)	Expunction of Criminal History Records; Revising the eligibility requirements for expunction of criminal history records to include instances in which a verdict of not guilty was rendered, etc. CJ 02/06/2018 Favorable JU 02/13/2018 Fav/CS RC	Fav/CS Yeas 10 Nays 0
Other Related Meeting Documents			



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
2/8/18	SM	Favorable
2/13/18	JU	Fav/CS
	GO	
	RC	

February 8, 2018

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

Re: **CS/SB 28** – Judiciary Committee and Senator Bill Montford
HB 6527 – Representative Ramon Alexander
Relief of Christopher Cannon

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$500,000, BASED ON A STIPULATED FINAL JUDGMENT BETWEEN CHRISTOPHER V. CANNON, THE CLAIMANT, AND THE CITY OF TALLAHASSEE. THE FINAL JUDGMENT RESOLVED A CIVIL ACTION ARISING FROM THE NEGLIGENT OPERATION OF A CITY OF TALLAHASSEE VEHICLE WHICH INJURED CHRISTOPHER CANNON.

FINDINGS OF FACT:

This claim arises out of an accident involving a Dial-a-Ride (DART) vehicle and a motorcyclist, Christopher V. Cannon, which occurred on December 16, 2015, in Tallahassee, Florida. The Star Metro department of the City of Tallahassee provides public transport services on DART vehicles to residents with qualifying disabilities. The City of Tallahassee employed Ms. Rosa Kelly as a DART driver.

On December 16, 2015, Ms. Kelly was driving a DART vehicle during work hours. According to witness statements, as documented in the Leon County Sheriff's Office accident report, Ms. Kelly made a left turn onto southbound Capital Circle Northwest, from Old Bainbridge Road while Mr. Cannon was driving his motorcycle northbound on Capital Circle

Northwest. Ms. Kelly hit Mr. Cannon in a head-on crash, causing him to be ejected from his motorcycle. Mr. Cannon was not communicative at the scene. Mr. Cannon was transported by ambulance to Tallahassee Memorial Hospital. At the time of the accident, Mr. Cannon was wearing a motorcycle helmet and other protective gear in the form of a jacket and boots.

At the time of impact, Mr. Cannon suffered multiple trauma. Specifically, the accident caused Mr. Cannon to have various fractures and a pulmonary contusion. On December 17, 2015, Dr. Hank Hutchinson of Tallahassee Memorial Healthcare operated on Mr. Cannon by inserting a permanent rod in his right lower leg and a plate in his right upper arm. On January 6, 2016, Mr. Cannon underwent a second surgery for infection, while under anesthesia, at which time, Dr. Hutchinson excised and closed the infected wound.

Based on the accident, Officer Robert Gaines III issued a traffic citation to Ms. Kelly for violating the right of way with serious bodily injury.

Not including this incident, Ms. Kelly has had 7 prior accidents in her capacity as a driver for the City of Tallahassee. The City documented in Disciplinary Accident Reports each of these previous incidents as preventable accidents. Discipline ranged from a written reprimand to suspension.

On March 30, 2016, the court held a nonjury trial on the infraction as is required in incidents in which an accident results in serious bodily injury (s. 318.19(2), F.S.) On April 4, 2016, the court found Ms. Kelly guilty of both failing to yield to oncoming traffic when making a left turn, in violation of s. 316.122, F.S., and of causing serious bodily injury to Mr. Cannon. The court suspended Ms. Kelly's commercial driver's license for a period of 90 days.

FUTURE SERVICES REPORT: Dr. Hutchinson drafted a future care plan dated November 9, 2017. In it, he indicates that Mr. Cannon's arm and leg, fractured in the incident, have completely healed. Mr. Cannon has a full range of motion in his shoulder, elbow, forearm, hand, and wrist and walks with a smooth and steady gait. He is at a significantly less than 50 percent chance of needing hip, knee, or ankle replacement surgery in the future, and is at very low risk of long-term arthritis due to the injuries.

LITIGATION HISTORY:

On July 11, 2016, Christopher V. Cannon filed a Complaint for Damages against the City of Tallahassee in Leon County Circuit Court. The complaint alleged an action for damages against the City of Tallahassee based upon negligent hiring, discipline, and supervision of employee Rosie Kelly whose negligent driving proximately caused permanent personal injuries to Mr. Cannon. The plaintiff filed a first amended complaint on January 11, 2017, adding a Count II cause of action against the City of Tallahassee, based upon vicarious liability.

On February 9, 2017, the City filed an answer to the first amended complaint. In it, the City admitted negligence based on vicarious liability, as asserted in Count II of the plaintiff's complaint. The City also moved to dismiss Count I of the complaint.

On March 3, 2017, the parties filed a joint motion for partial summary judgment. In their motion, the parties moved to dismiss Count I of the complaint in exchange for the City of Tallahassee admitting liability under Count II based on the vicarious liability doctrine of respondeat superior. The court granted the motion and reserved judgment on the issue of damages. On June 22, 2017, the court entered a final judgment for damages in the amount of the agreed to settlement of \$200,000.

On May 24, 2017, the parties entered into a Mediation Settlement Agreement. Therein, the City of Tallahassee agreed to a total settlement of \$700,000, of which the City would pay the first \$200,000 within 14 days after approval by the City Commission and agreed to pay the remaining \$500,000 through a claim bill. The City Commission approved the settlement amount at a City Commission meeting held on June 14, 2017.

Subsequently, the parties submitted to the court a Consented Motion for Court Approval of Settlement and Final Judgment. In it, the parties agreed that upon the entry of a court order approving the settlement, the City would pay \$200,000 to the plaintiff and the Plaintiff would execute a general release and secure a dismissal with prejudice. The court entered an Order Granting the Consented Motion for Court Approval of Settlement and Final Judgment on June 22, 2017. The plaintiff

then filed with the court a Motion for a Voluntary Dismissal with Prejudice on October 16, 2017.

CLAIMANT'S POSITION:

To prove a claim of negligence, a plaintiff must show that a defendant owed a duty to the plaintiff, the defendant breached that duty, the defendant's action or inaction caused the plaintiff's injury, and the plaintiff incurred damages. The claimant asserts each of these elements as follows.

Ms. Kelly had a duty to safely operate the Dial-a-Ride bus. Ms. Kelly breached that duty by operating the bus in a negligent manner. Specifically, Ms. Kelly drove negligently by turning left when it was not clear to do so and colliding with Mr. Cannon. Had Ms. Kelly properly looked before attempting to turn, she would have seen Mr. Cannon and avoided hitting him, as it was foreseeable that she could have hit someone. Ms. Kelly was 100 percent at fault for causing the collision.

As a direct and proximate result of the negligence of Ms. Kelly, Mr. Cannon suffered permanent bodily injury. He has experienced pain and suffering, multiple surgeries, disfigurement, hospitalization and other medical costs, and loss of earnings.

As a result of the accident, Mr. Cannon suffered multiple fractures. He underwent several surgeries to have a rod and screws inserted through his right tibia (shinbone), and plates and screws to his right humerus (upper arm). The rod, plates, and screws are permanent. Mr. Cannon also had to be readmitted to the hospital and operated on for a wound infection on his left thigh. The surgery left Mr. Cannon with considerable scarring and permanent disfigurement at the surgery sites.

Mr. Cannon testified at his deposition that he doesn't have full strength or feeling in the areas in which he was injured. He additionally stated that now his right leg hurts if he stands on it for long periods of time.

RESPONDENT'S POSITION:

At the claim bill hearing, the City of Tallahassee admitted liability and indicated that the City fully supports the claim.

CONCLUSIONS OF LAW:

Section 768.28 (2009), F.S., governs this matter. That statute generally allows injured parties to sue the state or local governments for damages caused by their negligence or the

negligence of their employees. However, the statute limits the amount of damages that a plaintiff can collect from a judgment against or settlement with a government entity to \$200,000 per person and \$300,000 for all claims or judgments arising out of the same incident. Funds can be paid in excess of these limits only upon the approval of a claim bill by the Legislature. Thus, Mr. Cannon will not receive the full benefit of his settlement agreement with the City of Tallahassee unless the Legislature approves a claim bill authorizing the additional payment.

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

The driver of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injuring persons within the vehicle's path. *Gowdy v. Bell*, 993 So. 2d 585,586 (Fla.1st DCA 2008). Reasonable care is the degree of care a reasonably careful person would have used under like circumstances. *Foster v. State*, 603 So. 2d 1312, 1316 (Fla. 1st DCA 1992). Ms. Kelly failed to use reasonable care by not looking to the left before turning the Dial-a-Ride bus onto Capital Circle at a red light. Had Ms. Kelly looked properly, she would have seen Mr. Cannon to the left of her, and avoided striking him with her vehicle.

Due to Ms. Kelly's breach of her duty of care, she caused the accident and Mr. Cannon's damages.

Florida's dangerous instrumentality doctrine imposes strict vicarious liability on an owner of a dangerous instrumentality who entrusts the instrument to a person who operates it negligently. *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Trucks in operation are considered to be dangerous instrumentalities. *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1985).

Municipalities are subject to the dangerous instrumentality doctrine. "When a municipality owns a motor truck, a dangerous instrumentality when in operation, that is being operated with the knowledge and consent of the municipality through its officers or employees and used on the other streets for lawful street, sewer, or other corporate purposes,

the municipality may be liable for injuries ... caused by negligence of the truck driver in operating the truck" *Barth v. City of Miami*, 1 So. 2d 574, 577 (Fla. 1941).

The long-standing doctrine of respondeat superior provides that an employer is liable for an employee's acts committed within the course and scope of employment. *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).

The City of Tallahassee employed Ms. Kelly at the time of the accident. On that day, Ms. Kelly drove the Dial-a-Ride vehicle owned by the City of Tallahassee during the course of her normal workday. Therefore, the City of Tallahassee is liable for the negligence of Ms. Kelly and the damages caused to Mr. Cannon.

The claimant has demonstrated significant economic damages. Medical costs alone total \$211,177. Of this, Mr. Cannon incurred medical bills in the amount of \$180,235 from the Tallahassee Memorial Hospital (TMH) through a subrogation lien. TMH subsequently agreed to reduce the amount of the lien to \$100,000 and to payment as follows: \$25,000 after distribution of the first settlement with the City of Tallahassee, and \$75,000 should the claim bill be approved. Due to missing work for a month and a half, Mr. Cannon lost income of \$4,500 that he would have earned during that time. Additionally, he purchased the new motorcycle that was totaled in the accident just one day earlier for \$5,757.

Noneconomic damages have not been calculated for Mr. Cannon. However, since the accident, Mr. Cannon finds running difficult and he limps at times. When the temperature is cold, he feels the titanium in both his arm and leg. He also experiences chronic numbness at several of the surgery sites.

Should this case have proceeded to trial, Mr. Cannon appears to have presented as a sympathetic plaintiff based upon: having been just 20 years of age at the time of the incident, undergoing multiple surgeries, and living permanently with a rod, plates, and screws placed internally. Additionally, he was not at-fault for his injuries and was even wearing a motorcycle helmet and other protective gear at the time of the accident.

For these reasons, the undersigned concludes that the settlement is both fair and reasonable.

LEGISLATIVE HISTORY:

This is the first year in which the claim bill has been filed.

COLLATERAL SOURCES:

The claimant represents that he has not received payment from any collateral sources.

ATTORNEY'S FEES:

The bill provides that the total amount paid for attorney fees relating to this claim is limited to 25 percent of the \$500,000 claim.

Mr. Cannon's attorney further agreed to limit his fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. However, 5 percent of the award will be payable to the lobbyist for his lobbying services and this amount will be paid from the attorney's fee.

Therefore, the total amount of fees payable for attorney and lobbying fees is \$125,000.

FISCAL IMPACT:

The City of Tallahassee is self-insured. If approved by the Legislature, the \$500,000 will be paid from the City's self-insurance fund. The City represents that it has reserved this amount for the claim.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that Senate Bill 28 (2018) be reported FAVORABLY.

Respectfully submitted,

Cindy M. Brown
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute provides for the claimant's attorney to be paid \$100,000, which is 20 percent of the \$500,000 claim bill. The lobbyist for the claim bill is to be paid \$25,000, which is 5 percent of the claim bill.



347486

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 100 - 102
and insert:
damages to Christopher Cannon. Of the amount awarded under this
act, the total amount paid for attorney fees may not exceed
\$100,000, the total amount paid for lobbying fees may not exceed
\$25,000, and no amount may be paid for costs or other similar
expenses.

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



347486

12 And the title is amended as follows:
13 Delete line 9
14 and insert:
15 and lobbying fees and costs; providing an effective
16 date.



The Florida Senate

Committee Agenda Request

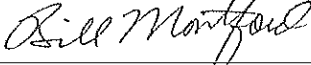
To: Senator Greg Steube, Chair
Senate Committee on Judiciary

Subject: Committee Agenda Request

Date: February 1, 2018

I respectfully request that SB 28 on Relief of Christopher Cannon by the City of Tallahassee be placed on the:

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



Senator Bill Montford
Florida Senate, District 3

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 112

INTRODUCER: Senator Campbell

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Favorable
2.	Delia	Hendon	CF	Favorable
3.	Davis	Cibula	JU	Favorable
4.			RC	

I. Summary:

SB 112 adds advanced registered nurse practitioners (ARNPs) and physician assistants (PAs) to the list of health care practitioners who may initiate an involuntary examination of a person under the Florida Mental Health Act, also known as the Baker Act.

When an involuntary examination is initiated, the person to be examined may be taken into custody by a law enforcement officer and delivered to a receiving facility. The person must be examined by a physician, clinical psychologist, or psychiatric nurse at the facility within 72 hours. The facility generally must release the person within that time period, but the person may be detained longer if a petition for involuntary inpatient placement is filed with a court.

The bill has an effective date of July 1, 2018.

II. Present Situation:

Involuntary Examination Under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act, also known as the Baker Act, to address mental health needs in the state.¹ The Baker Act provides the authority and process for the voluntary and involuntary examination of persons who meet certain criteria, and the subsequent inpatient or outpatient placement of those individuals for treatment.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities, which are designated by DCF. The facilities that provide the examination and short-

¹ Chapter 71-131, s. 1, Laws of Fla. This is codified in part I of ch. 394, F.S.

term treatment of persons who meet the criteria under the Baker Act may be public or private.² If, after an examination at a receiving facility,³ a person requires further treatment he or she may be transported to a treatment facility. Treatment facilities are state hospitals that provide extended treatment and hospitalization beyond what is provided in a receiving facility.⁴

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.⁵

Criteria

A person may be subjected to an involuntary examination if there is reason to believe he or she has a mental illness, and because of the illness, that person:

- Has refused a voluntary examination after the purpose of the exam has been explained, or
- Is unable to determine for himself or herself that an examination is needed; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that the harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment, the person will cause serious bodily harm to himself, herself, or others in the near future, as evidenced by recent behavior.⁶

Who May Initiate an Involuntary Exam?

A circuit or county court, law enforcement officers, and certain health care practitioners may initiate an involuntary examination of a person.⁷

A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination.⁸ A law enforcement officer must take into custody a person who appears to meet the criteria for involuntary examination and transport that person to a receiving facility for examination.⁹

Health care practitioners may initiate an involuntary examination if the health care practitioner has examined the person within the last 48 hours and finds that the person meets the criteria for an involuntary examination.¹⁰ The practitioner must state on a DCF form,¹¹ the observations upon which that conclusion is based.¹² The form contains information related to the person's

² Section 394.455(39), F.S.

³ Section 394.455(47), F.S.

⁴ *Id.*

⁵ Section 394.463(2)(g), F.S.

⁶ Section 394.463(1), F.S.

⁷ Section 394.463(2), F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ The form is a Certificate of Professional Initiating Involuntary Examination. See Department of Children and Families, *CF-MH 3052b*, incorporated by reference in Rule 65E-5.280, F.A.C.

<http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf>. (last visited January 30, 2018).

¹² Section 394.463(2)(a), F.S.

diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of the person.¹³

The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination:

- A physician licensed under chs. 458 or 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders;
- A physician employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense;
- A clinical psychologist, as defined in s. 490.003(7), F.S., who has 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure;
- A psychologist employed by a facility operated by the U.S. Department of Veterans Affairs or the U.S. Department of Defense that qualifies as a receiving or treatment facility;
- A psychiatric nurse, who is an ARNP, with a master's degree or doctoral degree in psychiatric nursing, who holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and who has 2 years of post-master's clinical experience under the supervision of a physician;
- A mental health counselor licensed under ch. 491, F.S.;
- A marriage and family therapist licensed under ch. 491, F.S.; and
- A clinical social worker licensed under ch. 491, F.S.¹⁴

Detention and Delivery of a Person for an Involuntary Examination

Once an involuntary examination is initiated by a court or health care practitioner, a law enforcement officer "shall" take the person into custody and deliver or have the person delivered to the appropriate or nearest facility for the examination.¹⁵ A law enforcement officer executing an ex parte order for an involuntary examination, issued by a court, may take the person into custody "on any day of the week, at any time of day or night."¹⁶ The law enforcement officer is further authorized to use "reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order."¹⁷

Physician Assistants

The Department of Health (DOH) licenses physician assistants in Florida, either under s. 458.347(7), F.S., if the physician assistant works with a physician, or s. 459.022(7), F.S., if he or she works with an osteopathic physician. PAs are regulated by the Florida Board of Medicine if licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine if licensed under ch. 459, F.S., and the Florida Council on Physician Assistants. The board makes disciplinary

¹³ See supra note 8.

¹⁴ Sections 394.463(2)(a)3., and 394.455(5) and (32), F.S.

¹⁵ Section 394.463(2), F.S.

¹⁶ Section 394.463(2)(c), F.S.

¹⁷ Section 394.463(2)(d), F.S.

decisions as to whether a doctor or PA has violated the provisions of his or her practice act. In 2017, there were 7,730 PAs holding active licenses in Florida.¹⁸

Scope of Practice

Physician Assistants may practice only under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom he or she has a clinical relationship.¹⁹ A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.²⁰ The supervising physician is responsible and liable for any acts or omissions of the PA²¹ and may not supervise more than four PAs at a time.²²

Licensure

To be licensed as a PA in Florida, an applicant must:

- Pass the exam established by the National Commission on Certification of Physician Assistants;
- Complete the application and submit the application fee;²³
- Complete an approved PA training program;
- Acknowledge any prior felony convictions;
- Acknowledge any previous revocation or denial of licensure in any state; and
- If the applicant wishes to apply for prescribing authority, submit a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.²⁴

Licenses are renewed biennially.²⁵ At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit an acknowledgement that he or she has not been convicted of any felony in the previous 2 years.²⁶

Authorization

Current Florida law does not expressly allow PAs to refer for, or initiate, an involuntary examination of a person under the Baker Act; however, in 2008, Attorney General Bill McCollum issued an opinion stating:

¹⁸ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2016-2017*, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html>, (last visited Feb. 8, 2018). This total includes 7,676 in-state active licenses and 54 active military licenses.

¹⁹ Sections 458.347(2)(f) and 459.022(2)(f), F.S., are identical and define "supervision" as "responsible supervision" and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the physician assistant.

²⁰ Sections 458.347(12) and 459.022(12), F.S.

²¹ Rules 64B8-30.012(1) and 64B15-6.010(1), F.A.C.

²² Section 458.347(3) and 459.022(3), F.S.

²³ The application fee is \$100 and the initial license fee is \$205. See <http://flboardofmedicine.gov/licensing/physician-assistant-licensure/> (last visited January 30, 2018).

²⁴ Sections 458.347(7) and 459.022(7), F.S.

²⁵ For timely renewed licenses, the renewal fee is \$280 and the prescribing registration is \$150. An applicant may be charged an additional fee if the license is renewed after expiration or is more than 120 days delinquent. Florida Board of Medicine, *Renewals, Physician Assistants*, <http://flboardofmedicine.gov/renewals/physician-assistants/> (last visited Feb. 8, 2018).

²⁶ Sections 458.347(7)(b)-(c) and 459.022(7)(b)-(c), F.S.

. . . [A] physician assistant licensed pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.²⁷

Legislation was enacted in 2016 that authorizes a licensed PA to perform services delegated by the supervising physician. The service must be in the physician assistant's practice in accordance with his or her education and training unless expressly prohibited under chs.458 or 459, F.S., or rules adopted under those chapters.²⁸

Curriculum

According to the American Academy of Physician Assistants, most PA programs last approximately 26 months, or 3 academic years, and award master's degrees. They include classroom instruction and clinical rotations.

Physician Assistant students complete more than 2,000 hours of clinical rotations, with an emphasis on primary care in ambulatory clinics, physician offices and acute or long-term care facilities. PA rotations can include:

- Family medicine;
- Internal medicine;
- Obstetrics and gynecology;
- Pediatrics;
- General surgery;
- Emergency medicine; and
- Psychiatry.²⁹

Additional Requirements

Physician Assistants are not currently required under Florida law to have any specific education, training, or experience in the diagnosis or treatment of mental health or nervous disorders for licensure or renewal. However, a PA working under the supervision of a physician who has experience in the diagnosis and treatment of mental and nervous disorders, or a physician employed by a facility operated by the U.S. Department of Veterans Affairs or the United States Department of Defense might obtain training or experience in these areas.

Advanced Registered Nurse Practitioners

Licensure

Nurses are licensed by the DOH and regulated by the Board of Nursing.³⁰ To be licensed, a nurse must complete an approved educational program, pass a DOH approved exam, pass a criminal

²⁷ Op. Att'y Gen. Fla. 08-31 (2008) at p. 4 <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf>

²⁸ Chapter 2016-125, Laws of Fla. (codified as ss. 458.347(4)(h) and 459.022(4)(g), F.S.).

²⁹ American Association of Physician Assistants, *Attend an Accredited PA Program*, <https://www.aapa.org/career-central/become-a-pa/> (last visited Feb. 8, 2018).

³⁰ See Part I, Chapter 464, F.S.

background screening, and pay the applicable fees.³¹ In 2017, there were 22,672 advanced registered nurse practitioners having active licenses in Florida.³²

A licensed nurse may apply to be certified as an Advanced Registered Nurse Practitioner (ARNP) if the nurse meets one or more of the following requirements:

- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.³³

Categories of ARNPs and Scope of Practice

Current law defines four categories of ARNPs: certified registered nurse anesthetists; certified nurse midwives; a nurse practitioner,³⁴ and a psychiatric nurse.³⁵ All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of someone licensed as a physician under ch. 458, F.S., an osteopathic physician licensed under ch. 459, F.S., or a dentist licensed under ch. 466, F.S.³⁶ ARNPs may carry out treatments as specified in statute, including:³⁷

- Prescribing, dispensing, administering, or ordering any drug;³⁸
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy;
- Ordering any medication for administration to patients in certain facilities; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.³⁹

In addition to these acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.⁴⁰ Further, if it is within an ARNP's established protocol, the ARNP may diagnose behavioral problems in a patient and make treatment recommendations.⁴¹

³¹ Sections 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

³² See *supra* note 19. This total includes 22,595 in-state active licenses and 77 military active licenses.

³³ Section 464.012, F.S.

³⁴ Sections 464.003(3) and 464.012(2), F.S.

³⁵ Section 394.455(35), F.S., defines a "psychiatric nurse" as an ARNP certified under s. 464.012, F.S., who has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.

³⁶ Section 464.012(3), F.S.

³⁷ *Id.*

³⁸ An ARNP may only prescribe controlled substances if he or she has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills. An ARNP is limited to prescribing a 7-day supply of Schedule II controlled substances. Only a psychiatric nurse may prescribe psychotropic controlled substances for the treatment of mental disorders and psychiatric mental health controlled substances for children younger than 18. See s. 464.012(3)(a) and (7)(a), F.S.

³⁹ Section 464.003(2), F.S., defines an "advanced or specialized nursing practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.

⁴⁰ Section 464.012(4), F.S.

⁴¹ Section 464.012(4)(c)5., F.S.

Currently, only ARNPs who are “psychiatric nurses” may initiate involuntary examinations under the Baker Act.⁴² To qualify as a psychiatric nurse, an ARNP must have a master’s or doctoral degree in psychiatric nursing, hold a national advance practice certification as a psychiatric mental health advanced practice nurse, and two years post-master’s clinical experience.⁴³

III. Effect of Proposed Changes:

Section 1 specifically authorizes PAs and ARNPs to initiate involuntary examinations under the Baker Act.

Section 2 requires that a PA or ARNP execute a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination for mental illness.

Sections 3 through 8 make necessary conforming changes due to the substantive changes made by the bill.

Section 9 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

⁴² Section 394.463(2)(a)3., F.S.

⁴³ Section 394.455(35), F.S.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill defines a “physician assistant” and an “advanced registered nurse practitioner” in the same manner as their respective practice acts.⁴⁴ The bill does not direct any additional training, clinical or continuing education requirements for either the PA or the ARNP to be qualified to perform the examination and execute the certificate in order to subject a person to an involuntary mental health examination. All other health care providers authorized to initiate an involuntary examination have additional professional specialized training in psychiatric mental health.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 394.407, 394.495, 394.496, 394.9085, 409.972, and 744.2007.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁴⁴ See ss. 458.347, 459.022, and 464.003, F.S.

By Senator Campbell

38-00156-18

2018112__

1 A bill to be entitled
 2 An act relating to involuntary examinations under the
 3 Baker Act; amending s. 394.455, F.S.; defining terms;
 4 amending s. 394.463, F.S.; authorizing physician
 5 assistants and advanced registered nurse practitioners
 6 to execute a certificate under certain conditions
 7 stating that they have examined a person and find the
 8 person appears to meet the criteria for involuntary
 9 examination; amending ss. 39.407, 394.495, 394.496,
 10 394.9085, 409.972, and 744.2007, F.S.; conforming
 11 cross-references; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Present subsections (5) through (48) of section
 16 394.455, Florida Statutes, are redesignated as subsections (6)
 17 through (49), respectively, a new subsection (5) is added to
 18 that section, and present subsection (33) is amended, to read:
 19 394.455 Definitions.—As used in this part, the term:
 20 (5) "Advanced registered nurse practitioner" means a person
 21 licensed in this state to practice professional nursing and
 22 certified in advanced or specialized nursing practice, as
 23 defined in s. 464.003.
 24 ~~(34)(33) "Physician assistant" has the same meaning as~~
 25 ~~provided in s. 458.347(2) means a person licensed under chapter~~
 26 ~~458 or chapter 459 who has experience in the diagnosis and~~
 27 ~~treatment of mental disorders.~~
 28 Section 2. Paragraph (a) of subsection (2) of section
 29 394.463, Florida Statutes, is amended to read:

Page 1 of 6

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38-00156-18

2018112__

30 394.463 Involuntary examination.—
 31 (2) INVOLUNTARY EXAMINATION.—
 32 (a) An involuntary examination may be initiated by any one
 33 of the following means:
 34 1. A circuit or county court may enter an ex parte order
 35 stating that a person appears to meet the criteria for
 36 involuntary examination and specifying the findings on which
 37 that conclusion is based. The ex parte order for involuntary
 38 examination must be based on written or oral sworn testimony
 39 that includes specific facts that support the findings. If other
 40 less restrictive means are not available, such as voluntary
 41 appearance for outpatient evaluation, a law enforcement officer,
 42 or other designated agent of the court, shall take the person
 43 into custody and deliver him or her to an appropriate, or the
 44 nearest, facility within the designated receiving system
 45 pursuant to s. 394.462 for involuntary examination. The order of
 46 the court shall be made a part of the patient's clinical record.
 47 A fee may not be charged for the filing of an order under this
 48 subsection. A facility accepting the patient based on this order
 49 must send a copy of the order to the department the next working
 50 day. The order may be submitted electronically through existing
 51 data systems, if available. The order shall be valid only until
 52 the person is delivered to the facility or for the period
 53 specified in the order itself, whichever comes first. If no time
 54 limit is specified in the order, the order shall be valid for 7
 55 days after the date that the order was signed.
 56 2. A law enforcement officer shall take a person who
 57 appears to meet the criteria for involuntary examination into
 58 custody and deliver the person or have him or her delivered to

Page 2 of 6

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38-00156-18

2018112__

59 an appropriate, or the nearest, facility within the designated
60 receiving system pursuant to s. 394.462 for examination. The
61 officer shall execute a written report detailing the
62 circumstances under which the person was taken into custody,
63 which must be made a part of the patient's clinical record. Any
64 facility accepting the patient based on this report must send a
65 copy of the report to the department the next working day.

66 3. A physician, physician assistant, clinical psychologist,
67 psychiatric nurse, mental health counselor, marriage and family
68 therapist, ~~or~~ clinical social worker, or an advanced registered
69 nurse practitioner may execute a certificate stating that he or
70 she has examined a person within the preceding 48 hours and
71 finds that the person appears to meet the criteria for
72 involuntary examination and stating the observations upon which
73 that conclusion is based. If other less restrictive means, such
74 as voluntary appearance for outpatient evaluation, are not
75 available, a law enforcement officer shall take into custody the
76 person named in the certificate and deliver him or her to the
77 appropriate, or nearest, facility within the designated
78 receiving system pursuant to s. 394.462 for involuntary
79 examination. The law enforcement officer shall execute a written
80 report detailing the circumstances under which the person was
81 taken into custody. The report and certificate shall be made a
82 part of the patient's clinical record. Any facility accepting
83 the patient based on this certificate must send a copy of the
84 certificate to the department the next working day. The document
85 may be submitted electronically through existing data systems,
86 if applicable.

87 Section 3. Paragraph (a) of subsection (3) of section

Page 3 of 6

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2018112__

88 39.407, Florida Statutes, is amended to read:

89 39.407 Medical, psychiatric, and psychological examination
90 and treatment of child; physical, mental, or substance abuse
91 examination of person with or requesting child custody.-

92 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
93 or paragraph (e), before the department provides psychotropic
94 medications to a child in its custody, the prescribing physician
95 shall attempt to obtain express and informed consent, as defined
96 in s. 394.455 ~~s. 394.455(15)~~ and as described in s.
97 394.459(3) (a), from the child's parent or legal guardian. The
98 department must take steps necessary to facilitate the inclusion
99 of the parent in the child's consultation with the physician.
100 However, if the parental rights of the parent have been
101 terminated, the parent's location or identity is unknown or
102 cannot reasonably be ascertained, or the parent declines to give
103 express and informed consent, the department may, after
104 consultation with the prescribing physician, seek court
105 authorization to provide the psychotropic medications to the
106 child. Unless parental rights have been terminated and if it is
107 possible to do so, the department shall continue to involve the
108 parent in the decisionmaking process regarding the provision of
109 psychotropic medications. If, at any time, a parent whose
110 parental rights have not been terminated provides express and
111 informed consent to the provision of a psychotropic medication,
112 the requirements of this section that the department seek court
113 authorization do not apply to that medication until such time as
114 the parent no longer consents.

115 2. Any time the department seeks a medical evaluation to
116 determine the need to initiate or continue a psychotropic

Page 4 of 6

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38-00156-18 2018112__

117 medication for a child, the department must provide to the
 118 evaluating physician all pertinent medical information known to
 119 the department concerning that child.

120 Section 4. Subsection (3) of section 394.495, Florida
 121 Statutes, is amended to read:

122 394.495 Child and adolescent mental health system of care;
 123 programs and services.—

124 (3) Assessments must be performed by:

125 (a) A professional as defined in s. 394.455(6), (8), (33),
 126 (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~;

127 (b) A professional licensed under chapter 491; or

128 (c) A person who is under the direct supervision of a
 129 qualified professional as defined in s. 394.455(6), (8), (33),
 130 (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a
 131 professional licensed under chapter 491.

132 Section 5. Subsection (5) of section 394.496, Florida
 133 Statutes, is amended to read:

134 394.496 Service planning.—

135 (5) A professional as defined in s. 394.455(6), (8), (33),
 136 (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a
 137 professional licensed under chapter 491 must be included among
 138 those persons developing the services plan.

139 Section 6. Subsection (6) of section 394.9085, Florida
 140 Statutes, is amended to read:

141 394.9085 Behavioral provider liability.—

142 (6) For purposes of this section, the terms "detoxification
 143 services," "addictions receiving facility," and "receiving
 144 facility" have the same meanings as those provided in ss.
 145 397.311(26)(a)4., 397.311(26)(a)1., and 394.455(40) ~~394.455(39)~~,

38-00156-18 2018112__

146 respectively.

147 Section 7. Paragraph (b) of subsection (1) of section
 148 409.972, Florida Statutes, is amended to read:

149 409.972 Mandatory and voluntary enrollment.—

150 (1) The following Medicaid-eligible persons are exempt from
 151 mandatory managed care enrollment required by s. 409.965, and
 152 may voluntarily choose to participate in the managed medical
 153 assistance program:

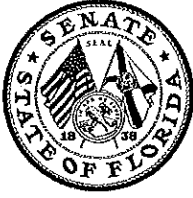
154 (b) Medicaid recipients residing in residential commitment
 155 facilities operated through the Department of Juvenile Justice
 156 or a treatment facility as defined in s. 394.455(48) ~~s.~~
 157 ~~394.455(47)~~.

158 Section 8. Subsection (7) of section 744.2007, Florida
 159 Statutes, is amended to read:

160 744.2007 Powers and duties.—

161 (7) A public guardian may not commit a ward to a treatment
 162 facility, as defined in s. 394.455(48) ~~s. 394.455(47)~~, without
 163 an involuntary placement proceeding as provided by law.

164 Section 9. This act shall take effect July 1, 2018.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR DAPHNE CAMPBELL
38th District

February 6, 2018

Chair Greg Steube
Committee on Judiciary
5155 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Greg Steube,

I respectfully request that SB 112 Involuntary Examinations under the Baker Act be placed on the next available committee agenda. The purpose of this bill is to add advanced registered nurse practitioners (ARNPs) and physician assistants (PAs) to the list of health care practitioners who may initiate an involuntary mental examination of a person under the Florida Mental Health Act, also known as the Baker Act. This bill, has one committee stop left in the House and has already passed the Senate Health Policy Committee and Senate Children Families and Elder Affairs committee. I ask for your consideration in helping advance this important piece of legislation.

Sincerely,

A handwritten signature in cursive script that reads "D Campbell".

Senator Daphne Campbell
Senate District 38

REPLY TO:

- 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
- 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

2.13.14

Meeting Date

112

Bill Number (if applicable)

Topic Involuntary Examinations under Baker Act

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18
Meeting Date

112
Bill Number (if applicable)

Topic Involuntary Exam Under the Bike Act

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

Address 101 E. College Ave., Ste. 302
Street

Phone 813-624-5117

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FLA. Assoc. of Nurse Practitioners

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)

2/13/2018

Meeting Date

SB 112

Bill Number (if applicable)

Topic Baker Act

Amendment Barcode (if applicable)

Name Jessica Janasiewicz (Jan-ah-see-wits)

Job Title Governmental Consultant

Address 119 S Monroe Street

Phone 850-681-6788

Street

Tallahassee

FL

32301

Email jessica@rutledge-ecenia.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Academy of Physician Assistants

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 300

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Rouson and others

SUBJECT: Florida Commission on Human Relations

DATE: February 12, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	Fav/CS
2.	Davis	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 300 amends several statutes involving the Florida Commission on Human Relations. The Commission is responsible for investigating and resolving discrimination complaints in the areas of employment, housing, and certain public accommodations, as well as investigating state employee whistle-blower complaints of retaliation.

The bill revises time period investigation requirements in the Whistle-blower's Act to better align with similar time periods in other cases investigated by the Commission.

The bill also reduces quorum meeting requirements for the Commission and revises the number of nominees that the Commission must recommend each year to the Governor for the Florida Civil Rights Hall of Fame.

The bill amends civil rights administrative and civil remedies. The Commission must provide notice to an aggrieved person under specified circumstances and notify the person that he or she must file a civil action within 1 year or the action will be barred.

Additionally, the bill deletes registration requirements for facilities that claim an exemption for housing older persons and eliminates related fees and fines.

Finally, the bill deletes a requirement that the Commission or the Attorney General investigate public housing discrimination complaints. Deleting this requirement will allow the commission

to move more quickly into informal methods to resolve the issue. The bill also increases the time from 30 days to 45 days for the Commission or Attorney General to resolve the dispute.

The bill takes effect on July 1, 2018.

II. Present Situation:

Florida Commission on Human Relations

Chapter 760, F.S., provides a forum for all individuals in Florida to be protected against discrimination in areas of employment, housing, certain public accommodations, and other opportunities based on race, color, religion, sex, national origin, age, handicap, marital, or familial status. Part I of Chapter 760, F.S., is known as the Florida Civil Rights Act of 1992; Part II is known as the Florida Fair Housing Act.

The Florida Commission on Human Relations (Commission) is authorized to carry out the purposes of chapter 760, F.S.¹ The Commission is also authorized to investigate allegations of violations of the Whistle-blower's Act. The Commission is housed in the Department of Management Services (DMS).² DMS does not exercise any control or supervision over the Commission.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate.³ The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups within Florida.⁴ At least one member of the Commission must be 60 years of age or older.⁵ The Commission is empowered to receive, initiate, investigate, seek to conciliate, hold hearings on, and act upon complaints alleging any discriminatory practice,⁶ as defined by the Florida Civil Rights Act of 1992.⁷

Quorum for Commission Meeting

While the Commission is comprised of 12 members, as of January, 2018, only eight commissioners are serving on its board.⁸ Two of the eight commissioners are serving in terms that have not yet expired. The remaining six commissioners are continuing to serve until they are reappointed to another term or until the seats are filled by another appointee.⁹

¹ Sections 760.03 and 760.05, F.S.

² Section 760.04, F.S.

³ Section 760.03(1), F.S.

⁴ Section 760.03(2), F.S.

⁵ *Id.*

⁶ Section 760.02(4), F.S., defines "discriminatory practice" to mean any practice made unlawful by the Florida Civil Rights Act of 1992.

⁷ Section 760.06(5), F.S.

⁸ Florida Commission on Human Relations, *SB 300/HB 307 Bill Analysis* (2018) (copy on file with the Senate Committee on Judiciary).

⁹ *Id.*

Current law provides that seven members constitute a quorum for the Commission to conduct business.¹⁰ Due to the low number of commissioners currently serving, the Commission has difficulty meeting the seven member quorum requirement and often cancels and reschedules meetings. If two members were to resign or were unable to attend a meeting, the Commission could no longer conduct official business.¹¹ Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.¹²

Florida Civil Rights Hall of Fame

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.¹³ The purpose of the program is to recognize those persons, living or deceased, who have made significant contributions to the state as leaders in the struggle for equality and justice for all persons.¹⁴ The Commission oversees and administers the Hall of Fame, excluding the normal costs of operations, repairs, and maintenance, which is the responsibility of DMS.¹⁵ The Commission must accept nominations every year and submit 10 recommendations to the Governor, who then selects up to three members for induction.¹⁶ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.¹⁷

With its limited resources and because the Commission was not provided any fiscal or staff resources to carry out this responsibility, the Commission has struggled to make the minimum number of 10 recommendations each year.¹⁸

Florida Civil Rights Act

A person aggrieved by a violation of ss. 760.01-760.10, F.S., may file a complaint with the Commission pursuant to the Florida Civil Rights Act.¹⁹ The complaint must be filed within 365 days of the alleged violation, naming the employer, employment agency, labor organization, joint labor-management committee, or person responsible for the violation and describing the

¹⁰ Section 760.03(5), F.S.

¹¹ *See supra* note 8.

¹² Among others, ss. 43.20(4) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), 455.207(3) (Boards and Commissions within Department of Business and Professional Regulation), 456.011(3) (Boards and Commissions within Department of Health), and 472.007(4)(a) (Board of Professional Surveyors and Mappers), F.S.

¹³ Section 760.065, F.S.; *see* ch. 2010-53, Laws of Fla.

¹⁴ Section 760.065(1), F.S.

¹⁵ Section 760.065(5), F.S.

¹⁶ Section 760.065(3)(a), F.S.

¹⁷ Section 760.065(3)(b), F.S.

¹⁸ *See supra* note 8.

¹⁹ Section 760.11(1), F.S.

violation.²⁰ The Commission must determine within 180 days whether reasonable cause exists to believe that a discriminatory practice occurred.²¹

If the Commission makes a "reasonable cause" determination, the claimant may then bring a civil action against the person named in the complaint in any court of competent jurisdiction or request an administrative hearing under provisions of ch. 120, F.S.²² A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.²³ If the Commission does not find reasonable cause, the claimant may still request an administrative hearing under provisions of ch. 120, F.S.²⁴ If the Commission fails to make a determination within 180 days, the claimant may proceed as though the Commission made a reasonable cause determination.²⁵

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between the Commission finding reasonable cause and the statute of limitations.²⁶ The Court stated that the "[a]ct...does not provide clear and unambiguous guidance to those who file complaints under its provisions nor to those who are brought into court on allegations of violating its terms."²⁷ The Court held that the one-year statute of limitations for filing civil actions in s. 760.11(5), F.S., does not apply if the Commission fails to make a determination within 180 days. Instead, the Court held that the four-year statute of limitations for a cause of action based on statutory liability²⁸ applies when the Commission fails to make a determination of reasonable cause.²⁹

State Employee Whistle-Blower Act

The Commission is authorized to investigate any allegation of an adverse action taken against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government.³⁰ If someone is retaliated against, he or she may file a written complaint with the Commission or the Office of the Chief Inspector General in the Governor's office within 60 days after the adverse action.³¹

Within 3 working days, the Commission or the Office of the Chief Inspector General must acknowledge receiving the complaint and provide copies of the complaint to each of the parties.³² The Commission must then further notify, within 15 days, the complainant that the

²⁰ *Id.*

²¹ Section 760.11(3), F.S. In the event that any other agency of the state or of any other unit of state government has jurisdiction of the subject matter of any complaint filed with the Commission and has legal authority to investigate the complaint, the Commission may refer such complaint to the agency for an investigation. *See* s. 760.11(2), F.S.

²² Section 760.11(4), F.S.

²³ Section 760.11(5), F.S.

²⁴ Section 760.11(7), F.S.

²⁵ Section 760.11(8), F.S.

²⁶ *Joshua v. City of Gainesville*, 768 So. 2d 432, 434-435 (Fla. 2000).

²⁷ *Id.*

²⁸ Section 95.11(3)(f), F.S.

²⁹ *Joshua*, 768 So. 2d at 439.

³⁰ Section 112.31895(2), F.S. *See also* s. 112.3187, F.S.

³¹ Section 112.31895(1)(a), F.S.

³² Section 112.31895(1)(b), F.S.

complaint has been received.³³ The Commission must then complete the fact-finding process within 90 days after receiving the complaint and provide the agency head and the complainant a report that may include recommendations to the parties or a proposed resolution of the complaint.³⁴

If the Commission is unable to conciliate a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation.³⁵ The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and the reasons for terminating the investigation.³⁶

If an agency does not implement the recommended action of the Commission within 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission (PERC)³⁷ or petition the agency for corrective action.³⁸ A complainant may file a complaint against the employer-agency with the PERC after the termination of an investigation by the Commission.³⁹ This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.⁴⁰

Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act.⁴¹ It is the state's policy to provide for fair housing throughout the state.⁴² The Fair Housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the Commission.⁴³ The complainant must file the complaint within one year after the alleged discriminatory practice has occurred.⁴⁴ The Commission has 100 days after receipt of the complaint to complete its investigation and give notice in writing to the person aggrieved whether it intends to resolve it.⁴⁵ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.⁴⁶

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature

³³ Section 112.31895(2)(b), F.S.

³⁴ Section 112.31895(2)(c), F.S.

³⁵ Section 112.31895(3)(d), F.S.

³⁶ *Id.*

³⁷ PERC is created pursuant to ch. 447, Part II, F.S., and has jurisdiction over certain state employment cases, including career service appeals, veterans preference appeals, Drug-Free Workplace Act appeals, age discrimination appeals, and Whistle-Blower Act appeals.

³⁸ Section 112.31895(3)(e)3., F.S.

³⁹ Section 112.31895(4)(a), F.S.

⁴⁰ *Id.*

⁴¹ Sections 760.20-760.37, F.S.

⁴² Section 760.21, F.S.

⁴³ Section 760.34(1), F.S.

⁴⁴ Section 760.34(2), F.S.

⁴⁵ Section 760.34(1), F.S.

⁴⁶ *Id.*

created exemptions for which charges of housing discrimination do not apply.⁴⁷ For example, a single-family house sold or rented by its owner is exempted, as well as rooms or units in dwellings that provide housing for four or fewer families.⁴⁸

Certain housing for older persons is also exempt from charges of discrimination based on familial status.⁴⁹ Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or, if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older.⁵⁰ The housing facility or community must also adhere to senior housing policies and procedures and comply with rules developed by the U.S. Department of Housing and Urban Development pursuant to 24 C.F.R. 100.⁵¹ These facilities and communities must register with the Commission and renew such registration every two years and pay a fee that does not exceed \$20 for registration and renewal.⁵² The Commission may impose an administrative fine of up to \$500 for the knowing submission of false information, but there is no penalty for failure to register with the Commission.⁵³ Failure to register does not prohibit a community from claiming the exemption.⁵⁴

The Commission made an executive decision in September, 2015, and has not charged the \$20 registration or renewal fee for facilities and communities. The Commission reports that the "registration program does not enhance or benefit the Commission in implementing its statutory requirements or carrying out its mission-critical responsibilities."⁵⁵ The registry does not determine whether a community actually qualifies for the housing for older persons exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if someone files a complaint against it. The facility or community would have to prove that it meets the exemption. The same standard holds true for a facility or community that has not registered.

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.⁵⁶ This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages directly or indirectly from non-members for business purposes.⁵⁷ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement to the effect that the accommodations, advantages, facilities, membership, or privileges of the club are denied to any individual because

⁴⁷ Section 760.29, F.S.

⁴⁸ Section 760.29(1)(a)1. and 2., F.S.

⁴⁹ Section 760.29(4), F.S.

⁵⁰ Section 760.29(4)(b), F.S.

