

Tab 1	CS/SB 52 by JU, Mayfield; (Similar to CS/H 06515) Relief of Cathleen Smiley by Brevard County					
Tab 2	SB 162 by Steube (CO-INTRODUCERS) Mayfield; (Similar to H 00217) Payment of Health Care Claims					
Tab 3	CS/CS/SB 268 by GO, CF, Passidomo; (Similar to CS/H 01037) Public Records/Public Guardians/Employees with Fiduciary Responsibility					
332120	A	S	RCS	RC, Passidomo	Delete L.29 - 75:	02/01 12:53 PM
Tab 4	CS/SB 278 by GO, Hutson (CO-INTRODUCERS) Baxley; (Identical to CS/H 00087) Public Records/Department of State					
Tab 5	SB 314 by Baxley; (Identical to H 00193) Mortgage Brokering					
Tab 6	CS/SB 1048 by JU, Baxley (CO-INTRODUCERS) Stargel, Steube; (Compare to H 01419) Firearms					
Tab 7	SB 512 by Young; (Identical to H 00421) Homestead Waivers					
927498	A	S	RCS	RC, Young	Delete L.12:	02/01 01:09 PM
671898	A	S	RCS	RC, Young	Delete L.17:	02/01 01:09 PM
Tab 8	SR 550 by Broxson (CO-INTRODUCERS) Rouson, Farmer, Taddeo, Steube, Gainer, Montford, Powell; (Identical to H 00319) Gulf of Mexico Range Complex					
Tab 9	SB 760 by Bean; (Identical to H 00623) Grounds for Nonrecognition of Out-of-country Foreign Judgments					
Tab 10	SB 1078 by Perry; (Identical to H 07053) Public Records/United States Census Bureau					
Tab 11	CS/SB 8 by HP, Benacquisto (CO-INTRODUCERS) Perry, Stargel, Bean, Passidomo; (Similar to CS/H 00021) Controlled Substances					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, February 1, 2018
TIME: 11:30 a.m.—1:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Braynon, Vice Chair; Senators Book, Bradley, Brandes, Flores, Galvano, Lee, Montford, Perry, Rodriguez, Simpson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 52 Judiciary / Mayfield (Similar CS/H 6515)	Relief of Cathleen Smiley by Brevard County; Providing for the relief of Cathleen Smiley by Brevard County; providing for an appropriation to compensate Cathleen Smiley for personal injuries and damages sustained in an automobile accident caused by a Brevard County employee, etc. SM JU 01/10/2018 Fav/CS GO 01/23/2018 Favorable RC 02/01/2018 Favorable	Favorable Yeas 12 Nays 0
2	SB 162 Steube (Similar H 217)	Payment of Health Care Claims; Prohibiting a health insurer or a health maintenance organization from retroactively denying a claim under specified circumstances, etc. BI 12/05/2017 Favorable HP 01/23/2018 Favorable RC 02/01/2018 Favorable	Favorable Yeas 12 Nays 0
3	CS/CS/SB 268 Governmental Oversight and Accountability / Children, Families, and Elder Affairs / Passidomo (Similar CS/H 1037)	Public Records/Public Guardians/Employees with Fiduciary Responsibility; Providing an exemption from public records requirements for certain identifying and location information of current or former public guardians, employees with fiduciary responsibility, and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 11/06/2017 CF 11/13/2017 Fav/CS GO 01/16/2018 Fav/CS RC 02/01/2018 Fav/CS	Fav/CS Yeas 11 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 1, 2018, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 278 Governmental Oversight and Accountability / Hutson (Identical CS/H 87, Compare CS/H 85, Linked CS/S 276)	Public Records/Department of State ; Providing an exemption from public records requirements for certain information received by the Department of State from another state or the District of Columbia which is confidential or exempt pursuant to the laws of that jurisdiction; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. EE 11/07/2017 Favorable GO 12/05/2017 Fav/CS RC 02/01/2018 Favorable	Favorable Yeas 11 Nays 0
5	SB 314 Baxley (Similar S 282, Identical H 193)	Mortgage Brokering; Providing an exemption from regulation under parts I and II of ch. 494, F.S., for certain securities dealers, investment advisers, and associated persons, etc. RI 12/07/2017 Favorable BI 01/23/2018 Favorable RC 02/01/2018 Favorable	Favorable Yeas 12 Nays 0
6	CS/SB 1048 Judiciary / Baxley (Compare H 1419)	Firearms; Authorizing a church, a synagogue, or other religious institution to allow a concealed weapons or concealed firearms licensee to carry a concealed handgun in certain established physical places of worship under certain circumstances, etc. JU 01/18/2018 Temporarily Postponed JU 01/25/2018 Fav/CS RC 02/01/2018 Favorable	Favorable Yeas 7 Nays 5
7	SB 512 Young (Identical H 421)	Homestead Waivers; Providing language that may be used to waive spousal homestead rights concerning devise restrictions, etc. CA 11/07/2017 Favorable JU 12/05/2017 Favorable RC 02/01/2018 Fav/CS	Fav/CS Yeas 12 Nays 0
8	SR 550 Broxson (Identical HR 319)	Gulf of Mexico Range Complex; Supporting an extension of the current moratorium on drilling in the Gulf of Mexico east of the Military Mission Line, etc. EP 01/16/2018 Favorable MS 01/25/2018 Favorable RC 02/01/2018 Favorable	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, February 1, 2018, 11:30 a.m.—1:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 760 Bean (Identical H 623)	Grounds for Nonrecognition of Out-of-country Foreign Judgments; Providing additional circumstances in which an out-of-country foreign judgment need not be recognized, etc. JU 12/05/2017 Favorable CM 01/09/2018 Favorable RC 02/01/2018 Favorable	Favorable Yeas 12 Nays 0
10	SB 1078 Perry (Identical H 7053)	Public Records/United States Census Bureau ; Creating an exemption from public records requirements for specified United States Census Bureau address information held by an agency; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 01/16/2018 Favorable RC 02/01/2018 Favorable	Favorable Yeas 12 Nays 0
11	CS/SB 8 Health Policy / Benacquisto (Similar CS/H 21, Compare H 1159, S 458)	Controlled Substances; Prohibiting managed care plans and their fiscal agents or intermediaries from imposing certain requirements or conditions on recipients as a prerequisite to receiving medication-assisted treatment (MAT) services to treat substance abuse disorders; authorizing certain boards to require practitioners to complete a specified board-approved continuing education course to obtain authorization to prescribe controlled substances as part of biennial license renewal; authorizing disciplinary action against practitioners for violating specified provisions relating to controlled substances; prohibiting the dispensing of certain controlled substances in an amount that exceeds a 3-day supply or a medically necessary 7-day supply if certain criteria are met, etc. HP 01/10/2018 Workshop-Discussed HP 01/16/2018 Fav/CS AP 01/24/2018 Favorable RC 02/01/2018 Temporarily Postponed	Temporarily Postponed

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
1/4/18	SM	Fav/1 amendment
1/11/18	JU	Fav/CS
1/23/18	GO	Favorable
2/1/18	RC	Favorable

January 2, 2018

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

Re: **CS/SB 52** – Judiciary Committee and Senator Mayfield
HB 6515 – Representative Altman
Relief of Cathleen Smiley

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM PREDICATED UPON A CONSENT JUDGMENT ENTERED AGAINST BREVARD COUNTY TO COMPENSATE THE CLAIMANT, CATHLEEN SMILEY, FOR INJURIES SUFFERED IN A MOTOR VEHICLE ACCIDENT AS A RESULT OF THE NEGLIGENT ACTIONS OF AN EMPLOYEE OF THE COUNTY.

FINDINGS OF FACT:

On June 18, 1998, Cathleen Smiley ("Claimant") was involved in a multi-vehicle accident caused by a bus owned and operated by Brevard County. Claimant was the driver of a 1994 Ford Ranger pickup truck that was stopped in the westbound inside lane of West Hibiscus Boulevard waiting to make a left turn. A van being driven by Howard Evarts was traveling behind Claimant at roughly 5 mph, also preparing to turn left, when a Brevard County transit bus traveling at 45 mph failed to brake and rear-ended the van leaving approximately 76 feet of skid marks. This collision caused the Evarts van to rear-end Claimant's vehicle. At the time of the accident, Claimant was wearing her seatbelt. The driver of the County bus, Dale McKale, was dismissed from county employment as a result of this accident.

Upon impact, Claimant's head hit the rear window of her pickup truck and she was knocked unconscious. She also sustained a laceration to her head which required 38 stitches. Injuries sustained by Claimant also included a post-traumatic cervical sprain, a post-traumatic thoracic sprain, post-traumatic headaches, a left shoulder injury, and a closed head injury with post-concussive syndrome. Claimant's neurologist, Dr. Christopher Prusinski, opined that she is at a point of maximum medical improvement and that she had suffered an 8 percent whole body impairment. To this day, Claimant experiences periodic neck and left shoulder pain.

After the accident, Claimant received substantial medical care with bills totaling \$22,437.42. Claimant testified that the accident caused a strain on her family life with her husband and young children. She could no longer perform her job as a certified nursing assistant due to the physically demanding nature of the position due to her injuries. But she has since found other work that is less physically demanding.

Collateral Sources

Claimant received \$8,650 from the County for property damage to her truck. She also received \$10,000 from Allstate Insurance from personal injury protection (PIP) coverage, which went towards her medical bills and support while she could not work.

Litigation History

Claimant and her husband filed suit against the Brevard County Board of Commissioners on or around February 29, 2000. The County filed an Answer in September 25, 2000. On May 27, 2014, Claimant and the County entered into a settlement agreement. The County agreed to pay Claimant \$25,000. Due to paying out other claims from the same accident, the county reached the \$200,000 sovereign immunity cap that was in place at the time of the accident, so the settlement agreement stipulates that Claimant will be compensated once a claims bill is passed. A consent judgment was entered on January 25, 2016. The Brevard County Board of County Commissioners has approved the settlement. The County is prepared to pay using risk management reserves, and payment of this claim bill will not affect county operations. The Legislature has already passed

two claim bills for the driver and passenger of the van involved in this same accident.¹

CONCLUSIONS OF LAW:

The County owned the bus driven by its employee, Mr. McKale and is covered by the provisions of s. 768.28, F.S. Section 768.28, F.S., generally allows injured parties to sue state or local governments for damages caused by their negligence or the negligence of their employees by waiving the government's sovereign immunity from tort actions. However, at the time of this accident, the statute limited the amount of damages that a plaintiff could collect from a judgment against or settlement with a government entity to \$100,000 per person and \$200,000 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. The district has settled all claims associated with this accident except for Claimant's claim.

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 damages. *Charron v. Birge*, 37 So. 3d 292, 296 (Fla. 5th DCA 2010) (quoting *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997)).

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 n. 3 (Fla. 1st DCA 1992).

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). Florida's dangerous instrumentality doctrine imposes "vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another." *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Motor vehicles have been considered dangerous instrumentalities under Florida

¹ House Bills 797 and 799 (2003).

law for over a century. See *Anderson v. S. Cotton Oil Co.*, 74 So. 975, 978 (Fla. 1917). Mr. McKale was employed by the County and was acting within the scope of his employment at the time of the accident. Accordingly, the negligence of Mr. McKale is attributable to the district.

Duty & Breach

The County employee driving the bus was acting within the scope of his employment at the time of the accident. He had a duty to exercise reasonable care while operating the bus, which he breached when he failed to brake and collided into the rear of the van driven by Mr. Evarts, causing Mr. Evarts to rear-end Claimant. Brevard County admits that its employee, Dale McKale, operated the bus in a negligent manner and the county is liable.

Causation

The County's breach of the duty of care caused the accident that resulted in Claimant's injuries and damages.

Damages

Claimant suffered various serious injuries, with medical bills totaling \$22,437.42. She will have ongoing pain for the rest of her life, and will require lifelong treatment due to her injuries. After the accident she was unable to do her job as a certified nursing assistant, resulting in a lack of employment for some time. Her injuries also contributed to the strain on her marriage, which later ended in a divorce.

ATTORNEYS FEES:

The attorney in this case submitted an affidavit affirming that his fees will not exceed 25 percent of any recovery as required by s. 768.28, F.S. Outstanding costs are \$2,343.12.

SPECIAL ISSUES:

The undersigned recommends the bill is amended to reflect that Claimant's current married name is Cathleen L. Waller.

RECOMMENDATIONS:

Based on the above findings, I recommend that Senate Bill 52 be reported FAVORABLY, AS AMENDED.

SPECIAL MASTER'S FINAL REPORT – CS/SB 52

January 2, 2018

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Respectfully submitted,

Kellie Cochran
Senate Special Master

cc: Secretary of the Senate
Senator Mayfield, Senate Sponsor
Representative Altman, House Sponsor
Jordan Jones, House Special Master

CS by Judiciary:

The committee substitute recognizes the Claimant's name change as the result of her marriage.

By the Committee on Judiciary; and Senator Mayfield

590-01999-18

201852c1

1 A bill to be entitled
 2 An act for the relief of Cathleen Smiley by Brevard
 3 County; providing for an appropriation to compensate
 4 Cathleen Smiley for personal injuries and damages
 5 sustained in an automobile accident caused by a
 6 Brevard County employee; providing for payment by
 7 Brevard County; providing a limitation on the payment
 8 of compensation and attorney fees; providing an
 9 effective date.

10
 11 WHEREAS, on June 18, 1998, Cathleen Smiley was the driver
 12 of her vehicle when it was struck in the rear section by a van
 13 driven by Howard Evarts which had been struck in the rear
 14 section by a passenger bus owned by the Brevard County Board of
 15 County Commissioners, and
 16 WHEREAS, the Brevard County employee operating the bus was
 17 traveling at approximately 45 miles per hour when the bus hit
 18 the vehicle in which Mr. Evarts was traveling, causing Mr.
 19 Evarts' vehicle to hit Ms. Smiley's vehicle, and
 20 WHEREAS, the vehicles which Ms. Smiley and Mr. Evarts were
 21 operating were appropriately stopped in their lane of travel
 22 waiting to make a left turn, and
 23 WHEREAS, at the time of the accident, Ms. Smiley was
 24 without personal resources for medical insurance, other than
 25 nominal personal injury protection, to adequately care for the
 26 injuries she suffered as a result of the accident, and
 27 WHEREAS, Ms. Smiley was knocked unconscious and suffered
 28 permanent injuries to the neck and left shoulder, and
 29 WHEREAS, Christopher Prusinski, D.O., a neurologist in

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

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201852c1

30 Brevard County, has opined that Ms. Smiley has reached maximum
 31 medical improvement and has an 8 percent whole body impairment
 32 due to the accident, and
 33 WHEREAS, Dr. Prusinski also has opined that Ms. Smiley will
 34 require extensive future chiropractic care and treatment, and
 35 WHEREAS, since the accident Ms. Smiley has required
 36 continuing care and treatment, and it is anticipated that she
 37 will require ongoing care in the future, including chiropractic
 38 treatment and periodic medical intervention and diagnostic
 39 testing, and
 40 WHEREAS, on January 25, 2016, a consent judgment was
 41 entered after Ms. Smiley and Brevard County agreed to a
 42 stipulated judgment in the amount of \$25,000 in case number 05-
 43 2000-CA-004291-XXXX-XX, and
 44 WHEREAS, Ms. Smiley is one of five persons who filed
 45 lawsuits related to the accident, and
 46 WHEREAS, at the time Ms. Smiley filed her lawsuit, on or
 47 about February 29, 2000, Brevard County had already paid
 48 property damage, medical, and injury claims totaling \$101,410.
 49 Additionally, the county was evaluating two additional related
 50 personal injury lawsuits, and
 51 WHEREAS, after these property damage, medical, and injury
 52 claims were settled, only \$98,590 remained to resolve the other
 53 claims filed in connection with the accident, and
 54 WHEREAS, Howard and Sharon Evarts and Alan Hammer filed
 55 their lawsuits against Brevard County on June 24, 1999, and
 56 WHEREAS, consent judgments were entered by the Circuit
 57 Court for the 18th Judicial Circuit in Brevard County on
 58 November 30, 2000, pursuant to an agreement entered into by

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

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59 plaintiffs Evarts and Hammer and Brevard County for stipulated
60 judgments in case numbers 05-1999-CA-025509-XXXX-XX (Evarts) and
61 05-1999-CA025510-XXXX-XX (Hammer), each in the amount \$125,000,
62 and

63 WHEREAS, Mr. Evarts and Mr. Hammer each received \$49,295
64 out of the remaining balance of \$98,590 of the county's \$200,000
65 sovereign immunity limitation and, pursuant to their settlement
66 agreements with Brevard County, received the balance of their
67 judgments through the claim bill process as articulated in
68 chapter 2003-346, Laws of Florida, and chapter 2003-345, Laws of
69 Florida, respectively, and

70 WHEREAS, Brevard County and Ms. Smiley agreed that she
71 would pursue payment of the stipulated judgment due her in the
72 amount of \$25,000 from the county through the claim bill
73 process, and

74 WHEREAS, Brevard County has agreed that it would not oppose
75 a claim bill being rendered against the county in this matter
76 and would support same, NOW, THEREFORE,

77

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

79

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

82 Section 2. Brevard County is authorized and directed to
83 appropriate from funds of the county not otherwise appropriated
84 and to draw a warrant in the sum of \$25,000 payable to Cathleen
85 Smiley, now known as Cathleen Waller, to compensate her for
86 personal injuries and damages sustained.

87 Section 3. The amount paid by Brevard County pursuant to s.

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88 768.28, Florida Statutes, and the amount awarded under this act
89 are intended to provide the sole compensation for all present
90 and future claims arising out of the factual situation described
91 in this act which resulted in injuries and damages to Cathleen
92 Smiley. The total amount paid for attorney fees relating to this
93 claim may not exceed 25 percent of the amount awarded under this
94 act.