⁵¹ Section 760.29(4)

⁵² Section 760.29(4)(e), F.S.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See supra* note 8 at 7.

⁵⁶ Section 760.60(1), F.S.

⁵⁷ *Id.*

of race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status.⁵⁸ This prohibition does not apply to fraternal or benevolent organizations, ethnic clubs, or religious organizations where business activity is not prevalent.⁵⁹

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.⁶⁰ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant in writing if it intends to resolve the complaint.⁶¹ If the Commission or the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.⁶²

If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce this section.⁶³ If the court finds a discriminatory practice has occurred at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.⁶⁴

III. Effect of Proposed Changes:

State Employee Whistle-blower's Act

Section 1 amends s. 112.31895, F.S., to revise a number of investigation time periods involving the Florida Commission on Human Relations. The changes provide that the Commission or the Office of the Chief Inspector General must respond within 5 working days, instead of 3 working days, after receiving a complaint. The bill deletes language requiring the Commission to further notify the complainant, within 15 days after receiving a complaint, that the complaint has been received. The bill also increases the time for the Commission to provide a fact-finding report from 90 days to 180 days after receiving the complaint.

The bill standardizes the times before the Commission must terminate an investigation pursuant to s. 112.31895(3)(d) and (e), F.S., to 35 days. The bill also reduces the time to appeal a decision to terminate an investigation to the Public Employees Relations Commission from 60 days to 21 days.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Section 760.60(2), F.S.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Section 760.60(3), F.S.

⁶⁴ *Id.*

Florida Commission on Human Rights

Section 2 amends s. 760.03, F.S., to provide that a quorum for the conduct of official business by the Commission consists of a majority of the currently appointed commissioners. Also, this section provides that panels created by the Commission would be able to establish a quorum to conduct business with three commissioners on the panel.

Section 3 amends s. 760.065, F.S., to provide that the Commission may recommend up to ten nominees for the Florida Civil Rights Hall of Fame each year for the Governor's consideration. This change prevents the Commission from violating the law if it submits fewer than ten recommendations due to a lack of nominees from others.

Section 4 amends s. 760.11, F.S., to provide that if the Commission fails to determine whether there is reasonable cause within 180 days, a cause of action is subject to the same one-year statute of limitations as a claim that receives a determination of reasonable cause. The Commission is required to promptly notify the individual of the Commission's failure to conciliate or to determine reasonable cause, to inform the individual of their options, and to inform the individual that a civil action alleging a violation of the Florida Civil Rights Act is prohibited if not filed within 1 year after the date the Commission certifies that the notice was mailed.

The bill requires that any civil action brought by an individual must be commenced within 1 year after the date the Commission certifies that the notice was mailed.

Fair Housing Act

Section 5 deletes s. 760.29(4)(e), F.S., to repeal the requirement that a facility or community that claims the exemption as housing for older persons must register with the Commission. This deletion includes the provisions for the registration and renewal fee and administrative fine for submission of false information to the Commission.

Section 6 amends s. 760.31, F.S., to delete the requirement that Commission rules specify the fee, forms, and procedures utilized for registration of facilities and communities claiming an exemption as housing for older persons. This is necessary to conform the statute to the deletion of s. 760.29(4)(e), F.S., in section 5.

Discriminatory Practices in Certain Clubs

Section 7 amends s. 760.60, F.S., to delete the requirement that the Commission or the Attorney General investigate the public accommodation discrimination complaint. The bill also extends from 30 days to 45 days the time for the Commission or the Attorney General to resolve the dispute.

Section 8 provides an effective date of July 1, 2018.

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

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate. There is no fiscal impact to the Commission.⁶⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.31895, 760.03, 760.065, 760.11, 760.29, 760.31, and 760.60 of the Florida Statutes.

⁶⁵ See *supra* note 8.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on January 30, 2018:

The Committee Substitute:

- Deletes provisions of original bill expanding time to file a complaint to 365 days regarding a violation of the Whistle-blower’s Act;
- Deletes provisions of original bill expanding statute of limitations to 4 years for filing a civil action regarding a violation of the Florida Civil Rights Act;
- Amends s. 760.11(8), F.S., to:
 - Provide that if the Commission fails to determine whether there is reasonable cause within 180 days, a cause of action is subject to the same one-year statute of limitations as a claim that receives a determination of reasonable cause; and
 - Require the Commission to promptly notify the individual of the Commission’s failure to conciliate or to determine reasonable cause, to inform the individual of their options, and to inform the individual that a civil action alleging a violation of the Florida Civil Rights Act is prohibited if not filed within 1 year after the date the Commission certifies that the notice was mailed.

- B. **Amendments:**

None.

By the Committee on Governmental Oversight and Accountability;
and Senators Rouson and Campbell

585-02615-18

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1 A bill to be entitled
2 An act relating to the Florida Commission on Human
3 Relations; amending s. 112.31895, F.S.; revising the
4 length of time by which receipt of the complaint must
5 be acknowledged and copies thereof provided to named
6 parties; revising the commission's duties with respect
7 to the process of fact finding regarding an allegation
8 of a prohibited personnel action; revising the
9 timeframes by which the commission must terminate an
10 investigation following the receipt of the fact-
11 finding report or the failure of an agency to
12 implement corrective action recommendations; revising
13 the length of time by which a complainant may file a
14 complaint with the Public Employees Relations
15 Commission following termination of the Florida
16 Commission on Human Relations' investigation; amending
17 s. 760.03, F.S.; revising what constitutes a quorum
18 for commission meetings and panels thereof; amending
19 s. 760.065, F.S.; revising the number of persons the
20 commission must annually recommend to the Governor for
21 inclusion in the Florida Civil Rights Hall of Fame;
22 amending s. 760.11, F.S.; requiring the commission to
23 provide notice to an aggrieved person under certain
24 circumstances; providing notice requirements;
25 requiring a certain civil action brought by an
26 aggrieved person to commence within a specified
27 timeframe; amending s. 760.29, F.S.; deleting
28 provisions requiring a facility or community claiming
29 an exemption under the Fair Housing Act to register

Page 1 of 9

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585-02615-18

2018300c1

30 with the commission; amending s. 760.31, F.S.;
31 removing a requirement for commission rules, to
32 conform to changes made by the act; amending s.
33 760.60, F.S.; removing the requirement that the
34 commission or the Attorney General investigate alleged
35 discriminatory practices of a club within a specified
36 timeframe; revising the timeframe by which a
37 complainant or the Attorney General may commence a
38 civil action in response to discriminatory practices
39 of a club; providing an effective date.

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

42
43 Section 1. Subsections (1) and (2), paragraphs (d) and (e)
44 of subsection (3), and subsection (4) of section 112.31895,
45 Florida Statutes, are amended to read:

46 112.31895 Investigative procedures in response to
47 prohibited personnel actions.—

48 (1) COMPLAINTS.—

49 (a) If a disclosure under s. 112.3187 includes or results
50 in alleged retaliation by an employer, the employee or former
51 employee of, or applicant for employment with, a state agency,
52 as defined in s. 216.011, which ~~that~~ is so affected may file a
53 complaint alleging a prohibited personnel action, which
54 complaint must be made by filing a written complaint with the
55 Office of the Chief Inspector General in the Executive Office of
56 the Governor or the Florida Commission on Human Relations, no
57 later than 60 days after the prohibited personnel action.

58 (b) Within 5 ~~three~~ working days after receiving a complaint

Page 2 of 9

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585-02615-18

2018300c1

59 under this section, the office or officer receiving the
60 complaint shall acknowledge receipt of the complaint and provide
61 copies of the complaint and any other preliminary information
62 available concerning the disclosure of information under s.
63 112.3187 to each of the other parties named in paragraph (a),
64 which parties shall each acknowledge receipt of such copies to
65 the complainant.

66 (2) FACT FINDING.—The Florida Commission on Human Relations
67 shall:

68 (a) Receive any allegation of a personnel action prohibited
69 by s. 112.3187, including a proposed or potential action, and
70 conduct informal fact finding regarding any allegation under
71 this section, to the extent necessary to determine whether there
72 are reasonable grounds to believe that a prohibited personnel
73 action under s. 112.3187 has occurred, is occurring, or is to be
74 taken.

75 ~~(b) Notify the complainant, within 15 days after receiving~~
76 ~~a complaint, that the complaint has been received by the~~
77 ~~department.~~

78 (b)(e) Within 180 ~~90~~ days after receiving the complaint,
79 provide the agency head and the complainant with a fact-finding
80 report that may include recommendations to the parties or
81 proposed resolution of the complaint. The fact-finding report
82 shall be presumed admissible in any subsequent or related
83 administrative or judicial review.

84 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

85 (d) If the Florida Commission on Human Relations is unable
86 to conciliate a complaint within 35 ~~60~~ days after receipt of the
87 fact-finding report, the Florida Commission on Human Relations

Page 3 of 9

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585-02615-18

2018300c1

88 shall terminate the investigation. Upon termination of any
89 investigation, the Florida Commission on Human Relations shall
90 notify the complainant and the agency head of the termination of
91 the investigation, providing a summary of relevant facts found
92 during the investigation and the reasons for terminating the
93 investigation. A written statement under this paragraph is
94 presumed admissible as evidence in any judicial or
95 administrative proceeding but is not admissible without the
96 consent of the complainant.

97 (e)1. The Florida Commission on Human Relations may request
98 an agency or circuit court to order a stay, on such terms as the
99 court requires, of any personnel action for 45 days if the
100 Florida Commission on Human Relations determines that reasonable
101 grounds exist to believe that a prohibited personnel action has
102 occurred, is occurring, or is to be taken. The Florida
103 Commission on Human Relations may request that such stay be
104 extended for appropriate periods of time.

105 2. If, in connection with any investigation, the Florida
106 Commission on Human Relations determines that reasonable grounds
107 exist to believe that a prohibited action has occurred, is
108 occurring, or is to be taken which requires corrective action,
109 the Florida Commission on Human Relations shall report the
110 determination together with any findings or recommendations to
111 the agency head and may report that determination and those
112 findings and recommendations to the Governor and the Chief
113 Financial Officer. The Florida Commission on Human Relations may
114 include in the report recommendations for corrective action to
115 be taken.

116 3. If, after 35 ~~20~~ days, the agency does not implement the

Page 4 of 9

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585-02615-18

2018300c1

117 recommended action, the Florida Commission on Human Relations
118 shall terminate the investigation and notify the complainant of
119 the right to appeal under subsection (4), or may petition the
120 agency for corrective action under this subsection.

121 4. If the Florida Commission on Human Relations finds, in
122 consultation with the individual subject to the prohibited
123 action, that the agency has implemented the corrective action,
124 the commission shall file such finding with the agency head,
125 together with any written comments that the individual provides,
126 and terminate the investigation.

127 (4) RIGHT TO APPEAL.—

128 (a) Not more than 21 ~~60~~ days after receipt of a notice of
129 termination of the investigation from the Florida Commission on
130 Human Relations, the complainant may file, with the Public
131 Employees Relations Commission, a complaint against the
132 employer-agency regarding the alleged prohibited personnel
133 action. The Public Employees Relations Commission shall have
134 jurisdiction over such complaints under ss. 112.3187 and
135 447.503(4) and (5).

136 (b) Judicial review of any final order of the commission
137 shall be as provided in s. 120.68.

138 Section 2. Subsection (5) of section 760.03, Florida
139 Statutes, is amended to read:

140 760.03 Commission on Human Relations; staff.—

141 (5) A quorum is necessary for the conduct of official
142 business. Unless otherwise provided by law, a quorum consists of
143 a majority of the commissioners who are currently appointed.
144 ~~Seven members shall constitute a quorum for the conduct of~~
145 ~~business; however,~~ The commission may establish panels of not

585-02615-18

2018300c1

146 less than three commissioners ~~of its members~~ to exercise its
147 powers under the Florida Civil Rights Act of 1992, subject to
148 such procedures and limitations as the commission may provide by
149 rule. For such a panel, a quorum consists of three
150 commissioners.

151 Section 3. Paragraph (a) of subsection (3) of section
152 760.065, Florida Statutes, is amended to read:

153 760.065 Florida Civil Rights Hall of Fame.—

154 (3) (a) The commission shall annually accept nominations for
155 persons to be recommended as members of the Florida Civil Rights
156 Hall of Fame. The commission shall recommend up to 10 persons
157 from which the Governor shall select up to 3 hall-of-fame
158 members.

159 Section 4. Subsection (8) of section 760.11, Florida
160 Statutes, is amended to read:

161 760.11 Administrative and civil remedies; construction.—

162 (8) If ~~In the event that~~ the commission fails to conciliate
163 or determine whether there is reasonable cause on any complaint
164 under this section within 180 days after ~~of the filing of~~ the
165 complaint; ~~r~~

166 (a) An aggrieved person may proceed under subsection (4) ~~r~~
167 as if the commission determined that there was reasonable cause.

168 (b) The commission shall promptly notify the aggrieved
169 person of the failure to conciliate or to determine whether
170 there is reasonable cause. The notice shall provide the options
171 available to the aggrieved person under subsection (4) and
172 inform the aggrieved person that a civil action is prohibited if
173 not filed within 1 year after the date the commission certifies
174 that the notice was mailed.

585-02615-18

2018300c1

175 (c) Any civil action brought by an aggrieved person under
 176 this subsection must be commenced within 1 year after the date
 177 the commission certifies that the notice was mailed pursuant to
 178 paragraph (b).

179 Section 5. Paragraph (e) of subsection (4) of section
 180 760.29, Florida Statutes, is amended to read:

181 760.29 Exemptions.—

182 (4)

183 ~~(c) A facility or community claiming an exemption under~~
 184 ~~this subsection shall register with the commission and submit a~~
 185 ~~letter to the commission stating that the facility or community~~
 186 ~~complies with the requirements of subparagraph (b)1.,~~
 187 ~~subparagraph (b)2., or subparagraph (b)3. The letter shall be~~
 188 ~~submitted on the letterhead of the facility or community and~~
 189 ~~shall be signed by the president of the facility or community.~~
 190 ~~This registration and documentation shall be renewed biennially~~
 191 ~~from the date of original filing. The information in the~~
 192 ~~registry shall be made available to the public, and the~~
 193 ~~commission shall include this information on an Internet~~
 194 ~~website. The commission may establish a reasonable registration~~
 195 ~~fee, not to exceed \$20, that shall be deposited into the~~
 196 ~~commission's trust fund to defray the administrative costs~~
 197 ~~associated with maintaining the registry. The commission may~~
 198 ~~impose an administrative fine, not to exceed \$500, on a facility~~
 199 ~~or community that knowingly submits false information in the~~
 200 ~~documentation required by this paragraph. Such fines shall be~~
 201 ~~deposited in the commission's trust fund. The registration and~~
 202 ~~documentation required by this paragraph shall not substitute~~
 203 ~~for proof of compliance with the requirements of this~~

Page 7 of 9

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585-02615-18

2018300c1

204 ~~subsection. Failure to comply with the requirements of this~~
 205 ~~paragraph shall not disqualify a facility or community that~~
 206 ~~otherwise qualifies for the exemption provided in this~~
 207 ~~subsection.~~

208
 209 A county or municipal ordinance regarding housing for older
 210 persons may not contravene the provisions of this subsection.

211 Section 6. Subsection (5) of section 760.31, Florida
 212 Statutes, is amended to read:

213 760.31 Powers and duties of commission.—The commission
 214 shall:

215 (5) Adopt rules necessary to implement ss. 760.20-760.37
 216 and govern the proceedings of the commission in accordance with
 217 chapter 120. Commission rules shall clarify terms used with
 218 regard to handicapped accessibility, exceptions from
 219 accessibility requirements based on terrain or site
 220 characteristics, and requirements related to housing for older
 221 persons. ~~Commission rules shall specify the fee and the forms~~
 222 ~~and procedures to be used for the registration required by s.~~
 223 ~~760.29(4)(c).~~

224 Section 7. Subsections (2) and (3) of section 760.60,
 225 Florida Statutes, are amended to read:

226 760.60 Discriminatory practices of certain clubs
 227 prohibited; remedies.—

228 (2) A person who has been discriminated against in
 229 violation of this act may file a complaint with the Commission
 230 on Human Relations or with the Attorney General's Office of
 231 Civil Rights. A complaint must be in writing and must contain
 232 such information and be in such form as the commission requires.

Page 8 of 9

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585-02615-18

2018300c1

233 Upon receipt of a complaint, the commission or the Attorney
234 General shall provide a copy to the person who represents the
235 club. Within 30 days after receiving a complaint, the commission
236 or the Attorney General shall ~~investigate the alleged~~
237 ~~discrimination and~~ give notice in writing to the person who
238 filed the complaint if it intends to resolve the complaint. If
239 the commission or the Attorney General decides to resolve the
240 complaint, it shall attempt to eliminate or correct the alleged
241 discriminatory practices of a club by informal methods of
242 conference, conciliation, and persuasion.

243 (3) If the commission or the Attorney General fails, within
244 30 days after receiving a complaint filed pursuant to subsection
245 (2), to give notice of its intent to eliminate or correct the
246 alleged discriminatory practices of a club, or if the commission
247 or the Attorney General fails to resolve the complaint within 45
248 ~~30~~ days after giving such notice, the person or the Attorney
249 General on behalf of the person filing the complaint may
250 commence a civil action in a court against the club, its
251 officers, or its members to enforce this section. If the court
252 finds that a discriminatory practice occurs at the club, the
253 court may enjoin the club, its officers, or its members from
254 engaging in such practice or may order other appropriate action.

255 Section 8. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair

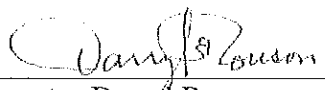
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #300**, relating to Florida Commission on Human Relations, be placed on the:

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



Senator Darryl Rouson
Florida Senate, District 19

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/13/2018

Meeting Date

300

Bill Number (if applicable)

Topic Florida Commission on Human Relations

Amendment Barcode (if applicable)

Name Michelle Wilson

Job Title Executive Director

Address 4075 Esplanade Way Room 110

Phone 850-488-7082

Street

Tallahassee

Florida

32399

Email michelle.wilson@fchr.myflorida.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Commission on Human Relations

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18

300

Meeting Date

Bill Number (if applicable)

Topic Florida Commission on Human Relations

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough Street

Phone 521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18
Meeting Date

SB 300

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 East Jefferson Street

Phone 850-445-5367

Street

Tallahassee

FL

32301

City

State

Zip

Email tim.nungesser@nfib.org

Speaking: For Against Information

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

Representing National Federation of Independent Business

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 750

INTRODUCER: Senator Perry

SUBJECT: Public Records

DATE: January 17, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 750 prohibits an agency, which includes a wide variety of state and local government entities, from responding to a request to inspect or copy a public record by filing a civil action against the individual or entity making the request.

II. Present Situation:

Public Records Law

The Florida Constitution

Under the Florida Constitution, the public is guaranteed the right of access to government records and meetings. Article I, s. 24(a) of the State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

The Florida Statutes

Similarly, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, F.S., contains the main body of public records laws and is known as the Public Records Act.¹ Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency² to provide access to

¹ Additional public records laws are found throughout the Florida Statutes.

² Section 119.011(2), F.S., defines the term “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

public records.³ Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies.⁴ The state's public records laws are construed liberally in favor of granting public access to public records.

Inspection and Copying of Public Records

Current law describes the duties and responsibilities of a custodian of public records. A records custodian must permit records to be inspected and copied by any person,⁵ at any reasonable time,⁶ under reasonable conditions, and under supervision by the records custodian. Generally, a records custodian may not require that a request for public records be submitted in a specific fashion.⁷

An agency is permitted to charge fees for the inspection or copying of records. These fees are prescribed by law and are based upon the nature or volume of the public records requested. Section 119.07(4)(d), F.S., provides that if the nature or volume of the request requires extensive use of information technology or extensive clerical or supervisory assistance, the agency may charge, in addition to the actual cost of duplication, a reasonable service charge based on the cost incurred for the use of information technology and the labor cost that is actually incurred by the agency in responding to the request. The term "labor cost" includes the entire labor cost, including benefits in addition to wages or salary.⁸ The service charge may be assessed, and payment may be required, by an agency before providing a response to the request.⁹

The Process for Making a Public Record Request

The statutes set out an orderly process for someone to request a public record.¹⁰

1. The requestor contacts the agency and asks to copy or inspect certain records.
2. The custodian or designee must acknowledge the request promptly and respond to the request in good faith.
3. The agency may then either:
 - Provide the record as it exists;
 - Provide the record after redactions are made if an exemption applies to a portion of a record; or

³ Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

⁴ See s. 119.071, F.S., for a list of general exemptions contained in chapter 119, F.S.

⁵ Section 119.07(1), F.S.

⁶ There is no specific time limit established for compliance with public records requests. A response must be prepared within a reasonable time of the request.

⁷ See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001) (holding that public records requests need not be made in writing).

⁸ *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31 (Fla. 2d DCA 2008).

⁹ Section 119.07(4), F.S.; *Morris Publishing Group, LLC v. State*, 154 So. 3d 528, 534 (Fla. 1st DCA 2015), *review denied*, 163 So. 3d 512 (Fla. 2015); see also *Wootton v. Cook*, 590 So. 2d 1039, 1040 (Fla. 1st DCA 1991) (stating that if a requestor identifies a record with sufficient specificity to permit an agency to identify it and forwards the appropriate fee, the agency must furnish by mail a copy of the record).

¹⁰ Section 119.07(1), F.S.

- Deny the request and state the basis for the exemption along with a statutory citation to the exemption. If the person seeking to inspect or copy the records requests, the custodian must state in writing and with particularity, the reasons the record is exempt or confidential.

If the request is denied, the requestor has the option to work with the agency in an effort to refine or alter its request so that the agency might disclose the information if the request is clarified, presented differently, or modified.

When all efforts by the requestor fail, the requestor may:

- File a civil lawsuit alleging that the agency's action is a violation of the public records law;
- File a complaint with the local state attorney; or
- Seek voluntary mediation of the dispute using the Attorney General's public records mediation program pursuant to s. 16.60, F.S., but the mediator does not impose a binding legal decision.¹¹

Criminal and Noncriminal Penalties

Any public officer who *knowingly* violates the provisions governing the inspection and copying of records in his or her custody, s. 119.07(1), F.S., is subject to suspension and removal or impeachment and also commits a first degree misdemeanor.¹² A first degree misdemeanor is punishable by a sentence of up to 1 year in prison, a \$1,000 fine, or both. Whoever violates any provision of chapter 119, F.S., commits a noncriminal infraction, punishable by a fine that does not exceed \$500.¹³

Declaratory Judgments

When a person submits a request to an agency and the agency is uncertain if the document is a record that must be disclosed to the public or is otherwise protected from disclosure, the agency may seek guidance from a court by filing a complaint for declaratory judgment.¹⁴ A declaratory judgment¹⁵ is a binding adjudication in which the court establishes the rights of the parties without requiring enforcement of its decision. It is used to resolve legal uncertainties for the parties.

Regarding the issue of costs in a declaratory judgment action, s. 86.081, F.S., provides that the court may award costs as are equitable. This generally means that each party bears its own

¹¹ According to a phone interview conducted with Pat Gleason, the mediator for the Attorney General's Office, the office mediates approximately 100 cases each year. This is a voluntary process and both sides agree in advance to use the process. All correspondence is conducted through email and no travel is involved. The process is free and non-binding on the parties. The parties generally agree to the outcome but are not required to. Telephone interview with Pat Gleason, Public Records Mediation Program, Office of the Attorney General, Tallahassee, FL (Jan. 14, 2018).

¹² Section 119.10(1)(b), F.S.

¹³ Section 119.10(1)(a), F.S.

¹⁴ See *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011).

¹⁵ BLACK'S LAW DICTIONARY (10th ed. 2014).

attorney fees and costs.¹⁶ Therefore, if an agency seeks a declaratory judgment and names the requestor as a party, each side will be expected to pay its own attorney fees and costs.

Agencies of the state may use this tool to ask a court to determine whether a particular record is protected from disclosure or whether the record is available to the public for inspection or copying. It is not uncommon for an agency to ask the court whether certain material in their records meets the definition of a trade secret that is protected from public disclosure.¹⁷ The Legislature has found that it is a public necessity that trade secret information be expressly made confidential and exempt from public records law.¹⁸ In creating this exemption the Legislature noted:

Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.¹⁹

Attorney Fees and Costs

A court is generally required to award attorney fees and enforcement costs to the plaintiff²⁰ in an action to enforce public records laws if the court determines that:

- An agency unlawfully refused access to a public record, and
- The plaintiff provided written notice identifying the public records request to an agency records custodian at least 5 business day before filing the action.²¹

However, if the court determines that a plaintiff requested records or filed the enforcement action based on an improper purpose, the court must award reasonable costs and attorney fees against the plaintiff. An improper purpose is one in which a person requests records mainly to harass an agency, cause a violation of the public records law, or for a frivolous purpose.

¹⁶ In *Price v. Tyler*, 890 So. 2d 246 (Fla. 2004), the Florida Supreme Court held that attorney fees are not recoverable in declaratory relief actions unless there is an independent statutory or contractual basis authorizing recovery of those fees. The Court noted that it follows the 'American Rule,' whereby attorney fees may be awarded by a court only when authorized by statute or agreement of the parties.

¹⁷ *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017). Chapter 65, Financial Institutions Generally, establishes how trade secret requests are to be handled for purposes of that chapter. If someone submits documents that are believed to be trade secrets, he or she must designate them as such and provide the name of a contact person. If the office then receives a public records request for that information, the office notifies the contact person of the request and states that he or she must file an action in circuit court within 30 days seeking a declaratory judgment that the document contains trade secrets and an order barring public disclosure of the document.

¹⁸ See *Surterra Florida, LLC. v. Florida Department of Health*, 223 So. 3d 376 (Fla. 1st DCA 2017).

¹⁹ Section 815.045, F.S.

²⁰ Section 119.12, F.S.

²¹ The 5-day notice period excludes holidays and weekends. Advance written notice is not required if the agency does not prominently post contact information for its records custodian in the agency's primary administrative building in which public records are kept and on the agency's website, if the agency has a website.

Additional Litigation

If an agency is about to disclose information that someone believes is confidential and exempt and entitled to protection, a party might sue the agency to keep the information out of the public domain.²²

The bill takes effect on July 1, 2018.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 119.07, F.S., and prohibits an agency, which includes a wide variety of state and local government entities, from responding to a request to inspect or copy a public record by filing a civil action against the individual or entity making the request.

Court cases have held, however, that the governmental agency claiming the benefit of a public record exemption bears the burden of proving its right to the exemption.²³ By prohibiting an agency from filing a “civil action” in response to a public records request, an agency would be prohibited from filing a declaratory judgment action with a court to determine whether the disclosure requirements of the public records law apply or whether the requested material is shielded from the disclosure requirements. If this option for a declaratory judgment action is removed from an agency when the duty to produce records is reasonably debatable, agencies may face additional lawsuits for refusing to provide access to public records and for producing records that are protected from public disclosure.

Section 2 of the bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²² *Office of Insurance Regulation v. State Farm Florida Insurance Company*, 213 So. 3d 1104 (Fla. 1st DCA 2017).

²³ *Central Florida Regional Transp. Authority v. Post-Newsweek*, 157 So. 3d 401, 404 (Fla. 5th DCA 2015); *Barfield v. School Bd. Of Manatee County*, 135 So. 3d 560, 562 (Fla. 2d DCA 2014).

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

None.

B. Private Sector Impact:

The bill may have an indeterminate positive impact on the private sector because individuals and entities that request public records would not be required to pay the legal costs and fees associated with being sued by a state or local government entity.

C. Government Sector Impact:

No agency bill analysis has been reported at this time projecting how this bill might affect an agency. However, removing an agency's ability to request a declaratory judgment and possibly avoid sanctions might result in more litigation filed against an agency. This could result in more litigation costs to the agency.

VI. Technical Deficiencies:

The phrase "civil action" is very broad and could prohibit an agency from filing any form of litigation, possibly even litigation to protect itself. Perhaps this phrase should be amended to state with greater specificity what legal actions are prohibited by the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.07 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.



510198

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (j) is added to subsection (1) of
section 119.07, Florida Statutes, to read:

119.07 Inspection and copying of records; photographing
public records; fees; exemptions.—

(1)

(j)1. If an agency is uncertain as to whether an exemption
is applicable to the record that is the subject of a public



510198

12 records request, the agency must provide a written statement to
13 the requester of such determination and notify the requester of
14 the right to enter into mediation under the public records
15 mediation program created under s. 16.60 in order to facilitate
16 a resolution of the public records request. If the requester
17 declines to enter into mediation with the agency or if the
18 parties to the mediation fail to reach a mutually acceptable and
19 voluntary agreement regarding the public records request, the
20 requester may request that the agency seek a declaratory
21 interpretation as to whether the requested record is subject to
22 an exemption. Upon such request, the agency shall file the
23 petition for the declaratory interpretation in the circuit court
24 of the county in which the requester resides. Additionally, the
25 agency may seek a declaratory interpretation regardless of
26 whether the requester requests that the agency file such a
27 petition. The requester has standing to participate in any
28 proceeding regarding the declaratory interpretation, but the
29 agency is responsible for all court costs and attorney fees as
30 to the declaratory interpretation petition.

31 2. An agency may not initiate a civil action against a
32 requester in response to the request to inspect or copy a public
33 record, but is not prohibited from responding to a civil action
34 that is filed against the agency by the requester. This
35 subparagraph does not impair an agency's authority to initiate a
36 civil action against a requester in a matter that is unrelated
37 to the public records request.

38 3. Any declaratory interpretation issued pursuant to this
39 paragraph is binding on the parties to the public records
40 request but is subject to appeal by either of the parties.



510198

41 4. For purposes of this paragraph, the term "declaratory
42 interpretation" means a petition filed with the circuit court in
43 which an agency seeks the opinion of the court as to the
44 applicability of an exemption to a record that is requested for
45 inspection or copying.

46 Section 2. This act shall take effect July 1, 2018.

47
48 ===== T I T L E A M E N D M E N T =====

49 And the title is amended as follows:

50 Delete everything before the enacting clause
51 and insert:

52 A bill to be entitled
53 An act relating to public records; amending s. 119.07,
54 F.S.; requiring an agency to provide a certain written
55 statement to a person seeking to inspect or copy a
56 record if the agency is uncertain as to whether the
57 requested record is subject to a public records
58 exemption; authorizing the requester of the record to
59 request that the agency seek a declaratory
60 interpretation, under specified circumstances;
61 requiring the agency to file a petition for a
62 declaratory interpretation upon receiving such
63 request; authorizing the agency to seek a declaratory
64 interpretation, regardless of whether having received
65 a request; providing that the requester has standing
66 to participate in any proceeding regarding the
67 declaratory interpretation; specifying that the agency
68 is responsible for court costs and attorney fees
69 regarding the petition for a declaratory



510198

70 interpretation; prohibiting an agency from initiating
71 a civil action against a requester in response to a
72 public records request; providing for construction;
73 specifying that a declaratory interpretation is
74 binding on the parties but is subject to appeal;
75 defining the term "declaratory interpretation";
76 providing an effective date.



876508

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Perry) recommended the following:

Senate Amendment to Amendment (510198)

Delete lines 13 - 30

and insert:

the requester of such determination within 5 days and notify the requester of the right to enter into mediation under the public records mediation program created under s. 16.60 in order to facilitate a resolution of the public records request. If the requester declines to enter into mediation with the agency or if the parties to the mediation fail to reach a mutually acceptable and voluntary agreement regarding the public records request,



876508

12 the requester may request that the agency seek a declaratory
13 interpretation as to whether the requested record is subject to
14 an exemption. Upon such request, the agency shall file the
15 petition for the declaratory interpretation in the circuit court
16 of the county in which the requester resides. Additionally, the
17 agency may seek a declaratory interpretation regardless of
18 whether the requester requests that the agency file such a
19 petition. The requester has standing to participate in any
20 proceeding regarding the declaratory interpretation. The agency
21 is responsible for all court costs and its attorney fees as to
22 the declaratory interpretation petition.

By Senator Perry

8-00956-18

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A bill to be entitled

An act relating to public records; amending s. 119.07, F.S.; prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request; providing an effective date.

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

Section 1. Paragraph (j) is added to subsection (1) of section 119.07, Florida Statutes, to read:

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(1)

(j) An agency that receives a request to inspect or copy a public record is prohibited from responding to such request by filing a civil action against the individual or entity making the request.

Section 2. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 10, 2018

I respectfully request that **Senate Bill #750**, relating to Public Records, be placed on the:

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

A handwritten signature in cursive script that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-13-18

Meeting Date

750

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Analyst

Address 200 W College Ave

Phone _____

Street

Tallahassee

City

FL

State

Zip

Email _____

Speaking: For Against Information

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

Representing Americans for Prosperity

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)

2/13/18

Meeting Date

750

Bill Number (if applicable)

510198

Amendment Barcode (if applicable)

Topic open records

Name Bill Peckles

Job Title

Address POB 10930

Street

TL

City

A

State

32902

Zip

Phone 880 966 3029

Email bill@psmfl.net

Speaking: For Against Information

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

Representing City of Orlando

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18

Meeting Date

750

Bill Number (if applicable)

510198

Amendment Barcode (if applicable)

Topic Public Records

Name Brian Sullivan

Job Title Chief Legal Counsel

Address 100 S. Monroe

Street

Tallahassee FL 32301

City

State

Zip

Phone 810-335-0150

Email bsullivan@flcounties.com

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 918

INTRODUCER: Judiciary Committee and Senator Grimsley

SUBJECT: Clerks of Circuit Court

DATE: February 15, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jones</u>	<u>Miller</u>	<u>TR</u>	Favorable
2.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 918 amends statutes that affect the duties of the clerks of the circuit courts. Specifically, these changes affect how the clerks will receive course completion information from driver improvement schools and how clerks will dispose of surplus funds from the judicial sale of property.

Under the bill, driver improvement schools must transmit student course completion certificates to the clerks of the circuit court through the Florida Courts E-Filing Portal. Under the current practice, students must provide their course completion certificates to the clerks.

Other statutory changes eliminate requirements for clerks of court to appoint surplus trustees to locate the owners of surplus funds after property is sold at judicial sale of property to satisfy a judgment. Under current law, a surplus trustee who locates the owner of surplus funds within 1 year after appointment is entitled to 12 percent of the surplus funds. Under the bill, any surplus funds remaining with the clerk of court 1 year after the judicial sale must be remitted to the Department of Financial Services as unclaimed property.

The department currently receives unclaimed property from many public and private entities. Upon receipt, the unclaimed property statutes presently direct DFS to try to notify owners of the existence of their unclaimed property. Those who assist property owners in the recovery unclaimed property may charge fees of up to 20 percent of the amount of a claim, not to exceed \$1,000.

II. Present Situation:

Clerks of the circuit court are county officers. They may perform court-related functions as the clerk of court and county-related functions as the “ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.”¹

Driver Improvement Schools

Section 318.14(9), F.S., provides that any person who does not hold a commercial driver license or commercial learner’s permit and who is cited while driving a noncommercial vehicle for certain noncriminal traffic infractions² may elect to attend a basic driver improvement course approved by the Department of Highway Safety and Motor Vehicles. If the individual completes the course, adjudication is withheld and no points may be assessed against the individual’s driver license. In addition, the DHSMV may require individuals involved in certain crashes to complete a driver improvement course as a requirement to maintain their driving privileges.³

Driver improvement course providers are required to submit course completion information to the DHSMV through the DHSMV’s Driver Improvement Certificate Issuance System within 5 days.⁴ However, the person who completes the driver improvement course is required to obtain a completion certificate and submit it to the clerk’s office (as required by each office) by mail, e-mail, or in-person.⁵

Unclaimed Funds in the Court System

Clerks of the circuit court may come into the possession of unclaimed funds in at least two ways. Funds may have been deposited with the clerk pursuant to judicial proceedings, which remain unclaimed by their owner after the proceedings.⁶ Once the funds have remained unclaimed for 5 years, the chief judge of the court or other judge must order that the funds be deposited with the Department of Financial Services.

A second way that unclaimed funds come into possession of a clerk of court is when property is sold at a judicial sale to satisfy a judgment and the sale price exceeds the amount of the judgment.⁷ After the sale, any surplus funds must be first made available to satisfy the claims of subordinate lien holders before they may be claimed by the record owner of the property.⁸

Property sold at a judicial sale is sold at a public auction which has been advertised at least two times in a local newspaper in the days before the sale.⁹ These advertisements must also include a

¹ FLA. CONST. art. V., s. 16 and art. VIII, s. 1(d).

² The option to elect to attend a driver improvement program is not available for violations of ss. 316.183(2), 316.187, 316.189, 320.0605, 320.07(3)(a) and (b), 322.065, and 322.15(1), F.S.

³ Section 322.0261, F.S.

⁴ Section 318.1451(6)(f), F.S.

⁵ See Florida Association of Court Clerks & Comptrollers, *Bill Analysis of SB 918* (on file with the Senate Committee on Judiciary).

⁶ Section 43.19, F.S.

⁷ See ss. 45.031-45.035, F.S., for more information about judicial sales procedures.

⁸ Section 45.031(1)(a), F.S.

⁹ Section 45.031(2) and (3), F.S.

statement that “any person claiming an interest in the surplus from the sale, if any, other than the property owner as of the date of the lis pendens [usually the date of the lawsuit] must file a claim within 60 days after the sale.”¹⁰ If the owner of record or an assignee or transferee claims the surplus funds during the 60 period when subordinate lienholders may claim the funds, the court must hold an evidentiary hearing to determine entitlement to the surplus.¹¹

When the 60-day period ends, only the owner of record of the property on the¹² date of the lis pendens is presumed to be the person entitled to the surplus funds, if any.¹³ However, the owner of record may assign or transfer the right to the funds. The court will approve the assignment or transfer if the assignee or transferee proves that the right to the surplus funds was transferred or assigned voluntarily.¹⁴

A transfer or assignment is sufficiently voluntary if the transfer or assignment is in writing and the instrument:

1. If executed prior to the foreclosure sale, includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, and the approximate amount of any equity in the property. If the instrument was executed after the foreclosure sale, the instrument must also specify the foreclosure sale price and the amount of the surplus.
2. Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.
3. Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.
 - (b) The transfer or assignment is filed with the court on or before 60 days after the filing of the certificate of disbursements.
 - (c) There are funds available to pay the transfer or assignment after payment of timely filed claims of subordinate lienholders.
 - (d) The transferor or assignee is qualified as a surplus trustee, or could qualify as a surplus trustee
 - (e) The total compensation paid or payable, or earned or expected to be earned, by the transferee or assignee does not exceed 12 percent of the surplus.¹⁵

Despite the criteria above, a court may approve a nonconforming assignment or transfer that is “procured in good faith and with no intent to defraud the transferor or assignor.”¹⁶

If the surplus funds remain unclaimed by the owner 120 days after the judicial sale, the clerk must appoint a surplus trustee “for the purpose of finding the owner of record in order for the clerk to disburse the surplus, after deducting costs, to the owner of record.”¹⁷

¹⁰ Section 45.031(2)(f), F.S.

¹¹ Section 45.032(3)(b), F.S.

¹² Section 45.032(3)(a) and (c), F.S.

¹³ Section 45.032(2), F.S.

¹⁴ *Id.* and s. 45.033(2) and (3), F.S.

¹⁵ Section 45.033(3), F.S.

¹⁶ Section 45.033(5), F.S.

¹⁷ Section 45.032(3)(c), F.S.

Surplus trustees must be approved by the Department of Financial Services.¹⁸ An entity seeking to qualify as a surplus trustee must:

- Be registered with the Secretary of State to do business in this state.
- Have a minimum of 12 months' experience in the recovery of surplus funds in foreclosure actions.
- Hold a valid Class "A" private investigator license.
- Carry a minimum of \$500,000 in liability insurance, cash reserves, or bonding.
- Have a principal who is an attorney or employ a full-time attorney who will supervise the management of the entity during the entity's tenure as a surplus trustee.

According to DFS, there are 83 registered surplus trustee entities.¹⁹ However, many of these entities are owned by the same individuals. For example, "16 are owned by the same individual(s), 15 are owned by another, and 10 by another"²⁰

Cases are assigned to surplus trustees based on a rotation system.²¹ Because the same individuals own multiple surplus trustee entities, these individuals obtain a disproportionate share of the appointments under the rotation system.²² Once appointed, the surplus trustee is entitled to a cost advance of 2 percent of the surplus.²³ If a surplus trustee is successful in having the surplus funds disbursed to the owner of record, the trustee will receive an additional 10 percent of the surplus. If the surplus trustee is unable to locate the owner of record within 1 year after appointment, the appointment terminates, and the clerk must report the surplus funds to DFS as unclaimed property.²⁴

Unclaimed Property

Unclaimed property generally includes "[a]ll intangible property, including any income or increment thereon less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and the owner fails to claim such property for more than 5 years after the property becomes payable or distributable is presumed unclaimed"²⁵ In practical terms, unclaimed property may include unclaimed paychecks, the contents of a safe deposit box, property held by government entities, property held by trustees, unclaimed utility deposits, the proceeds of life insurance policies, uncashed checks, dormant bank accounts, and more.

A person who holds unclaimed property must file a report with DFS, which describes the property and provides information about the identity and last known address of the owner.²⁶ With the report, the holder must also pay or deliver the unclaimed property to DFS.²⁷ Once the

¹⁸ Section 45.034, F.S.

¹⁹ Email from Walter T. Graham, Director, Division of Unclaimed Property, Department of Financial Services (Feb. 15, 2018).

²⁰ *Id.*

²¹ Section 45.034(5), F.S.

²² See email, *supra* n. 19.

²³ Section 45.034(7), F.S.

²⁴ Section 45.032(4), F.S.

²⁵ Section 717.102(1), F.S.

²⁶ Section 717.117, F.S.

²⁷ Section 717.919, F.S.

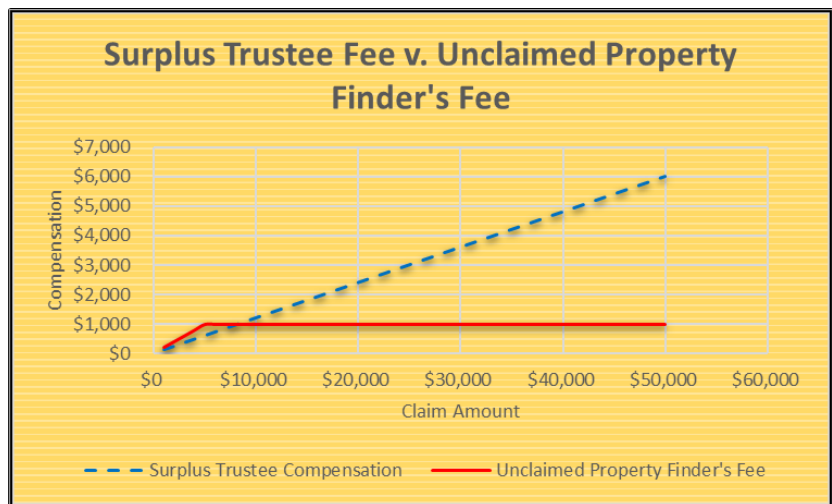
unclaimed property is in the possession of DFS, it has an obligation to try to notify the owners.²⁸ There is no statute of limitations on claims by owners and they may claim their property any time at no cost.²⁹

DFS must retain a portion of the unclaimed property it receives in its Unclaimed Property Trust Fund to promptly pay claims to the owners of the property.³⁰ The remainder of the funds must be deposited into the State School Fund. The State Constitution requires that the income from the fund be used for the “support and maintenance of free public schools.”³¹ However, the principal of the fund may be appropriated for these same purposes.

The unclaimed property statutes also allow claimants’ representatives to make claims on behalf of an owner using a power of attorney.³² Similarly, certain attorneys and private investigators may purchase the right to unclaimed property from an owner of the property. Under either mechanism, the maximum compensation to the agent under the power of attorney or the discount received by an attorney or private investigator is limited to 20 percent per account claimed, not to exceed \$1,000.

Compensation Comparison for Locating Owners of Fund

The chart to the right compares the fees received by successful surplus trustees with those who charge the maximum fee to assist property owners with unclaimed property claims from DFS’ Unclaimed Property Trust Fund. As shown, the formulas and fee cap is more beneficial to the owner of unclaimed property than to the owner of surplus funds when the amount of the claim exceeds \$8,333.33. Additionally, DCF has found that the lower fees paid to surplus trustees do not provide a sufficient incentive to locate the owners of surplus funds in amounts that are less than \$5,000.³³



²⁸ Section 717.118(1), F.S.

²⁹ DIVISION OF UNCLAIMED PROPERTY, FLORIDA DEPARTMENT OF FINANCIAL SERVICES, FLORIDA UNCLAIMED PROPERTY, <https://www.myfloridacfo.com/Division/UnclaimedProperty/> (last visited Feb. 15, 2018).

³⁰ Section 717.123, F.S.

³¹ FLA. CONST. art. IX, s. 6.

³² Sections 717.135 and 717.1351, F.S.

³³ See email, supra n. 19. The email includes an example of another email in which DFS notified a clerk of court of the appointment of a surplus trustee to locate the owner of \$913 in surplus funds. According to Mr. Graham, “the \$913 case and almost 100% of others like it will be ignored by the surplus trustee. This is generally true for assignments for less than \$5,000.”

III. Effect of Proposed Changes:

This bill changes how the clerks of the circuit courts will receive course completion information from driver improvement schools and how they will dispose of surplus funds from the judicial sale of property.

Termination of Surplus Trustee Program; Fees (Sections 3, 4, 5 & 6)

The bill amends or repeals several sections of statutes to terminate the use of surplus trustees to locate the owners of surplus funds from judicial sales. These surplus trustees receive 2 percent of the surplus funds upon appointment and an additional 10 percent of the surplus if the surplus trustee locates the owner of the funds and has the funds disbursed to the owner.