95 Section 4. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR DEBBIE MAYFIELD
17th District

January 24, 2018

The Honorable Lizbeth Benacquisto
Chair, Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 52

Dear Chair Benacquisto,

I am respectfully requesting Senate Bill 52, a claims bill relating to Cathleen Smiley, be placed on the agenda for your committee on Rules.

I appreciate your consideration of this bill and I look forward to working with you and the Rules committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017

Thank you,

A handwritten signature in cursive script that reads "Debbie Mayfield".

Senator Debbie Mayfield
District 17

Cc: John B. Phelps, Cynthia Futch, Matthew Hunter, Timothy Morris

REPLY TO:

- 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

COMMITTEES:

Education, Vice Chair
Appropriations Subcommittee on the
Environment and Natural Resources
Appropriations subcommittee on General
Government
Banking and Insurance
Judiciary

JOINT COMMITTEES:

Joint Legislative Auditing Committee,
Alternating Chair

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 Rules

BILL: SB 162

INTRODUCER: Senators Steube and Mayfield

SUBJECT: Payment of Health Care Claims

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Lloyd</u>	<u>Stovall</u>	<u>HP</u>	Favorable
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 162 prohibits health insurers and health maintenance organizations (HMOs) from retroactively denying a claim at any time if the insurer or HMO verified the eligibility of an insured or subscriber at the time of treatment and provided an authorization number. The provisions of the bill apply to policies or contracts issued or renewed on or after January 1, 2019. Medicaid managed care plans are exempt from the provisions of the bill. Currently, a health insurer or HMO may retroactively deny a claim because of an insured's ineligibility up to 1 year after the payment of the claim. Under existing law, the patient is responsible for those claims, which potentially exposes the physician to financial risk if the patient does not pay the claims.

The bill has an estimated negative fiscal impact of \$166,347 on the fully-insured HMO plan in the State Group Insurance.

II. Present Situation:

Denial of Health Insurance Claims

According to the American Medical Association (AMA), health care providers lose a significant amount of administrative time and revenue due to denied claims. In 2013, the AMA estimated that more than \$43 billion in savings could have been realized since 2010 if commercial insurers had consistently paid claims correctly.¹

Coverage for medical services can be denied before or after the service has been provided, through denial of preauthorization requests, through denial of claims for payment, or a retroactive denial of payment. As a condition for coverage of some services, providers or insureds are required to request authorization prior to providing or receiving the service. The full

¹ Amednews.com, *Claims Analysis Shows Doctors the Way to Fight Insurer Denials* (July 15, 2013), <http://www.amednews.com/article/20130715/business/130719992/5/> (last visited Jan. 17, 2018).

claim or certain lines of the claim may be denied, such as a surgery with charges for multiple procedures and supplies.

There are many possible reasons for claim denials. Claims may be denied due to an incorrect diagnosis code, incomplete claim submission, or the submission of a duplicate claim. Eligibility issues can cause claims to be denied. For example, a claim may be submitted for a service provided prior to an individual's effective date of coverage or after it has been terminated. Finally, claim denials can occur when a determination is made that the service provided was not covered or it was not medically necessary. Under state and federal laws, denied claims may be appealed.

After an insurer or HMO pays a claim, the insurer or HMO may conduct a claims audit to verify claims were paid appropriately and accurately. Such an audit can be triggered by a variety of reasons. Some of these situations include regulators establishing new billing guidelines; the provider making significant changes to the original bill, such as the diagnosis of the patient; the plan is notified that the enrollee's coverage is terminated due to non-payment of premiums; or the plan is notified that the enrollee has other health insurance coverage. After the audit, an insurer or HMO may retrospectively deny a claim for a preauthorized service and try to recoup the payment from the provider. Reasons for the retroactive denial may include fraud, submission of incomplete or inaccurate information; nonpayment of premiums; exhaustion of benefits; coordination of benefits; or if the individual was not enrolled or eligible for coverage at the time services were rendered. As a result, an insurer or HMO may try to recoup payment from a provider by retroactively denying a previously paid claim.

Group Health Plans Retroactive Termination of Coverage

Retroactive termination of insurance coverage to an earlier date due to an employee's discharge is an increasing problem for some providers and consumers. Some plans may allow an employer to cancel coverage of an employee retroactively more than 90 days post termination. Other plans will accept retroactive terminations for up to the preceding 3 months, if the plan has not paid any claims for the enrollee during that period. If claims have been paid within the previous 60 days, the coverage termination date may be established as of the end of the month in which services were rendered.

When a provider is notified of a retroactive termination, the provider may have already verified that the patient was covered, rendered services in reliance and expectation of payment, and even received payment. Retroactive terminations often result in the provider or the consumer bearing the loss, despite the verified eligibility.

Federal Subsidized Individual Policies or Contracts and Grace Periods

The federal Patient Protection and Affordable Care Act (PPACA)² guarantees access to coverage and mandates certain essential health benefits and other requirements. To address affordability issues, federal premium tax credits and cost-sharing subsidies are available to assist eligible low and moderate-income individuals to purchase qualified health plans (QHPs) on a state or federal

² The Patient Protection and Affordable Care Act (Pub. Law No. 111-148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. Law No. 111-152), which amended several provisions of the PPACA, was enacted on March 30, 2010.

exchange.³ A QHP is a health plan that has been certified by the federal Health Insurance Marketplace, provides essential health benefits, follows established limits on cost sharing (such as deductibles, copayments, and out of pocket maximums), and meets other requirements of the PPACA known as “minimum essential coverage.”⁴ QHPs can be a health plan bought in the federal Health Insurance Marketplace, but it can also be an individual health plan purchased outside of the marketplace, an employer-based plan, a Medicare Part A or C plan, a Children’s Health Insurance Plan (CHIP), and most student health plans.⁵

During the open enrollment period which ended January 31, 2018, 1,588,736 Floridians (or 90 percent of the state’s total) who enrolled through the federal exchange received premium tax credits, cost sharing reductions or both.⁶ The average premium rate during the 2017 Open Enrollment Period averaged \$442 per member per month with advance premium tax credits and cost sharing reductions per person close to \$360 per individual leaving a remaining premium responsibility to the enrollee of approximately \$84 per month.⁷

Under PPACA, insurers and HMOs must provide a grace period⁸ of at least three consecutive months⁹ before cancelling the policy or contract of a federally subsidized enrollee who is delinquent if the enrollee previously paid one-month’s premium. During the grace period, the insurer must pay all appropriate claims for services provided during the first month of the grace period. For the second and third months, an insurer may pend claims. Issuers must notify providers that may be affected that an enrollee has lapsed in his or her payment of premiums and there is a possibility the issuer may deny the payment of claims incurred during the second and third months.¹⁰

If the enrollee resolves all outstanding premium payments by the end of the grace period, then the pended claims would be paid as appropriate. If not, the claims for the second and third month would be denied. If coverage is terminated, the termination date is the last day of the first month of the grace period and the insurer may not recoup any payment for claims made during the first

³ In general, individuals and families may be eligible for the premium tax credit if their household income for the year is at least 100 percent but no more than 400 percent of the federal poverty line for their family size. For residents of one of the 48 contiguous states or Washington, D.C., the following illustrates when household income would be at least 100 percent but no more than 400 percent of the federal poverty line in computing your premium tax credit for 2016: \$11,770 (100 percent) up to \$47,080 (400 percent) for one individual; \$15,930 (100 percent) up to \$63,720 (400 percent) for a family of two; and \$24,250 (100 percent) up to \$97,000 (400 percent) for a family of four. ASPE Research Brief, *Health Plan Choice and Premiums in the 2017 Health Insurance Marketplace*, (Oct. 24, 2016), <https://www.irs.gov/affordable-care-act/individuals-and-families/questions-and-answers-on-the-premium-tax-credit> (last viewed Jan. 17, 2018).

⁴ U.S. Department of Health and Human Services, Healthcare.gov, *Qualified Health Plan*, <https://www.healthcare.gov/glossary/qualified-health-plan/> (last visited Jan. 17, 2018).

⁵ U.S. Department of Health and Human Services, Healthcare.gov, *Types of health insurance that count as coverage*, <https://www.healthcare.gov/fees/plans-that-count-as-coverage/> (last visited Jan. 17, 2018).

⁶ U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *2017 Marketplace Open Enrollment Public Use Files – 2017 OEP State-Level Public Use File* (May 11, 2017), https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/Plan_Selection_ZIP.html (last visited Jan. 17, 2018).

⁷ Id.

⁸ Example of grace period: Premium is not paid in May. Premium payments are made in June and July. Grace period would end July 31. Coverage would be cancelled retroactively to the last day of May. See <https://www.healthcare.gov/apply-and-enroll/health-insurance-grace-period/> (last viewed Jan. 17, 2018).

⁹ 45 C.F.R. s. 155.430.

¹⁰ 45 C.F.R. s. 156.270.

month of the grace period. At the end of the grace period, the provider may seek payment for the medical services the insurer denied for months two and three. Providers note that it will be extremely difficult to obtain direct payment from patients receiving federal subsidies given their low or moderate income.¹¹ According to a 2014 survey, 48 percent of the providers not participating with any PPACA exchange products cited concerns about assuming financial liability during the grace period as a reason for their decision.¹²

Regulation of Insurance in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.¹³ The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the AHCA.¹⁴

Florida's Prompt Payment Laws

Florida's prompt payment laws govern payment of provider claims submitted to insurers and HMOs, including Medicaid managed care plans in accordance with ss. 627.6131 and 641.3155, F.S., respectively.¹⁵ These provisions delineate the rights and responsibilities of insurers, HMOs, and providers for the payment of claims. An insurer or HMO has 12 months after payment is made to a provider to make a claim for overpayment against the provider, if the provider is licensed under ch. 458, F.S., (physicians), ch. 459, F.S., (osteopaths), ch. 460, F.S., (chiropractors), ch. 461, F.S., (podiatrists), or ch. 466, F.S., (dentists). For all other types of providers, an insurer or HMO has up to 30 months after such payment to make a claim for overpayment.¹⁶ The law provides a process and timeline for providers to pay, deny, or contest the claim. Further, the law prohibits an insurer or HMO from retroactively denying a claim because of the ineligibility of an insured or subscriber more than one year after the date the claim is paid.

Grace Periods

The federal regulation governing grace periods for federally subsidized policies or contracts does not affect policies or contracts of individuals who are not enrolled in an exchange QHP or who are enrolled in an exchange QHP and do not receive a subsidy. The grace period for these individual policies or contracts remains at the duration required under Florida law,¹⁷ which varies

¹¹ American Hospital Association, *et al*, Letter to Ms. Tavenner, Centers for Medicare and Medicaid Services (Aug. 15, 2013), <https://www.aamc.org/download/352602/data/coalitionletteronnonpaymentofpremiums-noncoverageissue.pdf> (last visited Jan. 17, 2018).

¹² Tracy Gnadinger, *Health Policy Brief: The Ninety-Day Grace Period*, (Oct. 16, 2014) <http://healthaffairs.org/blog/2014/10/17/health-policy-brief-the-ninety-day-grace-period/> (last viewed Jan. 17, 2018).

¹³ Section 20.121(3), F.S.

¹⁴ Section 641.21(1), F.S.

¹⁵ The prompt pay provisions apply to HMO contracts and major medical policies offered by individual and group insurers licensed under ch. 624, F.S., including preferred provider policies and an exclusive provider organization, and individual and group contracts that only provide direct payments to dentists.

¹⁶ Section 627.6131, F.S., and 641.3155, F.S., provide exceptions to this time limit in cases relating to fraud.

¹⁷ Sections 627.608 and 641.31(15), F.S. The grace period of an individual policy must be a minimum of 7 days for weekly premium; 10 days for a monthly premium; and 31 days for all other periods. The grace period of a HMO contract must be at least 10 days. For group policies, s. 627.6645, F.S., requires that if cancellation is due to nonpayment of premium, the insurer may not retroactively cancel the policy to a date prior to the date that notice of cancellation was provided to the policyholder

by the duration of the premium payment interval. During the grace period, the policy or contract stays in force, thus the insurer or HMO must affirm that an individual is insured, even when the payment is late and remains unpaid during the grace period. If the insurer or HMO does not receive the full payment of the premium by the end of the grace period, coverage terminates as of the grace period start date and the insurer or HMO may retroactively deny any claims incurred during the grace period.

Division of State Group Insurance

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group health insurance program under a cafeteria plan consistent with section 125, Internal Revenue Code. To administer the state group health insurance program, DMS contracts with third party administrators for self-insured health plans and insured health maintenance organizations (HMOs), as well as a pharmacy benefits manager for the state employees' self-insured prescription drug program pursuant to s. 110.12315, F.S.

Florida's Statewide Medicaid Managed Care Program

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (AHCA) oversees the Medicaid program. The Department of Children and Families (DCF) conducts Medicaid eligibility determinations.¹⁸ The Statewide Medicaid Managed Care (SMMC) program¹⁹ has two components: the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) program. The AHCA contracts with managed care plans to provide services to eligible recipients. The MMA program covers medical and acute care services for plan enrollees. Most Florida Medicaid recipients who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan. The LTC program covers nursing facility and home and community-based services to eligible adults.

Medicaid managed care plans are responsible for paying claims in accordance with federal and state law and contractual requirements. Florida Medicaid managed care plans are required to comply with s. 641.3155, F.S.,²⁰ which allows HMOs to deny a claim retroactively because of an insured or subscriber ineligibility up to one year after the date of payment of the claim. After paying claims pursuant with the deadlines in s. 641.3155, F.S., an HMO may audit claims to verify payment was appropriate and accurate. As a result, an HMO may try to recoup payment from a provider for claims paid in error. It may do this by reducing payments currently owed the provider, withholding future payments, or otherwise requiring a refund from the provider.

unless the insurer mails notice of cancellation to the policyholder prior to 45 days after the date the premium was due. Such notice must be mailed to the policyholder's last address as shown by the records of the insurer and may provide for a retroactive date of cancellation no earlier than midnight of the date that the premium was due. See 45 C.F.R. s. 155.735 for provisions relating to the termination of Small Business Health Options Program (SHOP) enrollment or coverage obtained through an exchange.

¹⁸The Social Security Administration makes determination for recipients of Supplemental Security Income. See <http://www.myflfamilies.com/service-programs/access-florida-food-medical-assistance-cash/medicaid> (last viewed Jan. 17, 2018).

¹⁹ Part IV of ch. 409, F.S.

²⁰ Section 409.967(2)(j), F.S.

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill amend ss. 627.6131 and 641.3155, F.S., respectively, to prohibit a health insurer or an HMO from retroactively denying a claim because of an insured's ineligibility at any time if the health insurer or HMO verified the eligibility of an insured at the time of treatment and provided an authorization for payment. The provisions of Sections 1 and 2 apply to policies or contracts issued or renewed on or after January 1, 2019. Section 2 provides that the provisions of the bill do not apply to Medicaid managed care plans.

Currently, ss. 627.608, F.S., and 641.31(15), F.S., require individual health insurance policies and all HMO contracts, excluding federally subsidized policies or contracts, to have a grace period of not less than 7 days and up to 31 days. If any required premium is not paid on or before the due date, it may be paid during the following grace period. During the grace period, the contract stays in force. If full payment of the premium is not received by the end of the grace period, coverage terminates as of the grace period start date, and the insurer or HMO will retroactively deny any claims incurred during the grace period. For a group policy, if cancellation is due to nonpayment of premium, the insurer may not retroactively cancel the policy to a date prior to the date that notice of cancellation was provided to the policyholder unless the insurer mails notice of cancellation to the policyholder prior to 45 days after the date the premium was due. Such notice must be mailed to the policyholder's last address as shown by the records of the insurer and may provide for a retroactive date of cancellation no earlier than midnight of the date that the premium was due.²¹

The bill requires HMOs and insurers to pay claims incurred during the grace period and any other time for policies or contracts that were not eligible for the federal premium tax credit, if the provider verified the insured as eligible at the time of treatment and was provided an authorization number by the insurer or HMO. Currently ss. 627.6131, F.S., and 641.3155, F.S., limit the ability of a HMO or insurer to deny a claim retroactively because of insured ineligibility to one year after the date of payment of the claim.

Section 3 provides this act 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.

²¹ Section 627.6645, F.S.

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

None.

B. Private Sector Impact:

Eliminating the ability of a health insurer or HMO to recoup the payment of a claim for an authorized treatment for an individual previously deemed eligible will prevent unanticipated additional financial obligations to a patient and potential unexpected loss of revenues to a provider. This will simultaneously impose additional financial liability on a health insurer or HMO that provides authorization for an individual who is later deemed ineligible for coverage.

Federal regulations govern the grace period and payment of claims of individuals receiving federally subsidized products on the exchange. This bill would not apply to such claims.

The provisions of the bill would not apply to ERISA (Federal Employee Retirement Income Security Act of 1974)²² self-insured plans. ERISA preempts the regulation of such plans by the state.

C. Government Sector Impact:

DMS/Division of State Group Insurance. According to DMS, Capital Health Plan, the only fully insured plan, would incur an estimated negative fiscal impact of \$166,347 on an annual basis. The department's calculation was based on a fiscal impact of \$0.23 per member. The bill would not affect the self-funded insurance plans.²³

Florida's Medicaid Program. Medicaid managed care plans are exempt from the provisions of the bill.

Office of Insurance Regulation. None.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

Internally, an insurer may understand an authorization to be a pre-service approval for certain benefits or services, a voluntary pre-certification request, or a pre-admission certification. Not all

²² 29 U.S.C. 1001 et seq. (1974).

²³ Department of Management Services, *Senate Bill 162 Analysis* (Nov. 13, 2017) (on file with the Senate Committee on Health Policy).

²⁴ Office of Insurance Regulation, *Senate Bill 162 Analysis* (Sep. 29, 2017) (on file with the Senate Committee on Health Policy).

benefits or procedures require prior authorization. A plan may offer a reference number for the call. An insured, member, or provider may consider this their authorization number.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.6131, and 641.3155.