By terminating the surplus trustee program, the full amount of unclaimed surplus funds will be transferred to the Department of Financial Services, which is obligated under current law to attempt to locate the owners of the funds at no cost to the owners. However, attorneys, private investigators, and others, pursuant to current law, may receive compensation for locating owners and assisting them with unclaimed property claims. The compensation may not exceed 20 percent of the amount claimed, not to exceed \$1,000.

Remission of Unclaimed or Surplus Funds from Courts to the Department of Financial Services (Sections 1, 3 & 8)

Section 1 of the bill repeals s. 43.19, F.S., which requires courts to remit any unclaimed funds that have been in their possession for 5 years to the Department of Financial Services. By default, the repeal of the statute will require courts to pay these funds to DFS 1 year after they become payable or distributable as provided in existing s. 717.113, F.S.

Under current law, surplus funds must be remitted to DFS by the clerk of court approximately 1 year and 120 days after the judicial sale of property resulting in the surplus funds.³⁴ Under the bill, surplus funds generally must be remitted to DFS as unclaimed property 1 year after the judicial sale. The time for remitting the funds is extended if the owner of the funds has not been determined by the court or if entitlement to the funds is being litigated.

Submission of Claims by Subordinate Lienholders (Sections 2 & 3)

The bill increases the time period in which subordinate lienholders may claim surplus funds resulting from a judicial sale of property to 1 year from 60 days. Nonetheless, the bill retains the provisions of existing law requiring a court to hold an evidentiary hearing to determine entitlement if the record owner claims the funds during the time period for subordinate lienholders to assert claims to the funds. If entitlement to the surplus funds is being litigated when the 1 year period elapses, the clerk of court must retain the funds until the conclusion of the litigation. Once a clerk remits the surplus funds to DFS, only the owner of record of the property sold at a judicial sale or the beneficiary of a deceased owner is entitled to the surplus.

³⁴ These time periods result from the 60-day period for subordinate lienholders to claim the surplus funds, an additional 60-day period before the appointment of a surplus trustee, and the 1 year appointment of a surplus trustee.

**Transmission of Course Completion Information by Driver Improvement Schools
(Section 7)**

Section 7 of the bill amends s. 318.1451, F.S., to require driver improvement schools to transmit student course completion certificates through the Florida Courts E-Filing Portal to the appropriate clerk of the circuit court. The appropriate clerk is the clerk for the county in which the driving citation was issued which resulted in the student's attendance at the driver improvement school. The requirement for the electronic submission of court completion certificates is intended to eliminate the need for students to obtain and submit course completion certificates to a clerk's office.

Cross-references Conformed (Sections 9, 10 & 11)

Sections 9 – 11 of the bill conform statutory cross-references to the repeal of the surplus trustee program and the transfer of surplus funds to DFS.

Effective Date (Section 12)

The bill takes effect July 1, 2018.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may have a positive financial impact on individuals who successfully complete driver improvement school and who will no longer be required to obtain and provide a copy of a course completion certificate to a clerk's office.

The bill may have a negative impact on driver improvement schools that will be required to electronically submit completion certificates. These schools may currently charge a fee to issue a paper completion certificate.

Owners of surplus funds from a judicial sale who need the assistance of a professional to recover them, will likely obtain a greater portion of their funds when larger amounts are involved. Although the bill allows professional locators to obtain a proportionately higher fee for assisting individuals with smaller claims, the higher fee may be a better incentive for locators to assist with smaller claims.

C. Government Sector Impact:

The Department of Financial Services will no longer be required to maintain a rotation system for the assignment of cases to surplus trustees. However, DFS likely will have increased numbers of unclaimed property accounts which contain the proceeds of surplus funds from judicial sales.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 45.031, 45.032, 45.033, 43.035, 318.1451, 717.113, 717.124, 717.138, and 717.1401.

The bill also repeals the following sections of the Florida Statutes: 43.19 and 45.034.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Judiciary on February 13, 2018:

The committee substitute differs from the underlying bill in that it no longer includes a provision which would have allowed clerks of court to maintain records at a location other than a county seat. Additionally, the committee substitute includes provisions terminating the surplus trustee program used by clerks of court to locate the owners of surplus funds from a judicial sale of property. Finally, the committee substitute specifies that the appropriate clerk of court for receiving course completion certificates from a driver improvement school is the clerk for the county issuing the citation resulting in the student's attendance at the school.

B. Amendments:

None.



950782

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Grimsley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 43.19, Florida Statutes, is repealed.

Section 2. Paragraph (a) of subsection (1), paragraph (f)
of subsection (2), and paragraph (b) of subsection (7) of
section 45.031, Florida Statutes, are amended to read:

45.031 Judicial sales procedure.—In any sale of real or
personal property under an order or judgment, the procedures
provided in this section and ss. 45.0315-45.035 may be followed



950782

12 as an alternative to any other sale procedure if so ordered by
13 the court.

14 (1) FINAL JUDGMENT.—

15 (a) In the order or final judgment, the court shall direct
16 the clerk to sell the property at public sale on a specified day
17 that shall be not less than 20 days or more than 35 days after
18 the date thereof, on terms and conditions specified in the order
19 or judgment. A sale may be held more than 35 days after the date
20 of final judgment or order if the plaintiff or plaintiff's
21 attorney consents to such time. The final judgment shall contain
22 the following statement in conspicuous type:

23

24 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE
25 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE
26 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS
27 FINAL JUDGMENT.

28

29 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS
30 REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE
31 CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS
32 UNCLAIMED ~~60 DAYS AFTER THE SALE~~. IF YOU FAIL TO FILE A TIMELY
33 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

34 (2) PUBLICATION OF SALE.—Notice of sale shall be published
35 once a week for 2 consecutive weeks in a newspaper of general
36 circulation, as defined in chapter 50, published in the county
37 where the sale is to be held. The second publication shall be at
38 least 5 days before the sale. The notice shall contain:

39 (f) A statement that any person claiming an interest in the
40 surplus from the sale, if any, other than the property owner as



950782

41 of the date of the lis pendens must file a claim before the
42 clerk reports the surplus as unclaimed ~~within 60 days after the~~
43 ~~sale.~~

44
45 The court, in its discretion, may enlarge the time of the sale.
46 Notice of the changed time of sale shall be published as
47 provided herein.

48 (7) DISBURSEMENTS OF PROCEEDS.—

49 (b) The certificate of disbursements shall be in
50 substantially the following form:

51
52 (Caption of Action)

53
54 CERTIFICATE OF DISBURSEMENTS

55
56 The undersigned clerk of the court certifies that he or she
57 disbursed the proceeds received from the sale of the property as
58 provided in the order or final judgment to the persons and in
59 the amounts as follows:

60 Name Amount

61
62 Total disbursements: \$....

63 Surplus retained by clerk, if any: \$....

64
65 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER
66 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE
67 DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED ~~60 DAYS AFTER~~
68 ~~THE SALE~~. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED
69 TO ANY REMAINING FUNDS. AFTER THE FUNDS ARE REPORTED AS



950782

70 UNCLAIMED 60-DAYS, ONLY THE OWNER OF RECORD AS OF THE DATE OF
71 THE LIS PENDENS MAY CLAIM THE SURPLUS.

72
73 WITNESS my hand and the seal of the court on, ...(year)....
74(Clerk)..
75 By ...(Deputy Clerk)..
76

77 Section 3. Paragraph (d) of subsection (1) and subsections
78 (3) and (4) of section 45.032, Florida Statutes, are amended, to
79 read:

80 45.032 Disbursement of surplus funds after judicial sale.-

81 (1) For purposes of ss. 45.031-45.035, the term:

82 ~~(d) "Surplus trustee" means a person qualifying as a~~
83 ~~surplus trustee pursuant to s. 45.034.~~

84 (3) During the period that ~~60 days after~~ the clerk holds
85 ~~issues a certificate of disbursements,~~ the clerk shall hold the
86 surplus pending a court order:-

87 (a) If the owner of record claims the surplus before the
88 date that the clerk reports it as unclaimed ~~during the 60-day~~
89 ~~period~~ and there is no subordinate lienholder, the court shall
90 order the clerk to deduct any applicable service charges from
91 the surplus and pay the remainder to the owner of record. The
92 clerk may establish a reasonable requirement that the owner of
93 record prove his or her identity before receiving the
94 disbursement. The clerk may assist an owner of record in making
95 a claim. An owner of record may use the following form in making
96 a claim:

97
98 (Caption of Action)



950782

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OWNER'S CLAIM FOR
MORTGAGE FORECLOSURE SURPLUS

State of
County of

Under penalty of perjury, I (we) hereby certify that:

1. I was (we were) the owner of the following described real property in County, Florida, prior to the foreclosure sale and as of the date of the filing of the lis pendens:

...(Legal description of real property)...

2. I (we) do not owe any money on any mortgage on the property that was foreclosed other than the one that was paid off by the foreclosure.

3. I (we) do not owe any money that is the subject of an unpaid judgment, tax warrant, condominium lien, cooperative lien, or homeowners' association.

4. I am (we are) not currently in bankruptcy.

5. I (we) have not sold or assigned my (our) right to the mortgage surplus.

6. My (our) new address is:

7. If there is more than one owner entitled to the surplus, we have agreed that the surplus should be paid jointly, or to:, at the following address:

8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY



950782

128 MONEY TO WHICH I (WE) MAY BE ENTITLED.

129 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER
130 OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE
131 PROSECUTED CRIMINALLY FOR PERJURY.

132

133 ...(Signatures)...

134

135 Sworn to (or affirmed) and subscribed before me this
136 day of, ...(year)...., by ...(name of person making
137 statement)....

138 ...(Signature of Notary Public - State of Florida)...

139 ...(Print, Type, or Stamp Commissioned Name of Notary
140 Public)...

141

142 Personally Known OR Produced Identification

143 Type of Identification Produced.....

144

145 (b) If any person other than the owner of record claims an
146 interest in the proceeds prior to the date that the clerk
147 reports the surplus as unclaimed ~~during the 60-day period~~ or if
148 the owner of record files a claim for the surplus but
149 acknowledges that one or more other persons may be entitled to
150 part or all of the surplus, the court shall set an evidentiary
151 hearing to determine entitlement to the surplus. At the
152 evidentiary hearing, an equity assignee has the burden of
153 proving that he or she is entitled to some or all of the surplus
154 funds. The court may grant summary judgment to a subordinate
155 lienholder prior to or at the evidentiary hearing. The court
156 shall consider the factors in s. 45.033 when hearing a claim



950782

157 that any person other than a subordinate lienholder or the owner
158 of record is entitled to the surplus funds.

159 (c) One year after the sale, any surplus remaining with the
160 clerk of the court which has not been disbursed as provided in
161 this section is presumed unclaimed as set forth in s. 717.113
162 and must be reported and remitted to the department in
163 accordance with ss. 717.117 and 717.119, unless there is a
164 pending court proceeding regarding entitlement to the surplus.
165 At the conclusion of any court proceeding and any appeal
166 regarding entitlement to the surplus, the clerk of the court
167 shall, if directed by the court order, report and remit the
168 unclaimed property to the department or to another entity, as
169 applicable, or, if not directed by the court order, to the owner
170 of record. For purposes of establishing entitlement to the
171 surplus after the property has been remitted to the department,
172 only the owner of record reported by the clerk of the court or
173 the beneficiary of a deceased owner of record reported by the
174 clerk is entitled to the surplus. A surplus of less than \$10
175 escheats to the clerk. For purposes of this paragraph, the term
176 "beneficiary" has the same meaning as in s. 731.201. ~~If no claim~~
177 ~~is filed during the 60-day period, the clerk shall appoint a~~
178 ~~surplus trustee from a list of qualified surplus trustees as~~
179 ~~authorized in s. 45.034. Upon such appointment, the clerk shall~~
180 ~~prepare a notice of appointment of surplus trustee and shall~~
181 ~~furnish a copy to the surplus trustee. The form of the notice~~
182 ~~may be as follows:-~~

183
184 ~~(Caption of Action)~~
185



950782

186 ~~NOTICE OF APPOINTMENT~~
187 ~~OF SURPLUS TRUSTEE~~
188

189 ~~The undersigned clerk of the court certifies that he or she~~
190 ~~disbursed the proceeds received from the sale of the property as~~
191 ~~provided in the order or final judgment to the persons named in~~
192 ~~the certificate of disbursements, and that surplus funds of~~
193 ~~\$. . . . remain and are subject to disbursement to the owner of~~
194 ~~record. You have been appointed as surplus trustee for the~~
195 ~~purpose of finding the owner of record in order for the clerk to~~
196 ~~disburse the surplus, after deducting costs, to the owner of~~
197 ~~record.~~

198 ~~WITNESS my hand and the seal of the court on, . . . (year)~~

199 ~~. . . (Clerk) . . .~~

200 ~~By . . . (Deputy Clerk) . . .~~

201
202 ~~(4) If the surplus trustee is unable to locate the owner of~~
203 ~~record entitled to the surplus within 1 year after appointment,~~
204 ~~the appointment shall terminate and the clerk shall notify the~~
205 ~~surplus trustee that his or her appointment was terminated.~~
206 ~~Thirty days after termination of the appointment of the surplus~~
207 ~~trustee, the clerk shall treat the remaining funds as unclaimed~~
208 ~~property to be deposited with the Chief Financial Officer~~
209 ~~pursuant to chapter 717.~~

210 Section 4. Paragraph (d) of subsection (3) of section
211 45.033, Florida Statutes, is amended to read:

212 45.033 Sale or assignment of rights to surplus funds in a
213 property subject to foreclosure.-

214 (3) A voluntary transfer or assignment shall be a transfer



950782

215 or assignment qualified under this subsection, thereby entitling
216 the transferee or assignee to the surplus funds or a portion or
217 percentage of the surplus funds, if:

218 ~~(d) The transferor or assignee is qualified as a surplus~~
219 ~~trustee, or could qualify as a surplus trustee, pursuant to s.~~
220 ~~45.034.~~

221 Section 5. Section 45.034, Florida Statutes, is repealed.

222 Section 6. Paragraphs (b) and (d) of subsection (2) of
223 section 45.035, Florida Statutes, are amended to read:

224 45.035 Clerk's fees.—In addition to other fees or service
225 charges authorized by law, the clerk shall receive service
226 charges related to the judicial sales procedure set forth in ss.
227 45.031-45.034 and this section:

228 (2) If there is a surplus resulting from the sale, the
229 clerk may receive the following service charges, which shall be
230 deducted from the surplus:

231 ~~(b) The clerk is entitled to a service charge of \$15 for~~
232 ~~notifying a surplus trustee of his or her appointment.~~

233 ~~(d) The clerk is entitled to a service charge of \$15 for~~
234 ~~appointing a surplus trustee, furnishing the surplus trustee~~
235 ~~with a copy of the final judgment and the certificate of~~
236 ~~disbursements, and disbursing to the surplus trustee the~~
237 ~~trustee's cost advance.~~

238 Section 7. Paragraph (h) of subsection (6) of section
239 318.1451, Florida Statutes, is amended to read:

240 318.1451 Driver improvement schools.—

241 (6) The department shall adopt rules establishing and
242 maintaining policies and procedures to implement the
243 requirements of this section. These policies and procedures may



950782

244 include, but shall not be limited to, the following:

245 (h) *Miscellaneous requirements.*—The department shall
246 require that all course providers:

247 1. Disclose all fees associated with courses offered by the
248 provider and associated driver improvement schools and not
249 charge any fees that are not disclosed during registration.

250 2. Provide proof of ownership, copyright, or written
251 permission from the course owner to use the course in this
252 state.

253 3. Ensure that any course that is offered in a classroom
254 setting, by the provider or a school authorized by the provider
255 to teach the course, is offered at locations that are free from
256 distractions and reasonably accessible to most applicants.

257 4. Issue a certificate to persons who successfully complete
258 the course.

259 5. Within 7 business days after a person successfully
260 completes the course, transmit the individual completion
261 certificate together with the citation number through the
262 Florida Courts E-Filing Portal governed by the Florida Courts E-
263 Filing Authority to the clerk of the circuit court of the county
264 where the citation is issued.

265 Section 8. Section 717.113, Florida Statutes, is amended to
266 read:

267 717.113 Property held by courts and public agencies.—All
268 intangible property held for the owner by any court, government
269 or governmental subdivision or agency, public corporation, or
270 public authority that has not been claimed by the owner for more
271 than 1 year after it became payable or distributable is presumed
272 unclaimed. Except as provided in s. 45.032(3)(c), money held in



950782

273 the court registry for which a court order has not been issued
274 to determine an owner does not become payable or distributable
275 and is not subject to reporting under this chapter.

276 Notwithstanding the provisions of this section, funds deposited
277 in the Minerals Trust Fund pursuant to s. 377.247 are presumed
278 unclaimed only if the funds have not been claimed by the owner
279 for more than 5 years after the date of first production from
280 the well.

281 Section 9. Subsection (8) of section 717.124, Florida
282 Statutes, is amended to read:

283 717.124 Unclaimed property claims.—

284 (8) This section applies to all unclaimed property reported
285 and remitted to the Chief Financial Officer, including, but not
286 limited to, property reported pursuant to ss. 45.032, 732.107,
287 733.816, and 744.534 ~~ss. 43.19, 45.032, 732.107, 733.816, and~~
288 ~~744.534.~~

289 Section 10. Section 717.138, Florida Statutes, is amended
290 to read:

291 717.138 Rulemaking authority.—The department shall
292 administer and provide for the enforcement of this chapter. The
293 department has authority to adopt rules pursuant to ss.
294 120.536(1) and 120.54 to implement the provisions of this
295 chapter. The department may adopt rules to allow for electronic
296 filing of fees, forms, and reports required by this chapter. The
297 authority to adopt rules pursuant to this chapter applies to all
298 unclaimed property reported and remitted to the Chief Financial
299 Officer, including, but not limited to, property reported and
300 remitted pursuant to ss. 45.032, 732.107, 733.816, and 744.534
301 ~~ss. 43.19, 45.032, 732.107, 733.816, and 744.534.~~



302 Section 11. Section 717.1401, Florida Statutes, is amended
303 to read:

304 717.1401 Repeal.—This chapter shall not repeal, but shall
305 be additional and supplemental to the existing provisions of ss.
306 43.18 and 402.17 ~~ss. 43.18, 43.19, and 402.17~~ and chapter 716.

307 Section 12. This act shall take effect July 1, 2019.

308
309 ===== T I T L E A M E N D M E N T =====

310 And the title is amended as follows:

311 Delete everything before the enacting clause
312 and insert:

313 A bill to be entitled
314 An act relating to clerks of the court; repealing s.
315 43.19, F.S., relating to the disposition of certain
316 money paid into a court which is unclaimed; amending
317 s. 45.031, F.S.; revising the time periods within
318 which certain persons must file claims for certain
319 unclaimed surplus funds; amending s. 45.032, F.S.;
320 deleting provisions defining and specifying the powers
321 of a "surplus trustee"; specifying procedures for the
322 clerk to use in handling surpluses that remain
323 unclaimed; specifying the entities eligible for the
324 surplus once the funds have been remitted to the
325 Department of Financial Services; conforming
326 provisions to changes made by the act; amending s.
327 45.033, F.S.; conforming a provision to changes made
328 by the act; repealing s. 45.034, F.S., relating to
329 qualifications and appointment of a surplus trustee in
330 foreclosure actions; amending s. 45.035, F.S.;



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331 revising service charges that a clerk may receive and
332 deduct from surplus amounts; amending s. 318.1451,
333 F.S.; requiring all driver improvement course
334 providers to transmit, within a specified timeframe,
335 the individual completion certificate and citation
336 number through the Florida Courts E-Filing Portal
337 governed by the Florida Courts E-Filing Authority to
338 the clerk of the circuit court in the county where the
339 citation was issued; amending s. 717.113, F.S.;
340 providing that certain funds remaining after a
341 judicial sale and held in a court registry are not
342 payable or distributable and are not subject to
343 certain reporting requirements; amending ss. 717.124,
344 717.138, and 717.1401, F.S.; conforming cross-
345 references; providing an effective date.

By Senator Grimsley

26-00767A-18

2018918__

1 A bill to be entitled
 2 An act relating to clerks of circuit court; amending
 3 s. 28.07, F.S.; requiring records and books to be
 4 readily accessible at the county seat; amending s.
 5 318.1451, F.S.; requiring all driver improvement
 6 course providers, within 7 business days, to transmit
 7 the individual completion certificate, or related data
 8 sufficient to update the Comprehensive Case
 9 Information System, through the statewide e-filing
 10 portal to a specified clerk of circuit court;
 11 providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 28.07, Florida Statutes, is amended to
 16 read:
 17 28.07 Place of office.—The clerk of the circuit court shall
 18 keep his or her office at the county seat. If the clerk finds a
 19 need for branch offices, they may be located in the county at
 20 places other than the county seat. Instruments presented for
 21 recording in the Official Records may be accepted and filed for
 22 that purpose at any branch office designated by the governing
 23 body of the county for the recording of instruments pursuant to
 24 s. 1, Art. VIII of the State Constitution. One or more deputy
 25 clerks authorized to issue process may be employed for such
 26 branch offices. The Official Records of the county, as well as
 27 other records and books, must be readily accessible ~~kept~~ at the
 28 county seat. ~~Other records and books must be kept within the~~
 29 ~~county but need not be kept at the county seat.~~

Page 1 of 2

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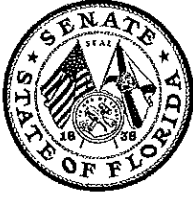
26-00767A-18

2018918__

30 Section 2. Paragraph (h) of subsection (6) of section
 31 318.1451, Florida Statutes, is amended to read:
 32 318.1451 Driver improvement schools.—
 33 (6) The department shall adopt rules establishing and
 34 maintaining policies and procedures to implement the
 35 requirements of this section. These policies and procedures may
 36 include, but shall not be limited to, the following:
 37 (h) *Miscellaneous requirements.*—The department shall
 38 require that all course providers:
 39 1. Disclose all fees associated with courses offered by the
 40 provider and associated driver improvement schools and not
 41 charge any fees that are not disclosed during registration.
 42 2. Provide proof of ownership, copyright, or written
 43 permission from the course owner to use the course in this
 44 state.
 45 3. Ensure that any course that is offered in a classroom
 46 setting, by the provider or a school authorized by the provider
 47 to teach the course, is offered at locations that are free from
 48 distractions and reasonably accessible to most applicants.
 49 4. Issue a certificate to persons who successfully complete
 50 the course.
 51 5. Within 7 business days after a person successfully
 52 completes the course, transmit the individual completion
 53 certificate, or related data sufficient to update the
 54 Comprehensive Case Information System, through the statewide e-
 55 filing portal to the clerk of the circuit court for the county
 56 the person chooses.
 57 Section 3. This act shall take effect July 1, 2018.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Greg Steube, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 31, 2018

I respectfully request that **Senate Bill #918**, relating to Clerks of Circuit Court, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18
Meeting Date

SB 918
Bill Number (if applicable)

Topic Clerk of Court Efficiencies

Amendment Barcode (if applicable)

Name Fred Baggett

Job Title Chairman - Greenberg Traurig

Address 101 E. College Av.
Street

Phone 850.222.6891

Tallahassee FL 32301
City State Zip

Email baggettf@gtlaw.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/18

Meeting Date

918

Bill Number (if applicable)

950782

Amendment Barcode (if applicable)

Topic Clerks of Circuit Court

Name BG Murphy

Job Title Legislative Affairs Director

Address 200 E. Gaines Street

Street

Tallahassee

City

FL

State

32399

Zip

Phone 850-413-2890

Email bg.murphy@myfloridacfo.com

Speaking: For Against Information

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

Representing Department of Financial Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1230

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Criminal Judgments

DATE: February 12, 2018

REVISED: 2/14/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Fav/CS
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1230 gives a judge the option to use an electronic record to enter a judgment of guilty or not guilty in a case of petit theft or any felony or to enter the judgment in a written record as under current law. The bill affords a judge this same option for entering a judgment of guilt for a crime relating to prostitution.

In a case involving any of these three categories of crimes, current law requires a guilty defendant's fingerprints to be taken and included with the judgment. The bill permits a court that is entering one of these judgments electronically to also electronically take and enter the defendant's fingerprints.

Current law also requires these judgments to include the judge's certification that the fingerprints are authentic. As to electronically captured fingerprints, the bill requires a similar certification, which must also include a "transaction control number."

Finally, the bill specifies that the electronic judgements authorized in the bill are admissible in the courts of this state as prima facie evidence that the fingerprints are those of the defendant against whom the judgment was entered.

II. Present Situation:

Judgments in Cases of Petit Theft, Felonies, and Crimes Relating to Prostitution

A judgment in a case of petit theft or any felony, as well as a judgement of guilt in a crime relating to prostitution under s. 796, F.S., must be in writing, signed by the judge, and recorded by the clerk of the court.¹

At the time the judgment of guilty is rendered, the defendant's fingerprints must be taken and affixed beneath the judge's signature. Beneath the fingerprints, the judge must certify and attest that the fingerprints belong to the defendant.

This judgment is admissible in other cases in this state as prima facie evidence that the fingerprints are those of the defendant against whom the judgment was entered.²

When entering a felony judgment of guilty, the judge must also record the defendant's social security number and affix it to the judgment. If the defendant is unable or unwilling to provide his or her social security number, the reason for its absence must be indicated on the written judgment.³

III. Effect of Proposed Changes:

The bill gives a judge the option to use an electronic record to enter a judgment of guilty or not guilty for a petit theft or any felony or to enter the judgment in a written record as under current law. The bill affords a judge these same options for entering a judgment of guilt for a crime relating to prostitution.

In a case involving any of these three categories of crimes, current law requires a guilty defendant's fingerprints to be taken and included with the judgment. The bill permits a court that is entering one of these judgments electronically to also electronically capture and enter the defendant's fingerprints.

Current law also requires these judgments to include the judge's certification that the fingerprints are authentic. As to electronically captured fingerprints, the bill requires a similar certification, which must also include a "transaction control number." The transaction control number is a unique identifier comprised of number, letter, or other symbols for a digital fingerprint record. It is generated at the time the fingerprints are taken.

Finally, the bill specifies that the electronic judgements authorized in the bill are admissible in the courts of this state as prima facie evidence that the fingerprints are those of the defendant against whom the judgment was entered.

The bill is effective July 1, 2018.

¹ Sections 812.014(3)(d)1. and 921.241(2), F.S.

² Sections 812.014(3)(d)2. and 921.241(2) and (3), F.S.

³ Section 921.241(4), F.S.

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill permits the courts to implement an electronic fingerprinting and judgment process. Circuits that wish to implement this electronic recordkeeping will need to procure electronic Live Scan fingerprinting technology. However, federal grant money may be available to cover expenses of procurement and implementation. And costs may be offset further by workload reductions resulting from the increased efficiency of the electronic system.⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 812.014, 921.241, and 921.242.

⁴ Office of the State Courts Administrator, *2018 Judicial Impact Statement for SB 1230*, (Jan. 17, 2018) (on file with the Senate Judiciary Committee).

This bill reenacts section 775.084 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 Criminal Justice on February 6, 2018:

The Committee Substitute:

- Requires a judgment of guilty or not guilty of a petit theft or a judgment of guilty for a misdemeanor under ch. 796, F.S., be in a written or electronic record, signed by the judge, and recorded by the clerk of the court;
- Requires an electronic record to contain the judge’s electronic signature;
- Defines a transaction control number;
- Requires manual fingerprints be attached to the written judgment;
- Requires electronically captured fingerprints be associated with a transaction control number and included in the electronic judgment;
- Requires the judge to certify that the digital fingerprints included in the electronic judgment are those of the defendant;
- Provides that the judge’s certification and signature on an electronic judgment is admissible as prima facie evidence that the fingerprints included in the judgment are those of the defendant against whom the judgment is rendered; and
- Requires the social security number of a defendant with a guilty judgment for a felony be taken and included in an electronic judgment.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Baxley

591-02890A-18

20181230c1

1 A bill to be entitled
 2 An act relating to criminal judgments; amending s.
 3 812.014, F.S.; requiring that judgments of guilty or
 4 not guilty of petit theft be in a written record or an
 5 electronic record with the judge's electronic
 6 signature, recorded by the clerk of the circuit court;
 7 conforming provisions to changes made by the act;
 8 amending s. 921.241, F.S.; defining terms; requiring
 9 that judgments of guilty or not guilty of a felony be
 10 in a written record or an electronic record with the
 11 judge's electronic signature, recorded by the clerk of
 12 the circuit court; requiring that for an electronic
 13 judgment of guilty, the fingerprints of a defendant be
 14 electronically captured and a certain certification be
 15 included; requiring the judge to place his or her
 16 electronic signature on the certificate; conforming
 17 provisions to changes made by the act; amending s.
 18 921.242, F.S.; requiring that specified judgments of
 19 guilty be in a written record or an electronic record
 20 with the judge's electronic signature, recorded by the
 21 clerk of the circuit court; conforming provisions to
 22 changes made by the act; reenacting s. 775.084(3) (a),
 23 (b), and (c), F.S., relating to fingerprinting a
 24 defendant for the purpose of identification, to
 25 incorporate the amendment made to s. 921.241, F.S., in
 26 references thereto; providing an effective date.
 27
 28 Be It Enacted by the Legislature of the State of Florida:
 29

Page 1 of 11

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591-02890A-18

20181230c1

30 Section 1. Paragraph (d) of subsection (3) of section
 31 812.014, Florida Statutes, is amended to read:
 32 812.014 Theft.—
 33 (3)
 34 (d)1. ~~A Every~~ judgment of guilty or not guilty of a petit
 35 theft shall be in:
 36 a. A written record that is writing, signed by the judge,
 37 and recorded by the clerk of the circuit court; or
 38 b. An electronic record that contains the judge's
 39 electronic signature, as defined in s. 933.40, and is recorded
 40 by the clerk of the circuit court.
 41 2. At the time a defendant is found guilty of petit theft,
 42 the judge shall cause the following to occur to be affixed to
 43 every such written judgment of guilty of petit theft, in open
 44 court and in the presence of such judge;
 45 a. For a written judgment of guilty, the fingerprints of
 46 the defendant against whom such judgment is rendered shall be
 47 manually taken. Such fingerprints shall be affixed beneath the
 48 judge's signature on the to such judgment. Beneath such
 49 fingerprints shall be appended a certificate to the following
 50 effect:
 51
 52 "I hereby certify that the above and foregoing fingerprints
 53 on this judgment are the fingerprints of the defendant, ...,
 54 and that they were placed thereon by said defendant in my
 55 presence, in open court, this the ... day of ...,
 56 ... (year)...."
 57
 58 Such certificate shall be signed by the judge, whose signature

Page 2 of 11

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591-02890A-18

20181230c1

59 thereto shall be followed by the word "Judge."

60 b. For an electronic judgment of guilty, s. 921.241(3) (b)
61 applies.

62 ~~3.2. A Any such written or an electronic judgment of guilty~~
63 ~~of a petit theft, or a certified copy thereof, is admissible in~~
64 ~~evidence in the courts of this state as provided in s.~~
65 ~~921.241(4) prima facie evidence that the fingerprints appearing~~
66 ~~thereon and certified by the judge are the fingerprints of the~~
67 ~~defendant against whom such judgment of guilty of a petit theft~~
68 ~~was rendered.~~

69 Section 2. Section 921.241, Florida Statutes, is amended to
70 read:

71 921.241 Felony judgments; fingerprints and social security
72 number required in record.—

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

74 (a) "Electronic signature" has the same meaning as in s.
75 933.40.

76 (b) "Transaction control number" means the unique
77 identifier comprised of numbers, letters, or other symbols for a
78 digital fingerprint record which is generated by the device used
79 to electronically capture the fingerprints At the time a
80 defendant is found guilty of a felony, the judge shall cause the
81 defendant's fingerprints to be taken.

82 (2) A Every judgment of guilty or not guilty of a felony
83 shall be in:

84 (a) A written record that is writing, signed by the judge,
85 and recorded by the clerk of the court; or

86 (b) An electronic record that contains the judge's
87 electronic signature and is recorded by the clerk of the court.

591-02890A-18

20181230c1

88 (3) At the time a defendant is found guilty of a felony,
89 the judge shall cause the following to occur to be affixed to
90 every written judgment of guilty of a felony, in open court and,
91 in the presence of such judge:

92 ~~(a) For a written judgment of guilty, and at the time the~~
93 ~~judgment is rendered, the fingerprints of the defendant shall be~~
94 ~~manually taken and against whom such judgment is rendered. Such~~
95 ~~fingerprints shall be affixed beneath the judge's signature on~~
96 ~~the to such judgment. Beneath such fingerprints shall be~~
97 ~~appended a certificate to the following effect:~~

98
99 "I hereby certify that the above and foregoing fingerprints
100 on this judgment are the fingerprints of the defendant, ...,
101 and that they were placed thereon by said defendant in my
102 presence, in open court, this the ... day of ...,
103 ... (year)...."

104
105 Such certificate shall be signed by the judge, whose signature
106 thereto shall be followed by the word "Judge."

107 (b) For an electronic judgment of guilty, the fingerprints
108 of the defendant shall be electronically captured and the
109 following certificate shall be included in the electronic
110 judgment:

111
112 "I hereby certify that the digital fingerprints record
113 associated with Transaction Control Number ... contains the
114 fingerprints of the defendant, ..., which were electronically
115 captured from the defendant in my presence, in open court, this
116 the ... day of ..., ... (year)...."

591-02890A-18

20181230c1

117
 118 The judge shall place his or her electronic signature, which
 119 shall be followed by the word "Judge," on the certificate.
 120 ~~(4)(3)~~ A written or electronic ~~Any such written~~ judgment of
 121 ~~guilty of a felony~~, or a certified copy thereof, shall be
 122 admissible in evidence in the several courts of this state as
 123 prima facie evidence that the:
 124 (a) Manual fingerprints appearing thereon and certified by
 125 the judge as aforesaid are the fingerprints of the defendant
 126 against whom the ~~such~~ judgment of guilty ~~of a felony~~ was
 127 rendered.
 128 (b) Digital fingerprint record associated with the
 129 transaction control number specified in the judge's certificate
 130 contains the fingerprints of the defendant against whom the
 131 judgment of guilty was rendered.
 132 ~~(5)(4)~~ (4) At the time the defendant's fingerprints are
 133 manually taken or electronically captured, the judge shall also
 134 cause the defendant's social security number to be taken. The
 135 defendant's social security number shall be specified in each
 136 ~~affixed to every~~ written or electronic judgment of guilty of a
 137 felony, in open court, in the presence of such judge, and at the
 138 time the judgment is rendered. If the defendant is unable or
 139 unwilling to provide his or her social security number, the
 140 reason for its absence shall be specified in ~~indicated on~~ the
 141 written or electronic judgment.
 142 Section 3. Section 921.242, Florida Statutes, is amended to
 143 read:
 144 921.242 Subsequent offenses under chapter 796; method of
 145 proof applicable.-

591-02890A-18

20181230c1

146 (1) A ~~Every~~ judgment of guilty with respect to any offense
 147 governed by the provisions of chapter 796 shall be in:
 148 (a) A written record that is writing, signed by the judge,
 149 and recorded by the clerk of the circuit court; or
 150 (b) An electronic record that contains the judge's
 151 electronic signature, as defined in s. 933.40, and is recorded
 152 by the clerk of the circuit court.
 153 (2) At the time a defendant is found guilty, the judge
 154 shall cause the following to occur ~~to be affixed to every such~~
 155 ~~written judgment of guilty~~, in open court and in the presence of
 156 such judge:
 157 (a) For a written judgment of guilty, the fingerprints of
 158 the defendant against whom such judgment is rendered shall be
 159 manually taken. Such fingerprints shall be affixed beneath the
 160 judge's signature on the ~~to any such~~ judgment. Beneath such
 161 fingerprints shall be appended a certificate to the following
 162 effect:
 163
 164 "I hereby certify that the above and foregoing fingerprints
 165 are of the defendant, ...(name)..., and that they were placed
 166 thereon by said defendant in my presence, in open court, this
 167 the day of, ...(year)...."
 168
 169 Such certificate shall be signed by the judge, whose signature
 170 thereto shall be followed by the word "Judge."
 171 (b) For an electronic judgment of guilty, s. 921.241(3)(b)
 172 applies.
 173 (2) A ~~Any such~~ written or an electronic judgment of guilty,
 174 or a certified copy thereof, shall be admissible in evidence in

591-02890A-18 20181230c1

175 the several courts of this state as provided in s. 921.241(4)
 176 ~~prima facie evidence that the fingerprints appearing thereon and~~
 177 ~~certified by the judge as aforesaid are the fingerprints of the~~
 178 ~~defendant against whom such judgment of guilty was rendered.~~

179 Section 4. For the purpose of incorporating the amendment
 180 made by this act to section 921.241, Florida Statutes, in a
 181 reference thereto, paragraphs (a), (b), and (c) of subsection
 182 (3) of section 775.084, Florida Statutes, are reenacted to read:

183 775.084 Violent career criminals; habitual felony offenders
 184 and habitual violent felony offenders; three-time violent felony
 185 offenders; definitions; procedure; enhanced penalties or
 186 mandatory minimum prison terms.—

187 (3) (a) In a separate proceeding, the court shall determine
 188 if the defendant is a habitual felony offender or a habitual
 189 violent felony offender. The procedure shall be as follows:

190 1. The court shall obtain and consider a presentence
 191 investigation prior to the imposition of a sentence as a
 192 habitual felony offender or a habitual violent felony offender.

193 2. Written notice shall be served on the defendant and the
 194 defendant's attorney a sufficient time prior to the entry of a
 195 plea or prior to the imposition of sentence in order to allow
 196 the preparation of a submission on behalf of the defendant.

197 3. Except as provided in subparagraph 1., all evidence
 198 presented shall be presented in open court with full rights of
 199 confrontation, cross-examination, and representation by counsel.

200 4. Each of the findings required as the basis for such
 201 sentence shall be found to exist by a preponderance of the
 202 evidence and shall be appealable to the extent normally
 203 applicable to similar findings.

591-02890A-18 20181230c1

204 5. For the purpose of identification of a habitual felony
 205 offender or a habitual violent felony offender, the court shall
 206 fingerprint the defendant pursuant to s. 921.241.

207 6. For an offense committed on or after October 1, 1995, if
 208 the state attorney pursues a habitual felony offender sanction
 209 or a habitual violent felony offender sanction against the
 210 defendant and the court, in a separate proceeding pursuant to
 211 this paragraph, determines that the defendant meets the criteria
 212 under subsection (1) for imposing such sanction, the court must
 213 sentence the defendant as a habitual felony offender or a
 214 habitual violent felony offender, subject to imprisonment
 215 pursuant to this section unless the court finds that such
 216 sentence is not necessary for the protection of the public. If
 217 the court finds that it is not necessary for the protection of
 218 the public to sentence the defendant as a habitual felony
 219 offender or a habitual violent felony offender, the court shall
 220 provide written reasons; a written transcript of orally stated
 221 reasons is permissible, if filed by the court within 7 days
 222 after the date of sentencing. Each month, the court shall submit
 223 to the Office of Economic and Demographic Research of the
 224 Legislature the written reasons or transcripts in each case in
 225 which the court determines not to sentence a defendant as a
 226 habitual felony offender or a habitual violent felony offender
 227 as provided in this subparagraph.

228 (b) In a separate proceeding, the court shall determine if
 229 the defendant is a three-time violent felony offender. The
 230 procedure shall be as follows:

231 1. The court shall obtain and consider a presentence
 232 investigation prior to the imposition of a sentence as a three-

591-02890A-18

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233 time violent felony offender.

234 2. Written notice shall be served on the defendant and the
235 defendant's attorney a sufficient time prior to the entry of a
236 plea or prior to the imposition of sentence in order to allow
237 the preparation of a submission on behalf of the defendant.

238 3. Except as provided in subparagraph 1., all evidence
239 presented shall be presented in open court with full rights of
240 confrontation, cross-examination, and representation by counsel.

241 4. Each of the findings required as the basis for such
242 sentence shall be found to exist by a preponderance of the
243 evidence and shall be appealable to the extent normally
244 applicable to similar findings.

245 5. For the purpose of identification of a three-time
246 violent felony offender, the court shall fingerprint the
247 defendant pursuant to s. 921.241.

248 6. For an offense committed on or after the effective date
249 of this act, if the state attorney pursues a three-time violent
250 felony offender sanction against the defendant and the court, in
251 a separate proceeding pursuant to this paragraph, determines
252 that the defendant meets the criteria under subsection (1) for
253 imposing such sanction, the court must sentence the defendant as
254 a three-time violent felony offender, subject to imprisonment
255 pursuant to this section as provided in paragraph (4)(c).

256 (c) In a separate proceeding, the court shall determine
257 whether the defendant is a violent career criminal with respect
258 to a primary offense committed on or after October 1, 1995. The
259 procedure shall be as follows:

260 1. Written notice shall be served on the defendant and the
261 defendant's attorney a sufficient time prior to the entry of a

591-02890A-18

20181230c1

262 plea or prior to the imposition of sentence in order to allow
263 the preparation of a submission on behalf of the defendant.

264 2. All evidence presented shall be presented in open court
265 with full rights of confrontation, cross-examination, and
266 representation by counsel.

267 3. Each of the findings required as the basis for such
268 sentence shall be found to exist by a preponderance of the
269 evidence and shall be appealable only as provided in paragraph
270 (d).

271 4. For the purpose of identification, the court shall
272 fingerprint the defendant pursuant to s. 921.241.

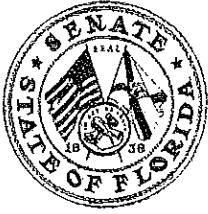
273 5. For an offense committed on or after October 1, 1995, if
274 the state attorney pursues a violent career criminal sanction
275 against the defendant and the court, in a separate proceeding
276 pursuant to this paragraph, determines that the defendant meets
277 the criteria under subsection (1) for imposing such sanction,
278 the court must sentence the defendant as a violent career
279 criminal, subject to imprisonment pursuant to this section
280 unless the court finds that such sentence is not necessary for
281 the protection of the public. If the court finds that it is not
282 necessary for the protection of the public to sentence the
283 defendant as a violent career criminal, the court shall provide
284 written reasons; a written transcript of orally stated reasons
285 is permissible, if filed by the court within 7 days after the
286 date of sentencing. Each month, the court shall submit to the
287 Office of Economic and Demographic Research of the Legislature
288 the written reasons or transcripts in each case in which the
289 court determines not to sentence a defendant as a violent career
290 criminal as provided in this subparagraph.

591-02890A-18

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291

Section 5. This act shall take effect July 1, 2018.



THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

February 6, 2018

The Honorable Senator Greg Steube
326 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Senator Steube,

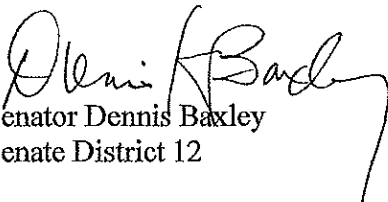
I respectfully request that you place SB 1230 Criminal Judgments on your next available agenda.

Current law requires a judgment to be a writing signed by a judge and, if the case is a felony or a misdemeanor under ch. 796, F.S., fingerprints to be affixed below the judge's signature on the written judgment. For the proposed pilot program to go forward, current law needs to be revised to permit electronic judgments and fingerprints. The Fifth, Seventh, and Nineteenth judicial circuits are applying for grant funding for a pilot program in which judgments and fingerprints would be entered electronically. Not all counties within the circuits are expected to participate.

This authorizes the use, but does not require, electronic judgments and fingerprints; thus, eliminating the necessity for written judgments.

I appreciate your favorable consideration.

Onward & Upward,


Senator Dennis Baxley
Senate District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

"Speaker Cards SB 1230 021318" Not Found!!!!

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1256

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Brandes

SUBJECT: Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1256 amends Florida law to address privacy issues related to the use of communication technology, such as cell phones, laptops, and tablets. These devices may be equipped with location tracking technology which allows the service provider to track the device whenever it is on.

Most notably, the bill amends ch. 934, F.S. to replace the requirement for a court order supported by a reasonable articulable suspicion to install and use a tracking device with a requirement for a warrant supported by the higher probable cause standard to install and use a tracking device. Similarly, the bill requires law enforcement agencies to obtain a warrant to acquire data identifying the location of a person's cellular phone or portable electronic communications device from the person's service provider.

Other specific changes made by the bill to chapter 934, F.S., include:

- Defining the terms "portable electronic communication device" and "microphone-enabled household device";
- Amending the definition of a tracking device to create a definition for a "mobile tracking device";
- Setting forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked;
- Providing a postponement of notice may only be granted by a court for good cause; and

- Allowing for emergency tracking under certain circumstances

II. Present Situation:

Fourth Amendment

The Fourth Amendment of the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy, such as one's home.² A warrantless search is generally per se unreasonable,³ unless an exception to the warrant requirement applies.⁴

The Florida Constitution similarly protects the people against unreasonable searches and seizures, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.⁵ Both the Florida and federal constitutions require a warrant to be supported by probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and items or people to be seized.⁶

In the seizure or arrest context, three levels of warrantless citizen encounters with law enforcement officers are generally recognized:

- (1) Consensual encounter, where a citizen may either comply or ignore a law enforcement officer's request and is free to leave;⁷
- (2) Investigatory or *Terry*⁸ stop, where an officer reasonably detains a citizen temporarily based on a "well-founded, articulable suspicion of criminal activity;"⁹ and
- (3) Arrest, "which must be supported by probable cause that a crime has been or is being committed."¹⁰

In the communications context, a warrant supported by probable cause is generally required to obtain the contents of a telephone conversation; whereas, information published to a third party generally is not protected by the Fourth Amendment. In *Smith v. Maryland*, the United States Supreme Court held that because "telephone users have no reasonable expectations of privacy in dialed telephone numbers recorded through pen registers and contained in the third-party

¹ U.S. CONST. AMEND. IV.

² *Katz v. United States*, 389 U.S. 347 (1967).

³ *United States v. Harrison*, 689 F.3d 301, 306 (3d Cir. 2012).

⁴ Examples of exceptions to the warrant requirement include exigent circumstances, searches of motor vehicles, and searches incident to arrest.

⁵ FLA. CONST. art. I, s. 12.

⁶ *Id.*; see n. 1, *supra*.

⁷ *Popple v. State*, 626 So. 2d 185, 186 (Fla. 1993).

⁸ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

⁹ *Popple* at 186.

¹⁰ *Id.*

telephone company's records," the use of a pen register did not constitute a "search" under the Fourth Amendment.¹¹

However, advancing technology, particularly the ability to track the location of a person through his or her cellphone, has presented law enforcement with new means of investigation and surveillance. This advancing technology has also led to greater protections over information conveyed to cell service providers. The Stored Communications Act requires the government to obtain a court order based on the *Terry* standard, i.e., a reasonable, articulable suspicion that a crime may be occurring, before obtaining cell phone records.¹² But some information contained in the records obtained under a court order has presented the courts with new questions about the Fourth Amendment implications of this technology.

Advancing Technology - Location Tracking

Cell phones, smartphones, laptops, and tablets are all mobile devices that can be located whenever they are turned on.¹³ There are essentially three methods of locating a mobile device:

- *Network-based location*, which occurs when a mobile device communicates with nearby cell sites. The mobile device communicates through a process called registration even when the device is idle. The service provider of the mobile device¹⁴ can also initiate the registration of a device. This information is stored in provider databases in order to route calls. The smaller the cell site, the more precise the location data.
- *Handset-based location*, which uses information transmitted by the device itself, such as global positioning system (GPS) data.
- *Third-party methods*, which facilitate real-time tracking of a mobile signal directly by using technology that mimics a wireless carrier's network.¹⁵

Mobile Tracking Devices

Mobile tracking devices can also be used to track a person's location. This broad category of devices includes radio frequency (RF)-enabled tracking devices (commonly referred to as "beepers"), satellite-based tracking devices, and cell-site tracking devices. Satellite-based tracking devices are commonly referred to as (GPS) devices.¹⁶

Florida law defines a "tracking device" as an electronic or mechanical device which permits the tracking of movement of a person or object.¹⁷ Section 934.42, F.S., requires a law enforcement officer to apply to a judge for a *court order* approving the "installation and use of a mobile

¹¹ *United States v. Davis*, 785 F.3d 498, 507 (11th Cir. 2015) (citing *Smith v. Maryland*, 442 U.S. 735, 742-46 (1979)).

¹² 18 U.S.C. § 2703(d). *See also, id.* at 505, explaining that "[w]hile this statutory standard is less than the probable cause standard for a search warrant, the government is still required to obtain a court order and present to a judge specific and articulable facts showing reasonable grounds to believe the records are relevant and material to an ongoing criminal investigation."

¹³ Electronic Privacy Information Center, *Cell Phone Tracking Methods*, <https://epic.org/privacy/location/> (last visited Feb. 11 2018).

¹⁴ A service provider is the company that provides the internet to the mobile device. *Id.*

¹⁵ *Id.*

¹⁶ Ian Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, BERKELEY J. OF CRIM. LAW, Vol. 16, Issue 2, 442, n. 1 (Fall 2011), http://www.bjcl.org/articles/16_2%20herbert_formatted.pdf (last visited Feb. 11, 2018).

¹⁷ Section 934.42(6), F.S.

tracking device.”¹⁸ If the court grants the order, the officer installs and uses the device.¹⁹ The application for such an order must include:

- A statement of the identity of the applicant and the identity of the law enforcement agency conducting the investigation.
- A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency.
- A statement of the offense to which the information likely to be obtained relates.
- A statement whether it may be necessary to use and monitor the mobile tracking device outside the jurisdiction of the court from which authorization is being sought.²⁰

The court then must review the application and if the court finds that the above requirements are met, the court will order the authorization of the installation and use of a mobile tracking device. The court is not allowed to require greater specificity or additional information than listed above.²¹

The installation and the monitoring of a mobile tracking device are governed by the standards established by the United State Supreme Court.²²

Cellular-Site Location Data

In the United States, it has been reported that there are 327.6 million cell phones in use, which is more than the current U.S. population (315 million people).²³ “As the cell phone travels, it connects to various cell phone towers, which means an electronic record of its location is created[.]”²⁴ The cell phone’s location record is held by the telecommunications company that services the device.²⁵

Cellular-site location information (CSLI) is information generated when a cell phone connects and identifies its location to a nearby cell tower that, in turn, processed the phone call or text message made by the cell phone. “CSLI can be ‘historic,’ in which case the record is of a cell phone’s past movements, or it can be ‘real-time’ or prospective, in which case the information reveals the phone’s current location.”²⁶ Historic CSLI enables law enforcement to piece together past events by connecting a suspect to the location of a past crime.²⁷ Prospective location information helps law enforcement trace the current whereabouts of a suspect.²⁸

¹⁸ Section 934.42(1)-(2), F.S.

¹⁹ Section 934.42(3), F.S.

²⁰ Section 934.42(2), F.S.

²¹ Section 934.42(3) and (4), F.S.

²² Section 934.42(5), F.S.

²³ Mana Azarmi, *Location Data: The More They Know*, Center for Democracy and Technology (Nov. 27, 2017), <https://cdt.org/blog/location-data-the-more-they-know/> (last visited Feb. 11, 2018).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ National Association of Criminal Defense Lawyers, *Cell Phone Location Tracking*, https://www.law.berkeley.edu/wp-content/uploads/2015/04/2016-06-07_Cell-Tracking-Primer_Final.pdf (last visited Feb. 11, 2018).

²⁸ *Id.*

GPS Location Data

A cell phone's GPS capabilities allow it to be tracked to within 5 to 10 feet.²⁹ GPS provides users with positioning, navigation, and timing services based on data available from satellites orbiting the earth.³⁰ If a mobile device is equipped with GPS technology, significantly more precise location information is then sent from the handset to the carrier.³¹

Developing Fourth Amendment Implications of Location Tracking Technology

In the 2012 case of *U.S. v. Jones*, the United States Supreme Court considered the issue of whether GPS tracking of a criminal suspect's vehicle was a search under the Fourth Amendment.³² Noting first that a motor vehicle is an "effect" under the Fourth Amendment, the Supreme Court held that the government's installation and use of a GPS³³ tracking device on a suspect's vehicle constituted a "search."³⁴ As noted in *Jones*,

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a "search" within the meaning of the Fourth Amendment when it was adopted.³⁵

In 2014, the Florida Supreme Court decided *Tracey v. State*, involving law enforcement's use of real-time cell phone location data.³⁶ In that case, law enforcement was conducting surveillance on a suspected drug dealer, and had applied for and received a court order to install a "pen register" and "trap and trace device" on the defendant's cell phone. Although not specifically requested in the application or authorized by the order, the defendant's cell phone provider also provided real time cell site location information.³⁷ After receiving a tip from a confidential informant one evening, law enforcement used real time cell site location data to find the defendant and discovered he had a kilogram brick of cocaine hidden in the spare tire wall of his vehicle.³⁸ The defendant moved to suppress the evidence on the basis that the police should have obtained a warrant before using his real time cell site location to find him.³⁹

²⁹ *Id.*

³⁰ GPS.gov, *GPS Location Privacy*, last modified August 22, 2017, available at <https://www.gps.gov/policy/privacy> (last visited January 30, 2018).

³¹ EE Times, *How does a GPS tracking system work?*, Patrick Bertagna, October 26, 2010 available at https://www.eetimes.com/document.asp?doc_id=1278363&page_number=2 (last visited January 30, 2018). Note that cell phone service providers were required by the Federal Communications Commission in 1996 to begin providing location data to 911 operators for a program called Enhanced 911 (E911) which ultimately required a high level of handset location accuracy. As a result, many cell service providers began putting GPS chips inside the handsets. See Herbert, *Where We are with Location Tracking: A Look at the Current Technology and the Implications on Fourth Amendment Jurisprudence*, Berkeley Journal of Criminal Law, Volume 16, Issue 2, (2011).

³² 565 U.S. 400, 404 (2012) (citing *United States v. Chadwick*, 433 U.S. 1, 12 (1977)).

³³ GPS is the acronym for "global positioning system." *Id.* at 402.

³⁴ *Id.* at 404 (citing *United States v. Chadwick*, 433 U.S. 1, 12 (1977)).

³⁵ *Id.* at 404-05.

³⁶ 152 So. 3d 504, 525-26 (2014).

³⁷ *Id.* at 506-07.

³⁸ *Id.* at 507. The person the defendant was meeting had \$23,000 cash on him. *Id.*

³⁹ *Id.* at 508.

The Florida Supreme Court agreed with the defendant in *Tracey* and held that a person has an expectation of privacy in his or her real-time cell site location data which society is prepared to recognize as a reasonable under the Fourth Amendment.⁴⁰ The Florida Supreme Court concluded that cell phones are “effects” under the Fourth Amendment, and reasoned that because users of cell phones, especially smart phones, often keep these devices on their person, tracking the location of these devices may breach the walls of the user’s home, showing the location of the person within their home.⁴¹ “This real risk of ‘inadvertent’ violation of Fourth Amendment rights is not a risk worth imposing on the citizenry when it is not an insurmountable task for the government to obtain a warrant based on probable cause when such tracking is truly justified.”⁴² Thus, in *Tracey*, the evidence of cocaine trafficking was suppressed.

In 2015, the First District Court of Appeal in *Herring v. State* applied the holding in *Tracey* to a case in which real time cell site location data was used to track down a murderer within five hours of shooting two victims.⁴³ The First District noted that exigent circumstances were present based on the belief that the defendant was still armed, because the defendant had recently killed one person and attempted to kill another, and because delay in apprehending the defendant may jeopardize the safety of both law enforcement and the public.⁴⁴ While such exigent circumstances would ordinarily relieve law enforcement from the duty of obtaining a warrant, the First District panel held that under the totality of the circumstances, the officers had plenty of time, 2.5 hours, to obtain a warrant before tracking the defendant’s real time cell site location. Thus, the First District held that law enforcement had not overcome the warrant requirement under the circumstances.⁴⁵

Recently, the United States Supreme court heard oral arguments in the case of *Carpenter v. United States*.⁴⁶ In the underlying case under review, *U.S. v. Carpenter*,⁴⁷ the Sixth Circuit held that the government had not conducted a “search” under the Fourth Amendment by obtaining historic cell tower location data as part of the business records obtained from the defendant’s wireless cell phone carrier. The business records were obtained pursuant to a court order under the Stored Communications Act.⁴⁸ The Sixth Circuit reasoned that the defendant had no expectation of privacy in his cell tower location data for Fourth Amendment purposes, because “the federal courts have long recognized a core distinction: although the content of personal communications is private, the information necessary to get those communications from point A to point B is not.”⁴⁹

⁴⁰ *Id.*

⁴¹ *Id.* at 524 (noting that cell phones and “smart phones” have “become virtual extensions of many of the people using them for all manner of necessary and personal matters.”).

⁴² *Id.*

⁴³ 168 So. 3d 240, 241-42 (2015).

⁴⁴ *Id.* at 243.

⁴⁵ *Id.* at 243-44. Compare *United States v. Caraballo*, 831 F.3d 95, 104 (2d Cir. 2016) (holding that officers’ warrantless pinging of the defendant’s cell phone was justified under the exigent circumstances exception in part because the defendant, who had just brutally killed a victim execution style, was still likely armed and on the loose).

⁴⁶ Supreme Court of the United States, Transcripts of November 29, 2017 oral argument, *Carpenter v. State*, No. 16-402, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/16-402_3f14.pdf (last visited Feb. 11, 2018).

⁴⁷ *United States v. Carpenter*, 819 F.3d 880 (6th Cir. 2016), *cert. granted*, 137 S. Ct. 2211 (2017).

⁴⁸ See *infra*, p. 8.

⁴⁹ *Carpenter*, 819 F.3d at 886.

The Eleventh Circuit in *U.S. v. Davis* similarly held that the defendant, who was using old technology and *not* a smart phone equipped with GPS, did not have a reasonable expectation of privacy in his phone records transmitted to a third party, his cell phone provider, particularly where the government did not obtain recordings of conversations.⁵⁰ The records in *Davis* were obtained by the government pursuant to a court order under the Stored Communications Act. As explained by the Eleventh Circuit, “[t]he Fourth Amendment prohibits *unreasonable* searches, not warrantless searches,”⁵¹ and:

[T]raditional Fourth Amendment analysis supports the reasonableness of the § 2703(d) [Stored Communications Act] order in this particular case. . . .

. . . .

[A] § 2703(d) court order functions as a judicial subpoena, but one which incorporates additional privacy protections that keep any intrusion minimal. The SCA guards against the improper acquisition or use of any personal information theoretically discoverable from such records. . . . Under § 2703(d), investigative authorities may not request such customer-related records merely to satisfy prurient or otherwise insubstantial governmental interests. Instead, a neutral and detached magistrate must find, based on “specific and articulable facts,” that there are “reasonable grounds to believe” that the requested records are “relevant and material to an ongoing criminal investigation.” Such protections are sufficient to satisfy “the primary purpose of the Fourth Amendment,” which is “to prevent arbitrary invasions of privacy.” *Brock v. Emerson Elec. Co., Elec. & Space Div.*, 834 F.2d 994, 996 (11th Cir.1987); *see, e.g., Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 n.18, 392 U.S. 1, 88 S.Ct. 1868, 1880 n. 18, 20 L.Ed.2d 889 (1968) (explaining that the “demand for specificity in the information upon which police action is predicated is the central teaching of this Court’s Fourth Amendment jurisprudence”).⁵²

Microphone-Enabled Household Devices

Another emerging technology raising privacy concerns is the smart speaker. Smart speakers, like the Google Home⁵³ or Amazon Echo,⁵⁴ are devices that use voice-activated artificial intelligence technology to respond to commands. They are designed as virtual home assistants and intended to be used in as many different ways as possible.⁵⁵

Although the term “always on” is often used to describe smart speakers, this is not entirely accurate. Speech activated devices use the power of energy efficient processors to remain in an inert state of passive processing, or “listening,” for the “wake words.” The device buffers and re-records locally, without transmitting or storing any information, until it detects the word or

⁵⁰ *United States v. Davis*, 785 F.3d 498 (11th Cir. 2015).

⁵¹ *Id.* at 516 (emphasis added).

⁵² *Id.* at 517 (citation omitted). A petition for certiorari review has been filed in the United States Supreme Court.

⁵³ Google Home, https://store.google.com/product/google_home (last visited Feb. 11, 2018).

⁵⁴ Amazon, Echo & Alexa, <https://www.amazon.com/all-new-amazon-echo-speaker-with-wifi-alexa-dark-charcoal/dp/B06XCM9LJ4> (last visited Feb. 11, 2018).

⁵⁵ Jocelyn Baird, *Smart Speakers and Voice Recognition: Is Your Privacy at Risk?*, NextAdvisor (Apr. 4, 2017), <https://www.nextadvisor.com/blog/2017/04/04/smart-speakers-and-voice-recognition-is-your-privacy-at-risk/> (last visited February 11, 2018).

phrase that triggers the device to begin actively recording and transmitting audio outside of the device to the service provider.⁵⁶

In one ongoing murder investigation in Arkansas, the victim died during a party at the suspect's home. The suspect owned an Amazon Echo, which other guests remembered was on and playing music. A law enforcement agency sought the information recorded by the suspect's Echo on the night of the victim's death, but Amazon initially refused to turn the information over on First Amendment privacy grounds. Ultimately, it appears the suspect has given Amazon permission to turn the recordings over to the law enforcement agency.⁵⁷

Chapter 934, F.S., Security of Communications Definitions

Florida law governing security of communications is found in ch. 934, F.S. Among the subjects covered in the chapter are procedures related to, and limitations upon, the government's use of wiretapping or interception, and tracking devices. This chapter closely mirrors the federal statutory law found in the Electronic Communications Privacy Act of 1986.⁵⁸

Definitions provided in the chapter that are pertinent to the bill are as follows:

- “Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of such connection in a switching station furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce.⁵⁹
- “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce, but does not include:
 - Any wire or oral communication;
 - Any communication made through a tone paging device;
 - Any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or
 - Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.⁶⁰
- “Oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation does not mean any public oral communication uttered at a public meeting or any electronic communication.⁶¹

⁵⁶ *Id.*; See also Stacey Gray, *Always On: Privacy Implications Of Microphone-Enabled Devices*, The Future of Privacy Forum (Apr. 2016), https://fpf.org/wp-content/uploads/2016/04/FPF_Always_On_WP.pdf (last visited Feb. 11, 2018).

⁵⁷ Elliott C. McLaughlin, *Suspect OKs Amazon to hand over Echo recordings in murder case*, CNN, Apr. 26, 2017 <https://www.cnn.com/2017/03/07/tech/amazon-echo-alexa-bentonville-arkansas-murder-case/index.html> (last visited February 11, 2018).

⁵⁸ 18 U.S.C. 2510 et seq.

⁵⁹ Section 934.02(1), F.S.

⁶⁰ Section 934.02(12), F.S.

⁶¹ Section 934.02(2), F.S.

- “Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.⁶²
- “Contents” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.⁶³
- “Electronic, mechanical, or other device” means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than any telephone or telegraph instrument, equipment, or facility, or any component thereof:
 - Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business; or
 - Being used by a provider of wire or electronic communications service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of her or his duties.⁶⁴
- “Investigative or law enforcement officer” means any officer of the State of Florida or political subdivision thereof, of the United States, or of any other state or political subdivision thereof, who is empowered by law to conduct on behalf of the Government investigations of, or to make arrests for, offenses enumerated in this chapter or similar federal offenses, any attorney authorized by law to prosecute or participate in the prosecution of such offenses, or any other attorney representing the State of Florida or political subdivision thereof in any civil, regulatory, disciplinary, or forfeiture action relating to, based upon, or derived from such offenses.⁶⁵

Stored Communications

Florida law also prohibits accessing stored communications. It is unlawful for a person to:

- Intentionally access a facility through which an electronic communication service is provided; or
- Intentionally exceed an authorization to access; and
- Obtain, alter, or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system.⁶⁶

The penalties for this offense vary based on the specific intent and the number of offenses.⁶⁷ It is a first degree misdemeanor⁶⁸ if the above described offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain.⁶⁹ Any subsequent offense with this intent is a third degree felony.⁷⁰

⁶² Section 934.02(3), F.S.

⁶³ Section 934.02(7), F.S.

⁶⁴ Section 934.02(4), F.S.

⁶⁵ Section 934.02(6), F.S.

⁶⁶ Section 934.21(1), F.S.

⁶⁷ See s. 934.21(2), F.S.

⁶⁸ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S.

⁶⁹ Section 934.21(2), F.S.

⁷⁰ A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

If the person did not have the above described intent then the above described offense is a second degree misdemeanor.⁷¹

III. Effect of Proposed Changes:

Legislative Findings for Chapter 934, F.S. (Section 1)

The bill amends s. 934.01, F.S., by adding the term “electronic” to the current terminology of “wire and oral” communications in the legislative findings.

The bill also creates new three legislative findings. First, in accord with the Florida Supreme Court’s holding in *Tracey*, the bill adds a legislative finding recognizing that a person has a subjective expectation of privacy in his or her precise location data that is objectively reasonable.

As such, a law enforcement agency’s collection of the precise location of a person, cellular phone, or portable electronic communication device⁷² without the consent of the device owner should be allowed only when authorized by a warrant issued by a court and should remain under the control and supervision of the authorizing court.

Second, the bill adds a legislative finding recognizing that the use of portable electronic devices, which can store almost limitless amounts of personal or private data, is growing rapidly. Portable electronic devices can be used to access personal and business information and other data stored in computers and servers located anywhere in the world. Given the nature of the information that can be contained in a portable electronic device, the legislature recognizes that a person using such a device has a reasonable and justifiable expectation of privacy in the information contained in that device.

Third, the bill adds a legislative finding recognizing that microphone-enabled household devices,⁷³ a new piece of technology being marketed to consumers, often contain microphones that listen for and respond to environmental triggers. These devices are generally connected to and communicate through the Internet, resulting in the storage of and accessibility of daily household information in either the device itself or in a remote computing service. In recognition of the private data such a device could transmit or store, the bill recognizes that an individual should not have to choose between using household technological enhancements and conveniences or preserving the right to privacy in one’s home.

Chapter 934, F.S., Security of Communications Definitions (Section 2)

The bill amends s. 934.02, F.S., by amending a current definition, and creating new definitions:

- The current definition of “oral communication” is amended to include the use of a *microphone-enabled device*.

⁷¹ A second degree misdemeanor is punishable by up to 60 days in county jail and up to a \$500 fine. Sections 775.082 and 775.083, F.S.

⁷² The term “portable electronic communication device” is defined in Section 2 of the bill, *infra*.

⁷³ The term “microphone-enabled household device” is defined in Section 2 of the bill, *infra*.

- The definition of “microphone-enabled household device” is created and is defined as a device, sensor, or other physical object within a residence:
 - Capable of connecting to the Internet, directly or indirectly, or to another connected device;
 - Capable of creating, receiving, accessing, processing, or storing electronic data or communications;
 - Which communicates with, by any means, another device, entity, or individual; and
 - Which contains a microphone designed to listen for and respond to environmental cues.
- The definition of “portable electronic communication device” is created and is defined as an object capable of being easily transported or conveyed by a person which is capable of creating, receiving, accessing, or storing electronic data or communications and which communicates with, by any means, another device, entity, or individual.

Stored Communications (Section 3)

The bill makes conforming changes and clarifies that the penalty for accessing a facility through which an electronic communication service is provided without authorization to obtain, alter, or prevent authorized access to a wire or electronic communication does not apply to conduct authorized:

- By the provider⁷⁴ or user⁷⁵ of wire, oral, or electronic communications services through cellular phones, portable electronic communication devices, or microphone-enabled household devices;
- Under chapter 933;⁷⁶ or
- For legitimate business purposes that do not identify the user.

Location Tracking (Section 4)

The bill amends the definition for a “tracking device” in s. 934.42, F.S. to create the definition of a “mobile tracking device” or “tracking device.” A “mobile tracking device” or “tracking device” is defined to mean any electronic or mechanical device which permits the tracking of a person’s movements. Such devices are defined to include a cellular phone or a portable electronic communication device that can be used to access real time cellular-site location data, precise global positioning satellite location data, and historical global positioning satellite data.

The bill also amends s. 934.42, F.S., to require a *warrant* rather than a *court order* for the law enforcement officer to install and use a mobile tracking device. This means that law enforcement must meet the higher standard of having probable cause for purposes of a warrant rather than the lower standard of having a reasonable, articulable suspicion for purposes of obtaining a court order under the federal Stored Communications Act.

The bill requires that the application for a *warrant* set forth a reasonable length of time that the mobile tracking device may be used. The time may not exceed 45 days after the date the warrant

⁷⁴ Section 934.21(3)(a), F.S.

⁷⁵ Section 934.21(3)(b), F.S.

⁷⁶ Chapter 933 authorizes search and inspection warrants.

was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each.

The bill requires the court to find probable cause in the required application statements in granting a warrant for the use of a tracking device or mobile tracking device. If the court issues a warrant, the warrant must also require the officer to complete any authorized installation within a specified timeframe after the warrant is issued, to be no longer than 10 days. Within 10 days after the use of the tracking device has ended, the officer executing the warrant must return the warrant to the judge. Additionally, when the warrant authorizes the collection of historical global positioning satellite data, the officer that executed the warrant must return it to the judge within 10 days after receiving the records.

Also, within 10 days after the use of the tracking device has ended, the officer executing the warrant must serve a copy of it on the person who was tracked or whose property was tracked. Upon a showing of good cause for postponement, the court may grant a postponement of notice in 90 day increments.

The bill requires that, in addition to the United States Supreme Court, standards established by Florida courts apply to the installation, use, or monitoring of any mobile tracking device as authorized by s. 934.42, F.S.

The bill also allows for the installation of a mobile tracking device without a warrant if an emergency exists which:

- Involves immediate danger of death or serious physical injury to any person or the danger of escape of a prisoner;
- Requires the installation or use of a mobile tracking device before a warrant authorizing such installation or use can, with due diligence, be obtained; and
- There are grounds upon which a warrant could be issued to authorize such installation or use.⁷⁷

Within 48 hours after the installation or use has occurred or begins to occur, a warrant approving the installation or use must be issued in accordance with s. 934.42, F.S. If an application for the warrant is denied, or when 48 hours have lapsed since the installation or use of the mobile tracking device began, whichever is earlier a law enforcement officer must immediately terminate the installation or use of a mobile tracking device.⁷⁸

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁷⁷ This exception is similar to that found in s. 934.09(7), F.S.

⁷⁸ It appears this provision overrules the *Herring* case.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Florida Department of Law Enforcement does not expect any fiscal impact from this bill.⁷⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 934.01, 934.02, 934.21, and 934.42.

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 February 13, 2018:

The Committee Substitute:

- Eliminating penalty and violation provisions which may subject police officers to criminal penalties when a warrantless search is subsequently deemed illegal under the Fourth Amendment.

⁷⁹ The Florida Department of Law Enforcement, *2018 Legislative Bill Analysis*, January 4, 2018 (on file with the Senate Committee on Criminal Justice).

- Provides that a law enforcement officer must return a warrant to the judge for records of a subscriber's historical global positioning data within 10 days of receiving the records.
- Requires that a law enforcement officer show good cause before the court can grant a postponement in providing notice of the warrant's existence to the person being tracked.
- Makes various technical changes.

CS by Criminal Justice on February 6, 2018:

The committee substitute:

- Defines the terms "portable electronic communication device" and "microphone-enabled household device";
- Changes the current definition of oral communication to include the use of a microphone-enabled household device;
- Amends the definition of a tracking device;
- Requires a warrant for the installation and use of a tracking device;
- Sets forth time constraints under which a tracking device must be used and when notice must be provided to the person tracked;
- Allows for emergency tracking under certain circumstances;
- Removes the requirement of a warrant instead of a court order for the interception of a wire, oral, or electronic communication; and
- Removes the misdemeanor the bill created for a person intentionally and unlawfully accessing a cell phone, portable electronic communication device, or microphone-enabled household device.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 150 - 297

and insert:

(1) Except as provided in subsection (3), whoever:

(a) Intentionally accesses without authorization a facility through which an electronic communication service is provided, or

(b) Intentionally exceeds an authorization to access such facility,



594522

12 and thereby obtains, alters, or prevents authorized access to a
13 wire or electronic communication while it is in electronic
14 storage in such system shall be punished as provided in
15 subsection (2).

16 (2) The punishment for an offense under subsection (1) is
17 as follows:

18 (a) If the offense is committed for purposes of commercial
19 advantage, malicious destruction or damage, or private
20 commercial gain, the person is:

21 1. In the case of a first offense under this subsection,
22 commits ~~guilty of~~ a misdemeanor of the first degree, punishable
23 as provided in s. 775.082, s. 775.083, or s. 934.41.

24 2. In the case of any subsequent offense under this
25 subsection, commits ~~guilty of~~ a felony of the third degree,
26 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
27 s. 934.41.

28 (b) In any other case, the person is guilty of a
29 misdemeanor of the second degree, punishable as provided in s.
30 775.082 or s. 775.083.

31 (3) Subsection (1) does not apply with respect to conduct
32 authorized:

33 (a) By the person or entity providing a wire, oral, or
34 electronic communications service, including through cellular
35 phones, portable electronic communication devices, or
36 microphone-enabled household devices;

37 (b) By a user of a wire, oral, or electronic communications
38 service, including through cellular phones, portable electronic
39 communication devices, or microphone-enabled household devices,
40 with respect to a communication of or intended for that user; ~~or~~



594522

41 (c) In s. 934.09, s. 934.23, or s. 934.24;
42 (d) In chapter 933; or
43 (e) For accessing for a legitimate business purpose
44 information that is not personally identifiable or that has been
45 collected in a way that prevents identification of the user of
46 the device.

47 Section 4. Section 934.42, Florida Statutes, is amended to
48 read:

49 934.42 Mobile tracking device and location tracking
50 authorization.—

51 (1) An investigative or law enforcement officer may make
52 application to a judge of competent jurisdiction for a warrant
53 ~~an order~~ authorizing or approving the installation and use of a
54 mobile tracking device.

55 (2) An application under subsection (1) ~~of this section~~
56 must include:

57 (a) A statement of the identity of the applicant and the
58 identity of the law enforcement agency conducting the
59 investigation.

60 (b) A statement setting forth a reasonable period of time
61 that the tracking device may be used or the location data may be
62 obtained in real-time, not exceed 45 days from the date the
63 warrant is issued. The court may, for good cause, grant one or
64 more extensions for a reasonable period of time, not to exceed
65 45 days each ~~certification by the applicant that the information~~
66 ~~likely to be obtained is relevant to an ongoing criminal~~
67 ~~investigation being conducted by the investigating agency.~~

68 (c) A statement of the offense to which the information
69 likely to be obtained relates.



594522

70 (d) A statement whether it may be necessary to use and
71 monitor the mobile tracking device outside the jurisdiction of
72 the court from which authorization is being sought.

73 (3) Upon application made as provided under subsection (2),
74 the court, if it finds probable cause, ~~that the certification~~
75 and that the statements required by subsection (2) have been
76 made in the application, shall grant a warrant ~~enter an ex parte~~
77 ~~order~~ authorizing the installation and use of a mobile tracking
78 device. Such warrant ~~order~~ may authorize the use of the device
79 within the jurisdiction of the court and outside that
80 jurisdiction but within the State of Florida if the device is
81 installed within the jurisdiction of the court. The warrant must
82 command the officer to complete any installation authorized by
83 the warrant within a specified period of time not to exceed 10
84 calendar days.

85 (4) A court may not require greater specificity or
86 additional information beyond that which is required by law and
87 this section as a requisite for issuing a warrant ~~an order~~.

88 (5) Within 10 days after the time period specified in
89 paragraph (2) (b) has ended, the officer executing a warrant must
90 return the warrant to the issuing judge. When the warrant is
91 authorizing historical global positioning satellite location
92 data, the office executing the warrant must return the warrant
93 to the issuing judge within 10 days of the receipt of the
94 records. The officer may do so by reliable electronic means.

95 (6) Within 10 days after the time period specified in
96 paragraph (2) (b) has ended, the officer executing a warrant must
97 serve a copy of the warrant on the person who, or whose
98 property, was tracked. Service may be accomplished by delivering



594522

99 a copy to the person who, or whose property, was tracked or by
100 leaving a copy at the person's residence or usual place of abode
101 with an individual of suitable age and discretion who resides at
102 that location and by mailing a copy to the person's last known
103 address. Upon a showing of good cause to a court of competent
104 jurisdiction, the court may grant one or more postponements of
105 this notice for a period of 90 days each.

106 (7) ~~(5)~~ The standards established by Florida courts and the
107 United States Supreme Court for the installation, use, or ~~and~~
108 monitoring of mobile tracking devices shall apply to the
109 installation, use, or monitoring ~~and use~~ of any device as
110 authorized by this section.

111 (8) ~~(6)~~ As used in this section, the term "mobile tracking
112 device" or a "tracking device" means an electronic or mechanical
113 device which permits the tracking of the movement of a person or
114 object, including a cellular phone or a portable electronic
115 communication device, and may be used to obtain real-time
116 cellular-site location data, precise global positioning
117 satellite location data, or historical global positioning
118 satellite location data.

119 (9) (a) Notwithstanding any other provision of this chapter,
120 any investigative or law enforcement officer specially
121 designated by the Governor, the Attorney General, the statewide
122 prosecutor, or a state attorney acting pursuant to this chapter
123 who reasonably determines that:

124 1. An emergency exists which:

125 a. Involves immediate danger of death or serious physical
126 injury to any person or the danger of escape of a prisoner; and

127 b. Requires the installation or use of a mobile tracking



594522

128 device before a warrant authorizing such installation or use
129 can, with due diligence, be obtained; and

130 2. There are grounds upon which a warrant could be issued
131 under this chapter to authorize such installation or use,

132
133 may install or use a mobile tracking device if, within 48 hours
134 after the installation or use has occurred or begins to occur, a
135 warrant approving the installation or use is issued in
136 accordance with this section.

137 (b) In the absence of an authorizing warrant, such
138 installation or use shall immediately terminate when the
139 information sought is obtained, when the application for the
140 warrant is denied, or when 48 hours have lapsed since the
141 installation or use of the mobile tracking device began,
142 whichever is earlier.

143
144 ===== T I T L E A M E N D M E N T =====

145 And the title is amended as follows:

146 Delete lines 11 - 47

147 and insert:

148 F.S.; revising exceptions to include authorized
149 conduct under specified circumstances; amending s.
150 934.42, F.S.; authorizing an investigative or law
151 enforcement officer to apply to a judge of competent
152 jurisdiction for a warrant, rather than an order,
153 authorizing the acquisition of cellular-site location
154 data, precise global positioning satellite location
155 data, or historical global positioning satellite
156 location data; requiring an application for a warrant



594522

157 to include a statement of a reasonable period of time
158 that a mobile tracking device may be used, not to
159 exceed a specified limit; authorizing a court to grant
160 extensions not individually exceeding a specified
161 limit, for good cause; deleting a provision requiring
162 a certification to be included in the application for
163 an order; requiring the warrant to command the officer
164 to complete an installation authorized by the warrant
165 within a certain timeframe; providing requirements for
166 the return of the warrant to the judge and service of
167 a copy of the warrant on the person who was tracked or
168 whose property was tracked; authorizing a court, for
169 good cause, to postpone the notice requirement for a
170 specified time period; requiring that the standards
171 established by Florida courts for the installation,
172 use, or monitoring of mobile tracking devices apply to
173 the installation, use, or monitoring of certain
174 devices; redefining the term "tracking device";
175 authorizing any investigative or law enforcement
176 officer who is specially designated by certain persons
177 and who makes specified determinations to install or
178 use a mobile tracking device under certain
179 circumstances; providing requirements for the
180 installation and use of the mobile tracking devices;
181 providing an effective

By the Committee on Criminal Justice; and Senator Brandes

591-02899-18

20181256c1

1 A bill to be entitled
 2 An act relating to the search of the content,
 3 information, and communications of cellular phones,
 4 portable electronic communication devices, and
 5 microphone-enabled household devices; amending s.
 6 934.01, F.S.; revising and providing legislative
 7 findings; amending s. 934.02, F.S.; redefining the
 8 term "oral communication"; defining the terms
 9 "microphone-enabled household device" and "portable
 10 electronic communication device"; amending s. 934.21,
 11 F.S.; providing criminal penalties for the intentional
 12 and unlawful accessing without authorization of
 13 certain devices and obtaining wire, oral, or
 14 electronic communications stored within those devices;
 15 conforming cross-references; amending s. 934.42, F.S.;

16 authorizing an investigative or law enforcement
 17 officer to apply to a judge of competent jurisdiction
 18 for a warrant, rather than an order, authorizing the
 19 acquisition of cellular-site location data, precise
 20 global positioning satellite location data, or
 21 historical global positioning satellite location data;
 22 requiring an application for a warrant to include a
 23 statement of a reasonable period of time that a mobile
 24 tracking device may be used, not to exceed a specified
 25 limit; authorizing a court to grant extensions not
 26 individually exceeding a specified limit, for good
 27 cause; deleting a provision requiring a certification
 28 to be included in the application for an order;
 29 requiring the warrant to command the officer to

Page 1 of 11

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

591-02899-18

20181256c1

30 complete an installation authorized by the warrant
 31 within a certain timeframe; providing requirements for
 32 the return of the warrant to the judge and service of
 33 a copy of the warrant on the person who was tracked or
 34 whose property was tracked; authorizing a court to
 35 delay the notice requirement for a certain time upon
 36 request by the law enforcement agency; requiring that
 37 the standards established by Florida courts for the
 38 installation, use, or monitoring of mobile tracking
 39 devices apply to the installation, use, or monitoring
 40 of certain devices; redefining the term "tracking
 41 device"; authorizing any investigative or law
 42 enforcement officer who is specially designated by
 43 certain persons and who makes specified determinations
 44 to install or use a mobile tracking device under
 45 certain circumstances; providing requirements for the
 46 installation and use of the mobile tracking devices;
 47 providing criminal penalties; providing an effective
 48 date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Section 934.01, Florida Statutes, is amended to
 53 read:

54 934.01 Legislative findings.—On the basis of its own
 55 investigations and of published studies, the Legislature makes
 56 the following findings:

57 (1) Wire communications are normally conducted through the
 58 use of facilities which form part of an intrastate network. The

Page 2 of 11

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591-02899-18

20181256c1

59 same facilities are used for interstate and intrastate
60 communications.

61 (2) In order to protect effectively the privacy of wire,
62 ~~and oral, and electronic~~ communications, to protect the
63 integrity of court and administrative proceedings, and to
64 prevent the obstruction of intrastate commerce, it is necessary
65 for the Legislature to define the circumstances and conditions
66 under which the interception of wire, ~~and oral, and electronic~~
67 communications may be authorized and to prohibit any
68 unauthorized interception of such communications and the use of
69 the contents thereof in evidence in courts and administrative
70 proceedings.

71 (3) Organized criminals make extensive use of wire, ~~and~~
72 oral, ~~and electronic~~ communications in their criminal
73 activities. The interception of such communications to obtain
74 evidence of the commission of crimes or to prevent their
75 commission is an indispensable aid to law enforcement and the
76 administration of justice.

77 (4) To safeguard the privacy of innocent persons, the
78 interception of wire, ~~or~~ oral, ~~or electronic~~ communications when
79 none of the parties to the communication has consented to the
80 interception should be allowed only when authorized by a court
81 of competent jurisdiction and should remain under the control
82 and supervision of the authorizing court. Interception of wire,
83 ~~and oral, and electronic~~ communications should further be
84 limited to certain major types of offenses and specific
85 categories of crime with assurance that the interception is
86 justified and that the information obtained thereby will not be
87 misused.

Page 3 of 11

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591-02899-18

20181256c1

88 (5) To safeguard the privacy of innocent persons, the
89 Legislature recognizes that the subjective expectation of
90 privacy in precision location data that society is now prepared
91 to accept is objectively reasonable. As such, the law
92 enforcement collection of the precise location of a person,
93 cellular phone, or portable electronic communication device
94 without the consent of the person or owner of the cellular phone
95 or portable electronic communication device should be allowed
96 only when authorized by a warrant issued by a court of competent
97 jurisdiction and should remain under the control and supervision
98 of the authorizing court.

99 (6) The Legislature recognizes that the use of portable
100 electronic communication devices is growing at a rapidly
101 increasing rate. These devices can store, and encourage the
102 storing of, an almost limitless amount of personal and private
103 information. Often linked to the Internet, these devices are
104 commonly used to access personal and business information and
105 databases in computers and servers that can be located anywhere
106 in the world. The user of a portable electronic communication
107 device has a reasonable and justifiable expectation of privacy
108 in the information that these devices contain.

109 (7) The Legislature recognizes that the use of household
110 electronic devices, including microphone-enabled household
111 devices, is growing at a rapidly increasing rate. These devices
112 often contain microphones that listen for and respond to
113 environmental triggers. These household devices are generally
114 connected to and communicate through the Internet, resulting in
115 the storage of and accessibility to daily household information
116 in a device itself or in a remote computing service. Persons

Page 4 of 11

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591-02899-18 20181256c1

117 should not have to choose between using household technological
 118 enhancements and conveniences or preserving the right to privacy
 119 in one's home.

120 Section 2. Subsection (2) of section 934.02, Florida
 121 Statutes, is amended, and subsections (27) and (28) are added to
 122 that section, to read:

123 934.02 Definitions.—As used in this chapter:

124 (2) "Oral communication" means any oral communication
 125 uttered by a person exhibiting an expectation that such
 126 communication is not subject to interception under circumstances
 127 justifying such expectation, including the use of a microphone-
 128 enabled household device, and does not mean any public oral
 129 communication uttered at a public meeting or any electronic
 130 communication.

131 (27) "Microphone-enabled household device" means a device,
 132 sensor, or other physical object within a residence:

133 (a) Capable of connecting to the Internet, directly or
 134 indirectly, or to another connected device;

135 (b) Capable of creating, receiving, accessing, processing,
 136 or storing electronic data or communications;

137 (c) Which communicates with, by any means, another entity
 138 or individual; and

139 (d) Which contains a microphone designed to listen for and
 140 respond to environmental cues.

141 (28) "Portable electronic communication device" means an
 142 object capable of being easily transported or conveyed by a
 143 person which is capable of creating, receiving, accessing, or
 144 storing electronic data or communications and which communicates
 145 with, by any means, another device, entity, or individual.

591-02899-18 20181256c1

146 Section 3. Section 934.21, Florida Statutes, is amended to
 147 read:

148 934.21 Unlawful access to stored communications;
 149 penalties.—

150 (1) Except as provided in subsection (4) ~~(3)~~, whoever:

151 (a) Intentionally accesses without authorization a facility
 152 through which an electronic communication service is provided,
 153 or

154 (b) Intentionally exceeds an authorization to access such
 155 facility,

156
 157 and thereby obtains, alters, or prevents authorized access to a
 158 wire or electronic communication while it is in electronic
 159 storage in such system shall be punished as provided in
 160 subsection (3) ~~(2)~~.

161 (2) Except as provided in subsection (4), whoever
 162 intentionally and unlawfully accesses without authorization a
 163 cellular phone, portable electronic communication device, or
 164 microphone-enabled household device and thereby obtains wire,
 165 oral, or electronic communications stored within the cellular
 166 phone, portable electronic communication device, or microphone-
 167 enabled household device shall be punished as provided in
 168 subsection (3).

169 (3)~~(2)~~ The punishment for an offense under subsection (1)
 170 or subsection (2) is as follows:

171 (a) If the offense is committed for purposes of commercial
 172 advantage, malicious destruction or damage, or private
 173 commercial gain, the person ~~is~~:

174 1. In the case of a first offense under this subsection,

591-02899-18

20181256c1

175 ~~commits guilty of~~ a misdemeanor of the first degree, punishable
176 as provided in s. 775.082, s. 775.083, or s. 934.41.

177 2. In the case of any subsequent offense under this
178 subsection, ~~commits guilty of~~ a felony of the third degree,
179 punishable as provided in s. 775.082, s. 775.083, s. 775.084, or
180 s. 934.41.

181 (b) In any other case, the person ~~commits is guilty of~~ a
182 misdemeanor of the second degree, punishable as provided in s.
183 775.082 or s. 775.083.

184 ~~(4)(3) Subsections subsection (1) and (2) do does~~ not apply
185 with respect to conduct authorized:

186 (a) By the person or entity providing a wire, oral, or
187 electronic communications service, including through cellular
188 phones, portable electronic communication devices, or
189 microphone-enabled household devices;

190 (b) By a user of a wire, oral, or electronic communications
191 service, including through cellular phones, portable electronic
192 communication devices, or microphone-enabled household devices,
193 with respect to a communication of or intended for that user; ~~or~~

194 (c) In s. 934.09, s. 934.23, or s. 934.24; or

195 (d) For accessing for a legitimate business purpose
196 information that is not personally identifiable or that has been
197 collected in a way that prevents identification of the user of
198 the device.

199 Section 4. Section 934.42, Florida Statutes, is amended to
200 read:

201 934.42 Mobile tracking device and location tracking
202 authorization.-

203 (1) An investigative or law enforcement officer may make

591-02899-18

20181256c1

204 application to a judge of competent jurisdiction for a warrant
205 ~~an order~~ authorizing or approving the installation and use of a
206 mobile tracking device or the acquisition of cellular-site
207 location data, precise global positioning satellite location
208 data, or historical global positioning satellite location data.

209 (2) An application under subsection (1) ~~of this section~~
210 must include:

211 (a) A statement of the identity of the applicant and the
212 identity of the law enforcement agency conducting the
213 investigation.

214 (b) A statement setting forth a reasonable period of time
215 that the device may be used or the location data may be
216 obtained. The time must not exceed 45 days from the date the
217 warrant is issued. The court may, for good cause, grant one or
218 more extensions for a reasonable period of time, not to exceed
219 45 days each certification by the applicant that the information
220 likely to be obtained is relevant to an ongoing criminal
221 investigation being conducted by the investigating agency.

222 (c) A statement of the offense to which the information
223 likely to be obtained relates.

224 (d) A statement whether it may be necessary to use and
225 monitor the mobile tracking device outside the jurisdiction of
226 the court from which authorization is being sought.

227 (3) Upon application made as provided under subsection (2),
228 the court, if it finds probable cause, that the certification
229 and that the statements required by subsection (2) have been
230 made in the application, shall grant a warrant enter an ex parte
231 ~~order~~ authorizing the installation and use of a mobile tracking
232 device. Such warrant order may authorize the use of the device

591-02899-18

20181256c1

233 within the jurisdiction of the court and outside that
 234 jurisdiction but within the State of Florida if the device is
 235 installed within the jurisdiction of the court. The warrant must
 236 command the officer to complete any installation authorized by
 237 the warrant within a specified period of time not to exceed 10
 238 calendar days.

239 (4) A court may not require greater specificity or
 240 additional information beyond that which is required by law and
 241 this section as a requisite for issuing a warrant ~~an order~~.

242 (5) Within 10 days after the time period specified in
 243 paragraph (2) (b) has ended, the officer executing a warrant must
 244 return the warrant to the issuing judge. The officer may do so
 245 by reliable electronic means.

246 (6) Within 10 days after the time period specified in
 247 paragraph (2) (b) has ended, the officer executing a warrant must
 248 serve a copy of the warrant on the person who, or whose
 249 property, was tracked. Service may be accomplished by delivering
 250 a copy to the person who, or whose property, was tracked or by
 251 leaving a copy at the person's residence or usual place of abode
 252 with an individual of suitable age and discretion who resides at
 253 that location and by mailing a copy to the person's last known
 254 address. Upon request of the law enforcement agency, the court
 255 may delay notice for a period of 90 days as provided in s.
 256 934.25.