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

23-00002-18

2018162__

1 A bill to be entitled
 2 An act relating to the payment of health care claims;
 3 amending s. 627.6131, F.S.; prohibiting a health
 4 insurer from retroactively denying a claim under
 5 specified circumstances; providing applicability;
 6 amending s. 641.3155, F.S.; prohibiting a health
 7 maintenance organization from retroactively denying a
 8 claim under specified circumstances; providing
 9 applicability; providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Subsection (11) of section 627.6131, Florida
 14 Statutes, is amended to read:
 15 627.6131 Payment of claims.—
 16 (11) A health insurer may not retroactively deny a claim
 17 because of insured ineligibility:
 18 (a) At any time, if the health insurer verified the
 19 eligibility of an insured at the time of treatment and provided
 20 an authorization number. This paragraph applies to policies
 21 entered into or renewed on or after January 1, 2019.
 22 (b) More than 1 year after the date of payment of the
 23 claim.
 24 Section 2. Subsection (10) of section 641.3155, Florida
 25 Statutes, is amended to read:
 26 641.3155 Prompt payment of claims.—
 27 (10) A health maintenance organization may not
 28 retroactively deny a claim because of subscriber ineligibility:
 29 (a) At any time, if the health maintenance organization

Page 1 of 2

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

23-00002-18

2018162__

30 verified the eligibility of a subscriber at the time of
 31 treatment and provided an authorization number. This paragraph
 32 applies to contracts entered into or renewed on or after January
 33 1, 2019. This paragraph does not apply to Medicaid managed care
 34 plans pursuant to part IV of chapter 409.
 35 (b) More than 1 year after the date of payment of the
 36 claim.
 37 Section 3. This act shall take effect July 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/1/18

Meeting Date

162

Bill Number (if applicable)

Topic Payment of Health Care Claims

Amendment Barcode (if applicable)

Name Stephen Winn

Job Title Exec. Director

Address 2544 Blairstone Pines Dr.

Phone 878-3056

Street

Tallahassee

FL

32301

City

State

Zip

Email winnsr@earthlink.net

Speaking: For Against Information

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

Representing Florida Osteopathic Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/1/18

Meeting Date

SB 162

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title

Address 1430 Piedmont Dr. E.

Phone 850 251-2439

Street

Tallahassee FL 32308

City

State

Zip

Email jscott@flmedical.org

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

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

Representing Florida Medical Association

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-1-2018

Meeting Date

SB 162

Bill Number (if applicable)

Topic Retroactive Denial

Amendment Barcode (if applicable)

Name Marnie George

Job Title Sr. Advisor; Buchanan, Ingersoll & Rooney

Address 101 N. Monroe Street, Suite 1090

Phone 850 510-8866

Street

Tallahassee

FL

32301

Email marnie.george@bipc.com

City

State

Zip

Speaking: For Against Information

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

Representing FL Chapter, American College of Cardiology

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)

APPEARANCE RECORD

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

Feb 1, 18

Meeting Date

1102

Bill Number (if applicable)

Topic Retroactive Denial

Amendment Barcode (if applicable)

Name Toni Large

Job Title

Address 519 E Park Ave

Phone (850) 556-1461

Street Tallahassee, FL 32308

Email toni@sulaw.het

City State Zip

Speaking ~~For~~ Against Information

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

Representing Florida Rheumatology Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1
Meeting Date

162
Bill Number (if applicable)

Topic Payment of Healthcare Claims

Amendment Barcode (if applicable)

Name Brewster Revis

Job Title Senior VP

Address 511 N Adams St
Street

Phone 224-7175

City

State

Zip

Email

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

February 1, 2018
Meeting Date

SB 162
Bill Number (if applicable)

Topic Payment of Health Care Claims

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director of Advocacy

Address 200 W. College Ave, Suite 304
Street

Phone 850-228-6387

Jall FL 32301
City State Zip

Email dobarker@aarpp.org

Speaking: For Against Information

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

Representing AARP FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 Rules

BILL: CS/CS/CS/SB 268

INTRODUCER: Rules Committee; Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee; and Senator Passidomo

SUBJECT: Public Records/Public Guardians/Employees with Fiduciary Responsibility

DATE: February 2, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 268 creates a public records exemption for identifying and location information of current and former public guardians, employees with fiduciary responsibility, and their spouses and children.

The required public necessity statement of the bill provides as justification for the exemption that the release of this information may and has placed current and former public guardians, employees with fiduciary responsibility, and the families of these individuals in danger of physical and emotional harm from disgruntled individuals, including wards of the guardian.

The exemption stands repealed on October 2, 2023, pursuant to the Open Government Sunset Review Act, unless the Legislature reviews and reenacts the exemption before that date.

The bill requires a two-thirds vote from each chamber for passage.

The bill takes effect July 1, 2018, but applies retroactively to information protected in this bill which is held by any agency before the effective date.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

An agency is defined as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including 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 a public agency.⁶

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁷ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(2), F.S.

⁷ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.¹⁰ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Guardianship

Guardianship is a concept whereby a “guardian” acts for another, called a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.²⁴ A court appoints a limited guardian for a ward who lacks capacity to do some, but not all, of the tasks necessary to care for him or herself or his or her property. In contrast, the court appoints a plenary guardian in instances in which the ward lacks capacity to perform all tasks needed to care for him or herself or his or her property.

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, in situations in which an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incapacity which is based on the determination of a court appointed examination committee.²⁵

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 744.102(9)(a) and (b), F.S.

²⁵ Sections 744.102(12), 744.3201, 744.341, F.S.

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.²⁶ A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.²⁷ The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.²⁸ In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out its responsibilities in an informed and considered manner.

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward. A guardian must file with the court an initial guardianship report,²⁹ an annual guardianship report,³⁰ and an annual accounting of the ward's financial activities, accounts and property.³¹ The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.³²

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446(1), F.S., explicitly states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." If a guardian breaches his or her fiduciary duty, a court will intervene and "take the necessary actions to protect the ward and the ward's assets."³³

Office of the Public and Professional Guardians

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.³⁴ The Statewide Public Guardianship Office was renamed the Office of the Public and Professional Guardians in 2016.³⁵ A public guardian may serve "an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian."³⁶ A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.³⁷ A public guardian may be an appointee of the Office of the Public and Professional Guardians or a contract employee of a nonprofit corporation.³⁸ Public guardianship offices are located in all 20 judicial circuits in the state.

²⁶ *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990). Section 744.361(1), F.S., provides, in part, "The guardian of an incapacitated person is a fiduciary ..."

²⁷ *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

²⁸ *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

²⁹ Section 744.362, F.S.

³⁰ Section 744.367, F.S.

³¹ Section 744.3678, F.S.

³² Sections 744.368(1) and 744.369, F.S.

³³ Section 744.446(4), F.S.

³⁴ Section 744.7021, F.S.; Section 4, Chapter 99-277, LO.F.

³⁵ Chapter 2016-40, L.O.F.

³⁶ Section 744.2007(1), F.S.

³⁷ Section 744.102(17), F.S.

³⁸ Section 744.2006(2), F.S.

Currently, the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of public guardians and employees with fiduciary responsibility as well as the names and location of schools and day care facilities of the children of public guardians and employees with fiduciary responsibility are subject to release pursuant to a public records request.

III. Effect of Proposed Changes:

This bill creates a public records exemption for contact and identify information held by an agency of former and current public guardians, employees with fiduciary responsibility in guardianship situations, and spouses and children of these individuals.

An employee with fiduciary responsibility is defined as an employee of a public guardian:

- Who has the ability to direct any transactions of a ward's funds, assets, or property;
- Who, under the supervision of the guardian supervises, cares for the ward; or
- Who makes any health care decision as defined in law for purposes of health care advance directives on behalf of the ward.

The public records exemption makes exempt from public disclosure:

- For former or current public guardians and employees with fiduciary responsibility, home addresses, telephone numbers, dates of birth, places of employment; and
- For spouses and children of former or current public guardians and employees with fiduciary responsibility, names, home addresses, telephone numbers, dates of birth, places of employment, and locations of schools and day care facilities attended by the children.

The required public necessity statement provides as justification for the exemption that the release of this information may and has placed current and former public guardians, employees with fiduciary responsibility, and the families of these individuals in danger of physical and emotional harm from disgruntled individuals, including wards of the guardian. The public necessity statement cites instances of threats of incarceration, violence, including death, and actual violence.

For employees with fiduciary responsibility who are current or former employees of state agencies, if the agency maintains any of the information covered by the public records exemption created in the bill (the employee's address, date of birth, etc.), the agency must only keep that information exempt if the covered individual submits a written request for maintenance of the exemption to the agency.

The public records exemption is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S., and will be repealed October 2, 2023, unless the Legislature reviews and reenacts the exemption before that date.

The bill requires a two-thirds vote from each chamber for passage.

The bill takes effect July 1, 2018, but applies retroactively to protected information held by an agency before that date.

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

None.

B. Public Records/Open Meetings Issues:**Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts certain identifying and location information of current and former public guardians, employees with fiduciary responsibility, their spouses and children. The public necessity for the exemption provides that guardians and their family members are subject to threats of emotional and physical harm from disgruntled individuals. The exemption from disclosure would help protect guardians and their families. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Private contractors would have to redact the information of the public guardian or employee with fiduciary responsibility if a public records request is made, which may cause them to incur a financial cost.

C. Government Sector Impact:

An agency would have to redact the information of the public guardian or employee with fiduciary responsibility if a public records request is made. As no appropriation is included in the bill, agencies would have to absorb cost through existing resources. However, fiscal impact is unknown at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 744.21031 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/CS/CS by Rules on February 1, 2018:

The amendment revises the definition of ‘employee with fiduciary responsibility’ to include individuals who can direct any transactions of a ward’s funds, assets, or property. This change broadens the definition to cover persons who have the ability to control or affect more of the ward’s property, not just their financial accounts as presently written in the bill.

Additionally, under the amendment, if an employee with fiduciary responsibility currently or previously worked for a state agency, and the agency maintains any of the information covered by the public records exemption created in the bill, the agency is only required to continue keeping that information exempt if the covered individual submits a written request for maintenance of the exemption to the agency.

CS/CS by Governmental Oversight and Accountability on January 16, 2018:

The CS better clarifies who is eligible for the public records exemption by defining the term “employee with fiduciary responsibility” as an employee of a public guardian:

- Who has the ability to direct withdrawals or investments made from a ward’s financial accounts;
- Who, under the supervision of the guardian supervises care for the ward; or
- Who makes any health care decision as defined in law for purposes of health care advance directives on behalf of the ward.

CS by Children, Families, and Elder Affairs on November 13, 2017:

The amendment replaces the term “public-guardian case manager” with the term “employee with fiduciary responsibility.”

B. Amendments:

None.



332120

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Passidomo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 29 - 75

and insert:

any transactions of a ward's funds, assets, or property; who
under the supervision of the guardian, manages the care of the
ward; or who makes any health care decision, as defined in s.
765.101, on behalf of the ward. This exemption applies to
information held by an agency before, on, or after July 1, 2018.
An agency that is the custodian of the information specified in
this section shall maintain the exempt status of that



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12 information only if the current or former public guardians and
13 employees with fiduciary responsibility submit to the custodial
14 agency a written request for maintenance of the exemption. This
15 section is subject to the Open Government Sunset Review Act in
16 accordance with s. 119.15 and shall stand repealed on October 2,
17 2023, unless reviewed and saved from repeal through reenactment
18 by the Legislature.

19 Section 2. (1) The Legislature finds that it is a public
20 necessity that the following identifying and location
21 information be exempt from s. 119.07(1), Florida Statutes, and
22 s. 24(a), Article I of the State Constitution:

23 (a) The home addresses, telephone numbers, dates of birth,
24 places of employment, and photographs of current or former
25 public guardians and employees with fiduciary responsibility;

26 (b) The names, home addresses, telephone numbers, dates of
27 birth, and places of employment of spouses and children of such
28 guardians and employees with fiduciary responsibility; and

29 (c) The names and locations of schools and day care
30 facilities attended by the children of such guardians and
31 employees with fiduciary responsibility.

32 (2) The Legislature finds that the release of such
33 identifying and location information might place current or
34 former public guardians and employees with fiduciary
35 responsibility and their family members in danger of physical
36 and emotional harm from disgruntled individuals who react
37 inappropriately to actions taken by the public guardians and
38 employees with fiduciary responsibility. Public guardians and
39 employees with fiduciary responsibility provide a valuable
40 service to the community by helping some of the state's most



332120

41 vulnerable residents who lack the physical or mental capacity to
42 take care of most aspects of their own personal affairs. Public
43 guardians and employees with fiduciary responsibility help those
44 who lack a willing and qualified family member or friend and who
45 do not have the income or assets to pay a professional guardian.

46 (3) Despite the value of this service, however, some
47 persons, including a public guardian's own wards, become
48 disgruntled with the assistance provided or the decisions a
49 public guardian or an employee with fiduciary responsibility
50 makes, which can result in a guardian or an employee with
51 fiduciary responsibility or the family members of the guardian
52 or the employee with fiduciary responsibility becoming potential
53 targets for an act of revenge. Wards have harassed their public
54 guardians with threats of incarceration, violence, and death
55 through voicemail messages and social media. Wards have also
56 left voicemail messages threatening to kill themselves and
57 others,

58
59 ===== T I T L E A M E N D M E N T =====

60 And the title is amended as follows:

61 Delete line 9

62 and insert:

63 providing for retroactive application; requiring an
64 agency that is the custodian of certain information to
65 maintain the exempt status of that information only if
66 the current or former public guardians and employees
67 with fiduciary responsibility submit a written request
68 for maintenance of the exemption to the custodial
69 agency; providing for

By the Committees on Governmental Oversight and Accountability;
and Children, Families, and Elder Affairs; and Senator Passidomo

585-02142-18

2018268c2

1 A bill to be entitled
2 An act relating to public records; creating s.
3 744.21031, F.S.; providing an exemption from public
4 records requirements for certain identifying and
5 location information of current or former public
6 guardians, employees with fiduciary responsibility,
7 and the spouses and children thereof; defining the
8 term "employee with fiduciary responsibility";
9 providing for retroactive application; providing for
10 future legislative review and repeal of the exemption;
11 providing a statement of public necessity; providing
12 an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Section 744.21031, Florida Statutes, is created
17 to read:
18 744.21031 Public records exemption.—The home addresses,
19 telephone numbers, dates of birth, places of employment, and
20 photographs of current or former public guardians and employees
21 with fiduciary responsibility; the names, home addresses,
22 telephone numbers, dates of birth, and places of employment of
23 the spouses and children of such persons; and the names and
24 locations of schools and day care facilities attended by the
25 children of such persons are exempt from s. 119.07(1) and s.
26 24(a), Art. I of the State Constitution. As used in this
27 section, the term "employee with fiduciary responsibility" means
28 an employee of a public guardian who has the ability to direct
29 any withdrawals or investments made from a ward's banking or

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

585-02142-18

2018268c2

30 investment accounts; who, under the supervision of the guardian,
31 supervises the care of the ward; or who makes any health care
32 decision, as defined in s. 765.101, on behalf of the ward. This
33 exemption applies to information held by an agency before, on,
34 or after July 1, 2018. This section is subject to the Open
35 Government Sunset Review Act in accordance with s. 119.15 and
36 shall stand repealed on October 2, 2023, unless reviewed and
37 saved from repeal through reenactment by the Legislature.
38 Section 2. (1) The Legislature finds that it is a public
39 necessity that the following identifying and location
40 information be exempt from s. 119.07(1), Florida Statutes, and
41 s. 24(a), Article I of the State Constitution:
42 (a) The home addresses, telephone numbers, dates of birth,
43 places of employment, and photographs of current or former
44 public guardians and employees with fiduciary responsibility;
45 (b) The names, home addresses, telephone numbers, dates of
46 birth, and places of employment of spouses and children of such
47 guardians and employees with fiduciary responsibility; and
48 (c) The names and locations of schools and day care
49 facilities attended by the children of such guardians and
50 employees with fiduciary responsibility.
51 (2) The Legislature finds that the release of such
52 identifying and location information might place current or
53 former public guardians and employees with fiduciary
54 responsibility and their family members in danger of physical
55 and emotional harm from disgruntled individuals who react
56 inappropriately to actions taken by the public guardians and
57 employees with fiduciary responsibility. Public guardians and
58 employees with fiduciary responsibility provide a valuable

Page 2 of 3

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

585-02142-18

2018268c2

59 service to the community by helping some of the state's most
60 vulnerable residents who lack the physical or mental capacity to
61 take care of most aspects of their own personal affairs. Public
62 guardians and employees with fiduciary responsibility help those
63 who lack a willing and qualified family member or friend and do
64 not have the income or assets to pay a professional guardian.

65 (3) Despite the value of this service, however, some
66 persons, including a public guardian's own wards, become
67 disgruntled with the assistance provided or the decisions a
68 public guardian or an employee with fiduciary responsibility
69 makes, which can result in a guardian or an employee with
70 fiduciary responsibility or the family members of the guardian
71 or the employee with fiduciary responsibility becoming potential
72 targets for an act of revenge. Wards have harassed their public
73 guardians with threats of incarceration, violence, and death
74 through voicemail messages and social media. Wards have also
75 left voicemail messages threatening to kill themselves and others,
76 as well as the public guardian. In the course of their duties,
77 public guardians have also been subject to being physically
78 assaulted.

79 (4) After a public guardian or an employee with fiduciary
80 responsibility concludes his or her service, the risk continues
81 because a disgruntled individual may wait until then to commit
82 an act of revenge. The harm that may result from the release of
83 a public guardian's or an employee with fiduciary
84 responsibility's personal identifying and location information
85 outweighs any public benefit that may be derived from the
86 disclosure of the information.

87 Section 3. 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)

2/1/2018

Meeting Date

CS/CS/SB 268

Bill Number (if applicable)

Topic Public Guardians and public records exemption

Amendment Barcode (if applicable)

Name Carlos McDonald

Job Title Executive Director, Guardianship Program of Dade County

Address 8300 NW 53 Street, #402

Phone 305-592-7642

Street

Miami

FL

33166

Email

City

State

Zip

Speaking: For Against Information

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

Representing Guardianship Program of Dade County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

2-1-18

Meeting Date

268

Bill Number (if applicable)

Topic SB 268

Amendment Barcode (if applicable)

Name Bryan Cherry

Job Title Sr. Assoc.

Address 217 S. Adams

Phone _____

Street

Tallahassee FL 32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL. Public Guardian Coalition

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 Rules

BILL: CS/SB 278

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

SUBJECT: Public Records/Department of State

DATE: January 31, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Favorable
2.	Peacock	Caldwell	GO	Fav/CS
3.	Carlton	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 278 creates a public records exemption for voter registration information received by the Department of State, pursuant to membership in a nongovernmental entity, from another state or the District of Columbia in which the information is confidential or exempt pursuant to the laws of those jurisdictions.

The bill provides a statement of public necessity as required by the Florida Constitution. The bill's effective date is contingent upon, and concurrent with, passage of SB 276, which will take effect on January 1, 2019.

The bill provides that the exemption is subject to the Open Government Sunset Review Act, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c)

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Public Records Exemptions for Voter Registration Information

Current law provides a public records exemption for certain information held by an agency for purposes of voter registration.²⁴ Specifically, the following information is confidential and exempt from public records requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

Further, the signature of a voter registration applicant or a voter is exempt from *copying* requirements.²⁵

Also, the law allows voters who fall into a number of high-risk professional classes to request that certain information such as their address and phone numbers and dates of birth be exempt for themselves and their spouses and children.²⁶

The names, addresses, and telephone numbers of victims of domestic violence who participate in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence, as well as people who are victims of stalking may be exempt from public disclosure.²⁷

Florida Voter List Maintenance Information

The Secretary of State is head of the Department of State²⁸ (Department) and acts as the chief election officer of the State and is responsible for the operation and maintenance of the statewide

-
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 97.0585, F.S.

²⁵ Section 97.0585(2), F.S.

²⁶ Section 119.071(4)(d), F.S.

²⁷ Sections 741.465 and 741.4651, F.S.

²⁸ Section 20.10, F.S. The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor. The Secretary of State also performs functions conferred by the State Constitution upon the custodian of state records. The Department of State is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.

voter registration system implemented as part of the Help America Vote Act of 2002.²⁹ The 67 county Supervisors of Elections (Supervisors) are primarily responsible for the registration of voters under s. 98.045, F.S., and records maintenance activities including removal of voters pursuant to ss. 98.065 and 98.075, F.S. Supervisors are the only election officials with authority who may register and remove voters from the registration rolls.

Each Supervisor is required to retain all records concerning implementation of registration list maintenance programs and activities conducted pursuant to ss. 98.065 and 98.075, F.S., and make them available for public inspection and copying.³⁰ The records must include a list containing the name and address of each person to whom a notice of potential ineligibility³¹ was sent and information as to whether each such person responded to the mailing, but may not include any information that is otherwise confidential or exempt from public inspection.³²

These ongoing records maintenance activities are conducted to protect the integrity of the electoral process through current and accurate records and to ensure only eligible voters are registered in the statewide voter registration system. By law, any maintenance program or activity must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Help America Vote Act of 2002.³³

CS/SB 276 (2018)

CS/SB 276 authorizes the Department of State (Department) to enter into an interstate agreement or become a member of a nongovernmental entity to share voter registration information with other states to maintain the integrity of the statewide Florida Voter Registration System (FVRS). That bill also directs the Department to use that information to identify registered voters or voter registration applicants who would be potentially ineligible to vote, and directs the Department to share such information with Supervisors to conduct registration list maintenance activities.

CS/SB 276 also requires all states and nongovernmental entities that receive any voter registration information to maintain the confidentiality of such information given as part of the agreement, if that information was confidential in its state of origin. The bill also requires an annual report to the Governor, President of the Senate, and Speaker of the House of Representatives describing the interstate agreement or membership, and providing information on the number of registered voters removed from the FVRS as a result of the agreement or membership and the reasons for their removal.

III. Effect of Proposed Changes:

Section 1 of the bill creates a public records exemption for voter registration information received by the Department, pursuant to membership in a nongovernmental entity, from another

²⁹ See s. 98.035, F.S.

³⁰ Section 98.045(3), F.S.

³¹ See s. 98.075(7), F.S. Supervisors are required to notify by mail the registered voter of his or her potential ineligibility to be registered to vote.

³² *Supra* note 30.

³³ Sections 98.065(1) and 98.075(1), F.S.

state or the District of Columbia in which the information is confidential or exempt pursuant to the laws of that state or jurisdiction.

This section further provides that the exemption is subject to the OGSR, and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

Section 2 of the bill provides a statement of public necessity as required by the Florida Constitution. It states that without the exemption, the Department would not be able to receive information from other states or the District of Columbia that might otherwise be confidential and exempt pursuant to the laws of those jurisdictions. This would impair the ability of the Department and Supervisors to maintain accurate voter rolls, which is critical to fair elections in this state.

Section 3 of the bill provides an effective date that is contingent upon, and concurrent with, passage of CS/SB 276, which will take effect on January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill creates a new public records exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the public records exemption in this bill appears to be no broader than necessary to accomplish its stated purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 98.075 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 Governmental Oversight and Accountability on December 5, 2017:**

- Adds references to SB 276 which is the linked substantive bill;
- Deletes from the bill information received by the Department from another state pursuant to an interstate agreement; and
- Adds information received by the Department from the District of Columbia.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senators Hutson and Baxley

585-01790-18

2018278c1

1 A bill to be entitled
2 An act relating to public records; amending s. 98.075,
3 F.S.; providing an exemption from public records
4 requirements for certain information received by the
5 Department of State from another state or the District
6 of Columbia which is confidential or exempt pursuant
7 to the laws of that jurisdiction; providing for the
8 release of such information to specified persons;
9 providing for future legislative review and repeal of
10 the exemption; providing a statement of public
11 necessity; providing a contingent effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Paragraph (c) is added to subsection (2) of
16 section 98.075, Florida Statutes, as amended by SB 276, 2018
17 Regular Session, to read:
18 98.075 Registration records maintenance activities;
19 ineligibility determinations.-
20 (2) DUPLICATE REGISTRATION.-
21 (c) Information received by the department from another
22 state or the District of Columbia upon the department becoming a
23 member of a nongovernmental entity as provided in subparagraph
24 (b)1., which is confidential or exempt pursuant to the laws of
25 that state or the District of Columbia, is exempt from s.
26 119.07(1) and s. 24(a), Art. I of the State Constitution. The
27 department shall provide such information to the supervisors to
28 conduct registration list maintenance activities. This paragraph
29 is subject to the Open Government Sunset Review Act in

Page 1 of 3

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

585-01790-18

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30 accordance with s. 119.15 and shall stand repealed on October 2,
31 2023, unless reviewed and saved from repeal through reenactment
32 by the Legislature.
33 Section 2. The Legislature finds that it is a public
34 necessity that information received by the Department of State
35 from another state or the District of Columbia pursuant to its
36 membership in a nongovernmental entity as provided in s.
37 98.075(2)(b), Florida Statutes, which is confidential or exempt
38 pursuant to the laws of that state or the District of Columbia,
39 be made exempt from s. 119.07(1), Florida Statutes, and s.
40 24(a), Article I of the State Constitution. Becoming a member of
41 a nongovernmental entity for the purpose of sharing and
42 exchanging information to verify voter registration information
43 is critical to ensuring the accuracy of the statewide voter
44 registration system. Maintaining an accurate statewide voter
45 registration system is critical to fair elections in this state.
46 Without the public records exemption, the department will be
47 unable to receive information from other states or the District
48 of Columbia which might otherwise be confidential or exempt
49 pursuant to the laws of those jurisdictions, which would impair
50 the ability of the department and supervisors of elections to
51 maintain accurate voter rolls. As a result, the effective and
52 efficient administration of the statewide voter registration
53 system would be hindered. For these reasons, the Legislature
54 finds that it is a public necessity to maintain the exempt
55 status of such information received by the department.
56 Section 3. This act shall take effect on the same date that
57 SB 276 or similar legislation takes effect, if such legislation
58 is adopted in the same legislative session or an extension

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

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59 | thereof and becomes a law.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 8, 2018

I respectfully request that **Senate Bill #278**, relating to Public Records/Department of State, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

APPEARANCE RECORD

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

Meeting Date

Bill Number (if applicable) 278

Topic Voter Registration Records

Amendment Barcode (if applicable)

Name META CALDER

Job Title Retired

Address 3760 RAVINE DR

Phone 850-228-5900

Street

STALL

FL

32312

Email meta@calder.com

City

State

Zip

Speaking: For Against Information

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

Representing League of Women Voters

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)

2/1/2018
Meeting Date

CS/SB 278
Bill Number (if applicable)

Topic VOTER EXCHANGE PUBLIC RECORDS

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title ATTORNEY

Address 120 S. MONROE ST

Phone 850 727 7087

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email david@rambalaw.com

Speaking: For Against Information

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

Representing FLORIDA SUPERVISORS OF ELECTIONS

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 Rules

BILL: SB 314

INTRODUCER: Senator Baxley

SUBJECT: Mortgage Brokering

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 314 exempts a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a loan originator or mortgage broker under ch. 494, F.S., if the person in the normal course of conducting securities business with corporate or individual clients:

- Solicits or offers to solicit a mortgage loan from a securities client, or refers a securities client to an entity exempt from regulation under parts I or II of ch. 494, F.S., pursuant to s. 494.00115, F.S., a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept a mortgage loan application, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Any referral or solicitation made under this exemption must comply with the provisions of ch. 517, F.S., the federal Real Estate Settlement Procedures Act, and any applicable federal law or general law of this state.

The bill may have an insignificant, negative fiscal impact to state government.

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

II. Present Situation:

State Regulation of Non-Depository Mortgage Business

The Office of Financial Regulation (OFR) regulates state-chartered banks, credit unions, other financial institutions, as well as finance companies, and the securities industry.¹ The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business.

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses:

- **Loan originator**, who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Mortgage Licensing Act of 2008.² The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.³
- **Mortgage broker**, who conducts loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.⁴
- **Mortgage lender**, who makes a mortgage loan or services a mortgage loan for others, or, for compensation or gain, directly or indirectly, sells or offers to sell a mortgage loan to a noninstitutional investor.⁵ A mortgage lender may act as a mortgage broker.⁶

Under ch. 494, F.S., these licensees are subject to:

- Requirements for the maintenance of books and records relating to the licensee's compliance with the chapter, with regard to expenses paid by the licensee on behalf of the borrower, and relating to its advertisements.⁷
- Investigations and examinations by the OFR.⁸
- The OFR's enforcement authority, such as injunctions, cease and desist orders, suspension or revocation of licensure, and administrative fines.⁹

¹ Section 20.121(3)(a)2. and (d), F.S. The OFR is housed within the Financial Services Commission (commission). The commission, comprised of the Governor and Cabinet, appoints the OFR Commissioner. The commission is a separate budget entity under the Department of Financial Services (DFS), and is not subject to the control or supervision by the DFS.

² The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act) (12 U.S.C. s. 5101-5116), enacted on July 30, 2008, establishes minimum standards for the licensing and registration of state-licensed mortgage loan originators, and mandates a nationwide licensing and registration system for residential mortgage loan originators.

³ Section 494.001(17), F.S.

⁴ Section 494.001(22), F.S.

⁵ Section 494.001(23), F.S.

⁶ Section 494.0073, F.S.

⁷ Sections 494.0016 and 494.00165(2), F.S.

⁸ Section 494.0012, F.S.

⁹ Sections 494.0013, 494.0014, and 494.00255, F.S.

In order to obtain a license as a mortgage loan originator, an individual must:¹⁰

- Be at least 18 years of age and have a high school diploma or its equivalent;
- Complete a 20-hour prelicensing class;¹¹
- Pass a written test;¹²
- Submit an application form;
- Submit nonrefundable application fees totaling \$215;
- Submit fingerprints, the cost of which is borne by the applicant; and
- Authorize access to his or her credit report, the cost of which is borne by the applicant.

In order to obtain a license as a mortgage broker, a person must:¹³

- Submit an application form, which must designate a qualified principal loan originator;
- Submit nonrefundable application fees totaling \$525;
- Submit fingerprints for each of the applicant's control persons,¹⁴ the cost of which is borne by the person subject to the background check; and
- Authorize access to the credit reports on each of the applicant's control persons, the cost of which is borne by the applicant.

In order to obtain licensure as a mortgage lender, a person must:¹⁵

- Submit an application form, which must designate a qualified principal loan originator;
- Submit nonrefundable application fees totaling \$600;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check;
- Submit a copy of the applicant's financial audit report for the most recent fiscal year, which must document that the applicant has a net worth of at least \$63,000 if the applicant is not seeking a servicing endorsement, or at least \$250,000 if the applicant is seeking a servicing endorsement; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

A mortgage loan originator, broker, and lender license is subject to annual renewal by December 31.¹⁶ In order to renew:

- A mortgage loan originator license, an individual must submit a renewal form and nonrefundable renewal fees totaling \$170; provide documentation of completion of at least

¹⁰ Section 494.00312, F.S.

¹¹ The cost of prelicensing courses may vary by course provider, but one such course provider charges \$349 for the required 20-hour course. See MortgageEducation.com, Mortgage Loan Originator Courses, <https://www.mortgage-education.com/StatePage.aspx?StateCode=FL> (last visited January 18, 2018).

¹² The cost of written test is \$110. See Nationwide Multistate Licensing System & Registry, Uniform State Test (UST) Implementation Information, <http://mortgage.nationwidelicingsystem.org/profreq/testing/Pages/UniformStateTest.aspx> (last visited January 18, 2018).

¹³ Section 494.00321, F.S.

¹⁴ "Control persons" is defined in s. 494.001(6), F.S., to mean, in part, "an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise."

¹⁵ Section 494.00611, F.S.

¹⁶ Sections 494.00312(7), 494.00321(7), and 494.00611, F.S.

eight hours of continuing education courses;¹⁷ and authorize access to his or her credit report, the cost of which is borne by the licensee.¹⁸

- A mortgage broker license, a person must submit a renewal form and nonrefundable renewal fees totaling \$475; submit fingerprints for any new control persons who have not been screened; and authorize access to the credit reports of each of the mortgage broker's control persons, the cost of which is borne by the licensee.¹⁹
- A mortgage lender license, a person must submit a renewal form and nonrefundable renewal fees totaling \$575; submit fingerprints for any new control persons who have not been screened; submit proof that the mortgage lender continues to meet the applicable net worth requirement; and authorize access to the credit reports of each of the mortgage lender's control persons, the cost of which is borne by the licensee.²⁰

The following persons are exempt from mortgage broker and mortgage lender regulation under ch. 494, F.S.:²¹

- Any person operating exclusively as a registered loan originator²² in accordance with the S.A.F.E. Act.
- A depository institution; certain regulated subsidiaries owned and controlled by a depository institution; or institutions regulated by the Farm Credit Administration.
- The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; any agency of the Federal Government; any state, county, or municipal government; or any quasi-governmental agency that acts in such capacity under the specific authority of the laws of any state or the United States.
- An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.
- A person involved solely in the extension of credit relating to the purchase of a timeshare plan.
- A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of ch. 475, F.S., unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator.

The following persons are exempt from the mortgage lender licensing requirements of ch. 494, F.S.:²³

- A person acting in a fiduciary capacity conferred by the authority of a court.
- A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.

¹⁷ See note 11.

¹⁸ Section 494.00313, F.S.

¹⁹ Section 494.00322, F.S.

²⁰ Section 494.00612, F.S.

²¹ Section 494.00115(1), F.S.

²² Section 494.001(31), F.S., defines a "registered loan originator" as "a loan originator who is employed by a depository institution, by a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or by an institution regulated by the Farm Credit Administration, and who is registered with and maintains a unique identifier through the [Nationwide Mortgage Licensing System and Registry]." A registered loan originator must comply with federal registration requirements rather than the loan originator licensing requirements under ch. 494, F.S.

²³ Section 494.00115(2), F.S.

- A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.
- A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.
- An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.
- An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

Federal Real Estate Settlement Procedures Act of 1974

The federal Real Estate Settlement Procedures Act²⁴ (the Act) became effective on June 20, 1975.²⁵ The Act requires lenders, mortgage brokers, or servicers of home loans to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. In addition, the Act prohibits specific practices, such as kickbacks,²⁶ and places limitations upon compensation and fees.²⁷

Federal Securities Regulation

The federal Securities Exchange Act of 1934 ('34 Act) requires registration of securities market participants such as broker-dealers.²⁸ Generally, any person acting as “broker” or “dealer” as defined in the '34 Act must be registered with the Securities and Exchange Commission (SEC) and join a self-regulatory organization (SRO), like the Financial Industry Regulatory Authority (FINRA) or a national securities exchange.

The '34 Act broadly defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others,” which the SEC has interpreted to include involvement in any of the key aspects of a securities transaction, including solicitation, negotiation, and execution.²⁹ A “dealer” is “any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise.”³⁰

State Securities Regulation

In addition to federal securities laws, “Blue Sky Laws” are state laws designed to protect investors against fraudulent sales practices and activities by requiring companies making

²⁴ 12 U.S.C. ss. 2601 et seq.

²⁵ 12 CFR Part 1024 (Regulation X) implements RESPA.

²⁶ 12 CFR s. 1024.14.

²⁷ *Id.*

²⁸ See 15 U.S.C. s. 78l, relating to registration requirements for securities.