257 ~~(7)(5)~~ The standards established by Florida courts and the
 258 United States Supreme Court for the installation, use, or ~~and~~
 259 monitoring of mobile tracking devices shall apply to the
 260 installation, use, or monitoring ~~and use~~ of any device as
 261 authorized by this section.

591-02899-18

20181256c1

262 ~~(8)(6)~~ As used in this section, the term "mobile tracking
 263 device" or a "tracking device" means an electronic or mechanical
 264 device, including a cellular phone or a portable electronic
 265 communication device, which permits the tracking of the movement
 266 of a person or object and may be used to access cellular-site
 267 location data, precise global positioning satellite location
 268 data, or historical global positioning satellite location data.

269 (9) (a) Notwithstanding any other provision of this chapter,
 270 any investigative or law enforcement officer specially
 271 designated by the Governor, the Attorney General, the statewide
 272 prosecutor, or a state attorney acting pursuant to this chapter
 273 who reasonably determines that:

274 1. An emergency exists which:

275 a. Involves immediate danger of death or serious physical
 276 injury to any person or the danger of escape of a prisoner; and

277 b. Requires the installation or use of a mobile tracking
 278 device before a warrant authorizing such installation or use
 279 can, with due diligence, be obtained; and

280 2. There are grounds upon which a warrant could be issued
 281 under this chapter to authorize such installation or use,

282 may install or use a mobile tracking device if, within 48 hours
 283 after the installation or use has occurred or begins to occur, a
 284 warrant approving the installation or use is issued in
 285 accordance with this section.

286 (b) In the absence of an authorizing warrant, such
 287 installation or use shall immediately terminate when the
 288 information sought is obtained, when the application for the
 289 warrant is denied, or when 48 hours have lapsed since the
 290

591-02899-18

20181256c1

291 installation or use of the mobile tracking device began,
292 whichever is earlier.

293 (c) The knowing installation or use by any investigative or
294 law enforcement officer of a mobile tracking device pursuant to
295 paragraph (a) without application for the authorizing warrant
296 within 48 hours after the installation or use begins constitutes
297 a violation of this section.

298 Section 5. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill #1256**, relating to **Search of the Content, Information, and Communications of Cellular Phones, Portable Electronic Communication Devices, and Microphone-enabled Household Devices**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

02.13.2018

Meeting Date

SB1256

Bill Number (if applicable)

1256C1

Amendment Barcode (if applicable)

Topic Search of the Content, Information, and Communications of Cellular Phones

Name SEBASTIAN ALEKSANDER

Job Title Lobbyist

Address 111-B E College Ave

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850.459.1559

Email sebastian@aleksandergroup.com

Speaking: For Against Information

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

Representing FACEBOOK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

02/13/2018

Meeting Date

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

SB 1256

Bill Number (if applicable)

Topic CRIMINAL JUSTICE

Amendment Barcode (if applicable)

Name CESAR GRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W. COLLEGE AVE.

Phone 786.260.9283

Street

TALLAHASSEE

FL.

City

State

Zip

Email cgrajales@belibrr.org

Speaking: [] For [] Against [] Information

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

Representing THE LIBRE INITIATIVE

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)

02/13/2018

Meeting Date

S1256

Bill Number (if applicable)

Topic Electronic Privacy

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32302

Email ndaniels@flpda.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defenders

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

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1384

INTRODUCER: Judiciary Committee and Senator Brandes

SUBJECT: Jurisdiction of the County Court

DATE: February 15, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	FAV/CS
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1384 amends and creates provisions affecting jurisdiction of the county courts, the number of circuit and county court judges, and the headquarters of individual Supreme Court justices. The Legislature has broad constitutional authority to uniformly define the subject matter jurisdiction of Florida's 67 county courts, and may increase or decrease the number of judges serving this state pursuant to procedures specified in the Florida Constitution.

Most notably, the bill raises the county court's jurisdictional amount for civil cases demanding money from \$15,000 to \$50,000. The bill also requires that the jurisdictional amount be adjusted for inflation or deflation every 5 years after January 1, 2020, rounded to the nearest \$5,000, based on changes in the Consumer Price Index.

This change will affect the circuit courts as well, because the circuit courts have exclusive jurisdiction over "all actions at law not cognizable by the county courts." The bill effectively raises the jurisdictional amount of the circuit courts to cases demanding money judgments over \$50,000. However, the bill provides that the filing fees for civil lawsuits demanding more than \$15,000 will not change even though suit is filed in the county court. Rather, filing fee amounts and allocation for suits demanding \$15,000 or more will continue to be governed by ss. 28.241 and 35.22, F.S.

The bill also adds two judges to the ninth circuit, as certified and requested by the Florida Supreme Court. The bill also adds the two county judges to Hillsborough County, as certified

and requested by the Florida Supreme Court. However, in light of the increase in the jurisdictional amount of the county courts, the bill rejects the Florida Supreme Court’s decertification of 13 county court judges and adds three more county court judges: one in Citrus, Columbia, and Flagler counties.

The addition of the three county court judges not requested by the Court requires approval by a two-thirds vote of the membership of each house.

Finally, the bill creates s. 25.025, F.S., which provides that a supreme court justice who permanently resides outside of Tallahassee may:

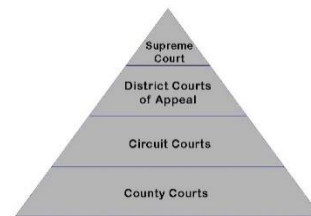
- Request that a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice’s district be designated as his or her official headquarters and serve as the justice’s private chambers; and
- Be reimbursed for travel and subsistence while in Tallahassee to the extent funding is available, as determined by the Chief Justice.

II. Present Situation:

Florida’s Court System

The Florida Constitution vests all judicial power in:

- The supreme court;
- The district courts of appeal;
- The circuit courts; and
- The county courts.¹



The Constitution provides that “[n]o other courts may be established by the state, any political subdivision or any municipality.”² Additionally, the Constitution vests the Florida Supreme Court with broad authority to administer the State court system and establish court rules of procedure.³

Legislative Powers Concerning Court Jurisdiction

The constitution confers some authority over the jurisdiction of the courts to the Legislature. Although the territorial and subject matter jurisdiction of the Florida Supreme Court is primarily defined by the Constitution, the Legislature has constitutional authority to provide for the territorial jurisdiction and the subject matter jurisdiction of the courts.⁴

¹ Art. V, s. 1, FLA. CONST.

² *Id.* (although the Constitution permits the Legislature to establish quasi-judicial, administrative courts and a civil traffic infraction hearing officer system).

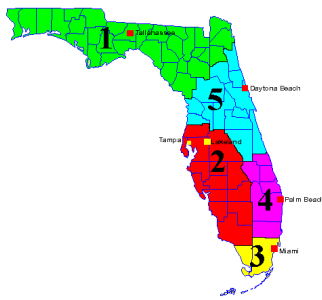
³ FLA. CONST. art. V, s. 2.

⁴ “Jurisdiction” is defined as “[a] government’s general power to exercise authority over all persons and things within its territory; esp., a state’s power to create interests that will be recognized under common-law principles as valid in other states <New Jersey’s jurisdiction>.” BLACK’S LAW DICTIONARY (10th ed. 2014). For courts, jurisdiction is defined as “[a] court’s power to decide a case or issue a decree <the constitutional grant of federal-question jurisdiction>.” *Id.* Additionally, jurisdiction is defined geographically: “A geographic area within which political or judicial authority may be exercised <the accused fled to another jurisdiction>.” *Id.*

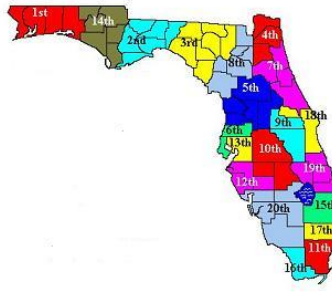
Territorial Jurisdiction

The Legislature is constitutionally required to establish the territorial or geographic jurisdiction of the appellate court districts and the judicial circuits “following county lines.”⁵ Currently, there are five district courts of appeal,⁶ 20 judicial circuits,⁶ and 67 county courts, one in each of Florida’s 67 counties⁷ as constitutionally required.⁸

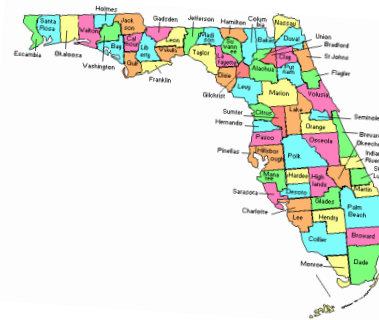
The following maps illustrate the territorial jurisdictions of these courts:⁹



Five District Courts of Appeal



Twenty Judicial Circuits



Sixty-Seven Counties

Subject Matter Jurisdiction

The Legislature’s authority over the subject matter jurisdiction of the Florida Supreme Court and district courts of appeal is fairly limited. With a few exceptions,¹⁰ the Constitution sets out the subject matter jurisdiction of the Supreme Court and the appellate courts.

On the other hand, under the Constitution, the Legislature is granted broad authority to define the jurisdiction¹¹ of the county courts: “The county courts shall exercise the jurisdiction *prescribed by general law*. Such jurisdiction shall be uniform throughout the state.”¹²

⁵ FLA. CONST. art. V, s. 1.

⁶ Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Feb. 7, 2018). The First District sits in Tallahassee; the Second District sits in Lakeland; the Third District sits in Miami; the Fourth District sits in West Palm Beach; and the Fifth District sits in Daytona Beach. *Id.*

⁷ Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Feb. 7, 2018).

⁸ FLA. CONST. art. V, s. 6(a) (“There shall be a county court in each county.”).

⁹ Rick Scott, 45th Governor of Florida, Judicial and Judicial Nominating Commission Information, *The Florida Court System*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Feb. 7, 2018).

¹⁰ See Art. V, s. 3(b)(2), FLA. CONST. (“When provided by *general law*, [the supreme court] shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.”) (emphasis added); FLA. CONST. art. V, s. 4(b)(2) (“District courts of appeal shall have the power of direct review of administrative action, *as prescribed by general law*.”) (emphasis added).

¹¹ See *Alexdex Corp. v. Nachon Enterprises, Inc.*, 641 So. 2d 858, 861 (Fla. 1994) (“The jurisdiction of the courts of the state is broadly defined by our State Constitution; however, the legislature may further define a court’s jurisdiction so long as the jurisdiction, as redefined, is not in conflict with the Constitution. . . . Absent a constitutional prohibition or restriction, the legislature is free to vest courts with exclusive, concurrent, original, appellate, or final jurisdiction.”) (citing *State v. Sullivan*, 95 Fla. 191, 116 So. 255 (1928)).

¹² FLA. CONST. art. V, s. 6(b) (emphasis added). Additionally, the Legislature establishes the number of judges to serve in each county. *Id.* at s. 6(a).

Because the jurisdiction of the circuit court is limited by the jurisdiction of the county courts under the Constitution, the Legislature's authority to define the jurisdiction of the circuit courts is also fairly broad:

The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals *when provided by general law*. They shall have the power to issue writs of mandamus, quo warranto, certiorari, prohibition and habeas corpus, and all writs necessary or proper to the complete exercise of their jurisdiction. Jurisdiction of the circuit court shall be uniform throughout the state. They shall have the power of direct review of administrative action *prescribed by general law*.¹³

County Court Jurisdiction

As provided by the Legislature in s. 34.01, F.S., the county court is a trial court that has jurisdiction over the following subject matters within its jurisdictional (monetary) amount of \$15,000:

- All criminal misdemeanor cases not cognizable by the circuit courts;
- All violations of municipal and county ordinances;
- All actions at law involving damages up to \$15,000, not including interest, costs, and attorney's fees, unless the cause of action is within the exclusive jurisdiction of the circuit courts;
- Concurrent jurisdiction with the circuit courts over disputes between homeowners' associations and parcel owners;
- Concurrent jurisdiction with circuit courts to hear uncontested dissolution of marriage petitions under the simplified dissolution procedures;
- Any subject matter jurisdiction previously exercised by the county courts prior to the adoption of the 1968 Constitution, including that of the small claims courts; and
- Any matter in equity (such as an eviction)¹⁴ that is within the jurisdictional amount of the county court, \$15,000.

The effective date of the last increase to the monetary limit on the jurisdiction of the county courts was July 1, 1992.¹⁵ If adjusted for inflation to December 2017, the \$15,000 jurisdictional limit would be \$26,319.29 as of December 2017.¹⁶

The county court is also the small claims court. Small claims courts are not separate, constitutionally recognized courts;¹⁷ rather, they are the county courts functioning under the

¹³ FLA. CONST. art. V, s. 5(b) (emphasis added).

¹⁴ Section 34.011, F.S. (providing that county and circuit courts generally have concurrent jurisdiction over landlord tenant cases, although county court will have exclusive jurisdiction over proceedings relating to the right of possession so long as matter is under \$15,000.).

¹⁵ Chapter 90-269, Laws of Fla.

¹⁶ The inflation adjusted figure was determined by the Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, which is available at https://www.bls.gov/data/inflation_calculator.htm.

¹⁷ *LaSalla v. Pools by George of Pinellas County, Inc.*, 125 So. 3d 1016, 1016 (Fla. 2d DCA 2013) (“[F]or purposes of the concept of subject matter jurisdiction, a county court that applies the Florida Small Claims Rules in a particular proceeding is not a separate court from a county court that applies the Florida Rules of Civil Procedure. This is true even if a county court has elected to create a ‘small claims division’ to handle cases under the Florida Small Claims Rules. To the extent that *Tax*

Florida Small Claims Rules of procedure adopted by Supreme Court.¹⁸ The goal of the Small Claims Rules is to “reach a ‘simple, speedy, and inexpensive’ resolution of [small claims] cases” in which the parties often represent themselves.¹⁹ The court rules apply to civil actions in county courts where money is demanded,²⁰ and set the jurisdictional limit of small claims demands at \$5,000²¹ where it has remained since January 1, 1997.²² If adjusted for inflation to December 2017, the jurisdictional limit of the Small Claims Rules would be \$7,747.15.²³

Circuit Court Jurisdiction

Because the circuit courts have exclusive jurisdiction over “all actions at law not cognizable by the county courts,” the circuit court’s current jurisdictional amount is \$15,000 or above for cases demanding money judgments.²⁴

Additionally, with two exceptions, the circuit court has appellate jurisdiction over county court cases. Under the two exceptions, the district court of appeal has appellate jurisdiction over a county court case when a county court either declares a statute or constitutional provision invalid or certifies a question of great public importance.²⁵ Additionally, if the law applied by the circuit court sitting in its appellate capacity is in question, a party may seek review by the appropriate district court of appeal by filing a petition of writ of certiorari.²⁶

Notably, foreclosure cases, which are cases in equity, are not one of the subject areas statutorily defined as being within the exclusive jurisdiction of the circuit court.²⁷ Rather, the Florida Supreme court in *Alexdex Corp. v. Nachon Enterprises, Inc.*, concluded in resolving a conflict between the statutes setting forth the county court’s and the circuit court’s equity jurisdiction in foreclosure cases, “the legislature intended to provide concurrent equity jurisdiction in circuit and county courts, except that equity cases filed in county courts must fall within the county court’s monetary jurisdiction, as set by statute.”²⁸

Certificate Redemption’s, Inc. v. Meitz, 705 So. 2d 64 (Fla. 4th DCA 1997), discusses the ‘jurisdiction’ of a small claims court as distinct from the jurisdiction of county court, we believe that discussion is incorrect.”)

¹⁸ *Id.* at 1017 (The Small Claims Rules “do not create a ‘small claims court.’ They simply create rules of procedure for use in county court when the amount in controversy is small.”). When the amount in controversy exceeds the jurisdictional limits of the Small Claims Rules, the more complex requirements of the Rules of Civil Procedure apply. *See Hilton v. Florio*, 317 So. 2d 83 (Fla. 3d DCA 1975).

¹⁹ *In re Amendments to Florida Small Claims Rule 7.090*, 64 So. 3d 1196 (Fla. 2011); Fla. Sm. Cl. R. 7.010(a).

²⁰ *In re Amendments to Florida Small Claims Rules*, 123 So. 3d 41, 43 (Fla. 2013) (amending Fla. Sm. Cl. R. 7.010).

²¹ Fla. Sm. Cl. R. 7.010(b).

²² *In re Amendments to the Florida Small Claims Rules*, 682 So. 2d 1075, 1076 (Fla. 1996) (raising amount from \$2,500 to \$5,000).

²³ The inflation adjusted figure was determined by the Bureau of Labor Statistics, United States Department of Labor, CPI Inflation Calculator, which is available at https://www.bls.gov/data/inflation_calculator.htm.

²⁴ Section 26.012(2)(a), F.S.

²⁵ Section 26.012(1), F.S.

²⁶ FLA. CONST. art. V, s. 4(b)(3) (authorizing district courts of appeal to issue writs of certiorari among others). Philip J. Padovano, *Appellate Practice*, 2 Fla. Prac., § 30:5 (2017 ed.) (“A party may file a petition for writ of certiorari to review . . . an appellate decision of a lower court[.]”). On petition for writ of certiorari, the district court reviews for whether the circuit court departed from the essential requirements of the law; or, put another way, whether the circuit court “(1) afforded the parties due process of law[,] and (2) applied the correct law.” *Id.*

²⁷ Section 26.012(2), F.S.

²⁸ 641 So. 2d 858, 862 (Fla. 1994).

Filing Fees

Filing fees are constitutionally required to fund the clerks of the circuit and county courts,²⁹ and vary depending on the court. In **county court**, the filing fee for civil actions at law demanding money judgments vary based on the amount:

- 1. For all claims less than \$100..... \$50.
- 2. For all claims of \$100 or more but not more than \$500..... \$75.
- 3. For all claims of more than \$500 but not more than \$2,500..... \$170.
- 4. For all claims of more than \$2,500..... \$295.³⁰

The clerk of court also collects an additional \$4 filing fee.³¹

When the clerk of court collects the \$295 filing fee, the fee is allocated as follows:

- The first \$15 of the filing fee is deposited in the State Courts Revenue Trust Fund.
- \$3.50 is transferred to the Department of Revenue (DOR) for deposit in the Court Education Trust Fund.
- Another \$0.50 is transferred to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation.³²

Additionally, any portion of fees for court functions collected in excess of one-twelfth of the clerk’s total budget from the prior month is transferred to the DOR for deposit into the Clerks of the Court Trust Fund.³³

In **circuit court**, the filing fee for civil actions at law demanding money judgments vary based on the type of action filed³⁴ and the number of defendants, but is generally \$395 for the first five defendants.³⁵ Additionally, there are graduated filing fees for real property and mortgage foreclosure cases which can reach as high as \$1,900 for claims valued at \$250,000 and higher.³⁶

The filing fee collected by the clerk of court is allocated as follows:

- Of the first \$200 in filing fees, \$195 must be remitted to the DOR for deposit into the State Courts Revenue Trust Fund.
- \$4 must be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services and used to fund the contract with the Florida Clerks of Court Operations Corporation.

²⁹ FLA. CONST. art. V, s. 14(b) (requiring that all funding for clerks of circuit and county courts come from adequate filing fees).

³⁰ Section 34.041(1)(a), F.S.

³¹ Section 34.041(1)(b), F.S.

³² *Id.*

³³ *Id.*

³⁴ Section 28.421(a)1.a., F.S. The filing fee is only \$295 for civil suits filed under chapters 39 (dependency), 61 (family law), 741 (domestic violence), 742 (determination of parentage), 747 (conservatorship), 752 (grandparental visitation rights), or 753 (supervised visitation). Section 28.421(a)1.b., F.S. Additionally, there are graduated filing fees for real property and mortgage foreclosure cases which can reach as high as \$1,900 for claims valued at \$250,000 and higher. Section 28.421(a)2, F.S..

³⁵ *Id.* It is \$2.50 per defendant in excess of five. *Id.*

³⁶ Section 28.421(a)2., F.S.

- \$1 must be remitted to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund audits of individual clerks' court-related expenditures conducted by the Department of Financial Services.³⁷

Additionally, like the county court, the circuit court must transfer any portion of fees for court functions collected in excess of one-twelfth of the clerk's total budget from the prior month to the DOR for deposit into the Clerks of the Court Trust Fund.³⁸

The clerk of court also collects an additional \$4 fee. Of that \$4 fee, \$3.50 is transferred to the DOR for deposit into the Court Education Trust Fund, and the other \$0.50 is also transferred to the DOR for deposit into the Administrative Trust Fund within the Department of Financial Services to fund clerk education provided by the Florida Clerks of Court Operations Corporation.³⁹

For **appeals** from the **county to the circuit court**, the clerk of the circuit court may collect up to \$280.⁴⁰

For appeals to the **district court of appeal**, the circuit court charges a \$100 fee for filing a notice of appeal,⁴¹ and the clerk of the district court of appeal collects a filing fee of \$300 for civil cases.⁴² Of the district court filing fee, \$50 is deposited into the State Courts Revenue Trust Fund and the remainder is deposited into the State Treasury to be credited to the General Revenue Fund.⁴³

Legislative Powers Concerning Certification of Need for Additional Judges

Article V, section 9 of the Florida Constitution requires the Florida Supreme Court to submit recommendations to the Legislature when there is a need to increase or decrease the number of judges.⁴⁴ The constitutional provision further directs the Court to base its recommendations on uniform criteria adopted by court rule.⁴⁵

³⁷ *Id.*

³⁸ *Id.*

³⁹ Section 28.421(a)1.c., F.S.

⁴⁰ Section 28.421(2), F.S.

⁴¹ *Id.*

⁴² Section 35.22(2)(a), F.S.

⁴³ Section 35.22(5), F.S. The clerk of the district court of appeal also collects \$295 for cross-appeals or additional parties, and this fee is remitted entirely to the DOR for deposit into the General Revenue fund. Section 35.255(2)(b), F.S.

⁴⁴ FLA. CONST. art. V, s. 9.

⁴⁵ *Id.* The Court's rule setting forth criteria for assessing judicial need at the trial court level is based primarily upon the application of case weights to circuit and county court caseload statistics. *See* Fla. R. Jud. Adm. 2.240(b)(1)(A). These weights are a quantified measure of judicial time spent on case-related activity. The judicial workload is then based on judicial caseloads adjusted in the relative complexity of various case types. In addition to the statistical information, the Court, in weighing the need for trial court judges, will also consider the factors below which primarily relate to the resources available to a judicial circuit:

- (i) The availability and use of county court judges in circuit court.
- (ii) The availability and use of senior judges to serve on a particular court.
- (iii) The availability and use of magistrates and hearing officers.
- (iv) The extent of use of alternative dispute resolution.
- (v) The number of jury trials.

The Legislature may, after considering the Court’s recommendations and findings, either implement or reject those findings. If the Legislature rejects the Court’s findings and recommendations by legislation creating additional judgeships in jurisdictions not requested by the Court, the legislation must be approved by two-thirds of the membership of both houses.⁴⁶

Certification of Need for Additional Judges for FY 2018-2019

Following its criteria for determining the need for judges, the Florida Supreme Court recently issued an order certifying the need for additional judges for the 2018-2018 fiscal year.⁴⁷ In the order, the Court requested two additional judgeships for the Ninth Judicial Circuit, which encompasses Orange and Osceola Counties, and two additional county court judgeships in Hillsborough County.⁴⁸

The Court also *decertified* the need for 13 county court judgeships as follows: one from Escambia County, two from Pasco County, one from Putnam County, one from Alachua County, one from Polk County, one from Monroe County, three from Brevard County, one from Charlotte County, and one from Collier County.⁴⁹

Supreme Court Headquarters

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government “where the *offices* of the governor, lieutenant governor, cabinet members and *the*

(vi) Foreign language interpretations.

(vii) The geographic size of a circuit, including travel times between courthouses in a particular jurisdiction.

(viii) Law enforcement activities in the court’s jurisdiction, including any substantial commitment of additional resources for state attorneys, public defenders, and local law enforcement.

(ix) The availability and use of case-related support staff and case management policies and practices.

(x) Caseload trends.

See Fla. R. Jud. Admin. 2.240(b)(1)(B). In addition to the weighted caseload statistics, the Court will also consider the time to perform other judicial activities, such as reviewing appellate decisions, reviewing petitions and motions for post-conviction relief, hearing and disposing motions, and participating in meetings with those involved in the justice system. *See* Fla. R. Jud. Admin. 2.240(c). Finally, the Court will consider any request for an increase or decrease in the number of judges that the chief judge of the circuit “feels are required.” *See* Fla. R. Jud. Admin. 2.240(d).

⁴⁶ *In re Advisory Opinion to the Governor Request of June 29, 1979*, 374 So. 2d 959 (Fla. 1979); Article V, section 9 of the Florida Constitution provides in pertinent part:

Determination of number of judges.— . . . Upon receipt of such certificate, the legislature, at the next regular session, shall consider the findings and recommendations and may reject the recommendations or by law implement the recommendations in whole or in part; provided the legislature may create more judicial offices than are recommended by the supreme court or may decrease the number of judicial offices by a greater number than recommended by the court only upon a finding of two-thirds of the membership of both houses of the legislature, that such a need exists. A decrease in the number of judges shall be effective only after the expiration of a term. If the supreme court fails to make findings as provided above when need exists, the legislature may by concurrent resolution request the court to certify its findings and recommendations and upon the failure of the court to certify its findings for nine consecutive months, the legislature may, upon a finding of two-thirds of the membership of both houses of the legislature that a need exists, increase or decrease the number of judges or increase, decrease or redefine appellate districts and judicial circuits.

⁴⁷ *In Re: Certification of Need for Additional Judges*, 2017 WL 5623576 (Fla. 2017).

⁴⁸ *Id.* at *3.

⁴⁹ *Id.* at *4.

supreme court shall be maintained and the sessions of the legislature shall be held[.]”⁵⁰ Article V, section 3 of the Florida Constitution provides that the Supreme Court will consist of seven justices, and that each of the five appellate districts “shall have at least one justice elected or appointed from the district at the time of the original appointment or election.” The chambers of all seven justices are on the fourth floor of the Florida Supreme Court building,⁵¹ and all official Supreme Court business is conducted in Tallahassee.⁵²

Headquarters for Purposes of Travel Reimbursement

Section 112.061, F.S., concerns the reimbursement of travel expenses to public employees and officers. To that end, s. 112.061(4), F.S. provides that while “[t]he official headquarters of an officer or employee assigned to an office shall be the city or town in which the office is located,” there are some exceptions:

- (a) The official headquarters of a person located in the field shall be the city or town nearest to the area where the majority of the person’s work is performed, or such other city, town, or area as may be designated by the agency head provided that in all cases such designation must be in the best interests of the agency and not for the convenience of the person.
- (b) When any state employee is stationed in any city or town for a period of over 30 continuous workdays, such city or town shall be deemed to be the employee’s official headquarters, and he or she shall not be allowed per diem or subsistence, as provided in this section, after the said period of 30 continuous workdays has elapsed, unless this period of time is extended by the express approval of the agency head or his or her designee.
- (c) A traveler may leave his or her assigned post to return home overnight, over a weekend, or during a holiday, but any time lost from regular duties shall be taken as annual leave and authorized in the usual manner. The traveler shall not be reimbursed for travel expenses in excess of the established rate for per diem allowable had he or she remained at his or her assigned post. However, when a traveler has been temporarily assigned away from his or her official headquarters for an approved period extending beyond 30 days, he or she shall be entitled to reimbursement for travel expenses at the established rate of

⁵⁰ FLA. CONST. art. II, s. 2 (emphasis added).

⁵¹ Florida Supreme Court, Manual of Internal Operating Procedures, *Section 1. Court Structure*, p. 1 (Rev. Sept. 21, 2016), http://www.floridasupremecourt.org/pub_info/documents/IOPs.pdf (last visited Feb. 14, 2018).

⁵² “[T]he Florida Supreme Court, comprised of its Justices, has only one “office” — the Supreme Court Building, located in the Northern District.” *Castro v. Labarga*, 16-22297-CIV, 2016 WL 6565946, at *5 (S.D. Fla. Nov. 3, 2016) (citing FLA. CONST. art. II, s. 2). “In my view, the mere fact that a Florida Supreme Court justice may periodically travel outside of the Northern District of Florida to attend bar functions or educational seminars and obtains travel reimbursements does not translate the trip into an ‘official duty’ trip sufficient to generate venue in the other districts.” *Id.* “If the Florida Supreme Court maintained major offices, courtrooms or staff in other districts, then the result about venue and venue discovery might be different. But those significant facts, which Castro relies on when citing other cases, are absent here.” *Id.* (holding the proper venue of a disgruntled bar candidate suing the Florida Supreme Court is the northern district of Florida). *See also Uberoi v. Labarga*, 8:16-CV-1821-T-33JSS, 2016 WL 5914922, at *2 (M.D. Fla. Oct. 11, 2016) (transferring another disgruntled bar candidate’s case to the Northern District based a motion to dismiss filed by Justice Labarga noting that official acts by the Florida Supreme Court concerning the candidate’s admission to the bar are done in Tallahassee; citing FLA. CONST. art. II, s. 2, noting that Tallahassee “is where the offices of the Florida Supreme Court shall be maintained.”).

one round trip for each 30-day period actually taken to his or her home in addition to pay and allowances otherwise provided.⁵³

Additionally, s. 112.061(1)(b)1., F.S., provides that

To preserve the standardization established by this law . . . The provisions of this section shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption.

Section 112.061, F.S. applies to the court system. In particular, a district court of appeal—the headquarters of which is defined by the Legislature, not the Constitution⁵⁴—is authorized by the current version of s. 35.05(2), F.S. to “designate other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061.”⁵⁵ However, a prior version of s. 35.05, F.S. contained no such authorization and designated one city as the headquarters for each district court of appeal.⁵⁶

On the other hand, prior versions of s. 112.061(4), in particular the 1973 version, is substantially similar if not identical to the current version of the statute.⁵⁷ The reason this matters is that the 1973 version of s. 112.061(4) was interpreted by the Attorney General’s office to mean that a district court of appeal judge could *not* designate the city of his or her residence as his or her official headquarters for purposes of travel expenses.⁵⁸ As explained by the AG opinion:

Section 112.061, F.S., has been uniformly interpreted by this office as authorizing reimbursement for travel expense only from the official headquarters of the public officer or employee; and, as defined in subsection 112.061(4), the official headquarters “of an officer or employee assigned to an office shall be the city or town in which the office is located . . .” (The provisions of paragraphs (4)(a), (b), and (c), relating to public officers or employees “located in the field” or “stationed” in another city or town, are not applicable her for obvious reasons.) The official headquarters of each district court of appeal is designated by statute, s. 35.05, F.S., and that is where the majority of the work of the court is performed.⁵⁹

Notably, the AG Opinion relied on the fact that s. 35.05, F.S., designated the official headquarters of each district court of appeal in specific cities. However, as already noted, s. 35.05, F.S., has since been amended and now permits a district court of appeal to “designate

⁵³ Section 112.061(4)(a)-(c), F.S.

⁵⁴ Section 35.05(1), F.S. (designating the city in which the headquarters for each appellate district must be located).

⁵⁵ Section 35.05(2), F.S.

⁵⁶ See s. 35.05, F.S., <http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TVC35.pdf> (last visited Feb. 15, 2018).

⁵⁷ See s. 112.061, F.S., <http://fall.law.fsu.edu/FlStatutes/docs/1973/1973TXC112.pdf> (last visited Feb. 15, 2018).

⁵⁸ Op. Att’y Gen. Fla. 74-132 (1974).

⁵⁹ *Id.*

other locations within its district as branch headquarters for the conduct of the business of the court and as the official headquarters of its officers or employees pursuant to s. 112.061.”⁶⁰

Currently, it appears that only the Second District Court of Appeal has designated a second branch office, in Tampa on the Stetson University campus.⁶¹ However, the Second District’s clerk’s office is at the official headquarters in Lakeland.⁶²

As of 2015, justices of the Florida Supreme Court and the judges for the district courts of appeal residing outside the city where their respective courts are headquartered were not receiving travel and subsistence reimbursement.⁶³

III. Effect of Proposed Changes:

Jurisdictional Amount of the County Courts: Section 3 of the bill raises the jurisdictional amount of the county court from \$15,000 to \$50,000. The bill also requires that the jurisdictional amount be adjusted for inflation or deflation every 5 years after January 1, 2020, rounded to the nearest \$5,000, using the reports and data provided by the United States Department of Labor, Bureau of Labor Statistics or its predecessor.

Because the circuit courts have exclusive jurisdiction over “all actions at law not cognizable by the county courts,” the bill also effectively raises the jurisdictional amount of the circuit courts to cases demanding money judgments over \$50,000. However, the bill provides that the filing fees for civil lawsuits demanding more than \$15,000 will not change even though suit is filed in the county court. Rather, filing fee amounts and allocation for suits demanding \$15,000 or more will continue to be governed by ss. 28.241 and 35.22, F.S.

Additional Judges: Sections 2 and 4 of the bill provide for additional judges. Section 2 of the bill also adds two judges to the ninth circuit, as certified and requested by the Florida Supreme Court.

Section 4 of the bill adds two county judges to Hillsborough County, as certified and requested by the Florida Supreme Court. However, in light of the increase in the jurisdictional amount of the county courts, the bill rejects the Florida Supreme Court’s decertification of 13 county court judges and adds three more county court judges: one in Citrus, Columbia, and Flagler counties. The addition of the three county court judges not requested by the Court requires approval by a two-thirds vote of the membership of each house.

Headquarters of Supreme Court Justices: Section 1 of the bill creates s. 25.025, F.S., providing that a Supreme Court justice who permanently resides outside of Tallahassee may:

- Request that a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice’s district be designated as his or her official headquarters and serve as the justice’s private chambers; and

⁶⁰ Section 35.05(2), F.S.

⁶¹ Florida Second District Court of Appeal, <http://www.2dca.org/Directions/tampa.shtml> (last visited Feb. 15, 2018).

⁶² *Id.*

⁶³ SB 2506 (2015 Reg. Session) (proposing creation of s. 25.025, F.S.; died on calendar).

- Be reimbursed for travel and subsistence while in Tallahassee to the extent funding is available, as determined by the Chief Justice.

The bill also provides that the Chief Justice is required to coordinate with the justice seeking a private chamber in his or her district and any state and local officials as necessary. The Supreme Court and a county courthouse may enter into an agreement to establish private chambers at the county courthouse for a justice, but the courthouse is under no obligation to provide space for the justice. Additionally, the Supreme Court may *not* use state funds to lease space in a county courthouse for use as a private chamber.

Effective Date: Section 5 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Addition of Judges Not Certified by the Florida Supreme Court- In order to create the three additional county court judgeships in Citrus, Columbia, and Flagler Counties, article V, section 9 of the Florida Constitution requires that these additions be approved by a two-thirds vote of each house.

Headquarters of the Florida Supreme Court Justices- It is unclear whether the Legislature has the authority to authorize the Chief Justice of the Florida Supreme Court to establish “headquarters” under s. 112.061, F.S., for any justice outside of Tallahassee, even if it is within the justice’s district.

Article II, section 2 of the Florida Constitution designates Tallahassee as the seat of state government “where the *offices* of the governor, lieutenant governor, cabinet members and *the supreme court shall be maintained* and the sessions of the legislature shall be held[.]”⁶⁴ Under the rule of construction, “*expressio unius est exclusio alterius*” (the expression of one thing is the exclusion of the other), it appears by excluding the word “offices” for the legislature and only requiring that session be held in Tallahassee, the drafters of article II, section 2 understood that legislators must have offices within their districts around the state. However, the word “offices” is specifically used in reference to

⁶⁴ FLA. CONST. art. II, s. 2 (emphasis added).

the governor, lieutenant governor, cabinet members, and the Florida Supreme Court in article II, section 2, and specifically requires that those offices be located at the seat of government in Tallahassee.

While permitting a justice to work remotely or establish a private chamber in another courthouse in the state does not appear to be problematic, it appears that another “headquarters” outside of Tallahassee may not be constitutionally permissible.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If the bill results in an increase in the jurisdictional limit of the Small Claims Rules, more cases will be expeditiously resolved in the county courts under the expedited procedures of those rules.

C. Government Sector Impact:

Raising the jurisdictional amount of the county courts is expected to have a positive fiscal impact.⁶⁵

In 2015, the Office of the State Court Administrator reported that SB 2506,⁶⁶ which, if passed, would have permitted travel and subsistence reimbursement to Florida Supreme Court justices residing outside Tallahassee, would have a total fiscal impact of \$209,930. This amount was reached assuming 40 round trips yearly per justice between Tallahassee and the DCA headquarters in the justice’s home appellate district. Subsistence costs assume 77 meeting days at \$131 per day and 80 travel days at \$98.25 per day, or \$17,947 per justice.⁶⁷

If the Florida Supreme Court justices are permitted travel and subsistence reimbursement, the DCA judges will likely seek reimbursement in the coming years as well. According to SB 2506, which also would have permitted reimbursement to DCA judges if passed, the Office of the State Court Administrator estimated a total impact of \$143,881.

VI. Technical Deficiencies:

None.

⁶⁵ See the companion bill analysis, HB 7061, which reports that raising the jurisdictional amount to \$50,000 without adjusting filing fees should result in an increase of \$2.3 million in revenue for FY 2018-2019.

⁶⁶ See *supra* n. 63.

⁶⁷ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 26.031, 34.01, and 34.022.

The bill creates section 25.035, 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 February 13, 2018:**

The Committee Substitute:

- Raises the county court jurisdiction under s. 34.01, F.S., to \$50,000 rather than \$100,000 and provides that it be adjusted for inflation every 5 years rather than every 10 years.
- Provides that the change in the county court jurisdictional amount applies to cases filed on January 1, 2020, or thereafter.
- Provides that for civil lawsuits filed in county court demanding over \$15,000, the circuit and appellate court filing fees will still apply, and the fees will continue to be allocated as already provided under ss. 28.241 and 35.22, F.S.
- Creates s. 25.025, F.S., providing that a supreme court justice who permanently resides outside of Tallahassee may:
 - Request that a district court of appeal courthouse, a county courthouse, or other appropriate facility in the justice's district be designated as his or her official headquarters and serve as the justice's private chambers;
 - Be reimbursed for travel and subsistence while in Tallahassee to the extent funding is available, as determined by the Chief Justice.
 - Amends s. 26.031, F.S., to add two judges to the ninth judicial circuit.
 - Amends s. 34.022, F.S., to add two county court judges in Hillsborough County, as certified by the Florida Supreme Court and add three county court judges: one in Citrus, Columbia, and Flagler counties.

B. Amendments:

None.



122416

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/15/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 25.025, Florida Statutes, is created to
read:

25.025 Headquarters.—

(1) (a) A Supreme Court justice who permanently resides
outside Leon County shall, if he or she so requests, have a
district court of appeal courthouse, a county courthouse, or
other appropriate facility in his or her district of residence



122416

12 designated as his or her official headquarters pursuant to s.
13 112.061. This official headquarters may serve only as the
14 justice's private chambers.

15 (b) A justice for whom an official headquarters is
16 designated in his or her district of residence under this
17 subsection is eligible for subsistence at a rate to be
18 established by the Chief Justice for each day or partial day
19 that the justice is at the headquarters of the Supreme Court for
20 the conduct of the business of the court. In addition to the
21 subsistence allowance, a justice is eligible for reimbursement
22 for transportation expenses as provided in s. 112.061(7) for
23 travel between the justice's official headquarters and the
24 headquarters of the Supreme Court for the conduct of the
25 business of the court.

26 (c) Payment of subsistence and reimbursement for
27 transportation expenses relating to travel between a justice's
28 official headquarters and the headquarters of the Supreme Court
29 shall be made to the extent appropriated funds are available, as
30 determined by the Chief Justice.

31 (2) The Chief Justice shall coordinate with each affected
32 justice and other state and local officials as necessary to
33 implement paragraph (1)(a).

34 (3)(a) This section does not require a county to provide
35 space in a county courthouse for a justice. A county may enter
36 into an agreement with the Supreme Court governing the use of
37 space in a county courthouse.

38 (b) The Supreme Court may not use state funds to lease
39 space in a district court of appeal courthouse, county
40 courthouse, or other facility to allow a justice to establish an



122416

41 official headquarters pursuant to subsection (1).

42 Section 2. Subsection (9) of section 26.031, Florida
43 Statutes, is amended to read:

44 26.031 Judicial circuits; number of judges.—The number of
45 circuit judges in each circuit shall be as follows:

46		
47	JUDICIAL CIRCUIT	TOTAL
48	(9) Ninth.....	<u>45</u> 43

49 Section 3. Section 34.01, Florida Statutes, is amended to
50 read:

51 34.01 Jurisdiction of county court.—

52 (1) County courts shall have original jurisdiction:

53 (a) In all misdemeanor cases not cognizable by the circuit
54 courts. ~~†~~

55 (b) Of all violations of municipal and county ordinances. ~~†~~

56 (c) 1. Of all actions at law filed on or before December 31,
57 2019, in which the matter in controversy does not exceed the sum
58 of \$15,000, exclusive of interest, costs, and attorney
59 attorney's fees, except those within the exclusive jurisdiction
60 of the circuit courts. ~~† and~~

61 2. Of all actions at law filed on or after January 1, 2020,
62 in which the matter in controversy does not exceed the sum of
63 \$50,000, exclusive of interest, costs, and attorney fees, except
64 those within the exclusive jurisdiction of the circuit courts.

65 This limit must be adjusted every 5 years after January 1, 2020,
66 to reflect the rate of inflation or deflation as indicated in
67 the Consumer Price Index for All Urban Consumers, U.S. City
68 Average, All Items, or successor reports as reported by the
69 United States Department of Labor, Bureau of Labor Statistics,



122416

70 or its successor. Such adjustments must be rounded to the
71 nearest \$5,000.

72 (d) Of disputes occurring in the homeowners' associations
73 as described in s. 720.311(2)(a), which shall be concurrent with
74 jurisdiction of the circuit courts.

75
76 The party instituting an action at law under subparagraph (c)2.
77 in which the amount in controversy exceeds \$15,000 shall pay the
78 filing fees and service charges in the same amounts and in the
79 same manner as provided in s. 28.241, and the party appealing
80 any judgment on such action shall pay the filing fees and
81 service charges in the same amounts and in the same manner as
82 provided in s. 35.22. The clerk of court shall remit the fees as
83 provided in those sections.

84 (2) The county courts shall have jurisdiction previously
85 exercised by county judges' courts other than that vested in the
86 circuit court by s. 26.012, except that county court judges may
87 hear matters involving dissolution of marriage under the
88 simplified dissolution procedure pursuant to the Florida Family
89 Law Rules of Procedure or may issue a final order for
90 dissolution in cases where the matter is uncontested, and the
91 jurisdiction previously exercised by county courts, the claims
92 court, small claims courts, small claims magistrates courts,
93 magistrates courts, justice of the peace courts, municipal
94 courts, and courts of chartered counties, including but not
95 limited to the counties referred to in ss. 9, 10, 11, and 24,
96 Art. VIII of the State Constitution of 1885, as preserved by s.
97 (6)(e), Art. VIII of the State Constitution of 1968.

98 (3) Judges of county courts shall also be committing trial



122416

99 court judges. Judges of county courts shall be coroners unless
100 otherwise provided by law or by rule of the Supreme Court.

101 (4) Judges of county courts may hear all matters in equity
102 involved in any case within the jurisdictional amount of the
103 county court, except as otherwise restricted by the State
104 Constitution or the laws of Florida.

105 (5) A county court is a trial court.

106 Section 4. Subsections (9), (12), (17), and (28) of section
107 34.022, Florida Statutes, are amended to read:

108 34.022 Number of county court judges for each county.—The
109 number of county court judges in each county shall be as
110 follows:

112 COUNTY	TOTAL
113 (9) Citrus.....	<u>2</u> ±
114 (12) Columbia.....	<u>2</u> ±
115 (17) Flagler.....	<u>2</u> ±
116 (28) Hillsborough.....	<u>19</u> ±7

117 Section 5. This act shall take effect July 1, 2018.

118
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete everything before the enacting clause
122 and insert:

123 A bill to be entitled
124 An act relating to courts; creating s. 25.025, F.S.;
125 authorizing certain Supreme Court Justices to have an
126 appropriate facility in their district of residence
127 designated as their official headquarters; providing



122416

128 that an official headquarters may serve only as a
129 justice's private chambers; providing that such
130 justices are eligible for a certain subsistence
131 allowance and reimbursement for certain transportation
132 expenses; requiring that such allowance and
133 reimbursement be made to the extent appropriated funds
134 are available, as determined by the Chief Justice;
135 requiring the Chief Justice to coordinate with certain
136 persons in implementing designations of official
137 headquarters; providing that a county is not required
138 to provide space for a justice in a county courthouse;
139 authorizing counties to enter into agreements with the
140 Supreme Court for the use of county courthouse space;
141 prohibiting the Supreme Court from using state funds
142 to lease space in a facility to allow a justice to
143 establish an official headquarters; amending s.
144 26.031, F.S.; adding judges to the Ninth Judicial
145 Circuit Court; amending s. 34.01, F.S.; increasing the
146 limit of the amount in controversy in certain actions
147 at law under which the county court has original
148 jurisdiction of such actions; providing for
149 adjustments to the limit at specified intervals due to
150 inflation or deflation; specifying filing fees,
151 services charges, and a requirement for the clerk of
152 court's remittal of such fees in actions in which the
153 amount in controversy exceeds a specified amount;
154 amending s. 34.022, F.S.; adding judges to certain
155 county courts; providing an effective date.

By Senator Brandes

24-01357B-18

20181384__

A bill to be entitled

An act relating to the jurisdiction of the county court; amending s. 34.01, F.S.; increasing the limit of the amount in controversy in certain actions at law under which the county court has original jurisdiction of such actions; providing for adjustments to the limit at specified intervals due to inflation or deflation; providing an effective date.