²⁹ 15 U.S.C. ss. 78c(4) and 78o. U.S. Securities and Exchange Commission, Guide to Broker-Dealer Registration, <https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html> (last visited January 18, 2018).

³⁰ 15 U.S.C. s. 78c(5).

offerings of securities to register their offerings before they can be sold in that state and by requiring licensure for brokerage firms, their brokers, and investment adviser representatives.³¹

In Florida, the OFR's Division of Securities oversees the Securities and Investor Protection Act, ch. 517, F.S. (act), which regulates the offer and sale of securities in, to, or from Florida by firms, branch offices, and individuals affiliated with these firms. The act requires the following individuals or businesses to be registered with the OFR under s. 517.12, F.S., in order for such persons to sell or offer to sell any securities in or from offices in this state, or to sell securities to persons in this state from offices outside this state.³²

- **Dealers**, which include:³³
 - Any person, other than an associated person registered under ch. 517, F.S., who engages, either for all or part of her or his time, directly or indirectly, as broker or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.
 - Any issuer who through persons directly compensated or controlled by the issuer engages, either for all or part of her or his time, directly or indirectly, in the business of offering or selling securities which are issued or are proposed to be issued by the issuer.
- **Investment advisors**, which include:³⁴
 - Any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services.
 - But does not include a "federal covered advisor."³⁵
- **Associated persons**, with respect to a dealer or investment adviser, include:³⁶
 - Any partner, officer, director, or branch manager of a dealer or investment adviser or any person occupying a similar status or performing similar functions;
 - Any natural person directly or indirectly controlling or controlled by such dealer or investment adviser, other than an employee whose function is only clerical or ministerial; or
 - Any natural person, other than a dealer, employed, appointed, or authorized by a dealer, investment adviser, or issuer to sell securities in any manner or act as an investment adviser as defined in this section.
- **Associated persons**, with respect to a federal covered adviser, includes any person who is an investment adviser representative and who has a place of business in this state.

³¹ U.S. Securities and Exchange Commission, Blue Sky Laws, <http://www.sec.gov/answers/bluesky.htm> (last visited January 18, 2017).

³² Section 517.12(1), F.S.

³³ Section 517.021(6)(a), F.S.

³⁴ Section 517.021(14)(a), F.S.

³⁵ Section 517.021(9) and (14)(b)9., F.S. A federal covered advisor must be registered under federal law and must provide a notice-filing to the OFR pursuant to ss. 517.021 and 517.1201, F.S.

³⁶ Section 517.021(2)(a), F.S.

Wells Fargo Declaratory Statement

In May 2016, Wells Fargo Advisors, LLC (Wells Fargo), filed a petition for a declaratory statement³⁷ with the OFR to determine whether it would be in compliance with ch. 494, F.S., if it were to start compensating its financial advisors for certain mortgage loan originator activities that it argued were purely incidental to the otherwise authorized securities and investment activities for Wells Fargo and its financial advisors.³⁸

Wells Fargo is a full-service broker-dealer firm subject to supervision by the SEC and the OFR.³⁹ Wells Fargo is indirectly owned by Wells Fargo & Co., a bank holding company that also owns certain national banks.⁴⁰ Therefore, Wells Fargo is affiliated with such banks through common ownership.⁴¹

Despite the fact Wells Fargo holds a mortgage broker license and many of its financial advisors hold a license as a mortgage loan originator, Wells Fargo and its financial advisors do not:

- Solicit the general public for mortgage loans;
- Solicit lenders on behalf of borrowers;
- Take, complete, accept, or assist in preparing applications for any mortgage loans;
- Negotiate the interest rate, terms or conditions for new or existing mortgage loans; or
- Offer any mortgage loans to borrowers.⁴²

If Wells Fargo's securities clients raise issues about other financial matters, such as a business need for a residential mortgage, the financial advisors may inform securities clients that the affiliated banks make mortgage loans and may provide bank-approved material.⁴³ If a securities client contacts an affiliated bank regarding a mortgage loan and ultimately obtains mortgage financing, Wells Fargo provides "additional compensation" to the financial advisor who interacted with the particular client.⁴⁴ Neither Wells Fargo nor the financial advisor, however, receives a fee of any kind from either the securities client obtaining the mortgage loan, or the affiliated bank making the mortgage loan.⁴⁵ Wells Fargo and the financial advisor do not have any additional involvement with the affiliated banks' mortgage loan origination process.⁴⁶

The determinative issues in the Declaratory Statement and Final Order issued by the OFR (OFR Declaratory Statement) were: 1) the prohibition against a mortgage broker paying a commission to any person not licensed or exempt from licensure under ch. 494, F.S.;⁴⁷ 2) permitting

³⁷ Pursuant to s. 120.565(1), F.S., "any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances."

³⁸ *In Re Petition for Declaratory Statement, Wells Fargo Advisors, LLC*, Case No. 66425, pp. 1 and 4-6 (Fla. OFR Aug. 15, 2016).

³⁹ *Id.* at 2.

⁴⁰ *Id.* at 3.

⁴¹ *Id.*

⁴² *Id.* at pp. 3 and 5.

⁴³ *Id.* at pp. 3-4.

⁴⁴ *Id.* at p. 4.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 494.0038(2), F.S.

“additional compensation” related to the mortgage loans to be paid to the financial adviser; and 3) the referral aspect of the above set of facts.⁴⁸

The OFR Declaratory Statement concluded both the compensation and the referral require Wells Fargo be licensed as either a mortgage broker or mortgage lender and require its financial advisors be licensed as mortgage loan originators.⁴⁹

III. Effect of Proposed Changes:

SB 314 amends s. 494.00115, F.S., to exempt a securities dealer, investment advisor, or associated person registered under ch. 517, F.S., from regulation as a loan originator or mortgage broker under ch. 494, F.S., if the person in the normal course of conducting securities business with corporate or individual clients:

- Solicits or offers to solicit a mortgage loan from a securities client, or refers a securities client to an entity exempt from regulation under parts I or II of ch. 494, F.S., pursuant to s. 494.00115, F.S.,⁵⁰ a licensed mortgage broker, a licensed mortgage lender, or a registered loan originator; and
- Does not accept or offer to accept an application for a mortgage loan, negotiate or offer to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiate or offer to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

Any referral or solicitation made pursuant to this exemption must comply with ch. 517, F.S., the federal Real Estate Settlement Procedures Act, and any other applicable federal law or general law of this state.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴⁸ Declaratory Statement and Final Order, *In Re: Petition for Declaratory Statement, Wells Fargo Advisors, LLC*, Case No. 66425 (Fla. OFR Aug. 15, 2016), at pp. 7-8.

⁴⁹ *Id.* at pp. 8 - 9.

⁵⁰ Section 494.00115(1)(b), F.S., provides an exemption from regulation as a mortgage broker or loan originator under parts I and II of ch. 494, F.S., for a “depository institution; subsidiaries that are owned and controlled by a depository institution and regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or institutions regulated by the Farm Credit Administration.” The Federal Deposit Insurance Act defines a “depository institution” as a bank or saving association. *See* 12 U.S.C. 1813(c).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may decrease licensing costs for securities dealers, investment advisors, or associated persons exempted from the license requirements under ch. 494, F.S.

C. Government Sector Impact:

The Office of Financial Regulation states the licensure exemption for securities dealers, investment advisors, or associated persons may result in an insignificant loss in revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The provisions in SB 314 relating to the exemption from regulation as a loan originator or mortgage broker under ch. 494, F.S., for securities dealers, investment advisors, and associated persons in certain situations are substantively similar to provisions contained in CS/CS/HB 747 (2017 Regular Session), relating to Mortgage Regulation, by the Commerce Committee, Insurance and Banking Subcommittee, and Rep. Stark.⁵¹ CS/CS/HB 747 passed the Legislature but subsequently was vetoed by the Governor. The Governor's veto was based on the bill's revised definition of the term "mortgage loan" in s. 494.001(24), F.S.⁵² SB 314 does not include the provision that was the basis for the Governor's veto.

VIII. Statutes Affected:

This bill substantially amends section 494.00115 of the Florida Statutes.

⁵¹ The Senate companion was CS/CS/SB 830 (2017 Regular Session) by the Banking and Insurance Committee, the Regulated Industries Committee, and Senator Baxley.

⁵² The Governor's veto of CS/CS/HB 747 was based on his concern the bill's revised definition of the term "mortgage loan" in s. 494.001(24), F.S., would expand the regulatory environment for residential mortgages and add overly prescriptive regulations related to mortgage lending. Specifically, the Governor's veto message noted CS/CS/HB 747 seemed overly burdensome on Florida families because it might have required a parent or other relative who decides to make a residential loan to a child or other loved one to be licensed by Florida Office of Financial Regulation.

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 Baxley

12-00567-18

2018314__

1 A bill to be entitled
 2 An act relating to mortgage brokering; amending s.
 3 494.00115, F.S.; providing an exemption from
 4 regulation under parts I and II of ch. 494, F.S., for
 5 certain securities dealers, investment advisers, and
 6 associated persons; providing requirements for certain
 7 solicitations and referrals; providing an effective
 8 date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Present subsections (2) and (3) of section
 13 494.00115, Florida Statutes, are redesignated as subsections (3)
 14 and (4), respectively, and a new subsection (2) is added to that
 15 section, to read:
 16 494.00115 Exemptions.—
 17 (2) (a) A securities dealer, an investment adviser, or an
 18 associated person registered under s. 517.12 is exempt from
 19 regulation under this part and part II of this chapter if such
 20 person, in the normal course of conducting securities business
 21 with a corporate or an individual client:
 22 1. Solicits or offers to solicit a mortgage loan from a
 23 securities client or refers a securities client to an entity
 24 exempt under paragraph (1) (b), a licensed mortgage broker, a
 25 licensed mortgage lender, or a registered loan originator; and
 26 2. Does not accept or offer to accept an application for a
 27 mortgage loan, negotiate or offer to negotiate the terms or
 28 conditions of a new or existing mortgage loan on behalf of a
 29 borrower or lender, or negotiate or offer to negotiate the sale

Page 1 of 2

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

12-00567-18

2018314__

30 of an existing mortgage loan to a noninstitutional investor for
 31 compensation or gain.
 32 (b) Any solicitation or referral made pursuant to this
 33 subsection must comply with chapter 517; the federal Real Estate
 34 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; and any
 35 applicable federal law or general law of this state.
 36 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

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

January 23, 2018

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, FL 32399

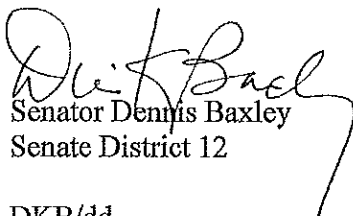
Dear Senator Benacquisto,

I respectfully request SB 314 Mortgage Brokering be placed on your next available agenda.

This good bill is necessary to permit licensed securities dealers to refer business to licensed or registered mortgage brokers or banks in Florida when acting in the normal course of business. It clarifies who IS and who IS NOT a mortgage broker.

I appreciate your favorable consideration.

Onward & Upward,


Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/01/2018

314

Meeting Date

Bill Number (if applicable)

Topic Mortgage Brokering

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Securities Industry and Financial Markets 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)

2/1/18

Meeting Date

314

Bill Number (if applicable)

Topic Mortgage Broker Bill

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of Govt. Affairs

Address 1001 Seminoleville Rd

Phone 229-224-5555

Street City State Zip Tallahassee FL 32303

Email adimarco@floridabankers.com

Speaking: [] For [] Against [] Information

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

Representing Florida Bankers Association

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.

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 Rules

BILL: CS/SB 1048

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Firearms

DATE: February 1, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Stallard</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1048 enables a church, synagogue, or other religious institution to authorize a person who has a concealed handgun license to carry a concealed handgun in some places where even a licensee normally may not, subject to several restrictions. These places includes elementary or secondary schools and career centers, if they are also established places of worship.

Under current law, a person who has a concealed handgun license is authorized to carry a concealed handgun on the typical property of a religious institution, such as a church property that is not also home to a school. However, a license does not authorize a person to possess a firearm at a school, including a school that is on church property. There is even a question as to whether a licensee may carry a handgun on any part of a property on which both a church's worship building and its school are located.

Under the bill, a religious institution may authorize the holder of a concealed handgun license to carry a concealed handgun on certain school properties if they are "established physical place[s] of worship at which religious services are regularly conducted."

However, if the institution uses school property not owned by the institution, the institution must have the permission of the owner or administrator of the property to allow the licensed carrying of concealed handguns. Additionally, a person may not possess a handgun on school property during school hours or when any school-sponsored activity is taking place on the property. Finally, the bill expressly states that religious institutions may not authorize a person to carry a handgun on the property of a public or private college or university.

II. Present Situation:

Overview

A concealed handgun license authorizes a licensee to carry a concealed handgun throughout most of the state. Though the licensing statute expressly excludes several places from this authorization, none of these places are the typical meeting places of “churches, synagogues, or other religious institutions.” Nonetheless, some congregations meet at, or are even located on the same property as, places where the authority under a concealed handgun license does not apply, including “school facilities and administration buildings,” or “college or university facilities.” Moreover, another statute broadly prohibits virtually all people, including concealed handgun licensees, from possessing a firearm on public or private school property. As such, a licensee may generally carry a concealed handgun when he or she meets with his or her congregation, but apparently may not do so if the congregation gathers on the property of a public or private school.

Lawful Concealed Carry of Weapons and Firearms

Although the statutes generally prohibit a person from carrying a firearm or carrying a concealed weapon, these prohibitions are subject to several exceptions.¹

The most significant exception to the prohibition on a person carrying a concealed weapon or firearm may be the licensed carry of these items. The license authorizes a licensee to carry a concealed handgun in most places in the state.² To obtain a license, one must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:³

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;

¹ Many of these exceptions are set forth in s. 790.25, F.S.

² As of December 31, 2017, 1,836,954 Floridians held a standard concealed carry license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited January 12, 2018).

³ Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S., which also sets forth criteria for the mandatory revocation of a license.

- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;⁴
- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

Although the license generally authorizes a person to carry a concealed handgun throughout the state, a license “does not authorize” a person to carry a concealed handgun into several places, including any college or university facility, any career center, or any elementary or secondary school facility or administration building. A license also does not authorize a person to carry a concealed handgun into any school, college, or professional athletic event not related to firearms.⁵ However, this list does *not* include the property of a church, synagogue or other religious institution, such as a typical church campus. So, a licensee generally may carry a concealed handgun when he or she goes to meet with his or her congregation, but not if they are meeting at a school facility or building, a college or university facility, or any other place at which even licensed carry is illegal.^{6, 7}

While the licensing statute sets forth that the concealed carry license *does not authorize* carrying into any school building or facility, another statute broadly *prohibits* the possession of a weapon or firearm on any public or private school property regardless of whether a person has a license.

Prohibited Possession of a Weapon or Firearm at a School or Related Location

In general, s. 790.115, F.S., prohibits a person from possessing any firearm, electric weapon or device, destructive device, or other weapon on the property of any school, school bus, or school bus stop. Although the word “school” is not defined in the statute authorizing the issuance of concealed weapon or firearm licenses, s. 790.115, F.S., expressly and broadly defines the term “school” as any preschool through postsecondary school, whether public or private.⁸ The penalty

⁴ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

⁵ See s. 790.06(12), F.S., for the list of the places that a license does not authorize a licensee to carry into.

⁶ As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

⁷ Additional exceptions to the prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or to carry a concealed firearm in any of the manners described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. Additionally, the statute authorizes a person to carry a firearm while engaged in hunting, fishing, or camping or while traveling to and from these activities. A person may also possess a firearm at his or her home or place of business or in any of the other circumstances set forth in statute.

⁸ It also means any career center. Section 790.115(2)(a), F.S.

for violating the ban on weapons varies depending on the weapon possessed and whether the violator has a concealed handgun license.⁹ The limited exceptions in the statute authorize the possession of weapons and firearms “in support of school-sanctioned activities,” “in a case” to a firearms class if approved by school authorities, and in parked cars.

Federal Law

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place the individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.¹⁰ However, this prohibition does not apply to a person who is licensed to carry a concealed handgun.¹¹

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting *students* from possessing firearms at or near schools. This prohibition is also subject to exceptions.¹² The act expressly states that it does not apply to a firearm “that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”¹³

III. Effect of Proposed Changes:

The bill addresses the issue of how persons who would otherwise be able to carry a concealed handgun to their worship services may not do so if their place of worship is also school property. Particularly, the bill enables a church, synagogue, or other religious institution¹⁴ to authorize a person who has a concealed handgun license to carry a concealed handgun at certain places, including the property of public or private elementary or secondary school, or a career center, that is also an “established place of physical worship at which religious services are regularly conducted.”

However, if the institution uses property that it does not own, the institution must have the permission of the owner or administrator of the property to allow the licensed carrying of concealed handguns. Additionally, a person may not possess a handgun on school property during school hours or when extracurricular school-sponsored activities are taking place on the

⁹ A non-licensee possessing a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000. *See* ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser crime, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

¹⁰ 18 U.S.C. § 922(q)(2)(A).

¹¹ *See* 18 U.S.C. § 922(q)(2)(B)(ii).

¹² *See* 20 U.S.C. § 7961.

¹³ 20 U.S.C. § 7961(g).

¹⁴ The bill adopts the definition of this term in s. 496.404, F.S.:

“Religious institution” means a church, ecclesiastical or denominational organization, or established physical place for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on and includes those bona fide religious groups that do not maintain specific places of worship. The term also includes a separate group or corporation that forms an integral part of a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that is not primarily supported by funds solicited outside its own membership or congregation.

property. Finally, the bill expressly states that religious institutions may not authorize a person to carry a handgun on the property of a public or private college or university.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill enables a religious institution to authorize a person who has a license to carry a concealed handgun to do so in certain places where even a licensee currently may not. These places include certain schools, subject to several restrictions. These restrictions include a restriction that handguns may not be carried on school property during school hours or during any school-sponsored activity.