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

Section 1. Section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts.↗

(b) Of all violations of municipal and county ordinances.↗

(c) Of all actions at law in which the matter in controversy does not exceed the sum of \$100,000 ~~\$15,000~~, exclusive of interest, costs, and ~~attorney~~ attorney's fees, except those within the exclusive jurisdiction of the circuit courts. ~~↗ and This limit must be adjusted every 10 years after July 1, 2018, to reflect the rate of inflation or deflation as indicated in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, or successor reports as reported by the United States Department of Labor, Bureau of Labor Statistics or its successor.~~

(d) Of disputes occurring in the homeowners' associations

Page 1 of 2

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

24-01357B-18

20181384__

as described in s. 720.311(2) (a), which shall be concurrent with jurisdiction of the circuit courts.

(2) The county courts shall have jurisdiction previously exercised by county judges' courts other than that vested in the circuit court by s. 26.012, except that county court judges may hear matters involving dissolution of marriage under the simplified dissolution procedure pursuant to the Florida Family Law Rules of Procedure or may issue a final order for dissolution in cases where the matter is uncontested, and the jurisdiction previously exercised by county courts, the claims court, small claims courts, small claims magistrates courts, magistrates courts, justice of the peace courts, municipal courts, and courts of chartered counties, including but not limited to the counties referred to in ss. 9, 10, 11, and 24, Art. VIII of the State Constitution of 1885, as preserved by s. (6) (e), Art. VIII of the State Constitution of 1968.

(3) Judges of county courts shall also be committing trial court judges. Judges of county courts shall be coroners unless otherwise provided by law or by rule of the Supreme Court.

(4) Judges of county courts may hear all matters in equity involved in any case within the jurisdictional amount of the county court, except as otherwise restricted by the State Constitution or the laws of Florida.

(5) A county court is a trial court.

Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Greg Steube
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 16, 2018

I respectfully request that **Senate Bill #1384**, relating to **Jurisdiction of the County Court**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18

SB

1384

Meeting Date

Bill Number (if applicable)

122416

Amendment Barcode (if applicable)

Topic Jurisdiction of County Court

Name Chief Judge Mark Mahon

Job Title Fourth Judicial Circuit, Vice Chair, Trial Court Budget Commission

Address 501 West Adams Street

Phone 904-255-1000

Jacksonville FL 32202

Email -

Speaking: For Against Information

Waive Speaking: In Support Against

Representing State Courts System

of Amendment 122416

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)

02.13.18

Meeting Date

1384

Bill Number (if applicable)

Topic Jurisdiction of the County Court

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

FL

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 706

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Steube

SUBJECT: Crime Stoppers Organizations

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 706 includes several measures to protect the anonymity and safety of persons who provide tips to crime stoppers organizations. These groups encourage persons who have information regarding a crime to share this information by offering them anonymity and the possibility of financial awards.

The bill states that a communication to a crime stoppers organization for the purpose of reporting alleged criminal activity is privileged. Once the information is received by a crime stoppers organization, the tipster's identity and the privileged communication, as well as evidence, opinions, or decisions relating to the communication are protected information that generally may not be disclosed through discovery procedures or otherwise.

However, a person charged with a crime may petition the court to compel the disclosure of protected information. And the protected information or privileged communication must be disclosed if the lack of disclosure would infringe on the criminal defendant's constitutional right.

Finally, the bill provides that a person, other than the tipster, who discloses any "information related to privileged communication or protected information" to anyone other than law enforcement personnel commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000.

To the extent that the felony created in the bill results in persons being convicted of a felony, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase of prison beds).

II. Present Situation:

Crime Stoppers – Overview

This state's crime stoppers organizations encourage the reporting of information regarding a crime by offering tipsters anonymity and the prospect of financial reward for tips that lead to an arrest.¹ There are various local crime stoppers organizations throughout the state, and they receive funding from the Crime Stoppers Trust Fund,² which is administered by the Department of Legal Affairs.³

Crime stoppers began in Albuquerque, New Mexico in 1976. A homicide detective with the Albuquerque Police asked a local television station to broadcast a re-enactment of an unsolved murder on its newscast. A reward was offered and a caller contacted the police the next day with a tip that led the police to the two men who were responsible. The success of this concept launched a program which is now internationally known as "Crime Stoppers." There are now more than 1,200 crime stoppers programs worldwide.⁴

Today there are 27 programs in Florida operating under the name Florida Association of Crime Stoppers, Inc.⁵

A crime stoppers organization may receive tips in various ways, including phone calls, online submissions, text messages, or through the Crime Stoppers' mobile application.⁶ The crime stoppers staff member receiving the information completes a tip information form, makes initial inquiries, and then passes the information to the investigating law enforcement agency.⁷

Privileged Communications Provided for in the Evidence Code

The Florida Evidence Code (Code) specifies what types of evidence and testimony are admissible in court.⁸ The Code makes certain communications privileged, meaning their disclosure generally cannot be compelled, even in legal proceedings. Examples of privileged

¹ Florida Association of Crime Stoppers, *Home page*, available at <http://www.facsflorida.org/> (last visited February 12, 2018).

² *See* s. 16.555, F.S.

³ *See* s. 16.555 and 16.556, F.S.

⁴ Florida Association of Crime Stoppers, *Where It All Started*, available at <http://www.facsflorida.org/where-it-all-started/> (last visited February 12, 2018).

⁵ Florida Association of Crime Stoppers, *Who We Are*, available at <http://www.facsflorida.org/who-we-are/> (last visited February 12, 2018).

⁶ Florida Association of Crime Stoppers, *How's It Done*, available at <http://www.facsflorida.org/what-we-do/how-they-do-it/> (last visited February 12, 2018).

⁷ *See id.*

⁸ Chapter 90, F.S.

communications include communications between a lawyer and client,⁹ a husband and wife,¹⁰ and a psychotherapist and his or her patient.¹¹

Crime Stoppers Privileged Communication in Other States

Several other states have statutes to provide that communications with a crime stoppers organization are privileged, as is the identity of the tipster and any information or tangible things collected from tipsters by crime stoppers organizations. Examples of these states include:

- Arkansas;¹²
- Colorado;¹³
- Kentucky;¹⁴
- Louisiana;¹⁵
- New Mexico;¹⁶
- Oklahoma;¹⁷ and
- Texas.¹⁸

Further, at least five states criminalize the disclosure of this protected crime stopper information. These crimes are generally classified as misdemeanors.¹⁹

III. Effect of Proposed Changes:

Under the bill, a person's communication to a crime stoppers organization for the purpose of reporting alleged criminal activity is a privileged. Once the information is received by a crime stoppers organization, the tipster's identity and the privileged communication, as well as the evidence, opinions, or decisions relating to the communication are protected information that generally may not be disclosed through discovery procedures or otherwise.

Specifically, a tipster or law enforcement crime stoppers coordinator, as well as a director, officer, or employee of a crime stoppers organization generally may not be compelled to give testimony or produce documents under subpoena regarding a privileged communication, protected information or specified materials²⁰ relating to these items:

- In connection with a criminal case or proceeding, or administrative hearing; or

⁹ Section 90.502, F.S.

¹⁰ Section 90.504, F.S.

¹¹ Section 90.503, F.S.

¹² ARK. CODE § 16-90-1005.

¹³ COLO. REV. STAT. § 16-15.7-104.

¹⁴ KY. REV. STAT. § 431.580.

¹⁵ LA. REV. STAT. § 15:477.1.

¹⁶ N.M. STAT. § 29-12A-4, 5.

¹⁷ OKLA. STAT. 12 § 2510.1.

¹⁸ TEX. GOV. CODE § 414.009.

¹⁹ The five states Senate staff found that assign criminal penalties include Arkansas, Colorado, Kentucky, New Mexico, and Texas. *See* ARK. CODE § 16-90-1006; COLO. REV. STAT. § 16-15.7-104; KY. REV. STAT. § s. 431.585; N.M. STAT. § 29-12A-4, 5; and TEX. GOV. CODE § 414.009. The exception to the offense being classified as a misdemeanor is in Texas where the offense becomes a felony instead of a misdemeanor if the information is divulged to obtain a monetary benefit.

²⁰ The specified materials are "any records, documentary evidence, opinions, or decisions related to such privileged communications or protected information."

- By way of any discovery procedure.

However, a person accused of a crime may petition the court to compel the disclosure of protected information. The petition must allege that the information:

- Provides evidence favorable to the defendant;
- Is specifically related to the determination of the innocence or guilt of the defendant; and
- Is such that, if it is not disclosed, the defendant will be deprived of a constitutional right.

If the court determines that each of these criteria are satisfied, it may order production and disclosure of all or any part of the protected information. However, if the court chooses to order production and disclosure, it must do so “while, to the fullest extent possible, protecting the identity of the persons who engaged in privileged communication.”

In a separate provision, the bill strongly implies that a court is authorized to also compel the disclosure, “by way of testimony or any other means,” of protected information or a privileged communication. As such, the bill implies that the court, in an appropriate case, may compel testimony from the tipster, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization.

Finally, the bill provides that a person, other than the tipster, who discloses any “information related to privileged communication or protected information” to anyone other than law enforcement personnel commits a third degree felony.²¹

The bill is effective on October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²¹ A third-degree felony offense is punishable by not more than five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates a new felony offense related to a person disclosing any information related to privileged communication or protected information to anyone other than law enforcement personnel. To the extent that this provision of the bill results in offenders being convicted for this felony offense, the bill may result in a positive indeterminate prison bed impact (i.e. an unquantifiable increase in prison beds).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 90.595 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 February 13, 2018:

The committee substitute classifies the content of a communication made to a crime stoppers organization as a privileged communication. The underlying bill, on the other hand, classified only the act of this communication as privileged. The committee substitute also protects additional members of crime stoppers organizations from having to disclose or produce protected information or privileged communications. Finally, though the underlying bill generally makes it a felony to disclose information related to protected information or privileged communication, the committee substitute clarifies that criminal penalties do not apply to disclosures to law enforcement personnel.

CS by Criminal Justice on February 6, 2018:

The committee substitute exempts the person who provides the privileged communication from the criminal penalty created in the bill.

B. Amendments:

None.

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



854106

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 29 - 71
and insert:

(b) "Privileged communication" means a communication made to a crime stoppers organization for the purpose of reporting alleged criminal activity.

(c) "Protected information" includes the identity of a person who engages in privileged communication with a crime stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided



854106

12 to or collected by a crime stoppers organization, a law
13 enforcement crime stoppers coordinator or his or her staff, or a
14 law enforcement agency in connection with such privileged
15 communication.

16 (2) A person who engages in privileged communication under
17 this section, a law enforcement crime stoppers coordinator or
18 his or her staff, or an officer, director, or employee of a
19 crime stoppers organization may not be required:

20 (a) To disclose, by way of testimony or any other means, a
21 privileged communication or protected information unless such
22 failure to disclose would infringe on the constitutional rights
23 of an accused person.

24 (b) To produce, under subpoena, any records, documentary
25 evidence, opinions, or decisions relating to such privileged
26 communication or protected information:

27 1. In connection with a criminal case, criminal proceeding,
28 or any administrative hearing; or

29 2. By way of any discovery procedure.

30 (3) (a) A person charged with a criminal offense may
31 petition the court for inspection in camera of the protected
32 information. The petition must allege that the protected
33 information meets all of the following criteria:

34 1. Provides evidence favorable to the defendant.

35 2. Is specifically related to the determination of the
36 innocence or guilt of the defendant.

37 3. Is such that, if it is not disclosed, will cause a
38 deprivation of a constitutional right of the defendant.

39 (b) If the court determines that all of the criteria
40 specified in paragraph (a) are satisfied, the court may order



854106

41 the production and disclosure of all or any part of the
42 protected information, while, to the fullest extent possible,
43 protecting the identity of the persons who engaged in privileged
44 communication.

45 (4) A person, other than the person who provides the
46 privileged communication, who discloses any information related
47 to privileged communication or protected information to a person
48 other than a law enforcement officer or an employee of a law
49 enforcement agency commits a

50
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete lines 6 - 7

54 and insert:

55 her staff, or an officer, director, or employee a
56 crime stoppers organization from being required

By the Committee on Criminal Justice; and Senator Steube

591-02893-18

2018706c1

A bill to be entitled

An act relating to crime stoppers organizations; creating s. 90.595, F.S.; defining terms; prohibiting a person who engages in privileged communication, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors from being required to disclose privileged communications or produce protected information; providing an exception; authorizing a person charged with a criminal offense to petition the court to inspect the protected information under certain circumstances; authorizing a court to disclose all or a portion of the protected information; providing criminal penalties; providing an effective date.

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

Section 1. Section 90.595, Florida Statutes, is created to read:

90.595 Privileged communication with and the provision of protected information to crime stoppers organizations.-

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

(a) "Crime stoppers organization" means a private not-for-profit organization that collects and expends donations for rewards to persons who report to the organization information concerning criminal activity and forwards that information to appropriate law enforcement agencies.

(b) "Privileged communication" means the act of providing

Page 1 of 3

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591-02893-18

2018706c1

information to a crime stoppers organization for the purpose of reporting alleged criminal activity.

(c) "Protected information" includes the identity of a person who engages in privileged communication with a crime stoppers program and any records, recordings, oral or written statements, papers, documents, or other tangible things provided to or collected by a crime stoppers organization, a law enforcement crime stoppers coordinator or his or her staff, or a law enforcement agency in connection with such privileged communication.

(2) A person who engages in privileged communication under this section, a law enforcement crime stoppers coordinator or his or her staff, or a member of a crime stoppers organization's board of directors may not be required:

(a) To disclose, by way of testimony or any other means, a privileged communication or protected information unless such failure to disclose would infringe on the constitutional rights of an accused person.

(b) To produce, under subpoena, any records, documentary evidence, opinions, or decisions relating to such privileged communication or protected information:

1. In connection with a criminal case, criminal proceeding, or any administrative hearing; or

2. By way of any discovery procedure.

(3) (a) A person charged with a criminal offense may petition the court for inspection in camera of the protected information. The petition must allege that the protected information meets all of the following criteria:

1. Provides evidence favorable to the defendant.

Page 2 of 3

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591-02893-18

2018706c1

59 2. Is specifically related to the determination of the
60 innocence or guilt of the petitioner.

61 3. Is such that, if it is not disclosed, will cause a
62 deprivation of a constitutional right of the petitioner.

63 (b) If the court determines that all of the criteria
64 specified in paragraph (a) are satisfied, the court may order
65 the production and disclosure of all or any part of the
66 protected information, while, to the fullest extent possible,
67 protecting the identity of the persons who engaged in privileged
68 communication.

69 (4) A person, other than the person who provides the
70 privileged communication, who discloses any information related
71 to privileged communication or protected information commits a
72 felony of the third degree, punishable as provided in s.
73 775.082, s. 775.083, or s. 775.083.

74 Section 2. This act shall take effect October 1, 2018.

THE FLORIDA SENATE APPEARANCE RECORD

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

2.13.18

Meeting Date

706

Bill Number (if applicable)

Topic Crime Stopper Organizations

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 952

INTRODUCER: Senator Steube and others

SUBJECT: Cruelty to Animals

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 952 increases the offense ranking for aggravated animal cruelty, which is defined in s. 828.12(2), F.S. The bill increases the offense ranking from Level 3 to Level 5 on the Offense Severity Ranking Chart of the Criminal Punishment Code. Effectively, this increases the corresponding sentencing points for purposes of calculating the lowest permissible sentence from 16 points to 28 points.

The bill also amends s. 828.12, F.S., by adding a provision that allows the court to prohibit a person convicted of cruelty to animals from owning, possessing, keeping, harboring, having contact with, or having custody of or control over any animal for a period of time determined by the court.

The bill is effective July 1, 2018.

II. Present Situation:

Animal Cruelty

Section 828.12, F.S., prohibits criminal offenses involving cruelty to animals. The word “animal” is defined to include every “living dumb creature.”¹ The Florida Supreme Court held that this definition “excludes human beings from the commonly understood definition of animals” and that the definition was not unconstitutionally vague.²

Specifically, a person commits animal cruelty if he or she “unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal

¹ Section 828.02, F.S.

² *Wilkerson v. State*, 401 So. 2d 1110, 1112 (1981).

in a cruel or inhumane manner.” Animal cruelty is a first degree misdemeanor.³ The statute authorizes the imposition of a fine of up to \$5,000; whereas, the statutory default maximum fine for a first degree misdemeanor is \$1,000.

A person commits aggravated animal cruelty, if he or she intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done. Aggravated animal cruelty is a third degree felony.⁴ The statute authorizes a fine of up to \$10,000; whereas, the statutory default maximum fine for a third degree felony is \$5,000.

Additionally, a person who intentionally trips, fells, ropes, or lassos the legs of a horse for entertainment or sport commits a third degree felony.⁵

A person convicted of aggravated animal cruelty, where the finder of fact determines that the violation included the knowing and intentional torture or torment of an animal which injured, mutilated, or killed the animal, must be ordered to pay a minimum mandatory fine of \$2,500 and undergo psychological counseling or complete an anger management treatment program.⁶

A person convicted of a second or subsequent conviction of aggravated animal cruelty must pay a minimum mandatory fine of \$5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence.⁷

Section 828.12(3), F.S., specifies that if a person commits multiple acts of animal cruelty or aggravated animal cruelty against an animal, he or she may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.⁸

Criminal Punishment Code

The Criminal Punishment Code⁹ (Code) is Florida’s “primary sentencing policy.”¹⁰ Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).¹¹

³ A first degree misdemeanor is punishable by up to one year in jail and up to a \$1,000 fine. Sections 775.082 and 775.083, F.S. However, this statute authorizes a fine of not more than \$5,000, which is authorized by s. 775.083(1)(g), F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁵ Section 828.12(5), F.S.

⁶ Section 828.12(2)(a), F.S. Any plea of nolo contendere is considered a conviction for purposes of s. 828.12(2), F.S.

⁷ Section 828.12(2)(b), F.S.

⁸ Section 828.12(3), F.S.

⁹ Sections 921.002-921.0027, F.S. See ch. 97-194, s. 3 and ch. 98-204, s. 2, Laws of Fla.

¹⁰ *Florida’s Criminal Punishment Code: A Comparative Assessment (FY 2012-2013) Executive Summary (Offenses Committed On or After October 1, 1998)*, Florida Department of Corrections, available at http://www.dc.state.fl.us/pub/sg_annual/1213/executives.html (last visited Feb. 8, 2018).

¹¹ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹² Absent mitigation,¹³ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁴

Aggravated animal cruelty is a Level 3 offense on the Offense Severity Ranking Chart of the Code.¹⁵ This means that 16 sentencing points are assigned to the offense of aggravated animal cruelty for purposes of calculating the lowest permissible sentence.¹⁶

III. Effect of Proposed Changes:

The bill amends s. 828.12, F.S., by adding a provision that allows the court to prohibit a person convicted of a violation of cruelty to animals from owning, possessing, keeping, harboring, having contact with, or having custody of or control over any animal for a period of time determined by the court. Presumably this period of time will be limited by the amount of time the court may have jurisdiction to enforce its order against the person, for example, up to five years in a third degree felony case.

The bill increases the offense ranking on the Offense Severity Ranking Chart of the Code from a Level 3 to a Level 5 for a violation of s. 828.12(2), F.S., aggravated animal cruelty.¹⁷ Effectively this increases the corresponding sentencing points for purposes of calculating the lowest permissible sentence from 16 points to 28 points.¹⁸

The act is named “Ponce’s Law” in honor of a puppy that was allegedly beaten to death in Volusia County in April 2017.¹⁹

The bill is effective July 1, 2018.

¹² Section 921.0024(2), F.S.

¹³ The court may “mitigate” or “depart downward” from the scored lowest permissible sentence if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁴ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

¹⁵ Section 921.0022(3)(c), F.S.

¹⁶ Section 921.0024(1)(a), F.S.

¹⁷ Section 921.0022(3)(e), F.S.

¹⁸ Section 921.0024(1)(a), F.S.

¹⁹ Daytona Beach News Journal, *Public Outrage Fuels Push for Animal Abuse Punishments*, Frank Fernandez (April 21, 2017), available at <http://www.news-journalonline.com/news/20170416/public-outrage-fuels-push-for-animal-abuse-punishments>.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of Economic and Demographic Research Criminal Justice Impact Conference met on January 8, 2018, and considered this bill. The Impact Conference determined that the bill would have a positive insignificant prison bed impact, meaning that there would be an increase of ten or fewer prison beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 828.12, and 921.0022.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Steube

23-01107-18

2018952__

A bill to be entitled

An act relating to cruelty to animals; providing a short title; amending s. 828.12, F.S.; authorizing a court to prohibit certain offenders from owning or having contact with animals; amending s. 921.0022, F.S.; revising the ranking of offenses on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. This act may be cited as "Ponce's Law."

Section 2. Section 828.12, Florida Statutes, is amended to read:

828.12 Cruelty to animals.—

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, commits animal cruelty, a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than \$5,000, or both.

(2) A person who intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, commits aggravated animal cruelty, a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than \$10,000, or

Page 1 of 22

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23-01107-18

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both.

(a) A person convicted of a violation of this subsection, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, shall be ordered to pay a minimum mandatory fine of \$2,500 and undergo psychological counseling or complete an anger management treatment program.

(b) A person convicted of a second or subsequent violation of this subsection shall be required to pay a minimum mandatory fine of \$5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person shall be released only upon expiration of sentence, is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection.

(3) A person who commits multiple acts of animal cruelty or aggravated animal cruelty against an animal may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

(4) A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this section. Such a veterinarian is, therefore, under this subsection, immune from a lawsuit for his or her part in an investigation of cruelty to animals.

(5) A person who intentionally trips, fells, ropes, or

Page 2 of 22

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23-01107-18 2018952__

59 lassos the legs of a horse by any means for the purpose of
 60 entertainment or sport ~~commits a shall be guilty of a third~~
 61 ~~degree felony of the third degree~~, punishable as provided in s.
 62 775.082, s. 775.083, or s. 775.084. As used in this subsection,
 63 the term "trip" means any act that consists of the use of any
 64 wire, pole, stick, rope, or other apparatus to cause a horse to
 65 fall or lose its balance, and the term "horse" means any animal
 66 of any registered breed of the genus *Equus*, or any recognized
 67 hybrid thereof. ~~The provisions of This subsection does shall~~ not
 68 apply when tripping is used:

69 (a) To control a horse that is posing an immediate threat
 70 to other livestock or human beings;

71 (b) For the purpose of identifying ownership of the horse
 72 when its ownership is unknown; or

73 (c) For the purpose of administering veterinary care to the
 74 horse.

75 (6) In addition to other penalties prescribed by law, a
 76 person who is convicted of a violation of this section may be
 77 prohibited by the court from owning, possessing, keeping,
 78 harboring, having contact with, or having custody of or control
 79 over any animal for a period of time determined by the court.

80 Section 3. Paragraphs (c) and (e) of subsection (3) of
 81 section 921.0022, Florida Statutes, are amended to read:

82 921.0022 Criminal Punishment Code; offense severity ranking
 83 chart.-

84 (3) OFFENSE SEVERITY RANKING CHART

85 (c) LEVEL 3

86
 87

23-01107-18 2018952__

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud,

23-01107-18 2018952__
 possess, sell, etc., a blank,
 forged, or unlawfully obtained
 title or registration.
 96 327.35(2)(b) 3rd Felony BUI.
 97 328.05(2) 3rd Possess, sell, or counterfeit
 fictitious, stolen, or
 fraudulent titles or bills of
 sale of vessels.
 98 328.07(4) 3rd Manufacture, exchange, or
 possess vessel with counterfeit
 or wrong ID number.
 99 376.302(5) 3rd Fraud related to reimbursement
 for cleanup expenses under the
 Inland Protection Trust Fund.
 100 379.2431 3rd Taking, disturbing, mutilating,
 (1)(e)5. destroying, causing to be
 destroyed, transferring,
 selling, offering to sell,
 molesting, or harassing marine
 turtles, marine turtle eggs, or
 marine turtle nests in
 violation of the Marine Turtle
 Protection Act.
 101

23-01107-18 2018952__
 379.2431 3rd Possessing any marine turtle
 (1)(e)6. species or hatchling, or parts
 thereof, or the nest of any
 marine turtle species described
 in the Marine Turtle Protection
 Act.
 102 379.2431 3rd Soliciting to commit or
 (1)(e)7. conspiring to commit a
 violation of the Marine Turtle
 Protection Act.
 103 400.9935(4)(a) 3rd Operating a clinic, or offering
 or (b) services requiring licensure,
 without a license.
 104 400.9935(4)(e) 3rd Filing a false license
 application or other required
 information or failing to
 report information.
 105 440.1051(3) 3rd False report of workers'
 compensation fraud or
 retaliation for making such a
 report.
 106 501.001(2)(b) 2nd Tampering with a consumer product
 or the container using
 materially false/misleading

23-01107-18

2018952__

information.

107

624.401(4)(a) 3rd Transacting insurance without a
certificate of authority.

108

624.401(4)(b)1. 3rd Transacting insurance without a
certificate of authority;
premium collected less than
\$20,000.

109

626.902(1)(a) & 3rd Representing an unauthorized
(b) insurer.

110

697.08 3rd Equity skimming.

111

790.15(3) 3rd Person directs another to
discharge firearm from a
vehicle.

112

806.10(1) 3rd Maliciously injure, destroy, or
interfere with vehicles or
equipment used in firefighting.

113

806.10(2) 3rd Interferes with or assaults
firefighter in performance of
duty.

114

810.09(2)(c) 3rd Trespass on property other than
structure or conveyance armed

Page 7 of 22

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23-01107-18

2018952__

with firearm or dangerous
weapon.

115

812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but
less than \$10,000.

116

812.0145(2)(c) 3rd Theft from person 65 years of
age or older; \$300 or more but
less than \$10,000.

117

815.04(5)(b) 2nd Computer offense devised to
defraud or obtain property.

118

817.034(4)(a)3. 3rd Engages in scheme to defraud
(Florida Communications Fraud
Act), property valued at less
than \$20,000.

119

817.233 3rd Burning to defraud insurer.

120

817.234 3rd Unlawful solicitation of
(8)(b) & (c) persons involved in motor
vehicle accidents.

121

817.234(11)(a) 3rd Insurance fraud; property value
less than \$20,000.

122

817.236 3rd Filing a false motor vehicle
insurance application.

Page 8 of 22

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

123	23-01107-18		2018952__	
	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
124	817.413(2)	3rd	Sale of used goods as new.	
125	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.	
126	831.28(2) (a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.	
127	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.	
128	838.021(3) (b)	3rd	Threatens unlawful harm to public servant.	
129	843.19	3rd	Injure, disable, or kill police dog or horse.	
130	860.15(3)	3rd	Overcharging for repairs and	

Page 9 of 22

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

	23-01107-18		2018952__	
				parts.
131	870.01(2)	3rd	Riot; inciting or encouraging.	
132	893.13(1) (a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) drugs).	
133	893.13(1) (d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) drugs within 1,000 feet of university.	
134	893.13(1) (f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5., (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., (3), or (4) drugs within 1,000 feet of public housing facility.	
135	893.13(4) (c)	3rd	Use or hire of minor; deliver to minor other controlled	

Page 10 of 22

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23-01107-18

2018952__

substances.

136

893.13(6)(a) 3rd Possession of any controlled substance other than felony possession of cannabis.

137

893.13(7)(a)8. 3rd Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.

138

893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

139

893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.

140

893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.

141

893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through

23-01107-18

2018952__

deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

142

893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

143

893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

144

893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

145

918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence.

146

944.47 (1)(a)1. & 2. 3rd Introduce contraband to correctional facility.

23-01107-18		2018952__	
147	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
148	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
149	(e) LEVEL 5		
150	Florida Statute	Felony Degree	Description
151	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
152	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
153	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
154	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious

23-01107-18		2018952__	
157			bodily injury.
158	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
159	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
160	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
161	379.407(5)(b)3.	3rd	Possession of 100 or more

	23-01107-18		2018952__	
				undersized spiny lobsters.
161	381.0041 (11) (b)	3rd		Donate blood, plasma, or organs knowing HIV positive.
162	440.10 (1) (g)	2nd		Failure to obtain workers' compensation coverage.
163	440.105 (5)	2nd		Unlawful solicitation for the purpose of making workers' compensation claims.
164	440.381 (2)	2nd		Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
165	624.401 (4) (b) 2.	2nd		Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
166	626.902 (1) (c)	2nd		Representing an unauthorized insurer; repeat offender.
167	790.01 (2)	3rd		Carrying a concealed firearm.
168	790.162	2nd		Threat to throw or discharge

Page 15 of 22

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	23-01107-18		2018952__	
				destructive device.
169	790.163 (1)	2nd		False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
170	790.221 (1)	2nd		Possession of short-barreled shotgun or machine gun.
171	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
172	796.05 (1)	2nd		Live on earnings of a prostitute; 1st offense.
173	800.04 (6) (c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
174	800.04 (7) (b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
175	806.111 (1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.

Page 16 of 22

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	23-01107-18		2018952__
176	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
177	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
178	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
179	812.131(2)(b)	3rd	Robbery by sudden snatching.
180	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
181	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
182	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
183	817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the

Page 17 of 22

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	23-01107-18		2018952__
			solvency of an insuring entity.
184	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
185	817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
186	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
187	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
188	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

Page 18 of 22

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189	23-01107-18	2018952__	
190	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
191	<u>828.12(2)</u>	3rd	<u>Tortures any animal with intent to inflict intense pain, serious physical injury, or death.</u>
192	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
193	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
194	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
195	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.

196	23-01107-18	2018952__	
197	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
198	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
199	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned

23-01107-18

2018952__

recreational facility or
community center.

200

893.13(1)(d)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
(2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
university.

201

893.13(1)(e)2. 2nd Sell, manufacture, or deliver
cannabis or other drug
prohibited under s.
893.03(1)(c), (2)(c)1.,
(2)(c)2., (2)(c)3., (2)(c)5.,
(2)(c)6., (2)(c)7., (2)(c)8.,
(2)(c)9., (3), or (4) within
1,000 feet of property used for
religious services or a
specified business site.

202

893.13(1)(f)1. 1st Sell, manufacture, or deliver
cocaine (or other s.
893.03(1)(a), (1)(b), (1)(d),
or (2)(a), (2)(b), or (2)(c)4.
drugs) within 1,000 feet of
public housing facility.

203

893.13(4)(b) 2nd Use or hire of minor; deliver

23-01107-18

2018952__

to minor other controlled
substance.

204

893.1351(1) 3rd Ownership, lease, or rental for
trafficking in or manufacturing
of controlled substance.

205

206

Section 4. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

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

952

Bill Number (if applicable)

Meeting Date

Topic Animal Cruelty

Amendment Barcode (if applicable)

Name Jean Wingo

Job Title VP FL Federation of Republican Women

Address 460 Frank Shaw

Phone 850-339-4601

Street

Ta

FL

32312

Email

City

State

Zip

Speaking: For Against Information

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

Representing FL Federation of Republican Women

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18

Meeting Date

952

Bill Number (if applicable)

Topic Animal Cruelty

Amendment Barcode (if applicable)

Name Kate Macfall

Job Title State director

Address 1624 Anthropos Circle

Phone 850 508-1001

Street

Tallahassee FL 32308

City

State

Zip

Email kmacfall@hsos.org

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

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

Representing Humane Society of the United States

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/18

Meeting Date

952

Bill Number (if applicable)

Topic Cruelty to Animals

Amendment Barcode (if applicable)

Name Chief Frank Fabrizio

Job Title Chief of Police, Ponce Inlet Police Department

Address 4301 S. Peninsula Drive

Phone 386-236-2160

Street

Ponce Inlet

FL

32127

Email ffabrizio@ponce-inlet.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/18
Meeting Date

SB 952
Bill Number (if applicable)

Topic Powce's LAW

Amendment Barcode (if applicable)

Name JENNIFER HOBGOOD PHD

Job Title DIRECTOR, STATE LEGISLATION

Address 2 PO BOX 20557
Street

Phone 445 5245

TALLAHASSEE FL 32316
City State Zip

Email jen.hobgood@aspcan.org

Speaking: For Against Information

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

Representing ASPCA

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)

2.13.18

Meeting Date

952

Bill Number (if applicable)

Topic Cruelty to Animals

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1076

INTRODUCER: Senator Steube

SUBJECT: Franchises

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1076 creates the “Protect Florida Small Business Act” (act). The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon franchisees in Florida. The bill addresses requirements for sale, transfer, or assignment of franchises.

The bill provides that a franchise agreement in violation of any provision in the act is void and unenforceable, as is any provision that restricts, to a jurisdiction outside of Florida, the location (venue) of an action related to a claim arising under a franchise agreement, if the claim involves a franchisee who was a resident of Florida when the franchise agreement was signed, or a business entity established in Florida, or a franchise either operating or to be operated in Florida. Furthermore, the bill provides the act does not apply to a franchise agreement between a Florida franchisor and a franchisee who has no connections to Florida (i.e., was not a resident of Florida when the franchise agreement was signed, or a business entity established in Florida, or involving a franchise either operating or to be operated in Florida), even if the franchise agreement says Florida law applies.

SB 1076 has an indeterminate fiscal impact on state government. See Section V. Fiscal Impact Statement.

II. Present Situation:

The regulation of franchising in Florida is addressed in multiple provisions of Florida law. Chapter 817, F.S. relating to Fraudulent Practices, includes provisions concerning False Pretenses and Frauds.¹

¹ See part I of ch. 817, F.S.

Florida Franchise Act

Section 817.416, F.S., deals with requirements for the relationship between a franchisee and a franchisor.² That statute defines the term “franchise or distributorship” to mean a contract, either express or implied, oral or written, between two or more persons wherein:

- A commercial relationship of definite duration or continuing indefinite duration is involved;
- One party, hereinafter called the “franchisee,” is granted the right to offer, sell, and distribute goods or services manufactured, processed, distributed or, in the case of services, organized and directed by another party;
- The franchisee as an independent business constitutes a component of franchisor’s distribution system; and
- The operation of the franchisee’s business franchise is substantially reliant on franchisors for the basic supply of goods.³

The term “goods,” means “any article or thing without limitation, or any part of such article or thing, including any article or thing used or consumed by a franchisee in rendering a service established, organized, directed, or approved by a franchisor.”⁴

It is unlawful for any person selling or establishing a franchise or distributorship to intentionally:

- Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;
- Misrepresent, by failure to disclose or otherwise, the known required total investment for such franchise or distributorship; or
- Misrepresent, or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the franchise or distributorship to sustain.⁵

The execution or carrying out of a scheme, plan, or corporate organization in violation of s. 817.416, F.S., if knowledge or intent is proved, is a second degree misdemeanor.⁶

In addition, a person who proves a violation of s. 817.416, F.S., may be granted a judgment for all moneys invested in a franchise or distributorship. Upon such a showing of proof, a court may award the successful plaintiff reasonable attorney’s fees and must award reasonable costs incurred in bringing the action.⁷

The Department of Legal Affairs, or the Department of Legal Affairs and the Department of Agriculture and Consumer Services jointly, on behalf of the people of Florida, may sue for

² Section 817.416, F.S. has not been amended since 1971. *See* ch. 71-61, Laws of Fla. While popularly referred as the “Florida Franchise Act,” the law does not cite s. 817.416, F.S., as such.

³ *See* s. 817.416(1)(b), F.S.

⁴ Section 817.416(1)(c), F.S.

⁵ *See* s. 817.416(2), F.S.

⁶ Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁷ *See* s. 817.416(3), F.S.

injunctive relief against franchise or distributorship plans or activities that engage in the intentional misrepresentations described above.⁸

The Florida Sale of Business Opportunities Act

The Florida Sale of Business Opportunities Act (SBOA)⁹ requires a person offering a “business opportunity” to make specified disclosures about the business to a prospective purchaser.¹⁰ A purchaser of a business opportunity pays the seller \$500 or more to purchase or lease products, equipment, supplies, or services that enable the purchaser to start a business. In return, the seller represents that it:

- Will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
- Will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
- Guarantees a partial or full refund to the seller; or
- Provides a sales program or marketing program, excepting a sales or marketing program made in conjunction with the licensing of a registered trademark or service mark.

A “business opportunity” does not include the sale of ongoing businesses when the owner sells and intends to sell up to five businesses. Also, a business opportunity does not include the not-for-profit sale of sales demonstration equipment, materials, or samples for a price up to \$500 or any sales training course offered by the seller at a cost up to \$500, or the sale or lease of laundry and drycleaning equipment.¹¹

The sale of a franchise is exempt from the required disclosures if the franchise satisfies the Federal Trade Commission’s (FTC) definition of a franchise¹² and applies for the exemption with the Department of Agriculture and Consumer Services (DACS).¹³

The FTC defines “franchise” to mean any continuing commercial relationship or arrangement in which the purchaser’s business uses the trademark of the seller’s business, the seller exercises significant control over how the business operates, and the purchaser pays a fee to the seller.¹⁴

The application for the exemption through the DACS requires only the name of the applicant, the name of the franchise and the name under which the applicant intends to, or does, transact

⁸ See s. 817.416(4), F.S.

⁹ Part VII of ch. 559, F.S.

¹⁰ Section 559.803, F.S.

¹¹ Section 559.801(1)(b), F.S.

¹² See *Federal Trade Commission, Franchise Rule, 16 CFR, Part 436 Compliance Guide*, (FTC Compliance Guide) at: <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Jan. 22, 2018). The FTC Compliance Guide provides a sample disclosure document and general instructions. See <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Jan. 22, 2018), at pages 34-154.

¹³ See s. 559.803, F.S.

¹⁴ 16 C.F.R. s. 436.1(h) (2017).

business, if different, the applicant's principal business address, and the applicant's federal employer identification number.¹⁵

Federal Trade Commission Regulations Affecting Franchises

The Federal Trade Commission's rule on franchises gives prospective franchise purchasers information to weigh the risks and benefits of an investment in a franchise.¹⁶ The rule requires franchisors to provide all potential franchisees with a disclosure document that contains 23 specific items of information about the offered franchise, its officers, and other franchisees.¹⁷ The FTC Compliance Guide provides a sample disclosure document and general instructions concerning the mandatory disclosures.¹⁸

Florida Deceptive and Unfair Trade Practices Act

Part II of ch. 501, F.S., the "Florida Deceptive and Unfair Trade Practices Act" (FDUTPA), addresses protection of the public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.¹⁹

Section 501.203(2), F.S., addresses who is authorized to enforce the FDUTPA (enforcing authority), which includes the:

- Office of the state attorney when a violation occurs in or affects the judicial circuit under the jurisdiction of that state attorney; or
- Department of Legal Affairs, if the violation occurs in or affects more than one judicial circuit, or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

The enforcing authority may pursue actions:

- To obtain a declaratory judgment that an act or practice violates the FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate, the FDUTPA; and
- For the actual damages caused by an act or practice in violation of the FDUTPA, on behalf of one or more consumers or governmental entities, except that damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the FDUTPA.²⁰

¹⁵ Section 559.803(3), F.S., and Florida Admin. R. 5J-10.002 (2012). The form for the application is available at the DACS website: <http://www.freshfromflorida.com/Business-Services/Sellers-of-Business-Opportunities> (last visited Jan. 22, 2018).

¹⁶ See 16 C.F.R. Part 436.1(h). See also <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Jan. 22, 2018).

¹⁷ See <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Jan. 22, 2018).

¹⁸ *Id.* at pages 34-154.

¹⁹ See s. 501.202, F.S.

²⁰ See s. 501.207(1), F.S.

Any person, firm, corporation, association, or entity, or any agent or employee of such persons, who is willfully using, or has willfully used, a method, act, or practice declared unlawful, or who is willfully violating any of the rules of the Department of Agriculture and Consumer Services (DACS) adopted under part II of ch. 501, F.S., is liable for a civil penalty of not more than \$10,000 for each violation.²¹

Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule.²² The civil penalty may be recovered in any action brought under FDUTPA by the enforcing authority; or the enforcing authority may terminate any investigation or action upon the agreement to pay a civil penalty by the person, firm, corporation, association, or entity, or their agent or employee.²³

The DACS or the court may waive a civil penalty if the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, has previously made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities who have been injured by the unlawful act or practice or rule violation.²⁴ If civil penalties are assessed in any litigation, the enforcing authority is entitled to reasonable attorney's fees and costs; a civil penalty accrues to the state.²⁵

Violations of the FDUTPA involving senior citizens, disabled persons, or active duty or veteran members of the United States Armed Forces may result in penalties not to exceed \$15,000 for each violation. However, these penalties only apply if the violator knew or should have known that the conduct was unfair or deceptive.²⁶

III. Effect of Proposed Changes:

Section 1 of the bill provides that the act may be cited as the "Protect Florida Small Business Act" (act).

The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other actions taken as to franchisees in Florida.

Section 2 of the bill sets forth legislative findings and intent. Specifically, the Legislature finds that the welfare of franchisees, including the success and failure of their franchise businesses, affects the state economy and the public. Accordingly, with the act, the Legislature intends to promote fair business relations between franchisees and franchisors and to protect franchisees against unfair treatment by franchisors.

Section 3 of the bill creates s. 686.103, F.S., to define the following terms:

²¹ See s. 501.2075, F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See s. 501.2077, F.S.

- “Area franchise” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, between a franchisor and another person through which that person is granted the right, for consideration in whole or in part for such right:
 - To sell or negotiate the sale of a franchise in the name or on behalf of the franchisor; or
 - To become an area developer and develop a franchise for the benefit of that person or that person’s affiliates.
- “Area franchisee” means the owner of an area franchise.
- “Franchise” or “franchise agreement” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, for a definite or indefinite time, between two or more persons by which:
 - A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;
 - The operation of the franchise business pursuant to that marketing plan or system is substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
 - The franchisee is required to pay, directly or indirectly, a franchise fee.
- The term “franchise” or “franchise agreement” includes an area franchise, but does not include any of the following:
 - A franchise governed by the Agricultural Equipment Manufacturers and Dealers Act.
 - Any activity under by ss. 686.501-686.506, F.S., pertaining to art dealers.
 - A franchise governed by the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act.
 - A motor vehicle franchise or agreement governed by ss. 320.60-320.70, F.S. F.S.
 - A business relationship between a beer distributor and a manufacturer governed by s. 563.022, F.S.
 - A professional sports franchise as described in s. 288.11625(2)(c), F.S.
- “Franchise fee” means a fee or charge greater than \$100 annually which a franchisee is required to pay or agrees to pay, directly or indirectly, to or for the benefit of the franchisor for the right to enter into or continue a franchise, including, but not limited to, a payment for goods or services. However, the term does not include a fee or charge that a franchisee pays or agrees to pay the franchisor for goods at a bona fide wholesale price, if no obligation is imposed upon the franchisee to purchase or pay for a quantity of goods in excess of that which a reasonable person normally would purchase by way of a starting inventory or supply or to maintain an ongoing inventory or supply.
- “Franchisee” means a person to whom a franchise is offered or granted.

- “Franchisor” means a person who grants a franchise to a franchisee.
- “Person” means a natural person, corporation, limited liability company, association, partnership, trust, or other business entity and, in the case of a business entity, includes any other affiliate of such entity.

Section 4 of the bill creates s. 686.104, F.S., relating to termination or nonrenewal of a franchise. Except as otherwise provided in the act, a franchisor may not terminate or refuse to renew a franchise except for good cause. And if a franchise is terminated without good cause, then that action constitutes an actionable unfair termination.

In general, good cause is limited to the failure of the franchisee to substantially comply with the reasonable and material requirements imposed upon the franchisee by the franchise agreement after being given notice at least 90 days in advance of the termination and a reasonable opportunity of not less than 60 days after the date of the notice of noncompliance, to cure the failure. If the franchisee cures the failure within the time given to cure, the termination notice is void.

However, there are other specified circumstances that constitute good cause to terminate or not renew a franchise agreement. Specifically, an immediate notice of termination may be given to a franchisee by a franchisor without an opportunity to cure if, during the period in which the franchise is in effect, any of the following events relevant to the franchise occurs:

- The franchisee has been judicially determined to be insolvent, has had all or a substantial part of its assets assigned to or for the benefit of any creditor, or has admitted its inability to pay its debts as they come due.
- The franchisee abandons, by failing to operate, the franchise business for 10 consecutive days during which, under the terms of the franchise, the franchisee is required to operate the franchise business, unless such failure to operate is due to an act of God; a work stoppage; a strike or labor difficulty; a fire, flood, hurricane, or sinkhole; or other cause beyond the franchisee’s control.
- The franchisee fails, for a period of 10 days after a notice of noncompliance, to comply with any federal, state, or local law or regulation, including, but not limited to, any health, safety, building, or labor law or regulation applicable to the operation of the franchise.
- The franchisee is convicted of a felony, if that felony significantly, directly, and adversely affects the operation of the franchise business.
- The franchisor makes a reasonable determination that continued operation of the franchise business by the franchisee will result in imminent and substantial danger to public health or safety.

Section 5 of the bill creates s. 686.105, F.S., relating to sales, transfers, and assignments of franchises.

A franchisor may not deny the surviving spouse, heir, or estate of a deceased franchisee (the survivors), or of a deceased person who controlled a majority interest in the franchise, the opportunity to participate in the ownership of the franchise or franchise business under a valid franchise agreement for at least 180 days after the death of the franchisee or the death of a person

controlling a majority interest in the franchise (the status quo period). During the status quo period, the surviving spouse, heir, or estate must either meet all of the existing reasonable qualifications for a purchaser of a franchise or must sell, transfer, or assign the franchise to a person who meets the franchisor's existing reasonable qualifications for new franchisees. The surviving spouse, heir, or estate must maintain all standards and obligations of the franchise.

With the prior written consent of the franchisor, a franchisee may sell, transfer, or assign a franchise. The franchisor's consent may not be withheld unless the purchaser, transferee, or assignee does not meet the qualifications for new or renewing franchisees, or the franchisee and the purchaser, transferee, or assignee fail to comply with other reasonable transfer conditions specified in the franchise agreement.

A franchisor may not prevent a franchisee from selling, transferring, or assigning a franchise, all or substantially all of the assets of the franchise business, or an interest in the franchise to another person, if that person meets the franchisor's reasonable qualifications for the approval of new or renewing franchisees in effect at the time the franchisor receives notice of the proposed sale, transfer, or assignment. The franchisor must make the list of qualifications available to the franchisee, and must consistently apply such qualifications to similarly situated franchisees operating within the franchise brand.

Section 6 of the bill creates s. 686.106, F.S., concerning the rights and prohibitions that govern the relations between a franchisor and its franchisee, to require that the parties deal with each other in good faith and in a commercially reasonable manner.²⁷

A franchisor may not:

- Terminate or fail to renew a franchise agreement in violation of the act.
- Prevent a sale, transfer, or assignment of a franchise in violation of the requirements regarding sales, transfers, and assignments set forth in proposed s. 686.105, F.S., created in this bill (*see Section 5* above).
- Violate the Florida Deceptive and Unfair Trade Practices Act²⁸ or s. 817.416, F.S., relating to claims for franchise misrepresentations, in connection with its business as a franchisor, or an officer, agent, or other representative thereof.
- Require a franchisee to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed under the act, including, but not limited to, through the use of a disclaimer or checklist designed to avoid a protection under the act.
- Require a franchisee to assent to the use of a choice of law provision by selecting a different state's law to govern the relationship of the parties.

A person who proves in court that a violation of this section has occurred is entitled to the remedies set forth in proposed s. 686.109, F.S., created in this bill (*see Section 9* below).

²⁷ For purposes of Florida's Uniform Commercial Code (ch. 670 through ch. 680, F.S.), (Code), s. 671.201(20), F.S., defines the term "good faith" to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing" unless otherwise provided in the Code. *See* s. 672.103(1)(b), F.S., where the term is used in connection with sales of goods, and s. 677.102(1)(f), F.S., where the term is used in connection with documents of title.

²⁸ *See* ss. 501.201-213, F.S.

Section 7 of the bill creates s. 686.107, F.S., and provides that a franchise agreement or other contract, any part thereof, or any practice under such contract, that violates any provision of the act is deemed against public policy and is void and unenforceable. The bill provides that an aggrieved party may choose to seek to void only the unenforceable portion of a franchise agreement and continue to enforce the remainder of the agreement.

Section 8 of the bill creates s. 686.108, F.S., to provide that provisions in a franchise agreement restricting the venue to a forum outside of Florida or selecting the law of any other state or jurisdiction other than Florida, are void with respect to any claim arising under or relating to a franchise agreement involving a franchisee that was, at the time of signing, a resident of Florida, or a business entity established in Florida, or a franchise business either operating or planning to be operated in Florida.

The bill also provides the act does not apply to a franchise agreement between a Florida-based franchisor and a franchisee that was not, at the time of signing, a resident of Florida, or a business entity established in Florida, or involving a franchise operating or to be operated in Florida, even if the agreement says Florida law applies.

Section 9 of the bill creates s. 686.109, F.S., and provides that in addition to relief specified in the act, any person aggrieved or injured in his or her business or property by a violation of the act may bring an action in state or federal court in Florida to recover the damages sustained and the costs of such action, including reasonable attorney fees.

In addition to any other remedy or relief to which a person is entitled, any person aggrieved by a violation of the act also may bring an action to obtain a declaratory judgment stating that an action or a practice violates the act, and injunctive relief enjoining a franchisor that has violated, is violating, or is otherwise likely to violate the act from committing the violation.

These remedies are in addition to any other remedies provided by law or in equity, including, but not limited to, those provided under the Florida Deceptive and Unfair Trade Practices Act²⁹ and s. 817.416, F.S., relating to claims for franchise misrepresentations.

Section 10 of the bill creates s. 686.11, F.S., expressly setting forth which persons and franchises the act applies to. Particularly, the act provides that any person or franchisor who engages directly or indirectly in an agreement or contract in Florida concerning a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operated in Florida, is subject to the act and to the jurisdiction of Florida courts, in accordance with Florida law, for violations of the act.

The act expressly applies to:

- Any franchise entered into, renewed, amended, or revised after the effective date of the act;
- Any existing franchise of an indefinite duration which may be terminated by the franchisee or franchisor without cause; and
- Any existing franchise entered into before the effective date of the act, only to the extent that the act does not significantly impair the existing contract rights between the parties.

²⁹ See ss. 501.201-.213, F.S.

Section 11 of the bill amends s. 817.416, F.S., relating to claims for franchise misrepresentations, to substitute the term “area franchise” (defined in proposed s. 686.103, F.S., created in this bill (*see Section 3* above)), for the term “distributorship.” The bill also provides that the provisions of s. 817.416, F.S., “may not be waived by any choice of venue clause, choice of law clause, checklist, or any other contract provision, scheme, or device that would otherwise affect a person’s rights to make a claim” thereunder.

Section 12 of the bill directs the Division of Law Revision and Information to replace the phrase “the effective date of the act” wherever it occurs in the act, with the date that the act becomes a law.

Section 13 of the bill provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

SB 1076 creates provisions affecting persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state. (*See Section 10* of the bill.) Such persons are made subject to the act and to jurisdiction of Florida courts for violations of the act. With respect to *existing* franchise agreements or contracts, certain provisions of the bill may implicate constitutional concerns relating to impairment of contract.³⁰

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³¹ the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact

³⁰ Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

³¹ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”³²

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.³³

In *United States Fidelity & Guaranty Co. v. Department of Insurance*,³⁴ the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person’s interest to not have his or her contracts impaired, with the state’s interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”³⁵ The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry the complaining party had entered had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.³⁶ If the state regulation constitutes a substantial impairment, the state must have a significant and legitimate public purpose³⁷ and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.³⁸

Furthermore, although retroactive application of a law may be constitutional in certain situations,³⁹ in 2011, the Florida Supreme Court unanimously held, in *Cohn v. The Grand Condominium Association, Inc.*,⁴⁰ that by changing the distribution of voting power between residential owners and other owners in a mixed-use condominium (i.e., a provision of an existing contract), the retroactive application of the law at issue in that case altered the rights of the unit owners in contravention of their contractual agreement and, thus, impaired the obligation of contract as applied.

³² *Pomponio*, 378 So. 2d at 779.

³³ *Id.*

³⁴ *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).

³⁵ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

³⁶ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

³⁷ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

³⁸ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1361.

³⁹ *Century Village, Inc. v. Wellington*, 361 So. 2d 128 (Fla. 1978).

⁴⁰ *Cohn*, 62 So. 3d 1120, 1122 (Fla. 2011).

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

None.

B. Private Sector Impact:

SB 1076 may impact the financial interests of persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state.

C. Government Sector Impact:

The act increases regulation of business relationships related to franchises. Moreover, the act expressly creates a cause of action for any violation of the act. Accordingly, the act could increase litigation, increasing costs of the state court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.416 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 686.101, 686.102, 686.103, 686.104, 686.105, 686.106, 686.107, 686.108, 686.109, and 686.11.

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

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

None.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 686.101, Florida Statutes, is created to
read:

686.101 Sales, transfers, and assignments of franchises.-

(1) A franchisor may not deny the surviving spouse, heir,
or estate of a deceased franchisee or of a deceased person who
controlled a majority interest in the franchise the opportunity
to participate in the ownership of the franchise or franchise



566792

12 business under a valid franchise agreement for at least 180 days
13 after the death of the franchisee or the death of a person
14 controlling a majority interest in the franchise. During that
15 time, the surviving spouse, heir, or estate of the deceased must
16 either meet all of the existing reasonable qualifications for a
17 purchaser of a franchise or must sell, transfer, or assign the
18 franchise to a person who meets the franchisor's existing
19 reasonable qualifications for new franchisees. The rights
20 granted to the surviving spouse, heir, or estate under this
21 section are granted subject to the surviving spouse, heir, or
22 estate of the deceased maintaining all standards and obligations
23 of the franchise.

24 (2) (a) A franchisee may sell, transfer, or assign a
25 franchise, all or substantially all of the assets of the
26 franchise business, or an interest in the franchise with the
27 prior written consent of the franchisor. The franchisor's
28 consent may not be withheld unless the purchaser, transferee, or
29 assignee does not meet the qualifications for new or renewing
30 franchisees described in paragraph (b) or the franchisee and the
31 purchaser, transferee, or assignee fail to comply with other
32 reasonable transfer conditions specified in the franchise
33 agreement.

34 (b) A franchisor may not prevent a franchisee from selling,
35 transferring, or assigning a franchise, all or substantially all
36 of the assets of the franchise business, or an interest in the
37 franchise to another person if the other person meets the
38 franchisor's reasonable qualifications for the approval of new
39 or renewing franchisees in effect at the time the franchisor
40 receives notice of the proposed sale, transfer, or assignment.



566792

41 The franchisor shall make this list of qualifications available
42 to the franchisee, and the franchisor shall consistently apply
43 such qualifications to similarly situated franchisees operating
44 within the franchise brand.

45 Section 2. Section 686.102, Florida Statutes, is created to
46 read:

47 686.102 Venue; choice of law.—A provision in a franchise
48 agreement restricting the venue to a forum outside of this state
49 or selecting the law of any other state or jurisdiction other
50 than this state is void with respect to any claim arising under
51 or relating to a franchise agreement involving a franchisee that
52 was, at the time of signing, a resident of this state or a
53 business entity established in this state or involving a
54 franchise business either operating or planning to be operated
55 in this state. An agreement between a Florida-based franchisor
56 and a franchisee with none of these stated connections to this
57 state is not subject to this section or s. 686.101, regardless
58 of whether the franchise agreement contains a choice of law
59 provision selecting this state.

60 Section 3. This act shall take effect upon becoming a law.

61
62 ===== T I T L E A M E N D M E N T =====

63 And the title is amended as follows:

64 Delete everything before the enacting clause
65 and insert:

66 A bill to be entitled
67 An act relating to franchises; creating s. 686.101,
68 F.S.; prohibiting a franchisor from denying certain
69 persons the opportunity to participate in the



566792

70 ownership of a franchise for at least a specified
71 period after the death of the franchisee or the death
72 of a person controlling a majority interest in the
73 franchise; requiring specified persons to either meet
74 certain requirements or sell, transfer, or assign the
75 franchise after the death of the franchisee or the
76 death of the person controlling a majority interest in
77 the franchise; authorizing a franchisee to sell,
78 transfer, or assign a franchise, specified assets, or
79 an interest in the franchise under certain
80 circumstances; prohibiting a franchisor from
81 preventing a franchisee from selling or transferring a
82 franchise, assets of the franchise business, or an
83 interest in the franchise under certain circumstances;
84 requiring the franchisor to make available to the
85 franchisee and to consistently apply qualifications
86 for the approval of new or renewing franchises;
87 creating s. 686.102, F.S.; prohibiting the use of
88 certain choice of venue and choice of law provisions,
89 under certain circumstances; providing an effective
90 date.

By Senator Steube

16-00774-18

20181076__

1 A bill to be entitled
 2 An act relating to franchises; creating s. 686.101,
 3 F.S.; providing a short title; creating s. 686.102,
 4 F.S.; providing legislative findings and intent;
 5 providing construction; creating s. 686.103, F.S.;
 6 defining terms; creating s. 686.104, F.S.; prohibiting
 7 a franchisor from terminating or not renewing a
 8 franchise under certain circumstances; providing
 9 limitations on what constitutes good cause;
 10 authorizing the franchisor to give immediate notice of
 11 termination of a franchise for specified reasons under
 12 certain circumstances; creating s. 686.105, F.S.;
 13 prohibiting a franchisor from denying certain persons
 14 the opportunity to participate in the ownership of a
 15 franchise for a specified period after the death of
 16 the franchisee or the death of a person controlling a
 17 majority interest in the franchise; requiring
 18 specified persons to meet certain requirements or to
 19 sell, transfer, or assign the franchise after the
 20 death of the franchisee or the death of the person
 21 controlling a majority interest in the franchise;
 22 authorizing a franchisee to sell, transfer, or assign
 23 a franchise, specified assets, or an interest in the
 24 franchise under certain circumstances; prohibiting a
 25 franchisor from preventing a franchisee from selling
 26 or transferring a franchise, assets of the franchise
 27 business, or an interest in the franchise under
 28 certain circumstances; requiring the franchisor to
 29 make available and to apply specified requirements for

Page 1 of 14

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30 the approval of new or renewing franchises, under
 31 certain circumstances; creating s. 686.106, F.S.;
 32 requiring a franchisor and a franchisee to deal with
 33 each other in good faith; prohibiting the franchisor
 34 from acting in a certain manner; providing remedies;
 35 creating s. 686.107, F.S.; voiding certain contracts,
 36 contract provisions, or practices; creating s.
 37 686.108, F.S.; prohibiting the use of certain choice
 38 of venue and choice of law provisions, under certain
 39 circumstances; creating s. 686.109, F.S.; providing
 40 remedies for a franchisee or an aggrieved or injured
 41 person under certain circumstances; clarifying that
 42 specified remedies are in addition to existing
 43 remedies; creating s. 686.11, F.S.; providing
 44 applicability; amending s. 817.416, F.S.; defining the
 45 term "area franchise"; prohibiting waivers through
 46 certain contract provisions that would affect a
 47 person's rights to make a claim; providing a directive
 48 to the Division of Law Revision and Information;
 49 providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:52
53 Section 1. Section 686.101, Florida Statutes, is created to
54 read:55 686.101 Short title.—Sections 686.101–686.11 may be cited
56 as the "Protect Florida Small Business Act."57 Section 2. Section 686.102, Florida Statutes, is created to
58 read:

Page 2 of 14

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16-00774-18

20181076__

59 686.102 Legislative findings and intent; construction of
60 the act.—

61 (1) The Legislature finds that the welfare of franchisees,
62 including the success and failure of their franchise businesses,
63 greatly affects the general economy of this state, the public
64 interest, and the public welfare. It is the intent of the
65 Legislature to promote fair business relations between
66 franchisees and franchisors and to protect franchisees against
67 unfair treatment by franchisors. Therefore, it is necessary to
68 regulate the conduct of franchisors and their representatives in
69 order to prevent fraud, unfair business practices, unfair
70 methods of competition, impositions, and other abuses upon
71 franchisees in this state.

72 (2) In order to promote the intent and policies announced
73 in this section, the provisions of this act shall be liberally
74 construed.

75 Section 3. Section 686.103, Florida Statutes, is created to
76 read:

77 686.103 Definitions.—As used in this act, the term:

78 (1) "Area franchise" means a contract or agreement,
79 expressed or implied, written or oral, regardless of whether the
80 contract or agreement is designated as a franchise, permit,
81 license, resolution, contract, certificate, agreement, or
82 otherwise, between a franchisor and another person through which
83 that person is granted the right, for consideration in whole or
84 in part for such right:

85 (a) To sell or negotiate the sale of a franchise in the
86 name or on behalf of the franchisor; or

87 (b) To become an area developer and develop a franchise for

16-00774-18

20181076__

88 the benefit of that person or that person's affiliates.

89 (2) "Area franchisee" means the owner of an area franchise.

90 (3) (a) "Franchise" or "franchise agreement" means a
91 contract or agreement, expressed or implied, written or oral,
92 regardless of whether the contract or agreement is designated as
93 a franchise, permit, license, resolution, contract, certificate,
94 agreement, or otherwise, for a definite or indefinite time,
95 between two or more persons by which:

96 1. A franchisee is granted the right to engage in the
97 business of offering, selling, or distributing goods or services
98 under a marketing plan or system prescribed in substantial part
99 by a franchisor;

100 2. The operation of the franchise business pursuant to that
101 marketing plan or system is substantially associated with the
102 franchisor's trademark, service mark, trade name, logotype,
103 advertising, or other commercial symbol designating the
104 franchisor or its affiliate; and

105 3. The franchisee is required to pay, directly or
106 indirectly, a franchise fee.

107 (b) The term includes an area franchise.

108 (c) The term does not include any of the following:

109 1. A franchise governed by the Agricultural Equipment
110 Manufacturers and Dealers Act.

111 2. Any activity under ss. 686.501-686.506.

112 3. A franchise governed by the Outdoor Power Equipment
113 Manufacturers, Distributors, Wholesalers, and Servicing Dealers
114 Act.

115 4. A motor vehicle franchise or agreement governed by ss.
116 320.60-320.70.

16-00774-18

20181076__

117 5. A business relationship between a beer distributor and a
 118 manufacturer governed by s. 563.022.

119 6. A professional sports franchise as described in s.
 120 288.11625(2)(c).

121 (4) "Franchise fee" means a fee or charge greater than \$100
 122 annually which a franchisee is required to pay or agrees to pay,
 123 directly or indirectly, to or for the benefit of the franchisor
 124 for the right to enter into or continue a franchise, including,
 125 but not limited to, a payment for goods or services. However, a
 126 fee or charge that a franchisee pays or agrees to pay the
 127 franchisor for goods at a bona fide wholesale price if no
 128 obligation is imposed upon the franchisee to purchase or pay for
 129 a quantity of goods in excess of that which a reasonable person
 130 normally would purchase by way of a starting inventory or supply
 131 or to maintain an ongoing inventory or supply is not considered
 132 a franchise fee.

133 (5) "Franchisee" means a person to whom a franchise is
 134 offered or granted.

135 (6) "Franchisor" means a person who grants a franchise to a
 136 franchisee.

137 (7) "Person" means a natural person, corporation, limited
 138 liability company, association, partnership, trust, or other
 139 business entity and, in the case of a business entity, includes
 140 any other affiliate of such entity.

141 Section 4. Section 686.104, Florida Statutes, is created to
 142 read:

143 686.104 Termination or nonrenewal.—

144 (1) Except as otherwise provided in this act, a franchisor
 145 may not terminate or refuse to renew a franchise except for good

16-00774-18

20181076__

146 cause. The termination or nonrenewal of a franchise without good
 147 cause constitutes an actionable unfair termination. Except as
 148 provided in subsection (2), good cause is limited to the failure
 149 of the franchisee to substantially comply with the reasonable
 150 and material requirements imposed upon the franchisee by the
 151 franchise agreement after being given notice at least 90 days in
 152 advance of the termination and a reasonable opportunity, which
 153 may not be less than 60 days after the date of the notice of
 154 noncompliance, to cure the failure. If the franchisee cures the
 155 failure within the time given to cure, the termination notice is
 156 void.

157 (2) A franchisor may give to a franchisee an immediate
 158 notice of termination without an opportunity to cure if, during
 159 the period in which the franchise is in effect, any one of the
 160 following events relevant to the franchise occurs:

161 (a) The franchisee has been judicially determined to be
 162 insolvent, has had all or a substantial part of its assets
 163 assigned to or for the benefit of any creditor, or has admitted
 164 its inability to pay its debts as they come due.

165 (b) The franchisee abandons, by failing to operate, the
 166 franchise business for 10 consecutive days during which, under
 167 the terms of the franchise, the franchisee is required to
 168 operate the franchise business unless such failure to operate is
 169 due to an act of God; a work stoppage; a strike or labor
 170 difficulty; a fire, flood, hurricane, or sinkhole; or other
 171 cause beyond the franchisee's control.

172 (c) The franchisee fails, for a period of 10 days after a
 173 notice of noncompliance, to comply with any federal, state, or
 174 local law or regulation, including, but not limited to, any

16-00774-18 20181076__

175 health, safety, building, or labor law or regulation applicable
176 to the operation of the franchise.

177 (d) The franchisee is convicted of a felony if that felony
178 significantly, directly, and adversely affects the operation of
179 the franchise business.

180 (e) The franchisor makes a reasonable determination that
181 continued operation of the franchise business by the franchisee
182 will result in imminent and substantial danger to public health
183 or safety.

184 Section 5. Section 686.105, Florida Statutes, is created to
185 read:

186 686.105 Sales, transfers, and assignments.-

187 (1) A franchisor may not deny the surviving spouse, heir,
188 or estate of a deceased franchisee or of a deceased person who
189 controlled a majority interest in the franchise the opportunity
190 to participate in the ownership of the franchise or franchise
191 business under a valid franchise agreement for at least 180 days
192 after the death of the franchisee or the death of a person
193 controlling a majority interest in the franchise. During that
194 time, the surviving spouse, heir, or estate of the deceased must
195 either meet all of the existing reasonable qualifications for a
196 purchaser of a franchise or must sell, transfer, or assign the
197 franchise to a person who meets the franchisor's existing
198 reasonable qualifications for new franchisees. The rights
199 granted to the surviving spouse, heir, or estate under this
200 section are granted subject to the surviving spouse, heir, or
201 estate of the deceased maintaining all standards and obligations
202 of the franchise.

203 (2) (a) A franchisee may sell, transfer, or assign a

Page 7 of 14

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16-00774-18 20181076__

204 franchise, all or substantially all of the assets of the
205 franchise business, or an interest in the franchise with the
206 prior written consent of the franchisor. The franchisor's
207 consent may not be withheld unless the purchaser, transferee, or
208 assignee does not meet the qualifications for new or renewing
209 franchisees described in paragraph (b) or the franchisee and the
210 purchaser, transferee, or assignee fail to comply with other
211 reasonable transfer conditions specified in the franchise
212 agreement.

213 (b) A franchisor may not prevent a franchisee from selling,
214 transferring, or assigning a franchise, all or substantially all
215 of the assets of the franchise business, or an interest in the
216 franchise to another person if the other person meets the
217 franchisor's reasonable qualifications for the approval of new
218 or renewing franchisees in effect at the time the franchisor
219 receives notice of the proposed sale, transfer, or assignment.
220 The franchisor shall make this list of qualifications available
221 to the franchisee, and the franchisor shall consistently apply
222 such qualifications to similarly situated franchisees operating
223 within the franchise brand.

224 Section 6. Section 686.106, Florida Statutes, is created to
225 read:

226 686.106 Rights and prohibitions.-The following rights and
227 prohibitions govern the relations between a franchisor and its
228 franchisee:

229 (1) The parties shall deal with each other in good faith
230 and in a commercially reasonable manner.

231 (2) A franchisor may not:

232 (a) Terminate or fail to renew a franchise agreement in

Page 8 of 14

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16-00774-18 20181076__

233 violation of this act;

234 (b) Prevent a sale, transfer, or assignment of a franchise
235 in violation of s. 686.105;

236 (c) Violate the Florida Deceptive and Unfair Trade
237 Practices Act or s. 817.416 in connection with its business as a
238 franchisor, or an officer, agent, or other representative
239 thereof;

240 (d) Require a franchisee to assent to a release,
241 assignment, novation, waiver, or estoppel that would relieve any
242 person from liability imposed under this act, including, but not
243 limited to, through the use of a disclaimer or checklist
244 designed to avoid a protection under this act; or

245 (e) Require a franchisee to assent to the use of a choice
246 of law provision by selecting a different state's law to govern
247 the relationship of the parties.

248 (3) A person who shows in a civil court of law a violation
249 of this section is entitled to the remedies under s. 686.109.

250 Section 7. Section 686.107, Florida Statutes, is created to
251 read:

252 686.107 Unenforceable franchise agreement or other contract
253 or part thereof.—A franchise agreement or other contract, or a
254 part thereof or practice thereunder, which is in violation of
255 any provision of this act is deemed against public policy and is
256 void and unenforceable. An aggrieved party may choose to seek to
257 void the portion of the agreement that is unenforceable and
258 continue to enforce the remainder of the agreement.

259 Section 8. Section 686.108, Florida Statutes, is created to
260 read:

261 686.108 Venue; choice of law.—A provision in a franchise

16-00774-18 20181076__

262 agreement restricting the venue to a forum outside of this state
263 or selecting the law of any other state or jurisdiction other
264 than this state is void with respect to any claim arising under
265 or relating to a franchise agreement involving a franchisee that
266 was, at the time of signing, a resident of this state or a
267 business entity established in this state or involving a
268 franchise business either operating or planning to be operated
269 in this state. An agreement between a Florida-based franchisor
270 and a franchisee with none of these stated connections to this
271 state is not subject to this act, regardless of whether the
272 franchise agreement contains a choice of law provision selecting
273 this state.

274 Section 9. Section 686.109, Florida Statutes, is created to
275 read:

276 686.109 Remedies.—

277 (1) In addition to any relief specified in this act, any
278 person aggrieved or injured in his or her business or property
279 by any violation of this act may bring an action in the
280 appropriate state or federal court of this state and shall
281 recover the damages sustained and the costs of such action,
282 including reasonable attorney fees.

283 (2) Without regard and in addition to any other remedy or
284 relief to which a person is entitled, any person aggrieved by a
285 violation of this act may bring an action to obtain a
286 declaratory judgment stating that an action or a practice
287 violates this act and may obtain injunctive relief enjoining a
288 franchisor that has violated, is violating, or is otherwise
289 likely to violate these sections from committing the violation.

290 (3) The remedies provided in this section are in addition

16-00774-18 20181076__

291 to any other remedies provided by law or in equity, including,
 292 but not limited to, the Florida Deceptive and Unfair Trade
 293 Practices Act and s. 817.416.

294 Section 10. Section 686.11, Florida Statutes, is created to
 295 read:

296 686.11 Applicability.-

297 (1) Any person or franchisor who engages directly or
 298 indirectly in an agreement or contract within this state in
 299 connection with a franchise; or any franchise whose franchisee
 300 is a resident of this state or is domiciled in this state or
 301 whose franchise business is, has been, or is intended to be
 302 operated in this state, is subject to this act and to the
 303 jurisdiction of the courts of this state, in accordance with the
 304 laws of this state, for violations of this act.

305 (2) This act applies to:

306 (a) Any franchise entered into, renewed, amended, or
 307 revised after the effective date of this act;

308 (b) Any existing franchise of an indefinite duration which
 309 may be terminated by the franchisee or franchisor without cause;
 310 and

311 (c) Any existing franchise entered into before the
 312 effective date of this act, only to the extent that this act
 313 does not significantly impair the existing contract rights
 314 between the parties.

315 Section 11. Section 817.416, Florida Statutes, is amended
 316 to read:

317 817.416 Franchises and distributorships;
 318 misrepresentations.-

319 (1) DEFINITIONS.-For the purpose of this section, the term:

Page 11 of 14

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16-00774-18 20181076__

320 (a) "Area franchise" has the same meaning as in s. 686.103.

321 (d)(a) The term "Person" means an individual, partnership,
 322 corporation, association, or other entity doing business in this
 323 state Florida.

324 (b) The term "Franchise or distributorship" means a
 325 contract or agreement, either expressed or implied, whether oral
 326 or written, between two or more persons:

327 1. Wherein a commercial relationship of definite duration
 328 or continuing indefinite duration is involved;

329 2. Wherein one party, ~~hereinafter~~ hereinafter called the "franchisee,"
 330 is granted the right to offer, sell, and distribute goods or
 331 services manufactured, processed, distributed or, in the case of
 332 services, organized and directed by another party;

333 3. Wherein the franchisee as an independent business
 334 constitutes a component of franchisor's distribution system; and

335 4. Wherein the operation of the franchisee's business
 336 franchise is substantially reliant on franchisors for the basic
 337 supply of goods.

338 (c) The term "Goods" means any article or thing without
 339 limitation, or any part of such article or thing, including any
 340 article or thing used or consumed by a franchisee in rendering a
 341 service established, organized, directed, or approved by a
 342 franchisor.

343 (2) DECLARATIONS.-

344 (a) It is unlawful, when selling or establishing a
 345 franchise or area franchise distributorship, for any person to:

346 1. Intentionally ~~to~~ misrepresent the prospects or chances
 347 for success of a proposed or existing franchise or area
 348 franchise distributorship;

Page 12 of 14

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16-00774-18

20181076__

349 2. Intentionally ~~to~~ misrepresent, by failure to disclose or
 350 otherwise, the known required total investment for such
 351 franchise or area franchise distributorship; or

352 3. Intentionally ~~to~~ misrepresent or fail to disclose
 353 efforts to sell or establish more franchises or area franchises
 354 ~~distributorships~~ than is reasonable to expect the market or
 355 market area for the particular franchise or area franchise
 356 ~~distributorship~~ to sustain.

357 (b) The execution or carrying out of a scheme, plan, or
 358 corporate organization which violates any of the provisions of
 359 this section, if knowledge or intent be proved, is ~~shall be~~ a
 360 misdemeanor of the second degree, punishable as provided in ss.
 361 775.082 and 775.083.

362 (3) WAIVER.—The applicability of this section may not be
 363 waived by any choice of venue clause, choice of law clause,
 364 checklist, or any other contract provision, scheme, or device
 365 that would otherwise affect a person's rights to make a claim
 366 under this section.

367 (4)(3) CIVIL PROVISIONS.—Any person, who shows in a civil
 368 court of law a violation of this section may receive a judgment
 369 for all moneys invested in the ~~such~~ franchise or area franchise
 370 ~~distributorship~~. Upon such a showing, the court may award any
 371 person bringing said action reasonable attorney fees ~~attorney's~~
 372 ~~fees~~ and shall award such person reasonable costs incurred in
 373 bringing the action, and execution shall thereupon issue.

374 (5)(4) INJUNCTIONS.—The Department of Legal Affairs, or the
 375 Department of Legal Affairs and the Department of Agriculture
 376 and Consumer Services jointly, may sue in behalf of the people
 377 of this state for injunctive relief against franchise or area

16-00774-18

20181076__

378 franchise distributorship plans or activities in violation of
 379 paragraph (2) (a).

380 Section 12. The Division of Law Revision and Information is
 381 directed to replace the phrase "the effective date of this act"
 382 wherever it occurs in this act with the date the act becomes a
 383 law.

384 Section 13. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/13/18

Meeting Date

1076

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street #200

Phone 850-205-9000

Street

Tallahassee FL 32301

City

State

Zip

Email aimee.diazlyon@mhdfirm.com

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/18
Meeting Date

1076
Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe

Phone 205-9000

Street

TCH

City

FL

State

Zip

Email doug.bell@whdfirm.com

Speaking: For Against Information

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

Representing McDonald's Restaurants

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

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-13-18

Meeting Date

1076

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Analyst

Address 200 W College Ave

Phone

Street

Tallahassee FL

Email

City

State

Zip

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/13/18

Meeting Date

1076

Bill Number (if applicable)

Topic franchises

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams St

Phone 352 359 6835

Street

Tallahassee

FL

32301

Email Jake@fid.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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

07/13/18

Meeting Date

1070

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name MATT Holmes

Job Title owner

Address 14213 OTTER Run Rd

Phone 850-509-4759

Street

JANNAHASSUE

FL

32312

City

State

Zip

Email mholmes@finehousesubs.com

Speaking: For Against Information

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

Representing Finehouse Subs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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2/13/18

Meeting Date

81076

Bill Number (if applicable)

Topic FRANCHISES

Amendment Barcode (if applicable)

Name Chris Holmes

Job Title Franchisee

Address 3018 Kimmer Rowe Dr.

Phone (850) 567-5171

Street

Tallahassee FL 32309

City

State

Zip

Email cholmes@forehousesub.com

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

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

Representing Forehouse Subr

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

02/13/18

Meeting Date

1076

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name Richard Turner

Job Title Senior VP of Legal & Legislative Affairs

Address 230 S. Adams St.

Phone 850-224-2250

Street

Tallahassee FL 32301

Email rturner@frla.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Restaurant & Lodging Assn.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

APPEARANCE RECORD

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

2/13/19
Meeting Date

1076
Bill Number (if applicable)

Topic FRANCHISE LAW

Amendment Barcode (if applicable)

Name Jim Magill

Job Title Lobbyist

Address 101 North Monroe St Suite 1090 Phone 850-681-0411

PH FL 32701 Email JAMES.MAGILL@DIPG.CO
City State Zip

Speaking: For Against Information

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

Representing Pinch A Penny Pools

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1142

INTRODUCER: Judiciary Committee and Senator Steube

SUBJECT: Expunction of Criminal History Records

DATE: February 14, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Storch</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1142 revises the eligibility requirements that must be met for a person to seek a court-ordered expunction of a criminal history record.

Currently, a person is ineligible for a court-ordered expunction of a criminal history record that resulted in a trial, without regard to the outcome. The bill permits a person to obtain a court-ordered expunction of a criminal history record if the person is acquitted either after trial, as a result of a not guilty verdict, or during trial, as a result of the court granting a motion for judgment of acquittal.

Additionally, a person who under current law seeks to expunge a criminal history record that resulted in a trial, without regard to the outcome, must have the record sealed for a minimum of 10 years prior to seeking an expunction of the record. The bill provides that a person who was acquitted as a result of a not guilty verdict after trial or a favorable ruling on a motion for judgment of acquittal during trial does not have to obtain a sealing of the record for a minimum of 10 years prior to seeking an expunction of the record.

The bill also amends the application requirements in s. 943.059, F.S., for persons seeking a certificate of eligibility to seal a criminal history record, which is a prerequisite for petitioning the court to seal the record for 10 years. In turn, sealing the record for 10 years is a prerequisite for petitioning the court to expunge the record. Currently, the Florida Department of Law Enforcement must issue a certificate of eligibility for sealing a record even though the

applicant's criminal offense (e.g., sexual offenses) will automatically disqualify him or her from later having the record expunged by the court. The bill authorizes FDLE to reject the application for a certificate of eligibility to seal the record if the applicant has a disqualifying offense. The bill also provides that this provision will be effective upon becoming law.

II. Present Situation:

Expunction of Criminal History Record

A criminal history record¹ is “any nonjudicial record maintained by a criminal justice agency containing criminal history information.”² Florida law³ makes adult criminal history records accessible to the public unless the record has been sealed or expunged.⁴ Sealed records are placed under highly restricted access,⁵ while expunged records are removed from record systems and destroyed.⁶ In addition to the court-ordered expungement process, Florida statutes authorize the following expungement processes:

- Administrative, for records of arrests determined to have been made contrary to law or by mistake;⁷
- Juvenile diversion for records of arrests of minors who complete a prearrest or postarrest diversion program;⁸
- Lawful self-defense, for records relating to a person who is later found to have acted in lawful self-defense;⁹
- Human trafficking, for records of offenses committed while the person was being victimized as part of a human trafficking scheme;¹⁰
- Automatic juvenile, for records of juvenile offenses as long as the person does not commit any serious offenses between age 18 and 26;¹¹ and
- Early juvenile, for records of juvenile offenses as long as the person does not commit any serious offenses between age 18 and 21.¹²

¹ Section 943.045(6), F.S.

² “Criminal history information . . . consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof.” *See* s. 943.045(5), F.S.

³ Section 943.053(3)(a), F.S.

⁴ Florida Department of Law Enforcement, *Seal and Expunge Process*, <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited Feb. 8, 2018). *See id.*

⁵ *See id.* Sealed records are those that have been preserved “under such circumstances” to be “secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein”. *See* s. 943.045(19), F.S.

⁶ “Expunction of a criminal history record” is “the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order[.]” *See* s. 943.045(16), F.S.

⁷ Section 943.0581, F.S.

⁸ Section 943.0582, F.S.

⁹ Section 943.0585(5), F.S.

¹⁰ Section 943.0583, F.S.

¹¹ Section 943.0515, F.S.

¹² Section 943.0515(1)(b)2., F.S.

Court-Ordered Expunction of Criminal Record (Section 1)

A court may order a criminal history record of a minor or an adult to be expunged. A person is permitted to obtain one court-ordered expunction in their lifetime.¹³

To qualify for a court-ordered expunction, a person must first obtain a certificate of eligibility from the Florida Department of Law Enforcement pursuant to requirements set forth in ss. 943.0585(2) or 943.0585(5), F.S. To obtain the certificate, a person must submit to the FDLE:

- A written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:
 - An indictment, information, or other charging document was not filed or issued in the case.¹⁴
 - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or *nolle prosequi*¹⁵ by the state attorney or statewide prosecutor, and that none of the charges that the person is seeking to expunge *resulted in a trial*, without regard to the outcome of the trial.¹⁶
 - The criminal history record does not relate to certain violations.¹⁷
- A \$75 processing fee, unless it is waived by the executive director.
- A certified copy of the disposition of the charge.¹⁸

In addition, the applicant must not:

- Prior to the date the application for a certificate of eligibility is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;¹⁹
- Have been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains;
- Be under court supervision for the arrest or alleged criminal activity to which the petition pertains; and

¹³ Section 943.0585, F.S.

¹⁴ Section 943.0585(2)(a)1., F.S.

¹⁵ In criminal cases, a “*nolle prosequi*” is a formal entry in the record by the prosecutor declaring that the case will not be further prosecuted. BLACK’S LAW DICTIONARY (10th ed. 2014).

¹⁶ Section 943.0585(2)(a)2., F.S.

¹⁷ These violations include sexual misconduct, luring or enticing a child, sexual battery, procuring a person under 18 for prostitution, lewd or lascivious offenses committed in front of a minor, an elderly person, or a disabled person, voyeurism, violations of the Florida Communications Fraud Act, sexual abuse of a child, offenses by public officers and employees, acts in connection with obscenity and minors, child pornography, selling or buying of minors, drug trafficking, violation of pretrial detention, and any violation specified as a predicated offense for registration as a sexual predator pursuant to the Florida Sexual Predators Act. *See* s. 943.0585(2)(a)3., F.S.

¹⁸ Section 943.0585(2)(b)-(c), F.S.

¹⁹ These offenses include assault, battery, carrying a concealed weapon, unlawful use of destructive devices or bombs, child neglect, assault or battery on a law enforcement officer, a firefighter, or other specified officer, open carrying of a weapon, indecent exposure, unlawful possession of a firearm, petit theft, animal cruelty, arson, and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or on school property. *See* s. 943.051(3)(b), F.S.

- Have secured a prior expunction or sealing of a criminal history record, unless the expunction sought is of a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S.²⁰

Section 943.0585(2)(h), F.S., provides that if an applicant's arrest or alleged criminal activity resulted in the withholding adjudication or a trial, the applicant's criminal history record must have been sealed for 10 years to be eligible for expunction. This sealing requirement does not apply, however, when a plea was not entered or all charges were dismissed prior to trial.²¹

Upon receipt of a certificate of eligibility for expunction, a person must then petition the court to expunge his or her criminal history record. Along with the certificate,²² the petition must include a sworn statement attesting that the petitioner:

- Has never been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a specified misdemeanor;²³
- Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains;
- Has never secured a prior sealing or expunction of a criminal history record, unless the expunction is sought for a criminal history record previously sealed for 10 years pursuant to s. 943.0585(2)(h), F.S. (above), and the record is otherwise eligible for expunction; and
- Believes to the best of his or her knowledge that the record is eligible for such an expunction and does not have any other petition to expunge or seal pending before any court.²⁴

A copy of the completed petition is then served upon the appropriate state attorney or statewide prosecutor and the arresting agency, any of which may respond to the court regarding the petition.²⁵ There is no statutory right to a court-ordered expunction and any request for expunction of a criminal history record may be denied at the sole discretion of the court.²⁶

Prerequisite to Expunction: Sealing the Criminal History Record (Section 2)

When a criminal history record must be sealed for 10 years as a prerequisite to expunction, the person seeking to have the record sealed must follow the procedures in s. 943.059, F.S.²⁷ Prior to petitioning a court to seal the record, the person must apply for a certificate of eligibility for sealing from the FDLE.²⁸ The FDLE is required to issue a certificate of eligibility if the person is no longer under court supervision for the criminal charge or arrest at issue, and has:

- Submitted a certified copy of the disposition of the criminal charge at issue;
- Remitted a \$75 processing fee;
- Never been adjudicated guilty, or delinquent if a juvenile, of a criminal offense prior to filing the application for the certificate;

²⁰ Section 943.0585(2)(d)-(g), F.S.

²¹ The 10-year sealing requirement applies without regard to the outcome of the trial. Section 943.0585(2)(h), F.S.

²² Section 943.0585(1)(a), F.S.

²³ *See supra*, n. 20.

²⁴ Section 943.0585(1)(b), F.S.

²⁵ Section 943.0585(3)(a), F.S.

²⁶ Section 943.0585, F.S.

²⁷ These procedures are very similar to those set out in s. 943.0585, F.S.

²⁸ Section 943.059(2), F.S.

- Not been adjudicated guilty or delinquent for acts stemming from the criminal charge at issue; and
- Never previously had a record sealed or expunged.²⁹

Once the FDLE issues a certificate of eligibility for sealing of the record, the person may petition the court to seal the record³⁰ and serve the petition on the appropriate state attorney of statewide prosecutor.³¹ However, the court may *not* seal the record when the criminal history relates to certain statutory violations, such as aggravated child abuse or the predicate offenses for registration as a sexual predator or sexual offender.³²

Under current law, even if the person's criminal history relates to one of the automatic disqualifying offenses, the FDLE is not permitted to deny a certificate of eligibility to seal the record. In *Lazard v. State*, the Fifth District Court of Appeal held that the FDLE had overreached its statutory authority under s. 943.059, F.S., by denying an application for a certificate of eligibility to seal a record even though the application pertained to an offense that would automatically disqualify the applicant from sealing and expunction.³³ The court held that, under the statute, it was up to the court whether the person had committed one of the disqualifying offenses.³⁴

Since the ruling in *Lazar*, the FDLE reports that it has issued approximately 75 certificates of eligibility to persons who are statutorily barred from expunction later.³⁵

Effect of a Court-Ordered Criminal History Record Expunction

If the court grants a petition to expunge a criminal history record, the clerk of the court then certifies copies of the order to the appropriate state attorney and the arresting agency and any other agency that has received the criminal history record from the court. In turn, the arresting agency must provide the expunction order to any agencies to which it disseminated the applicant's criminal history record. The FDLE must provide the expunction order to the Federal Bureau of Investigation.³⁶

Upon receiving the court's expunction order, with the exception of FDLE, any criminal justice agency that has a copy of the applicant's criminal history record must physically destroy or obliterate the record. The FDLE is required to maintain the criminal history record to be used for certain types of background checks, generally involving employment in sensitive positions, such as becoming a member of The Florida Bar or law enforcement agency or working with the elderly or children.³⁷ However, the record is confidential and exempt from disclosure

²⁹ Section 943.059(2)(a)-(f), F.S.

³⁰ Section 943.059(1)(a), F.S.

³¹ Section 943.059(3)(a), F.S.

³² Section 943.059, F.S. These disqualifying offenses are the same as those listed in s. 943.0585. *See supra* n. 17

³³ 229 So. 3d 439, 441 (Fla. 5th DCA 2017) (concerning the offense of aggravated child abuse).

³⁴ *Id.*

³⁵ Email from Brenda G. Johnson, Policy & Planning Administrator, Office of External Affairs, Florida Department of Law Enforcement, to Thomas Cibula, Staff Director, Senate Judiciary Committee (Feb. 13, 2018) (on file with the Senate Judiciary Committee).

³⁶ Section 943.0585(3)(b), F.S.

³⁷ Section 943.0585(4)(a)1., (a)4.-6., (a)7.-8., and (c), F.S.

requirements under the public records laws. Only a court order can make the record available to a person or entity that is otherwise excluded.³⁸

A person who has his or her criminal history record expunged may lawfully deny or fail to acknowledge the record that was expunged, unless he or she is:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services, or a position with an agency that is responsible for the protection of vulnerable persons, including children, the disabled, or the elderly;
- Petitioning to have a court-ordered criminal history record expunged or sealed or petitioning for relief under s. 943.0583, F.S.;³⁹ or
- A candidate for admission to The Florida Bar.⁴⁰

III. Effect of Proposed Changes:

Currently, a person is ineligible for a court-ordered expunction of a criminal history record if that person went to trial on the charges, regardless of whether the outcome of the trial was an acquittal. The bill repeals this prohibition and permits a person to seek a court-ordered expunction of a criminal history record involving a trial that resulted in a not guilty verdict, rendered by a judge or jury, or an order granting a motion for judgment of acquittal rendered by a judge.

Additionally, current law requires that the criminal history record of a person who went to trial on the charges be sealed for a minimum of 10 years prior to seeking an expunction of the record. The bill amends this requirement and provides that if the trial results in an acquittal resulting either from a not guilty verdict or a favorable ruling on a motion for judgment of acquittal, the 10-year sealing requirement does not apply. These changes take effect July 1, 2018.

The bill also amends the application requirements in s. 943.059(2), F.S., for persons seeking a certificate of eligibility to seal a criminal history record, which is a prerequisite for petitioning the court to seal the record for 10 years. In turn, having the record sealed for 10 years is a prerequisite for petitioning the court to expunge the record.

Currently, the Florida Department of Law Enforcement must issue a certificate of eligibility for sealing a record even though the applicant's criminal offense (e.g., sexual offenses) will automatically disqualify him or her from later having the record sealed or ultimately expunged by the court. The bill fixes this by authorizing FDLE to reject the application for a certificate of eligibility to seal the record if the applicant has an automatic disqualifying offense. The bill also provides that this provision will be effective upon becoming law.

³⁸ Section 943.0585(4)(a)-(b), F.S.

³⁹ Section 943.0583(3), F.S., provides that a victim of human trafficking may petition for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committing while the person was a victim or human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme, including, but not limited to, violations under chs. 796 and 847, F.S., without regard to the disposition of the arrest or of any charges.

⁴⁰ Section 943.0585(4)(a), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Current law prohibits a person from seeking the expunction of a criminal history record that resulted in a trial, regardless of the outcome. However, current law allows a person to have this record sealed. The bill enables a person to seek the expunction of a criminal history record that resulted in a not guilty verdict at trial, and provides that a prior sealing is not required.

The Florida Department of Law Enforcement estimates that this change will result in the submission of approximately 5,000 additional applications for a court-ordered expunction, which will require an additional full-time employee. The fiscal impact to accommodate for this increase in applications is projected to be \$62,441 in year one and \$58,686 in recurring years.⁴¹

Despite FDLE's estimate, it is unclear whether the bill will lead to an increase in applications rather than a shift in the type of application submitted. The bill enables a person who was previously only eligible to have his or her criminal history record sealed to now be able to seek an expunction of a criminal history record without obtaining a prior sealing. It seems that this will result in such persons submitting an application for a court-ordered expunction, rather than a court-ordered sealing. As such, the bill might not result in a significant increase in applications.