The lack of a clear definition of what constitutes a school-sponsored activity and the lack of a required notice of when those activities are occurring may lead to unintentional violations of

criminal law by those authorized to carry a concealed handgun. If the activities of a religious institution and a school it operates are closely interrelated, such as a student performance during the institution's worship service, the authority for a person to possess a concealed handgun even during a worship service seems uncertain. Therefore, the Legislature may wish to revise the bill to minimize the risk of unintentional violations of criminal law by otherwise law-abiding persons.

VIII. Statutes Affected:

This bill substantially amends section 790.06 of the Florida Statutes.

IX. Additional Information:

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

CS by Judiciary on January 25, 2018:

In the underlying bill, a religious institution could authorize a person who has a concealed handgun license to carry a firearm anywhere the religious institution could lawfully meet, regardless of whether a licensee's carrying in that place would otherwise be prohibited. Under the committee substitute, a religious institution may authorize a person who has a concealed handgun license to carry a concealed handgun only on certain properties that are used by a religious institution, and only under a number of limitations.

- B. **Amendments:**

None.

By the Committee on Judiciary; and Senators Baxley and Stargel

590-02440-18

20181048c1

1 A bill to be entitled
 2 An act relating to firearms; amending s. 790.06, F.S.;
 3 authorizing a church, a synagogue, or other religious
 4 institution to allow a concealed weapons or concealed
 5 firearms licensee to carry a concealed handgun in
 6 certain established physical places of worship under
 7 certain circumstances; providing applicability;
 8 providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (12) of section 790.06, Florida
 13 Statutes, is amended to read:
 14 790.06 License to carry concealed weapon or firearm.—
 15 (12) (a) A license issued under this section does not
 16 authorize any person to openly carry a handgun or carry a
 17 concealed weapon or firearm into:
 18 1. Any place of nuisance as defined in s. 823.05;
 19 2. Any police, sheriff, or highway patrol station;
 20 3. Any detention facility, prison, or jail;
 21 4. Any courthouse;
 22 5. Any courtroom, except that nothing in this section would
 23 preclude a judge from carrying a concealed weapon or determining
 24 who will carry a concealed weapon in his or her courtroom;
 25 6. Any polling place;
 26 7. Any meeting of the governing body of a county, public
 27 school district, municipality, or special district;
 28 8. Any meeting of the Legislature or a committee thereof;
 29 9. Any school, college, or professional athletic event not

Page 1 of 3

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590-02440-18

20181048c1

30 related to firearms;
 31 10. Any elementary or secondary school facility or
 32 administration building;
 33 11. Any career center;
 34 12. Any portion of an establishment licensed to dispense
 35 alcoholic beverages for consumption on the premises, which
 36 portion of the establishment is primarily devoted to such
 37 purpose;
 38 13. Any college or university facility unless the licensee
 39 is a registered student, employee, or faculty member of such
 40 college or university and the weapon is a stun gun or nonlethal
 41 electric weapon or device designed solely for defensive purposes
 42 and the weapon does not fire a dart or projectile;
 43 14. The inside of the passenger terminal and sterile area
 44 of any airport, provided that no person shall be prohibited from
 45 carrying any legal firearm into the terminal, which firearm is
 46 encased for shipment for purposes of checking such firearm as
 47 baggage to be lawfully transported on any aircraft; or
 48 15. Any place where the carrying of firearms is prohibited
 49 by federal law.
 50 (b) A person licensed under this section may ~~shall~~ not be
 51 prohibited from carrying or storing a firearm in a vehicle for
 52 lawful purposes.
 53 (c)1. Notwithstanding the prohibitions contained in this
 54 subsection or s. 790.115, a church, a synagogue, or any other
 55 religious institution, as that term is defined in s. 496.404,
 56 may authorize a person licensed under this section to carry a
 57 concealed handgun in an established physical place of worship at
 58 which religious services are regularly conducted provided that:

Page 2 of 3

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

590-02440-18

20181048c1

59 a. If such property is not owned by the religious
60 institution, the religious institution receives the permission
61 of the property owner or administrator; and

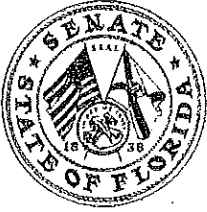
62 b. If the religious institution is using property that is
63 an elementary or secondary school facility or career center or
64 that is located on the property of a school, as defined in s.
65 790.115, the person may not carry a concealed handgun on school
66 property during school hours or during any time when curricular
67 or extracurricular school-sponsored activities are taking place
68 on the property.

69 2. This paragraph does not authorize the carrying of a
70 firearm in any place or in any manner prohibited by federal law
71 or on the property of a public or private college, university,
72 or other postsecondary educational institution.

73 (d)(e) This section does not modify the terms or conditions
74 of s. 790.251(7).

75 (e)(d) Any person who knowingly and willfully violates any
76 provision of this subsection commits a misdemeanor of the second
77 degree, punishable as provided in s. 775.082 or s. 775.083.

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



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

January 25, 2018

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
404 So Monroe Street
Tallahassee, FL 32399

Dear Senator Benacquisto,

I respectfully request SB 1048 Firearms (Church Protection) be placed on your next available agenda.

This bill is about property rights, enabling communities of faith (church), a synagogue, or other religious institution to authorize a person who has a license to carry a concealed weapon or firearm on any property lawfully used by the religious institution.

The bill ensures that property owners who lease property to religious institutions are not forced to allow guns on the property by requiring that the lessee obtain the property owner's permission before allowing guns on the property. It also ensures that guns are not allowed on school property during school hours or when school activities or extra-curricular activities are taking place on the property.

I appreciate your favorable consideration.

Onward & Upward,

A handwritten signature in cursive script that reads "Dennis Baxley".

Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

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

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/1/18
Meeting Date

1048
Bill Number (if applicable)

Topic Firearms

Amendment Barcode (if applicable)

Name META CALDER

Job Title RETIRED

Address 3740 RAVINE DR.
Street

Phone 850-228-5900

TALL. FL 32312
City State Zip

Email meta.calder@gmail.com

Speaking: For Against Information

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

Representing LWV League of Women Voters

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)

2-1-18

Meeting Date

1098

Bill Number (if applicable)

Topic FIREARMS

Amendment Barcode (if applicable)

Name AMBER KELLY

Job Title LEGISLATIVE CONSULTANT

Address 4853 S. ORANGE AVE

Phone 407-418-0250

Street

ORLANDO

City

FL

State

32806

Zip

Email

Speaking: For Against Information

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

Representing FLORIDA FAMILY ACTION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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2/1/18

Meeting Date

1048

Bill Number (if applicable)

Topic FIREARMS

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO BOX 391644

Phone 813.264.2977

Street

TAMPA

City

FL

State

33694

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1/2018

Meeting Date

SB-1048

Bill Number (if applicable)

Topic Church Private Property Rights/Firearms

Amendment Barcode (if applicable)

Name Marion P. Hammer

Job Title _____

Address PO Box 1387

Phone 850-222-9518

Street

Tallahassee FL 32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing National Rifle Association & Unified Sportsmen of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
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 Rules

BILL: CS/SB 512

INTRODUCER: Rules Committee and Senator Young

SUBJECT: Homestead Waivers

DATE: February 1, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Favorable
2.	Davis	Cibula	JU	Favorable
3.	Present	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 512 provides form language that a spouse may include in a deed to demonstrate that he or she knowingly waives the right to inherit homestead property. The State Constitution prohibits an owner from transferring homestead property when the owner has a spouse or minor child but permits a transfer of the property to the spouse if there is no minor child. A spouse, however, may waive this restriction in a signed and witnessed written contract or agreement.

The bill provides that a spouse waives his or her rights as a surviving spouse with regard to the devise restrictions contained in the State Constitution if certain language, or substantially similar language, is included in a deed.

This waiver language is not a waiver of the protection against the owner's creditor claims during the owner's lifetime and after death. Additionally, the language is not a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.

II. Present Situation:

Florida Constitution

The Florida Constitution protects homestead property in three specific ways.¹ The Constitution:

¹ *Chames v. DeMayo*, 972 So. 2d 850, 853 (Fla. 2007) (quoting *Snyder v. Davis*, 699 So. 2d 999, 1001-02 (Fla. 1996)).

- Provides homesteads with an exemption from taxes;²
- Protects homesteads from forced sale by creditors;³ and
- Limits the manner in which homestead owners may alienate or devise⁴ the property.⁵

The purpose of this longstanding public policy is to preserve the home as a shelter for a family so that the family does not become a public charge.⁶ By protecting a family's financial interest, the state's financial interests are protected as well.

To protect the interests of the family unit, the Constitution provides in Section 4(c) of Article X that a homestead may not be devised when the owner is survived by a spouse or minor child. However, the homestead may be devised to the owner's spouse if there is no minor child. The Florida Supreme court has noted that this provision "protects the surviving spouse and minor children from having the homestead property transferred out from under them by the other spouse (or parent) without the consent of both spouses."⁷

The Constitution also provides that the owner of homestead property, if married, may alienate the property by mortgage, sale, or gift, if joined by the spouse. Therefore, under the exemption, both spouses are required to join in a conveyance of a homestead that is owned by one spouse to a third party.⁸ Requiring the joinder of both spouses in a deed or mortgage serves to "inhibit" all other forms of transferring property away from a spouse or destroying the homestead status of the property.⁹

Section 4(c) of Article X states:

The homestead shall not be subject to devise if the owner is survived by the spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse

Florida Statutes

The statutes also echo the Constitution's prohibition on devising homestead property. Section 732.4015, F.S., states that "the homestead shall not be subject to devise if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner's spouse if there is no minor child or minor children."

² FLA. CONST. art. VII, s. 6.

³ *Id.* at art. X, s. 4(a)-(b).

⁴ To "alienate" means to transfer property to another person and to "devise" means to give property in a testamentary instrument such as a will. BLACK'S LAW DICTIONARY (10th ed. 2014).

⁵ FLA. CONST. art. X, s. 4(c).

⁶ 28A Fla. Jur. 2d *Homesteads*, s. 3.

⁷ *Stone v. Stone*, 157 So. 3d 295, 299 (Fla. 2014).

⁸ 28A Fla. Jur. 2d *Homesteads*, s. 78.

⁹ *Id.* at s. 79.

Waiving Homestead Rights – Statutes and Case Law

The question naturally arises as to how a spouse's interest in homestead property, which is legally protected, may be validly transferred. The statutes provide a procedure for waiving spousal rights, particularly homestead rights, under written contracts, agreements, or waivers.¹⁰ But there is a difference of opinion among practitioners as to whether a deed is covered under the umbrella of "contracts, agreements, or waivers." Generally, a waiver of "all rights" is deemed sufficient to waive all of a spouse's rights in an agreement under the statute when signed by the waiving party in the presence of two subscribing witnesses. The statute¹¹ further provides that if the agreement, contract, or waiver is executed after a marriage, each spouse must make a fair disclosure to the other of that spouse's estate. Disclosure is not required before marriage and no consideration is required for the agreement, contract, or waiver to be valid when executed before or after a marriage.

The issue has arisen in litigation, though, as to what constitutes a valid waiver of homestead rights in a deed. Recently, the issue has been raised as to whether joining in a deed without a more formal agreement or acknowledgement constitutes a valid waiver of homestead rights.

The Fourth District Court of Appeal has issued two decisions dealing with homestead waiver. In *Stone v. Stone*,¹² the court held that a spouse validly waived her homestead rights when she joined in the execution of a deed that conveyed her husband's one-half interest in a homestead property to a qualified personal resident trust. The deed was determined to constitute a waiver even though it contained no particular waiver language and there was no evidence of financial disclosure.

The court was also presented with an issue of spousal waiver in the case of *Lyons v. Lyons*.¹³ In that case, a wife's interest in a homestead residence was conveyed in a deed to a qualified personal residence trust without the husband being joined. The court held that the wife did not have standing to later challenge the transfer. The court determined that only the husband, and not the wife, could challenge the transfer.

As a result of these very fact-specific decisions, it is not consistently clear when a knowing and intelligent waiver has occurred. Attorneys who specialize in this area of estate planning and homestead provisions have determined that a statute could be drafted supplying language that would clarify when a person knowingly waives homestead rights in a deed. Statutory language that provides express deed waiver language could reduce the expense of litigation, reduce court time dedicated to resolving these legal conflicts, and reduce the chance that a waiver in a deed is made by mistake or misunderstanding.¹⁴

¹⁰ Section 732.702, F.S.

¹¹ Section 732.702(2), F.S.

¹² *Stone v. Stone*, 157 So. 3d 295 (Fla. 4th DCA 2014).

¹³ *Lyons v. Lyons*, 155 So. 3d 1179 (Fla. 4th DCA 2014).

¹⁴ The Florida Supreme Court has held that a surviving spouse may validly waive her homestead rights. However, for the waiver of a constitutional right to be valid, the waiver "must be made knowingly, voluntarily, and intelligently." See *Chames*, 972 So. 2d at 861 (Fla. 2007).

III. Effect of Proposed Changes:

The bill provides form language that a spouse may include in a deed to waive his or her right to inherit homestead property. The specific language provides that a spouse has waived his or her rights as a surviving spouse with regard to the devise restrictions contained in s. 4(c), Article X of the State Constitution when certain language, or substantially similar language is included in a deed. The form waiver language states:

By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me.

This waiver language is not a waiver of the protection against the owner's creditor claims during the owner's lifetime and after death. Additionally, the language is not a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.

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 provide more certainty and greater predictability for Florida residents and their attorneys as they plan for the disposition of constitutionally protected homesteads upon death.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 732.7025 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.)

CS by Rules on February 1, 2018:

- Provides that a spouse may waive his or her rights as a surviving spouse with respect to the devise restrictions under the State Constitution by executing a deed; and
- Clarifies that a spouse waives such rights if he or she uses specified form language.

B. Amendments:

None.



927498

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment

Delete line 12

and insert:

(1) A spouse waives his or her rights



671898

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment

Delete line 17
and insert:
"By executing or joining this deed, I intend to waive
homestead rights

By Senator Young

18-00593-18

2018512__

A bill to be entitled

An act relating to homestead waivers; creating s.
732.7025, F.S.; providing language that may be used to
waive spousal homestead rights concerning devise
restrictions; providing an effective date.

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

Section 1. Section 732.7025, Florida Statutes, is created
to read:

732.7025 Waiver of homestead rights through deed.-

(1) A spouse is presumed to have waived his or her rights
as a surviving spouse with respect to the devise restrictions
under s. 4(c), Art. X of the State Constitution if the following
or substantially similar language is included in a deed:

"By joining this deed, I intend to waive homestead rights
that would otherwise prevent my spouse from devising the
homestead property described in this deed to someone other than
me."

(2) The waiver language in subsection (1) may not be
considered a waiver of the protection against the owner's
creditor claims during the owner's lifetime and after death.
Such language may not be considered a waiver of the restrictions
against alienation by mortgage, sale, gift, or deed without the
joinder of the owner's spouse.

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

APPEARANCE RECORD

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

2/1/18

Meeting Date

512

Bill Number (if applicable)

927498

Amendment Barcode (if applicable)

Topic HOMESTEAD WAIVER

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVENUE

Street

Phone 224-5081

TCH

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA LAND TITLE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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

2/11/18

Meeting Date

512

Bill Number (if applicable)

671898

Amendment Barcode (if applicable)

Topic HOMESTEAD WAIVER

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVENUE
Street

Phone 224-5081

TULSA 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 FLORIDA LAND TITLE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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

02/01/2018

Meeting Date

512

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Michael Dobson

Job Title Attorney

Address 215 S. Monroe Street, Suite 815 Phone (850) 545-0576

Street

Tallahassee

City

FL

State

32301

Zip

Email

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

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

Representing Real Property, Probate and Trust Law Section of the FL Bar

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
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 Rules

BILL: SR 550

INTRODUCER: Senator Broxson and others

SUBJECT: Gulf of Mexico Range Complex

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Mitchell</u>	<u>Rogers</u>	<u>EP</u>	Favorable
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	Favorable
3.	<u>Mitchell</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SR 550 pronounces that:

- The State of Florida must maintain a unified front in supporting an extension of the current moratorium on drilling in the Gulf of Mexico east of the Military Mission Line;
- Drilling east of the Military Mission Line would mean loss of range areas and possible relocation of aircraft and bases to other unrestricted range areas; and
- The Florida Senate supports an indefinite extension of the restriction, specified in the Gulf of Mexico Security Act (GOMESA), on oil and gas leasing in all areas east of the Military Mission Line established at 86°41' west longitude and an indefinite extension of the GOMESA's ban on oil and gas leasing within 125 miles of the Florida coastline in the Eastern Planning Area and in a portion of the Central Planning Area.

Resolutions are not subject to action by the Governor and do not have the effect of law. In addition, they are not subject to the constitutional single-subject limitation or title requirements.

II. Present Situation:

Gulf of Mexico Range Complex

Florida's 20 major military installations and defense business presence provide a nearly \$80 billion annual economic impact and account for 774,000 jobs in Florida.¹ Additionally, Florida houses 10 unified combatant commands and hosts two of only four Navy deep water ports in the United States with adjacent airfields, the military's only east coast space launch facility, the Marine Corps' only maritime prepositioning force facility, and one of only three Navy Fleet

¹ Enterprise Florida, *Florida's Military Profile*, available at http://www.enterpriseflorida.com/wp-content/uploads/Military_Install_Map.pdf (last visited January 23, 2018).

Readiness Centers, as well as several critical research, development, training and evaluation centers.²

Joint basing, joint usage, and joint training areas are vital to assessing the future of a military base. Florida's military bases are dependent on access to the air and sea space the Gulf of Mexico Range Complex (GOMEX Range Complex) provides. The GOMEX Range Complex is larger than all other training ranges inside the continental United States combined and has been in use for over 60 years. The GOMEX Range Complex stretches from the Florida Panhandle (commonly referred to as the Military Mission Line) south to Key West and encompasses 180,000 square miles in the eastern Gulf of Mexico.³ The GOMEX Range Complex "supports NAS Pensacola, NAS Whiting Field, Hurlburt Air Force Base, Duke Field, Eglin Air Force Base, NSA Panama City, Tyndall Air Force Base, MacDill Air Force Base, and NAS Key West missions, while also supporting joint live fire weapons and operational testing for the Air Force, Navy and Marine units from around the world."⁴ The GOMEX Range Complex also contains multiple live-fire bombing ranges, including Pinycastle Range, Avon Park Air Force Range, and Eglin Bombing Range, that allow for simultaneous maritime, air, and land training exercises.⁵

New technology and the need for more integrated realistic training missions are constantly changing in order to keep up with ever changing global threats. Consequently, Air Force and Navy ranges within the GOMEX Range Complex must keep pace to ensure they will be capable of handling the new aircraft and weapons requirements.⁶ Due to its capabilities of offering joint training exercises, access to sea and land, and close proximity to Florida's bases, the GOMEX Range Complex serves as a vital part of the Department of Defense's training strategies.

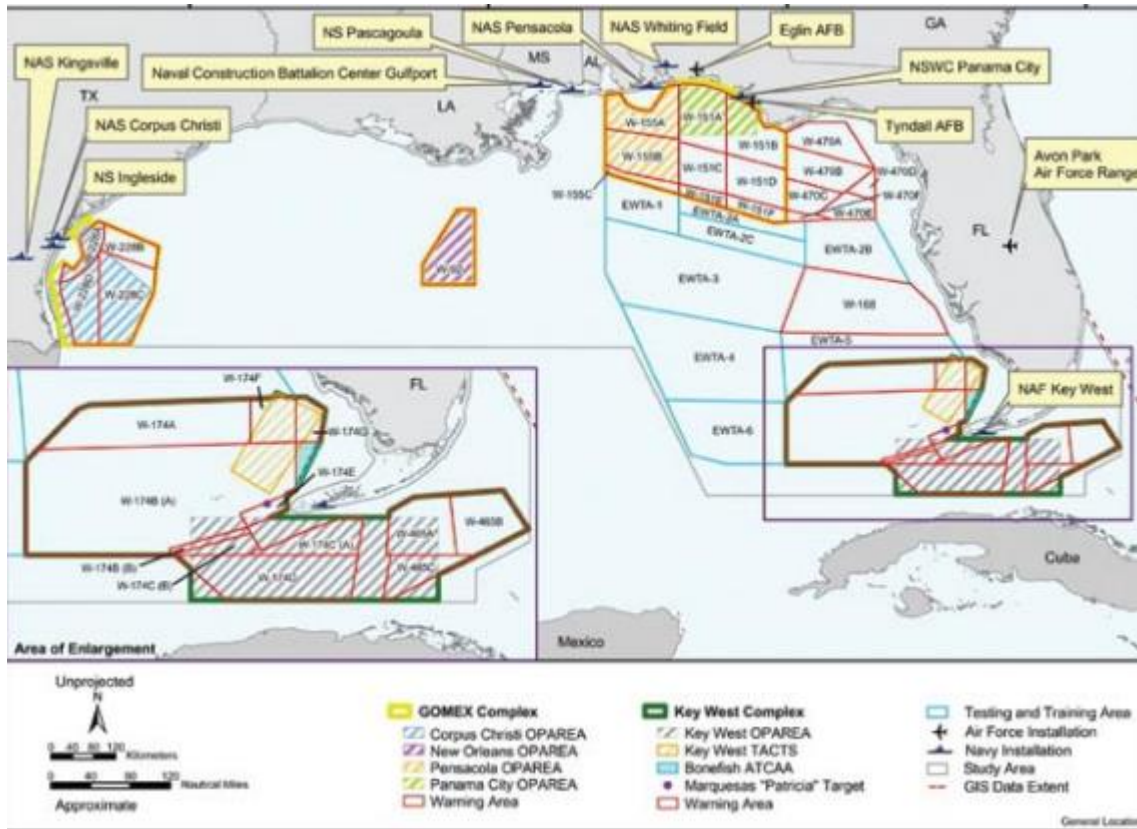
² Florida Defense Factbook, 5 (September 2015), available at <http://www.coj.net/departments/military-and-veterans-affairs/docs/2015-fl-defense-factbook-sept-2015.aspx> (last visited January 23, 2018).

³ Florida Defense Support Task Force White Paper, *Oil Drilling & Military Mission Compatibility*, 1 (January 2017), available at <https://www.enterpriseflorida.com/wp-content/uploads/FDSTF-White-Paper-Oil-Drilling-and-Military-Mission-Compatibility.pdf> (last visited January 23, 2018).

⁴ *Id.* at 2.

⁵ *Supra* note 2.

⁶ *Supra* note 3, at 3.



Oil Production in the Gulf of Mexico

Offshore drilling and oil exploration in the Gulf of Mexico began in the 1930s. According to the U.S. Department of Energy, in 2016 Gulf of Mexico offshore production accounted for seventeen percent of total U.S. crude oil production and five percent of total U.S. dry natural gas production.⁷

The federal government’s jurisdiction over submerged lands, subsoil, and seabed extends from the seaward extent of the state’s jurisdiction (between three International Nautical Miles and nine U.S. Nautical Miles from the territorial sea baseline) and the seaward limits defined under accepted principles of international law (generally 200 to 350 nautical miles from the territorial sea baseline). Florida’s jurisdiction extends nine U.S. Nautical Miles seaward off the Gulf coast.⁸ The Department of Interior’s Bureau of Ocean Energy Management is responsible for administering the National Outer Continental Shelf Oil and Gas Leasing Program for oil and gas lease sales proposed for planning areas of the U.S. Outer Continental Shelf. The program

⁷ U.S. Energy Information Administration website, *Gulf of Mexico Fact Sheet*, available at https://www.eia.gov/special/gulf_of_mexico/ (last visited January 23, 2018).

⁸ Department of the Interior Bureau of Ocean Energy Management website, *Outer Continental Shelf*, available at <https://www.boem.gov/Outer-Continental-Shelf/> (last visited January 23, 2018).

specifies the size, timing, and location of potential leasing activity that the Secretary of the Interior determines will best meet national energy needs.⁹

After the OPEC crisis in the 1970s and the September 11, 2001 attacks, interest in energy production, particularly domestic oil and natural gas, grew.¹⁰ The Department of Defense became concerned about the possibility of an unchecked expansion of oil drilling platforms in the eastern Gulf of Mexico conflicting with military training and weapons testing in the GOMEX Range Complex. In 2005, the Secretary of Defense sent a memo to the United States Senate Armed Services Committee stating the concern and said the Department of Defense would work with the Department of Interior to strike a balance between energy needs and national security goals.¹¹

Gulf of Mexico Energy Security Act of 2006

The Secretary of Defense's memo led to federal legislation limiting oil and gas production in the Gulf of Mexico. On December 20, 2006, the Gulf of Mexico Energy Security Act of 2006 (GOMESA)¹² was signed into law. GOMESA enhances Outer Continental Shelf oil and gas leasing activities and revenue sharing in the Gulf of Mexico by:

- Sharing leasing revenues with Gulf producing states and the Land & Water Conservation Fund for coastal restoration projects;
- Banning oil and gas leasing within 125 miles off the Florida coastline in the Eastern Gulf of Mexico Planning Area, and a portion of the Central Planning Area until 2022; and
- Allowing companies to exchange certain existing leases in moratorium areas for bonus and royalty credits to be used on other Gulf of Mexico leases.

Specifically, GOMESA restricts leasing activities that include portions of the Eastern Planning Area within 125 miles of Florida, all areas in the Gulf of Mexico east of the Military Mission Line (86° 41' west longitude), and the area within the Central Planning Area that is within 100 miles of Florida.¹³

Efforts to Revise the Moratorium

In 2013, the "Offshore Energy and Jobs Act was introduced to remove limits imposed by the GOMESA, including shortening the duration of the moratorium from 2022 to 2017. The bill passed the House of Representatives; however, it was never taken up in the Senate.¹⁴

⁹ Department of the Interior Bureau of Ocean Energy Management website, *National OCS Oil and Gas Leasing Program*, available at <https://www.boem.gov/National-OCS-Program/> (last visited January 23, 2018).

¹⁰ *Supra* note 3, at 2.

¹¹ *Supra* note 3, at 4.

¹² Gulf of Mexico Energy Security Act of 2006, Pub. L. No. 109-432, S. 3711, 109th Cong. (Dec. 20, 2006), available at <https://www.congress.gov/bill/109th-congress/senate-bill/3711> (last visited January 23, 2018).

¹³ Department of the Interior Bureau of Ocean Energy Management website, *Gulf of Mexico Energy Security Act*, available at <https://www.boem.gov/Revenue-Sharing/> (last visited January 23, 2018).

¹⁴ H.R. 2231, 113th Cong. (June 4, 2013). See <https://www.congress.gov/bill/113th-congress/house-bill/2231> (last visited January 23, 2018).

Two years later a similar bill, the “Offshore Energy and Jobs Act of 2015,” was filed. Among other things, the bill reduced the exclusion area east of the Military Mission Line from 125 miles to 50 miles off shore and reduced the area subject to the moratorium in the Central Planning Area off the coastline of Florida. The bill was never heard in the Senate.¹⁵

On April 28, 2017, President Trump signed an executive order with the intent to expand offshore drilling in the Arctic and Atlantic Oceans, in addition to assessing whether energy exploration can take place in marine sanctuaries in the Pacific and Atlantic.¹⁶ The order also directs the Secretary of the Interior, in consultation with the Secretary of Defense, to review “the schedule of proposed oil and gas lease sales...in the Western Gulf of Mexico, Central Gulf of Mexico, Chukchi Sea, Beaufort Sea, Cook Inlet, Mid-Atlantic, and the South Atlantic.”¹⁷ The executive order does not require a review of oil and gas lease sales in the eastern Gulf of Mexico; however, the oil industry is pushing to drill in the region.¹⁸

Subsequently, in October, 2017, Department of the Interior Secretary Zinke announced that the department is proposing “the largest oil and gas lease sale ever held in the United States, 76,967,935 acres in federal waters of the Gulf of Mexico, offshore of Texas, Louisiana, Mississippi, Alabama and Florida.”¹⁹ The proposed lease sale is scheduled for March 2018.²⁰

On January 4, 2018, Secretary Zinke announced a draft proposed National Outer Continental Shelf Oil and Gas Leasing Program that would make over 90 percent of the total outer continental shelf acreage and more than 98 percent of undiscovered, technically recoverable oil and gas resources in federal offshore areas available for future exploration and development. By contrast, the current oil and gas leasing program puts 94 percent of the outer continental shelf off limits. In addition to the largest number of lease sales in U.S. history, the proposed program announced in early January, 2018, includes two lease sales in portions of the Eastern and Central Gulf of Mexico after the expiration of the Congressional moratorium in 2022, making the majority of the Eastern Gulf of Mexico Planning Area available for leasing for the first time since 1988.²¹ News organizations report that on January 9, 2018, after meeting with Florida’s Governor Rick Scott, Secretary Zinke said that he would not allow offshore drilling in waters

¹⁵ S. 1276, 114th Cong. (May 11, 2015). See <https://www.congress.gov/bill/114th-congress/senate-bill/1276> (last visited January 23, 2018).

¹⁶ Executive Order 13795, available at <https://www.federalregister.gov/documents/2017/05/03/2017-09087/implementing-an-america-first-offshore-energy-strategy> (last visited January 23, 2018).

¹⁷ *Id.*

¹⁸ Timothy Cama, *Pentagon wants offshore drilling ban maintained in eastern Gulf*, THE HILL (May 2, 2017), <http://thehill.com/policy/energy-environment/331520-pentagon-wants-offshore-drilling-ban-maintained-in-eastern-gulf> (last visited January 23, 2018).

¹⁹ Department of the Interior Press Release, October 24, 2017, available at <https://www.doi.gov/pressreleases/secretary-zinke-announces-largest-oil-gas-lease-sale-us-history> (last visited January 23, 2018).

²⁰ *Id.*

²¹ Department of the Interior Press Release, January 4, 2018, available at <https://www.doi.gov/pressreleases/secretary-zinke-announces-plan-unleashing-americas-offshore-oil-and-gas-potential> (last visited January 23, 2018).

near Florida through 2024.²² However, the Department of the Interior is still conducting analyses on sites nationwide and has not yet announced a formal decision.²³

Expanding the Current Moratorium

Senator Bill Nelson (D-FL) filed the “Marine Oil Spill Prevention Act” in January, 2017. The bill, among other things, expands the GOMESA to 2027. The bill has been referred to committees but has not received a hearing.²⁴

In May, 2017, Acting Under Secretary of Defense, A.M. Kurta, sent a letter to Representative Matt Gaetz (R-FL) stating that military training and related exercises in the Eastern Gulf necessitate a continuation of the GOMESA. Kurta also stated the following:

Emerging technologies such as hypersonics, autonomous systems, and advanced sub-surface systems will require enlarged testing and training footprints and increased Department of Defense reliance on the Gulf of Mexico Energy Security Act’s moratorium beyond 2022. The moratorium is essential for developing and sustaining our nation’s future combat capabilities.²⁵

Additionally, county commissions, chambers of commerce, local economic development councils, and military affairs committees from the counties bordering the Gulf of Mexico have provided resolutions in support of the GOMESA to the Florida Legislature.²⁶

III. Effect of Proposed Changes:

The resolution pronounces that:

- The State of Florida must maintain a unified front in supporting an extension of the current moratorium on drilling in the Gulf of Mexico east of the Military Mission Line;
- Drilling east of the Military Mission Line would mean loss of range areas and possible relocation of aircraft and bases to other unrestricted range areas; and
- The Florida Senate supports an indefinite extension of the restriction, specified in the GOMESA, on oil and gas leasing in all areas east of the Military Mission Line established at 86°41’ west longitude and an indefinite extension of the GOMESA’s ban on oil and gas leasing within 125 miles of the Florida coastline in the Eastern Planning Area and in a portion of the Central Planning Area.

²² Timothy Cama, *Zinke removing Florida from offshore drilling plan*, THE HILL, January 9, 2018, available at <http://thehill.com/homenews/administration/368208-zinke-to-take-florida-out-of-offshore-drilling-plan> (last visited January 23, 2018).

²³ Timothy Cama, *Trump officials cast doubt on Zinke’s Florida offshore drilling exemption*, THE HILL, January 19, 2018, available at <http://thehill.com/policy/energy-environment/369743-offshore-drilling-official-zinkes-florida-exemption-was-not-a> (last visited January 23, 2018).

²⁴ S. 74, 115th Cong. (January 9, 2017). See <https://www.congress.gov/bill/115th-congress/senate-bill/74?q=%7B%22search%22%3A%5B%22oil+drilling+moratorium%22%5D%7D&r=1> (last visited January 23, 2018).

²⁵ Congressional Record on *Gulf of Mexico Oil Drilling Moratorium*, Senator Bill Nelson remarks, May 1, 2017, available at <https://www.congress.gov/congressional-record/2017/05/01/senate-section/article/S2654-4> (last visited January 23, 2018).

²⁶ *Supra* note 3, at 5,6.

Resolutions are not subject to action by the Governor and do not have the effect of law. In addition, they are not subject to the constitutional single-subject limitation or title requirements.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This Senate resolution does not amend the Florida Statutes. If enacted, it will become an undesignated chapter law codified in the Laws of Florida.

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 Broxson

1-00784-18

2018550__

Senate Resolution

A resolution supporting an extension of the current moratorium on drilling in the Gulf of Mexico east of the Military Mission Line.