⁴¹ Florida Department of Law Enforcement, *2018 Legislative Bill Analysis for SB 1142*, (January 5, 2018) (on file with the Senate Judiciary Committee).

The bill will have a small positive impact on the FDLE's workload, as the FDLE will no longer be required to issue certificates of eligibility for sealing a record when the criminal offense at issue is an automatically disqualifying offense.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.0585 and 943.059.

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 February 13, 2018:

The Committee Substitute:

- Expands the eligibility for court-ordered expunction of criminal records under section 1, to *any* acquittal obtained during a trial, whether the result of a not guilty verdict or a court's favorable ruling on a motion for judgment of acquittal.
- Amends the application requirements for persons seeking a certificate of eligibility to seal a record and authorizes the Florida Department of Law Enforcement to reject such an application if the record concerns a criminal offense that will automatically disqualify the applicant upon petitioning the court.

B. Amendments:

None



280316

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/14/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (a) and (h) of subsection (2) of
section 943.0585, Florida Statutes, are amended, and paragraph
(b) of subsection (1) and paragraph (f) of subsection (2) of
that section are republished, to read:

943.0585 Court-ordered expunction of criminal history
records.—The courts of this state have jurisdiction over their
own procedures, including the maintenance, expunction, and



280316

12 correction of judicial records containing criminal history
13 information to the extent such procedures are not inconsistent
14 with the conditions, responsibilities, and duties established by
15 this section. Any court of competent jurisdiction may order a
16 criminal justice agency to expunge the criminal history record
17 of a minor or an adult who complies with the requirements of
18 this section. The court shall not order a criminal justice
19 agency to expunge a criminal history record until the person
20 seeking to expunge a criminal history record has applied for and
21 received a certificate of eligibility for expunction pursuant to
22 subsection (2) or subsection (5). A criminal history record that
23 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
24 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
25 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
26 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
27 s. 907.041, or any violation specified as a predicate offense
28 for registration as a sexual predator pursuant to s. 775.21,
29 without regard to whether that offense alone is sufficient to
30 require such registration, or for registration as a sexual
31 offender pursuant to s. 943.0435, may not be expunged, without
32 regard to whether adjudication was withheld, if the defendant
33 was found guilty of or pled guilty or nolo contendere to the
34 offense, or if the defendant, as a minor, was found to have
35 committed, or pled guilty or nolo contendere to committing, the
36 offense as a delinquent act. The court may only order expunction
37 of a criminal history record pertaining to one arrest or one
38 incident of alleged criminal activity, except as provided in
39 this section. The court may, at its sole discretion, order the
40 expunction of a criminal history record pertaining to more than



280316

41 one arrest if the additional arrests directly relate to the
42 original arrest. If the court intends to order the expunction of
43 records pertaining to such additional arrests, such intent must
44 be specified in the order. A criminal justice agency may not
45 expunge any record pertaining to such additional arrests if the
46 order to expunge does not articulate the intention of the court
47 to expunge a record pertaining to more than one arrest. This
48 section does not prevent the court from ordering the expunction
49 of only a portion of a criminal history record pertaining to one
50 arrest or one incident of alleged criminal activity.

51 Notwithstanding any law to the contrary, a criminal justice
52 agency may comply with laws, court orders, and official requests
53 of other jurisdictions relating to expunction, correction, or
54 confidential handling of criminal history records or information
55 derived therefrom. This section does not confer any right to the
56 expunction of any criminal history record, and any request for
57 expunction of a criminal history record may be denied at the
58 sole discretion of the court.

59 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
60 petition to a court to expunge a criminal history record is
61 complete only when accompanied by:

62 (b) The petitioner's sworn statement attesting that the
63 petitioner:

64 1. Has never, prior to the date on which the petition is
65 filed, been adjudicated guilty of a criminal offense or
66 comparable ordinance violation, or been adjudicated delinquent
67 for committing any felony or a misdemeanor specified in s.
68 943.051(3)(b).

69 2. Has not been adjudicated guilty of, or adjudicated



280316

70 delinquent for committing, any of the acts stemming from the
71 arrest or alleged criminal activity to which the petition
72 pertains.

73 3. Has never secured a prior sealing or expunction of a
74 criminal history record under this section, s. 943.059, former
75 s. 893.14, former s. 901.33, or former s. 943.058, unless
76 expunction is sought of a criminal history record previously
77 sealed for 10 years pursuant to paragraph (2) (h) and the record
78 is otherwise eligible for expunction.

79 4. Is eligible for such an expunction to the best of his or
80 her knowledge or belief and does not have any other petition to
81 expunge or any petition to seal pending before any court.

82
83 Any person who knowingly provides false information on such
84 sworn statement to the court commits a felony of the third
85 degree, punishable as provided in s. 775.082, s. 775.083, or s.
86 775.084.

87 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
88 petitioning the court to expunge a criminal history record, a
89 person seeking to expunge a criminal history record shall apply
90 to the department for a certificate of eligibility for
91 expunction. The department shall, by rule adopted pursuant to
92 chapter 120, establish procedures pertaining to the application
93 for and issuance of certificates of eligibility for expunction.
94 A certificate of eligibility for expunction is valid for 12
95 months after the date stamped on the certificate when issued by
96 the department. After that time, the petitioner must reapply to
97 the department for a new certificate of eligibility. Eligibility
98 for a renewed certification of eligibility must be based on the



280316

99 status of the applicant and the law in effect at the time of the
100 renewal application. The department shall issue a certificate of
101 eligibility for expunction to a person who is the subject of a
102 criminal history record if that person:

103 (a) Has obtained, and submitted to the department, a
104 written, certified statement from the appropriate state attorney
105 or statewide prosecutor which indicates:

106 1. That an indictment, information, or other charging
107 document was not filed or issued in the case.

108 2. That an indictment, information, or other charging
109 document, if filed or issued in the case, was dismissed or nolle
110 prosequi by the state attorney or statewide prosecutor, ~~or~~ was
111 dismissed by a court of competent jurisdiction, that a judgment
112 of acquittal was rendered by a judge, or that a verdict of not
113 guilty was rendered by a judge or jury and that none of the
114 ~~charges related to the arrest or alleged criminal activity to~~
115 ~~which the petition to expunge pertains resulted in a trial,~~
116 ~~without regard to whether the outcome of the trial was other~~
117 ~~than an adjudication of guilt.~~

118 3. That the criminal history record does not relate to a
119 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
120 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
121 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
122 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
123 or any violation specified as a predicate offense for
124 registration as a sexual predator pursuant to s. 775.21, without
125 regard to whether that offense alone is sufficient to require
126 such registration, or for registration as a sexual offender
127 pursuant to s. 943.0435, where the defendant was found guilty



280316

128 of, or pled guilty or nolo contendere to any such offense, or
129 that the defendant, as a minor, was found to have committed, or
130 pled guilty or nolo contendere to committing, such an offense as
131 a delinquent act, without regard to whether adjudication was
132 withheld.

133 (f) Has never secured a prior sealing or expunction of a
134 criminal history record under this section, s. 943.059, former
135 s. 893.14, former s. 901.33, or former s. 943.058, unless
136 expunction is sought of a criminal history record previously
137 sealed for 10 years pursuant to paragraph (h) and the record is
138 otherwise eligible for expunction.

139 (h) Has previously obtained a court order sealing the
140 record under this section, former s. 893.14, former s. 901.33,
141 or former s. 943.058 for a minimum of 10 years because
142 adjudication was withheld or because all charges related to the
143 arrest or alleged criminal activity to which the petition to
144 expunge pertains were not dismissed before ~~prior to~~ trial,
145 ~~without regard to whether the outcome of the trial was other~~
146 ~~than an adjudication of guilt.~~ The requirement for the record to
147 have previously been sealed for a minimum of 10 years does not
148 apply when a plea was not entered or all charges related to the
149 arrest or alleged criminal activity to which the petition to
150 expunge pertains were dismissed before ~~prior to~~ trial, when a
151 judgment of acquittal was rendered by a judge, or when a verdict
152 of not guilty was rendered by a judge or jury.

153 Section 2. Present paragraphs (c) through (f) of subsection
154 (2) of section 943.059, Florida Statutes, are redesignated as
155 paragraphs (d) through (g), respectively, a new paragraph (c) is
156 added to that subsection, and paragraph (a) of subsection (1) of



280316

157 that section is republished, to read:

158 943.059 Court-ordered sealing of criminal history records.—

159 The courts of this state shall continue to have jurisdiction
160 over their own procedures, including the maintenance, sealing,
161 and correction of judicial records containing criminal history
162 information to the extent such procedures are not inconsistent
163 with the conditions, responsibilities, and duties established by
164 this section. Any court of competent jurisdiction may order a
165 criminal justice agency to seal the criminal history record of a
166 minor or an adult who complies with the requirements of this
167 section. The court shall not order a criminal justice agency to
168 seal a criminal history record until the person seeking to seal
169 a criminal history record has applied for and received a
170 certificate of eligibility for sealing pursuant to subsection
171 (2). A criminal history record that relates to a violation of s.
172 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
173 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
174 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
175 s. 916.1075, a violation enumerated in s. 907.041, or any
176 violation specified as a predicate offense for registration as a
177 sexual predator pursuant to s. 775.21, without regard to whether
178 that offense alone is sufficient to require such registration,
179 or for registration as a sexual offender pursuant to s.
180 943.0435, may not be sealed, without regard to whether
181 adjudication was withheld, if the defendant was found guilty of
182 or pled guilty or nolo contendere to the offense, or if the
183 defendant, as a minor, was found to have committed or pled
184 guilty or nolo contendere to committing the offense as a
185 delinquent act. The court may only order sealing of a criminal



280316

186 history record pertaining to one arrest or one incident of
187 alleged criminal activity, except as provided in this section.
188 The court may, at its sole discretion, order the sealing of a
189 criminal history record pertaining to more than one arrest if
190 the additional arrests directly relate to the original arrest.
191 If the court intends to order the sealing of records pertaining
192 to such additional arrests, such intent must be specified in the
193 order. A criminal justice agency may not seal any record
194 pertaining to such additional arrests if the order to seal does
195 not articulate the intention of the court to seal records
196 pertaining to more than one arrest. This section does not
197 prevent the court from ordering the sealing of only a portion of
198 a criminal history record pertaining to one arrest or one
199 incident of alleged criminal activity. Notwithstanding any law
200 to the contrary, a criminal justice agency may comply with laws,
201 court orders, and official requests of other jurisdictions
202 relating to sealing, correction, or confidential handling of
203 criminal history records or information derived therefrom. This
204 section does not confer any right to the sealing of any criminal
205 history record, and any request for sealing a criminal history
206 record may be denied at the sole discretion of the court.

207 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
208 petition to a court to seal a criminal history record is
209 complete only when accompanied by:

210 (a) A valid certificate of eligibility for sealing issued
211 by the department pursuant to subsection (2).

212 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to
213 petitioning the court to seal a criminal history record, a
214 person seeking to seal a criminal history record shall apply to



280316

215 the department for a certificate of eligibility for sealing. The
216 department shall, by rule adopted pursuant to chapter 120,
217 establish procedures pertaining to the application for and
218 issuance of certificates of eligibility for sealing. A
219 certificate of eligibility for sealing is valid for 12 months
220 after the date stamped on the certificate when issued by the
221 department. After that time, the petitioner must reapply to the
222 department for a new certificate of eligibility. Eligibility for
223 a renewed certification of eligibility must be based on the
224 status of the applicant and the law in effect at the time of the
225 renewal application. The department shall issue a certificate of
226 eligibility for sealing to a person who is the subject of a
227 criminal history record provided that such person:

228 (c) Is not seeking to seal a criminal history record that
229 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
230 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
231 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
232 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
233 s. 907.041, or any violation specified as a predicate offense
234 for registration as a sexual predator pursuant to s. 775.21,
235 without regard to whether that offense alone is sufficient to
236 require such registration, or for registration as a sexual
237 offender pursuant to s. 943.0435, where the defendant was found
238 guilty of, or pled guilty or nolo contendere to any such
239 offense, or which the defendant, as a minor, was found to have
240 committed, or pled guilty or nolo contendere to committing, such
241 an offense as a delinquent act, without regard to whether
242 adjudication was withheld.

243 Section 3. This act shall take effect July 1, 2018.



280316

244

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

246 And the title is amended as follows:

247 Delete everything before the enacting clause

248 and insert:

249 A bill to be entitled

250 An act relating to the expunction and sealing of
251 criminal history records; amending s. 943.0585, F.S.;
252 revising the eligibility requirements for expunction
253 of criminal history records to include instances in
254 which a judgment of acquittal or a verdict of not
255 guilty was rendered; amending s. 943.059, F.S.;
256 clarifying the circumstances under which the
257 Department of Law Enforcement must issue a certificate
258 of eligibility for the sealing of a criminal history
259 record; providing an effective date.



710312

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/14/2018	.	
	.	
	.	
	.	

The Committee on Judiciary (Steube) recommended the following:

1 **Senate Substitute for Amendment (280316) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Paragraphs (a) and (h) of subsection (2) of
7 section 943.0585, Florida Statutes, are amended, and paragraph
8 (b) of subsection (1) and paragraph (f) of subsection (2) of
9 that section are republished, to read:

10 943.0585 Court-ordered expunction of criminal history
11 records.—The courts of this state have jurisdiction over their



710312

12 own procedures, including the maintenance, expunction, and
13 correction of judicial records containing criminal history
14 information to the extent such procedures are not inconsistent
15 with the conditions, responsibilities, and duties established by
16 this section. Any court of competent jurisdiction may order a
17 criminal justice agency to expunge the criminal history record
18 of a minor or an adult who complies with the requirements of
19 this section. The court shall not order a criminal justice
20 agency to expunge a criminal history record until the person
21 seeking to expunge a criminal history record has applied for and
22 received a certificate of eligibility for expunction pursuant to
23 subsection (2) or subsection (5). A criminal history record that
24 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
25 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
26 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
27 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
28 s. 907.041, or any violation specified as a predicate offense
29 for registration as a sexual predator pursuant to s. 775.21,
30 without regard to whether that offense alone is sufficient to
31 require such registration, or for registration as a sexual
32 offender pursuant to s. 943.0435, may not be expunged, without
33 regard to whether adjudication was withheld, if the defendant
34 was found guilty of or pled guilty or nolo contendere to the
35 offense, or if the defendant, as a minor, was found to have
36 committed, or pled guilty or nolo contendere to committing, the
37 offense as a delinquent act. The court may only order expunction
38 of a criminal history record pertaining to one arrest or one
39 incident of alleged criminal activity, except as provided in
40 this section. The court may, at its sole discretion, order the



710312

41 expunction of a criminal history record pertaining to more than
42 one arrest if the additional arrests directly relate to the
43 original arrest. If the court intends to order the expunction of
44 records pertaining to such additional arrests, such intent must
45 be specified in the order. A criminal justice agency may not
46 expunge any record pertaining to such additional arrests if the
47 order to expunge does not articulate the intention of the court
48 to expunge a record pertaining to more than one arrest. This
49 section does not prevent the court from ordering the expunction
50 of only a portion of a criminal history record pertaining to one
51 arrest or one incident of alleged criminal activity.

52 Notwithstanding any law to the contrary, a criminal justice
53 agency may comply with laws, court orders, and official requests
54 of other jurisdictions relating to expunction, correction, or
55 confidential handling of criminal history records or information
56 derived therefrom. This section does not confer any right to the
57 expunction of any criminal history record, and any request for
58 expunction of a criminal history record may be denied at the
59 sole discretion of the court.

60 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
61 petition to a court to expunge a criminal history record is
62 complete only when accompanied by:

63 (b) The petitioner's sworn statement attesting that the
64 petitioner:

65 1. Has never, prior to the date on which the petition is
66 filed, been adjudicated guilty of a criminal offense or
67 comparable ordinance violation, or been adjudicated delinquent
68 for committing any felony or a misdemeanor specified in s.
69 943.051(3)(b).



710312

70 2. Has not been adjudicated guilty of, or adjudicated
71 delinquent for committing, any of the acts stemming from the
72 arrest or alleged criminal activity to which the petition
73 pertains.

74 3. Has never secured a prior sealing or expunction of a
75 criminal history record under this section, s. 943.059, former
76 s. 893.14, former s. 901.33, or former s. 943.058, unless
77 expunction is sought of a criminal history record previously
78 sealed for 10 years pursuant to paragraph (2) (h) and the record
79 is otherwise eligible for expunction.

80 4. Is eligible for such an expunction to the best of his or
81 her knowledge or belief and does not have any other petition to
82 expunge or any petition to seal pending before any court.

83
84 Any person who knowingly provides false information on such
85 sworn statement to the court commits a felony of the third
86 degree, punishable as provided in s. 775.082, s. 775.083, or s.
87 775.084.

88 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
89 petitioning the court to expunge a criminal history record, a
90 person seeking to expunge a criminal history record shall apply
91 to the department for a certificate of eligibility for
92 expunction. The department shall, by rule adopted pursuant to
93 chapter 120, establish procedures pertaining to the application
94 for and issuance of certificates of eligibility for expunction.
95 A certificate of eligibility for expunction is valid for 12
96 months after the date stamped on the certificate when issued by
97 the department. After that time, the petitioner must reapply to
98 the department for a new certificate of eligibility. Eligibility



710312

99 for a renewed certification of eligibility must be based on the
100 status of the applicant and the law in effect at the time of the
101 renewal application. The department shall issue a certificate of
102 eligibility for expunction to a person who is the subject of a
103 criminal history record if that person:

104 (a) Has obtained, and submitted to the department, a
105 written, certified statement from the appropriate state attorney
106 or statewide prosecutor which indicates:

107 1. That an indictment, information, or other charging
108 document was not filed or issued in the case.

109 2. That an indictment, information, or other charging
110 document, if filed or issued in the case, was dismissed or nolle
111 prosequi by the state attorney or statewide prosecutor, ~~or~~ was
112 dismissed by a court of competent jurisdiction, that a judgment
113 of acquittal was rendered by a judge, or that a verdict of not
114 guilty was rendered by a judge or jury ~~and that none of the~~
115 ~~charges related to the arrest or alleged criminal activity to~~
116 ~~which the petition to expunge pertains resulted in a trial,~~
117 ~~without regard to whether the outcome of the trial was other~~
118 ~~than an adjudication of guilt.~~

119 3. That the criminal history record does not relate to a
120 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
121 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
122 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
123 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
124 or any violation specified as a predicate offense for
125 registration as a sexual predator pursuant to s. 775.21, without
126 regard to whether that offense alone is sufficient to require
127 such registration, or for registration as a sexual offender



710312

128 pursuant to s. 943.0435, where the defendant was found guilty
129 of, or pled guilty or nolo contendere to any such offense, or
130 that the defendant, as a minor, was found to have committed, or
131 pled guilty or nolo contendere to committing, such an offense as
132 a delinquent act, without regard to whether adjudication was
133 withheld.

134 (f) Has never secured a prior sealing or expunction of a
135 criminal history record under this section, s. 943.059, former
136 s. 893.14, former s. 901.33, or former s. 943.058, unless
137 expunction is sought of a criminal history record previously
138 sealed for 10 years pursuant to paragraph (h) and the record is
139 otherwise eligible for expunction.

140 (h) Has previously obtained a court order sealing the
141 record under this section, former s. 893.14, former s. 901.33,
142 or former s. 943.058 for a minimum of 10 years because
143 adjudication was withheld or because all charges related to the
144 arrest or alleged criminal activity to which the petition to
145 expunge pertains were not dismissed before ~~prior to~~ trial,
146 ~~without regard to whether the outcome of the trial was other~~
147 ~~than an adjudication of guilt.~~ The requirement for the record to
148 have previously been sealed for a minimum of 10 years does not
149 apply when a plea was not entered or all charges related to the
150 arrest or alleged criminal activity to which the petition to
151 expunge pertains were dismissed before ~~prior to~~ trial, when a
152 judgment of acquittal was rendered by a judge, or when a verdict
153 of not guilty was rendered by a judge or jury.

154 Section 2. Effective upon this act becoming a law, present
155 paragraphs (c) through (f) of subsection (2) of section 943.059,
156 Florida Statutes, are redesignated as paragraphs (d) through



710312

157 (g), respectively, a new paragraph (c) is added to that
158 subsection, and paragraph (a) of subsection (1) of that section
159 is republished, to read:

160 943.059 Court-ordered sealing of criminal history records.-
161 The courts of this state shall continue to have jurisdiction
162 over their own procedures, including the maintenance, sealing,
163 and correction of judicial records containing criminal history
164 information to the extent such procedures are not inconsistent
165 with the conditions, responsibilities, and duties established by
166 this section. Any court of competent jurisdiction may order a
167 criminal justice agency to seal the criminal history record of a
168 minor or an adult who complies with the requirements of this
169 section. The court shall not order a criminal justice agency to
170 seal a criminal history record until the person seeking to seal
171 a criminal history record has applied for and received a
172 certificate of eligibility for sealing pursuant to subsection
173 (2). A criminal history record that relates to a violation of s.
174 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
175 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
176 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
177 s. 916.1075, a violation enumerated in s. 907.041, or any
178 violation specified as a predicate offense for registration as a
179 sexual predator pursuant to s. 775.21, without regard to whether
180 that offense alone is sufficient to require such registration,
181 or for registration as a sexual offender pursuant to s.
182 943.0435, may not be sealed, without regard to whether
183 adjudication was withheld, if the defendant was found guilty of
184 or pled guilty or nolo contendere to the offense, or if the
185 defendant, as a minor, was found to have committed or pled



710312

186 guilty or nolo contendere to committing the offense as a
187 delinquent act. The court may only order sealing of a criminal
188 history record pertaining to one arrest or one incident of
189 alleged criminal activity, except as provided in this section.
190 The court may, at its sole discretion, order the sealing of a
191 criminal history record pertaining to more than one arrest if
192 the additional arrests directly relate to the original arrest.
193 If the court intends to order the sealing of records pertaining
194 to such additional arrests, such intent must be specified in the
195 order. A criminal justice agency may not seal any record
196 pertaining to such additional arrests if the order to seal does
197 not articulate the intention of the court to seal records
198 pertaining to more than one arrest. This section does not
199 prevent the court from ordering the sealing of only a portion of
200 a criminal history record pertaining to one arrest or one
201 incident of alleged criminal activity. Notwithstanding any law
202 to the contrary, a criminal justice agency may comply with laws,
203 court orders, and official requests of other jurisdictions
204 relating to sealing, correction, or confidential handling of
205 criminal history records or information derived therefrom. This
206 section does not confer any right to the sealing of any criminal
207 history record, and any request for sealing a criminal history
208 record may be denied at the sole discretion of the court.

209 (1) PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
210 petition to a court to seal a criminal history record is
211 complete only when accompanied by:

212 (a) A valid certificate of eligibility for sealing issued
213 by the department pursuant to subsection (2).

214 (2) CERTIFICATE OF ELIGIBILITY FOR SEALING.—Prior to



710312

215 petitioning the court to seal a criminal history record, a
216 person seeking to seal a criminal history record shall apply to
217 the department for a certificate of eligibility for sealing. The
218 department shall, by rule adopted pursuant to chapter 120,
219 establish procedures pertaining to the application for and
220 issuance of certificates of eligibility for sealing. A
221 certificate of eligibility for sealing is valid for 12 months
222 after the date stamped on the certificate when issued by the
223 department. After that time, the petitioner must reapply to the
224 department for a new certificate of eligibility. Eligibility for
225 a renewed certification of eligibility must be based on the
226 status of the applicant and the law in effect at the time of the
227 renewal application. The department shall issue a certificate of
228 eligibility for sealing to a person who is the subject of a
229 criminal history record provided that such person:

230 (c) Is not seeking to seal a criminal history record that
231 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
232 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
233 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
234 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
235 s. 907.041, or any violation specified as a predicate offense
236 for registration as a sexual predator pursuant to s. 775.21,
237 without regard to whether that offense alone is sufficient to
238 require such registration, or for registration as a sexual
239 offender pursuant to s. 943.0435, where the defendant was found
240 guilty of, or pled guilty or nolo contendere to any such
241 offense, or which the defendant, as a minor, was found to have
242 committed, or pled guilty or nolo contendere to committing, such
243 an offense as a delinquent act, without regard to whether



710312

244 adjudication was withheld.

245 Section 3. Except as otherwise expressly provided in this
246 act and except for this section, which shall take effect upon
247 becoming a law, this act shall take effect July 1, 2018.

248

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

250 And the title is amended as follows:

251 Delete everything before the enacting clause
252 and insert:

253 A bill to be entitled
254 An act relating to the expunction and sealing of
255 criminal history records; amending s. 943.0585, F.S.;
256 revising the eligibility requirements for expunction
257 of criminal history records to include instances in
258 which a judgment of acquittal or a verdict of not
259 guilty was rendered; amending s. 943.059, F.S.;
260 clarifying the circumstances under which the
261 Department of Law Enforcement must issue a certificate
262 of eligibility for the sealing of a criminal history
263 record; providing an effective date.

By Senator Steube

23-01315A-18

20181142__

1 A bill to be entitled
2 An act relating to expunction of criminal history
3 records; amending s. 943.0585, F.S.; revising the
4 eligibility requirements for expunction of criminal
5 history records to include instances in which a
6 verdict of not guilty was rendered; providing an
7 effective date.

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

10 Section 1. Paragraphs (a) and (h) of subsection (2) of
11 section 943.0585, Florida Statutes, are amended, and paragraph
12 (b) of subsection (1) and paragraph (f) of subsection (2) of
13 that section are republished, to read:

14 943.0585 Court-ordered expunction of criminal history
15 records.—The courts of this state have jurisdiction over their
16 own procedures, including the maintenance, expunction, and
17 correction of judicial records containing criminal history
18 information to the extent such procedures are not inconsistent
19 with the conditions, responsibilities, and duties established by
20 this section. Any court of competent jurisdiction may order a
21 criminal justice agency to expunge the criminal history record
22 of a minor or an adult who complies with the requirements of
23 this section. The court shall not order a criminal justice
24 agency to expunge a criminal history record until the person
25 seeking to expunge a criminal history record has applied for and
26 received a certificate of eligibility for expunction pursuant to
27 subsection (2) or subsection (5). A criminal history record that
28 relates to a violation of s. 393.135, s. 394.4593, s. 787.025,
29

Page 1 of 6

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23-01315A-18

20181142__

30 chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034,
31 s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135,
32 s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in
33 s. 907.041, or any violation specified as a predicate offense
34 for registration as a sexual predator pursuant to s. 775.21,
35 without regard to whether that offense alone is sufficient to
36 require such registration, or for registration as a sexual
37 offender pursuant to s. 943.0435, may not be expunged, without
38 regard to whether adjudication was withheld, if the defendant
39 was found guilty of or pled guilty or nolo contendere to the
40 offense, or if the defendant, as a minor, was found to have
41 committed, or pled guilty or nolo contendere to committing, the
42 offense as a delinquent act. The court may only order expunction
43 of a criminal history record pertaining to one arrest or one
44 incident of alleged criminal activity, except as provided in
45 this section. The court may, at its sole discretion, order the
46 expunction of a criminal history record pertaining to more than
47 one arrest if the additional arrests directly relate to the
48 original arrest. If the court intends to order the expunction of
49 records pertaining to such additional arrests, such intent must
50 be specified in the order. A criminal justice agency may not
51 expunge any record pertaining to such additional arrests if the
52 order to expunge does not articulate the intention of the court
53 to expunge a record pertaining to more than one arrest. This
54 section does not prevent the court from ordering the expunction
55 of only a portion of a criminal history record pertaining to one
56 arrest or one incident of alleged criminal activity.
57 Notwithstanding any law to the contrary, a criminal justice
58 agency may comply with laws, court orders, and official requests

Page 2 of 6

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23-01315A-18

20181142__

59 of other jurisdictions relating to expunction, correction, or
60 confidential handling of criminal history records or information
61 derived therefrom. This section does not confer any right to the
62 expunction of any criminal history record, and any request for
63 expunction of a criminal history record may be denied at the
64 sole discretion of the court.

65 (1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
66 petition to a court to expunge a criminal history record is
67 complete only when accompanied by:

68 (b) The petitioner's sworn statement attesting that the
69 petitioner:

70 1. Has never, prior to the date on which the petition is
71 filed, been adjudicated guilty of a criminal offense or
72 comparable ordinance violation, or been adjudicated delinquent
73 for committing any felony or a misdemeanor specified in s.
74 943.051(3)(b).

75 2. Has not been adjudicated guilty of, or adjudicated
76 delinquent for committing, any of the acts stemming from the
77 arrest or alleged criminal activity to which the petition
78 pertains.

79 3. Has never secured a prior sealing or expunction of a
80 criminal history record under this section, s. 943.059, former
81 s. 893.14, former s. 901.33, or former s. 943.058, unless
82 expunction is sought of a criminal history record previously
83 sealed for 10 years pursuant to paragraph (2)(h) and the record
84 is otherwise eligible for expunction.

85 4. Is eligible for such an expunction to the best of his or
86 her knowledge or belief and does not have any other petition to
87 expunge or any petition to seal pending before any court.

23-01315A-18

20181142__

88
89 Any person who knowingly provides false information on such
90 sworn statement to the court commits a felony of the third
91 degree, punishable as provided in s. 775.082, s. 775.083, or s.
92 775.084.

93 (2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to
94 petitioning the court to expunge a criminal history record, a
95 person seeking to expunge a criminal history record shall apply
96 to the department for a certificate of eligibility for
97 expunction. The department shall, by rule adopted pursuant to
98 chapter 120, establish procedures pertaining to the application
99 for and issuance of certificates of eligibility for expunction.
100 A certificate of eligibility for expunction is valid for 12
101 months after the date stamped on the certificate when issued by
102 the department. After that time, the petitioner must reapply to
103 the department for a new certificate of eligibility. Eligibility
104 for a renewed certification of eligibility must be based on the
105 status of the applicant and the law in effect at the time of the
106 renewal application. The department shall issue a certificate of
107 eligibility for expunction to a person who is the subject of a
108 criminal history record if that person:

109 (a) Has obtained, and submitted to the department, a
110 written, certified statement from the appropriate state attorney
111 or statewide prosecutor which indicates:

112 1. That an indictment, information, or other charging
113 document was not filed or issued in the case.

114 2. That an indictment, information, or other charging
115 document, if filed or issued in the case, was dismissed or nolle
116 prosequi by the state attorney or statewide prosecutor, ~~or~~ was

23-01315A-18

20181142__

117 dismissed by a court of competent jurisdiction, or that a
 118 verdict of not guilty was rendered by a judge or jury ~~and that~~
 119 ~~none of the charges related to the arrest or alleged criminal~~
 120 ~~activity to which the petition to expunge pertains resulted in a~~
 121 ~~trial, without regard to whether the outcome of the trial was~~
 122 ~~other than an adjudication of guilt.~~

123 3. That the criminal history record does not relate to a
 124 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
 125 former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025,
 126 s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145,
 127 s. 893.135, s. 916.1075, a violation enumerated in s. 907.041,
 128 or any violation specified as a predicate offense for
 129 registration as a sexual predator pursuant to s. 775.21, without
 130 regard to whether that offense alone is sufficient to require
 131 such registration, or for registration as a sexual offender
 132 pursuant to s. 943.0435, where the defendant was found guilty
 133 of, or pled guilty or nolo contendere to any such offense, or
 134 that the defendant, as a minor, was found to have committed, or
 135 pled guilty or nolo contendere to committing, such an offense as
 136 a delinquent act, without regard to whether adjudication was
 137 withheld.

138 (f) Has never secured a prior sealing or expunction of a
 139 criminal history record under this section, s. 943.059, former
 140 s. 893.14, former s. 901.33, or former s. 943.058, unless
 141 expunction is sought of a criminal history record previously
 142 sealed for 10 years pursuant to paragraph (h) and the record is
 143 otherwise eligible for expunction.

144 (h) Has previously obtained a court order sealing the
 145 record under this section, former s. 893.14, former s. 901.33,

Page 5 of 6

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23-01315A-18

20181142__

146 or former s. 943.058 for a minimum of 10 years because
 147 adjudication was withheld or because all charges related to the
 148 arrest or alleged criminal activity to which the petition to
 149 expunge pertains were not dismissed before ~~prior to~~ trial,
 150 without regard to whether the outcome of the trial was other
 151 than an adjudication of guilt. The requirement for the record to
 152 have previously been sealed for a minimum of 10 years does not
 153 apply when a plea was not entered or all charges related to the
 154 arrest or alleged criminal activity to which the petition to
 155 expunge pertains were dismissed before ~~prior to~~ trial or a
 156 verdict of not guilty was rendered by a judge or jury.

157 Section 2. This act shall take effect July 1, 2018.

Page 6 of 6

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2.13.18

Meeting Date

11421

Bill Number (if applicable)

Topic Expunction of Criminal History Records

Amendment Barcode (if applicable)

Name Barney Bishop

Job Title CEO

Address 204 South Monroe Street

Phone 510-9922

Street

Tallahassee

FL

32301

Email Barney@BarneyBishop.com

City

State

Zip

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

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

Representing Florida Smart Justice Alliance

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)

2-13-18

Meeting Date

1142

Bill Number (if applicable)

Topic Expansion of Criminal Records

Amendment Barcode (if applicable)

Name Andrew Hasek

Job Title Analyst

Address 200 W College Ave

Phone _____

Street

TLH FL

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/13/2018

Meeting Date

S1142

Bill Number (if applicable)

Topic Expungement

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32302

Email ndaniels@flpda.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Public Defenders

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: 2/13/2018 2:03:40 PM

Ends: 2/13/2018 3:26:13 PM Length: 01:22:34

2:03:41 PM Meeting called to order by Chair Steube
2:03:52 PM Roll call by Administrative Assistant Joyce Butler
2:04:01 PM Quorum present
2:04:10 PM Comments from Chair Steube
2:04:26 PM CS1230 introduced by Chair Steube
2:04:44 PM Explanation of CS/SB 1230 by Senator Baxley
2:05:20 PM Barney Bishop, CEO, Florida Smart Justice waives in support
2:05:26 PM Sarah Naf Behl, Chief of Legislative Affairs, State Courts System
waives in support
2:05:35 PM Senator Thurston in debate
2:06:07 PM Senator Baxley in closure
2:06:35 PM Roll call on CS/SB 1230
2:06:46 PM CS/SB 1230 reported favorably
2:07:13 PM Chair to Senator Benacquisto
2:07:26 PM Introduction of SB 1142 by Chair Benacquisto
2:07:45 PM Explanation of SB 1142 by Senator Steube
2:08:08 PM Amendment Barcode Nos. 280316 and 710312 introduced by
Chair Benacquisto
2:08:30 PM Explanation of Amendment Barcode No. 710312
2:08:38 PM Amendment Barcode No. 710312 adopted
2:08:44 PM Question from Senator Thurston
2:09:26 PM Response from Senator Steube
2:09:45 PM Follow-up question from Senator Thurston
2:10:29 PM Nancy Daniels, Legislative Consultant Florida Public Defenders
waives in support
2:10:33 PM Andrew Hasek, Analyst, Americans for Prosperity waives in
support
2:10:39 PM Barney Bishop, CEO, Florida Smart Justice Alliance waives in
support
2:10:48 PM Senator Thurston in Debate
2:11:53 PM Closure waived by Senator Steube
2:12:07 PM Roll call on CS/SB 1142
2:12:18 PM CS/SB 1142 reported favorably

2:12:34 PM Introduction of SB 952 by Chair Benacquisto
2:12:38 PM Explanation of SB 952 by Senator Steube
2:12:47 PM Barney Bishop, Florida Smart Justice Alliance waives in support
2:12:53 PM Jennifer Habogood, ASPCA waives in support
2:13:40 PM Speaker Chief Frank Fabrizio, Ponce Inlet Police Department
2:16:07 PM Closure waived by Senator Steube
2:16:15 PM Roll call on SB 952
2:16:22 PM SB 952 reported favorably
2:16:32 PM Introduction of SB 918 by Chair Steube
2:16:50 PM Explanation of SB 918 by Senator Grimsley
2:17:39 PM Introduction of Amendment Barcode No. 950782 by Chair
Steube
2:17:55 PM Explanation of Amendment Barcode No. 950782 by Senator
Grimsley
2:18:43 PM Question from Senator Bradley
2:18:55 PM Response from Senator Grimsley
2:19:13 PM Follow-up question from Senator Bradley
2:19:24 PM Response from Senator Grimsley
2:19:45 PM Amendment Barcode No. 950782 adopted
2:19:56 PM Fred Baggett, Chairman, Greenberg Traurig waives in support
2:20:07 PM BG Murphy, Legislative Affairs Director, Department of Financial
Services waives in support
2:20:13 PM Closure waived by Senator Grimsley
2:20:22 PM Roll call on CS/SB 918
2:20:37 PM CS/SB 918 reported favorably
2:20:55 PM CS/SB 1256 introduced by Chair Steube
2:21:06 PM Explanation of CS/SB 1256 by Senator Brandes
2:21:43 PM Amendment Barcode No. 594522 introduced by Chair Steube
2:21:57 PM Explanation of Amendment Barcode No. 594522 by Senator
Brandes
2:22:11 PM Amendment Barcode No. 594522 adopted
2:22:18 PM Question from Senator Gibson
2:22:38 PM Response from Senator Brandes
2:23:01 PM Sebastian Aleksander, Facebook waives in support
2:23:09 PM Cesar Grajales, Coalitions Director waives in support
2:23:14 PM Nancy Daniels, Legislative Consultant, Florida Public Defenders
waives in support
2:23:21 PM Closure waived by Senator Brandes
2:23:29 PM Roll call on CS/SB 1256
2:23:41 PM CS/SB 1256 reported favorably
2:23:54 PM SB 1384 introduced by Chair Steube

2:24:12 PM	Explanation of Amendment Barcode No. 122416 by Senator Brandes
2:25:29 PM	Question from Senator Thurston
2:25:37 PM	Response from Senator Brandes
2:26:24 PM	Chief Judge Mark Mahon, State Court System waives in support of Amendment
2:26:39 PM	Amendment Barcode No. 122416 adopted
2:27:15 PM	Speaker William Large, President, Florida Justice Reform Institute
2:28:31 PM	Question from Senator Thurston
2:28:37 PM	Response from Mr. Large
2:28:55 PM	Follow-up question from Senator Thurston
2:29:10 PM	Response from Mr. Large
2:30:11 PM	Question from Senator Gibson
2:30:40 PM	Response from Mr. Large
2:31:51 PM	Follow-up question from Senator Gibson
2:32:01 PM	Response from Chair Steube
2:32:13 PM	Additional question from Senator Gibson
2:32:20 PM	Response from Mr. Large
2:32:42 PM	Question from Senator Gibson
2:32:53 PM	Response from Mr. Large
2:33:27 PM	Additional question from Senator Gibson
2:33:34 PM	Response from Mr. Large
2:33:54 PM	Question from Chair Steube
2:34:05 PM	Response from Mr. Large
2:34:30 PM	Senator Brandes in closure
2:34:58 PM	Roll call on CS/SB 1384
2:35:20 PM	CS/SB 1384 reported favorably
2:35:39 PM	Introduction of SB 28 by Chair Steube
2:35:52 PM	Explanation of SB 28 by Senator Montford
2:36:22 PM	Amendment Barcode No. 347486 introduced
2:36:30 PM	Explanation of Amendment Barcode No. 347486 by Senator Montford
2:36:39 PM	Amendment Barcode No. 347486 adopted
2:36:49 PM	Closure waived by Senator Montford
2:36:57 PM	Roll call on CS/SB 28
2:37:07 PM	CS/SB 28 reported favorably
2:37:23 PM	SB 112 introduced by Chair Steube
2:37:48 PM	Barney Bishop, Florida Smart Justice Alliance waives in support
2:37:52 PM	Chris Floyd, Florida Association of Nurse Practitioners waives in support

2:38:04 PM Jessica Janasiewicz, Governmental Consultant, Florida Academy of Physician Assistants waives in support

2:38:14 PM Closure waived by Senator Campbell

2:38:18 PM Roll call on SB 112

2:38:33 PM SB 112 reported favorably

2:38:52 PM SB 750 introduced by Chair Steube

2:39:00 PM Explanation of SB 750 by Senator Perry

2:39:11 PM Introduction of Amendment Barcode No. 510198

2:39:29 PM Explanation of Amendment Barcode No. 510198 by Senator Perry

2:39:32 PM Amendment Barcode No. 510198 adopted

2:39:41 PM Introduction of Amendment Barcode No. 876508 by Chair Steube

2:40:00 PM Explanation of Amendment Barcode No. 876508 by Senator Perry

2:40:07 PM Amendment to Amendment Barcode No. 876508 adopted

2:40:22 PM Question from Senator Powell

2:40:52 PM Response from Senator Perry

2:41:36 PM Andrew Hosek, Americans for Prosperity waives in support

2:42:06 PM Speaker Bill Peebles, City of Orlando

2:48:08 PM Question from Senator Powell

2:48:24 PM Response from Mr. Peebles

2:49:49 PM Question from Senator Thurston

2:50:13 PM Response from Mr. Peebles

2:51:01 PM Follow-up question from Senator Thurston

2:51:10 PM Response from Mr. Peebles

2:52:05 PM Question from Senator Bradley

2:52:27 PM Response from Mr. Peebles

2:52:51 PM Follow-up question from Senator Bradley

2:53:03 PM Response from Mr. Peebles

2:53:16 PM Follow-up question from Senator Bradley

2:53:42 PM Response from Mr. Peebles

2:54:28 PM Additional question from Senator Bradley

2:54:38 PM Response from Mr. Peebles

2:54:48 PM Additional question from Senator Bradley

2:54:53 PM Response from Mr. Peebles

2:55:01 PM Question from Senator Powell

2:55:10 PM Response from Mr. Peebles

2:55:21 PM Brian Sullivan, Chief Legal Counsel, Florida Association of Counties waives in opposition

2:55:40 PM Question from Senator Thurston

2:55:58 PM Response from Senator Perry
2:57:57 PM Debate by Senator Garcia
2:58:40 PM Question from Senator Bradley
2:58:45 PM Response from Chair Steube
2:59:22 PM Senator Bradley in debate
3:00:38 PM Senator Flores in debate
3:02:14 PM Senator Perry in closure
3:03:39 PM Roll call on CS/SB 750
3:04:13 PM CS/SB 750 in reported unfavorably
3:04:25 PM CS/SB 300 introduced by Chair Steube
3:04:34 PM Explanation of CS/SB 300 by Senator Rouson
3:06:23 PM Michelle Wilson, Executive Director, Florida Commission on Human Relations waives in support
3:06:29 PM Carolyn Johnson, Policy Director, Florida Chamber of Commerce waives in support
3:06:38 PM Tim Nungesser, National Federation of Independent Business waives in support
3:06:45 PM Closure waived by Senator Rouson
3:06:54 PM Roll call on CS/SB 300
3:07:07 PM CS/SB 300 reported favorably
3:07:25 PM Chair to Senator Benacquisto
3:07:34 PM Introduction of CS/SB 706 by Chair Benacquisto
3:07:49 PM Explanation of CS/SB 706 by Senator Steube
3:07:57 PM Question from Senator Bracy
3:08:18 PM Response from Senator Steube
3:08:52 PM Amendment Barcode No. 854106 introduced
3:09:17 PM Explanation of Amendment Barcode No. 854106 by Senator Steube
3:09:51 PM Amendment Barcode No. 854106 adopted
3:10:00 PM Question from Senator Thurston
3:10:32 PM Response from Senator Steube
3:11:19 PM Follow-up question from Senator Thurston
3:12:06 PM Response from Senator Steube
3:12:28 PM Response from Tom Cibula, Staff Director
3:13:45 PM Follow-up question from Senator Thurston
3:14:29 PM Response from Senator Steube
3:14:48 PM Barney Bishop, Florida Smart Justice Alliance waives in support
3:15:00 PM Senator Steube in closure
3:15:14 PM Roll call on CS/SB 706
3:15:33 PM CS/SB 706 reported favorably
3:16:03 PM Senator Bradley makes motion to reconsider SB 7505 and to TP

the bill

3:16:40 PM Senator Mayfield, shown favorably on 28, 918, 1230, 1256, 1384, 952, 1142, unfavorably, 112

3:16:53 PM Senator Bradley moves in favor of CS/SB 300

3:17:11 PM Garcia 918, negav, 1230, 1142, and 952 favorably

3:17:28 PM SB 1076 introduced by Chair Benacquisto

3:17:32 PM Explanation of SB 1076 by Senator Steube

3:17:39 PM Amendment Barcode No. 566792 introduced by Chair Benacquisto

3:17:53 PM Explanation of Amendment Barcode No. 566792 by Senator Steube

3:18:32 PM Amendment Barcode No. 566792 adopted

3:18:44 PM Jim Magill, Pinch A Penny Pools waives in opposition

3:18:48 PM Richard Turner, Florida Restaurant & Lodging Association waives in opposition

3:19:20 PM Speaker Chris Holmes, Firehouse Subs in opposition

3:20:18 PM Question from Senator Powell

3:20:58 PM Response from Mr. Holmes

3:23:33 PM Speaker Matt Holmes, Firehouse Subs in opposition

3:24:35 PM Question from Senator Powell

3:24:46 PM Response from Mr. Holmes

3:25:20 PM Jake Farmer, Florida Retail Federation waives in opposition

3:25:24 PM Andrew Hosek, Americans for Prosperity waives in opposition

3:25:29 PM Doug Bell, McDonalds Restaurant waives in opposition

3:25:35 PM Aimee Diaz Lyon, The Business Law Section of the Florida Bar waives in opposition

3:25:51 PM Senator Steube moves that CS/SB 1076 be TP'd

3:26:05 PM Senator Benacquisto moves to adjourn, meeting adjourned