WHEREAS, the Florida Legislature represents the military bases and personnel that maintain, manage, and use the Gulf of Mexico Range Complex (GOMEX Range Complex) which provides for the common defense of this state and the nation, and

WHEREAS, defense is the State of Florida's fourth largest industry, accounting for more than 775,000 jobs, \$80 billion in economic impact, and 65 percent of the regional economy of Northwest Florida, and

WHEREAS, testing and training activities conducted from Florida's air and sea bases are considerably dependent on unconstrained access to the Eastern Gulf of Mexico airspace and seaspace, and

WHEREAS, the GOMEX Range Complex is a unique national resource, and

WHEREAS, the range is larger than all other training ranges inside the continental United States combined, stretching from the Florida Panhandle south to Key West and encompassing the Eastern Gulf of Mexico, and

WHEREAS, surrounding the GOMEX Range Complex are numerous United States Department of Defense installations, ranges, and airspaces, which make the complex unique, and

WHEREAS, originally a place to practice air-to-air engagements and air-to-surface bombing and strafing, the GOMEX Range Complex has served the nation for over 60 years, and

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

1-00784-18

2018550__

WHEREAS, after World War II, the GOMEX Range Complex was used to test surface-to-air rockets against drones and, with the advent of fifth-generation aircraft at Tyndall and Eglin Air Force Bases, has been used extensively to test future weapons systems, and

WHEREAS, the military missions require day and night access to the airspace, from the surface up to 60,000 feet, for high-speed flying and maneuvering, as well as day and night access to the seaspace, from the sea surface to the subsurface areas, for use by ships and submarines, and

WHEREAS, the military uses live ammunition and missiles against remotely piloted full-scale targets and drones, resulting in large debris fields of dangerous objects, and

WHEREAS, for well over a decade and through two presidential administrations, the United States Department of Defense policy has been to keep the Eastern Gulf of Mexico free from obstruction, and

WHEREAS, oil exploration and offshore platforms placed in the Eastern Gulf of Mexico could jeopardize military missions and severely reduce the state's appeal in keeping military installations, and

WHEREAS, without access to airspace in order to test modern and emerging weapons systems and train the aircrews that support such systems, Florida would lose its primary reason for hosting the GOMEX Range Complex, and

WHEREAS, the Gulf of Mexico Energy Security Act (GOMESA) of 2006 restricts oil and gas leasing in all areas east of the Military Mission Line established at 86°41' W. longitude and bans oil and gas leasing within 125 miles of the Florida

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

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59 coastline in the Eastern Planning Area and in a portion of the
 60 Central Planning Area until 2022, and
 61 WHEREAS, attempts to reduce restrictions on oil and gas
 62 exploration and production arose in 2013 and 2015, when the
 63 members of the United States Senate and the United States House
 64 of Representatives developed and introduced bills to change
 65 GOMESA without addressing the military need to maintain the
 66 GOMEX Range Complex, and
 67 WHEREAS, in 2013, the Offshore Energy and Jobs Act was
 68 introduced by United States Representative Doc Hastings of
 69 Washington to propose changes in oil and gas drilling and
 70 exploration locations, and
 71 WHEREAS, the Offshore Energy and Jobs Act of 2015 was
 72 introduced by United States Senator Bill Cassidy of Louisiana,
 73 to increase oil and gas exploration and production, most notably
 74 through reducing the exclusion area east of the Military Mission
 75 Line from 125 miles to 50 miles offshore and through shortening
 76 the time limit of the moratorium from 2022 to 2017, but the bill
 77 ultimately did not advance past committee, and GOMESA remained
 78 intact for the time being, and
 79 WHEREAS, the United States Secretary of Defense, the Chief
 80 of Staff of the United States Air Force, and fifteen members of
 81 the United States Congress from Florida have written letters
 82 requesting an extension to the moratorium, which is essential
 83 for developing and sustaining the military's future capabilities
 84 and for guaranteeing long-term capabilities for future test
 85 missions that may enable new technologies such as hypersonic
 86 fifth-generation fighters, advanced subsurface weapons systems,
 87 and other projects that require enlarged testing and training

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88 footprints well beyond 2022, and
 89 WHEREAS, without the certainty of an extension to the
 90 moratorium, investment in upgrades in telemetry, tracking, and
 91 other important improvements are at risk, and
 92 WHEREAS, in March 2017, twenty local county commissions,
 93 chambers of commerce, local economic development councils, and
 94 military affairs committees drafted resolutions in support of
 95 the moratorium and submitted them to the Florida Legislature,
 96 NOW, THEREFORE,
 97
 98 Be It Resolved by the Senate of the State of Florida:
 99
 100 That the State of Florida must maintain a united front in
 101 supporting an extension of the current moratorium on drilling in
 102 the Gulf of Mexico east of the Military Mission Line.
 103 BE IT FURTHER RESOLVED that to allow drilling east of the
 104 Military Mission Line would mean loss of range areas and
 105 possible relocation of aircraft and bases to other unrestricted
 106 range areas.
 107 BE IT FURTHER RESOLVED that the Florida Senate supports an
 108 indefinite extension of the restriction, specified in the Gulf
 109 of Mexico Energy Security Act of 2006, oil and gas leasing in
 110 all areas east of the Military Mission Line established at
 111 86°41' W. longitude and indefinite extension of the Act's ban
 112 oil and gas leasing within 125 miles of the Florida coastline in
 113 the Eastern Planning Area and in a portion of the Central
 114 Planning Area.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/1/18

Meeting Date

530

Bill Number (if applicable)

Topic Gulf RANCH

Amendment Barcode (if applicable)

Name DAVID MICA

Job Title DIRECTOR

Address 215 S. MONROE ST STEPEN

Phone _____

Street

TRUSSARDI

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA PETROLEUM COUNCIL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 Rules

BILL: SB 760

INTRODUCER: Senator Bean

SUBJECT: Grounds for Nonrecognition of Out-of-country Foreign Judgments

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	Favorable
3.	<u>Tulloch</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 760 amends the Uniform Out-of-country Foreign Money-Judgment Recognition Act (act), codified in ch. 55, F.S., to add two additional permissive grounds for nonrecognition of a foreign money judgment by a Florida court. The act currently provides three mandatory grounds for nonrecognition and eight permissive grounds for nonrecognition of a foreign judgment.

The additional permissive grounds allow a Florida court to decline to recognize a foreign judgment if:

- There is substantial doubt about the integrity of the particular foreign court with respect to the judgment; or
- The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

The bill takes effect upon becoming law.

II. Present Situation:

Recognition and Enforcement of Foreign Judgments

Florida law codifies the common law principle of comity for recognizing and enforcing final money judgments rendered by a foreign, out-of-country court.

Common Law Comity Principles

Under the full faith and credit clause of the United States Constitution, judgments of any state or federal court within the United States are automatically enforceable in any other state or federal court.¹ However, the enforcement of a foreign judgment obtained in another country is not

¹ U.S. CONST. art. IV, s. 1.

subject to the full faith and credit clause. Instead, the recognition of foreign judgments is generally governed by the principles of international comity.

“Comity is ‘the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.’”² The purpose of granting comity is similar to the application of *res judicata* in that “once the parties have had an opportunity to present their cases fully and fairly before a court of competent jurisdiction, the results of the litigation process should be final” and given conclusive effect.³

However, there is no absolute obligation by a U.S. court to extend comity to a foreign judgment.⁴ Rather, comity is an affirmative defense that the party seeking recognition of a foreign judgment has the burden of proving.⁵

The principles governing comity analysis were first set forth by the United States Supreme Court in *Hilton v. Guyot* in 1895, when the Court considered the enforceability of a French judgment in the United States.⁶ These governing principles have since been summarized as follows:

Under principles of international comity, a foreign court’s judgment on a matter is conclusive in a federal court when (1) the foreign judgment was rendered by a court of competent jurisdiction, which had jurisdiction over the cause and the parties, (2) the judgment is supported by due allegations and proof, (3) the relevant parties had an opportunity to be heard, (4) the foreign court follows procedural rules, and (5) the foreign proceedings are stated in a clear and formal record. . . .

Under the law of the United States, a foreign judgment cannot be enforced in a U.S. court unless it was obtained under a system with procedures compatible with the requirements of due process of law.⁷

The principles of comity are now regarded as common law in the United States.⁸

² *Int’l Transactions, LTD. v. Embotelladora Agral Regiomontana*, 347 F.3d 589, 593-94 (5th Cir. 2003) (quoting and citing *Hilton v. Guyot*, 159 U.S. 113, 163-64, 205-06 (1895)).

³ *Id.* (citing *Cunard S.S. Co. v. Salen Reefer Services AB*, 773 F.2d 452, 457 (2d Cir.1985)).

⁴ *Hilton*, 159 U.S. at 163-64.

⁵ *Int’l Transactions, LTD.*, 347 F.3d at 594 (citing *Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 999 (2d Cir. 1993)).

⁶ *Hilton*, 159 U.S. at 163-64.

⁷ *Int’l Transactions, LTD.*, 347 F.3d at 594 (citing *Hilton* at 159).

⁸ *Mujica v. AirScan Inc.*, 771 F.3d 580, 597 (9th Cir. 2014) (“The federal common law doctrine of international comity is applicable to these state law claims notwithstanding the general rule that federal courts apply California’s substantive law when sitting in diversity.”); Nat’l Conference of Comm’rs on Uniform State Laws, *Uniform Foreign Money-Judgments Recognition Act*, 1 (1962) available at <http://www.uniformlaws.org/shared/docs/foreign%20money%20judgments%20recognition/ufmjra%20final%20act.pdf> (last visited Jan. 5, 2018).

Comity and Due Process

At the center of the comity analysis is the constitutionally guaranteed right to due process of law. The Constitutions of the United States⁹ and Florida¹⁰ guarantee that no person shall be deprived of life, liberty, or property without due process of law. Due process has been described as envisioning

a court that hears before it condemns, proceeds upon inquiry, and renders judgment only after proper consideration of issues advanced by adversarial parties. In this respect the term ‘due process’ embodies a fundamental conception of fairness that derives ultimately from the natural rights of all individuals. Procedural due process, therefore, requires adequate notice and an opportunity to be heard at a meaningful time and in a meaningful manner.¹¹

Due process in the U.S. requires courts and judges to be neutral and impartial.¹²

Codification of Common Law Comity Principles in Uniform State Laws

Comity principles have not been codified at the federal level. With the exception of foreign defamation suits,¹³ there is no federal statute¹⁴ or treaty¹⁵ governing the recognition or enforcement of foreign judgments.¹⁶ Rather, recognition and enforcement of foreign judgments in the United States is governed either by common law principles of international comity as developed in case law following *Hinton* or by state law.¹⁷

Most states have adopted either the 1962 Uniform Foreign Money Judgments Recognition Act (1962 Act) or the 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Act) drafted by the National Conference of Commissioners on Uniform State Laws (Uniform Law

⁹ U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

¹⁰ FLA. CONST. art. I, s. 9.

¹¹ *Luckey v. State*, 979 So. 2d 353, 355–56 (Fla. 5th DCA 2008) (quoting *Jones v. State*, 740 So.2d 520, 523 (Fla.1999), accord *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971); *Scull v. State*, 569 So.2d 1251, 1252 (Fla.1990)) (internal quotations and citations omitted).

¹² *Tumey v. State of Ohio*, 273 U.S. 510, 522 (1927) (“That officers acting in a judicial or quasi judicial capacity are disqualified by their interest in the controversy to be decided is of course the general rule.”).

¹³ 28 U.S.C. s. 4102 (2010).

¹⁴ The American Law Institute (ALI) has proposed a federal statute. See ALI, *Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute*, available at <https://www.ali.org/publications/show/recognition-and-enforcement-foreign-judgments-analysis-and-proposed-federal-statute/> (last visited Jan. 5, 2018).

¹⁵ Hague Convention On Choice Of Court Agreements, signed Jan. 19, 2009, 44 I.L.M. 1294 (2005). The Hague Convention Choice of Laws was signed by the United States in 2009 but does not appear to have been ratified to date. See HCCH, *Status Table 37: Convention of 30 June 2005 on Choice of Court Agreements*, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=98> (last visited Jan. 5, 2018).

¹⁶ Violeta I. Balan, *Recognition and Enforcement of Foreign Judgments in the United States: The Need for Federal Legislation*, 37 J. MARSHALL L. REV. 229, 234-35 (2003).

¹⁷ *Id.*

Commission).¹⁸ The aim of these uniform laws is to codify the common law principles of comity and promote reciprocal recognition of money judgments in foreign countries.¹⁹

The 1962 Act

The prefatory comment to the 1962 Act indicates that, while the 1962 Act sets out rules that have been applied by a majority of U.S. courts, the 1962 Act contemplates a degree of flexibility among various jurisdictions. The prefatory comment notes that the 1962 Act does not necessarily “go as far” as some court decisions, and that courts are still privileged to give a foreign judgment greater effect than required by the 1962 Act.²⁰ The prefatory note also contemplates that some states would not wholesale adopt the 1962 Act as written, and that each state would have to provide a procedural mechanism for enforcement.²¹

Florida’s Version of the 1962 Act

In 1994, Florida adopted the 1962 Act and enacted it as the Uniform Out-of-country²² Foreign Money–Judgment Recognition Act (act).²³ The act, codified in ss. 55.601-55.607, F.S., applies “to any out-of-country foreign judgment²⁴ that is final and conclusive²⁵ and enforceable where rendered.”²⁶ “The Act effectively replaces the common law principles of comity for recognizing foreign judgments, at least to the extent of any differences between the Act and the common law.”²⁷

Under the act, “a foreign judgment is *prima facie* enforceable if it ‘is final, conclusive, and enforceable where rendered, even though an appeal therefrom is pending or is subject to appeal.’”²⁸ “Once the party seeking to enforce the judgment follows the filing and notice

¹⁸ The Uniform Law Commission is a non-profit organization comprised of state commissions on uniform laws from each state and certain U.S. territories. The purpose of the Uniform Law Commission is to “study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable.” Uniform Law Comm’n, Nat’l Conference of Comm’rs on Uniform State Laws, *Organization*, available at <http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC> (last visited Jan. 5, 2018).

¹⁹ See Nat’l Conference of Comm’rs on Uniform State Laws, *Uniform Foreign Money-Judgments Recognition Act*, 1 (1962) available at <http://www.uniformlaws.org/shared/docs/foreign%20money%20judgments%20recognition/ufmjra%20final%20act.pdf> (last visited Jan. 5, 2018).

²⁰ See Nat’l Conference of Comm’rs on Uniform State Laws, *Uniform Foreign Money-Judgments Recognition Act*, 1 (1962) available at <http://www.uniformlaws.org/shared/docs/foreign%20money%20judgments%20recognition/ufmjra%20final%20act.pdf> (last visited Jan. 5, 2018).

²¹ *Id.*

²² “Out-of-country” is used to describe “foreign judgments” under sections 55.605-.607, F.S., to distinguish it from “foreign judgments” as that term is used in sections 55.501-.509, F.S. (“Florida Enforcement of Foreign Judgments Act”). Sections 55.501-.509, F.S., applies to judgments rendered in another state or court within the United States and its territories. See s. 55.502(1), F.S.

²³ Chapter 94-239, Laws of Fla.; Sections 55.601-.607, F.S.

²⁴ Section 55.602, F.S., defines an “out-of-country foreign judgment” as “any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine, or other penalty.”

²⁵ An out-of-country foreign judgment is conclusive if “it grants or denies recovery of a sum of money.” Section 55.604, F.S.

²⁶ Section 55.603, F.S.

²⁷ *Chabert v. Bacquie*, 694 So. 2d 805, 811 (Fla. 4th DCA 1997).

²⁸ *Osorio v. Dole Food Co.*, 665 F. Supp. 2d 1307, 1323–24 (S.D. Fla. 2009), *aff’d sub nom. Osorio v. Dow Chem. Co.*, 635 F.3d 1277 (11th Cir. 2011) (quoting s. 55.603, F.S.).

requirements of Fla. Stat § 55.604, the judgment will be enforced unless the judgment debtor objects within 30 days.”²⁹ Out-of-country foreign money judgments:

[C]an be recognized and enforced in this state by filing an authenticated copy of the judgment with the clerk of the court and recording it in the public records in the county where enforcement is sought. The clerk must give notice to the judgment debtor at the address provided by the judgment creditor, and the debtor has thirty days in which to file objections to recognition of the judgment. If no objections are filed, the clerk records a certificate to that effect.

Upon application by either party, the circuit court shall conduct a hearing and enter an appropriate order granting or denying recognition in accordance with the terms of the [1964 Act]. That is an appealable order. After the clerk files the certificate or the court enters an order, the judgment “shall be enforceable in the same manner as the judgment of a court of this state.”³⁰

The party seeking enforcement must prove that the foreign money judgment is final, conclusive, and enforceable in the jurisdiction where it was rendered.³¹ Once the creditor proves the judgment is enforceable, the burden of proof shifts to the debtor to establish grounds for nonrecognition as set out in section 55.605, F.S.³²

Section 55.605, F.S., which is based on section 4 of the 1962 Act, provides a number of grounds under which a Florida court may decline to recognize a foreign money judgment.

An out-of-country foreign judgment is not considered “conclusive” and must not be recognized if:

- The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- The foreign court did not have personal jurisdiction over the defendant; or
- The foreign court did not have jurisdiction over the subject matter.³³

A court *may* decline to recognize an out-of-country foreign judgment if:

- The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him or her to defend;
- The judgment was obtained by fraud;
- The cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state;
- The judgment conflicts with another final and conclusive order;
- The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court;

²⁹ *Id.*

³⁰ *Le Credit Lyonnais, S.A. v. Nadd*, 741 So. 2d 1165, 1166 (Fla. 5th DCA 1999).

³¹ *Osorio*, 665 F. Supp. 2d at 1324 (citing *Kramer v. von Mitschke–Collande*, 5 So.3d 689, 690 (Fla. 3d DCA 2008)).

³² *Id.*

³³ Section 55.605(1), F.S.

- In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
- The foreign jurisdiction where judgment was rendered would not give recognition to a similar judgment rendered in this state; or
- The foreign judgment is a defamation judgment obtained outside the United States, unless the state court determines that the foreign court afforded at least as much protection for freedom of speech and press as the Constitutions of the United States and Florida would provide.³⁴

The 2005 Act

The 2005 Act is a revision of the 1962 Act. As the Uniform Law Commissioners explained in their prefatory note;

This Act continues the basic policies and approach of the 1962 Act. Its purpose is not to depart from the basic rules or approach of the 1962 Act, which have withstood well the test of time, but rather to update the 1962 Act, to clarify its provisions, and to correct problems created by the interpretation of the provisions of that Act by the courts over the years since its promulgation. Among the more significant issues that have arisen under the 1962 Act which are addressed in this Revised Act are . . . the need to clarify and, to a limited extent, expand upon the grounds for denying recognition in light of differing interpretations of those provisions in the current case law[.]³⁵

The commentary to the 2005 Act cites several cases decided between 2000 and 2002 interpreting the first ground for nonrecognition (foreign court system fails to provide impartial courts or compatible due process) under the 1962 Act rather strictly.³⁶ Notably, two of these cases involve an English creditor, the Society of Lloyd's (Lloyd's). By 2008, Lloyd's withstood due process challenges and successfully received recognition for 25 foreign judgments in the United States.³⁷ In the 2010 appeal of one such case, *Tropp v. Corporation of Lloyd's*, Tropp sought to avoid recognition of a default judgment entered against him in England on due process grounds. Tropp argued that English law employs a sub-system for claims likes his (insurance underwriting realm) that denies due process of law.³⁸ In rejecting Tropp's argument on appeal, the court followed precedent holding that the "relevant inquiry" under the first ground for nonrecognition in the 1962 Act "is the overall fairness of England's legal system, *which is beyond dispute.*"³⁹

³⁴ Section 55.605(2), F.S. (2009).

³⁵ See Nat'l Conference of Comm'rs on Uniform State Laws, *Uniform Foreign-Country Money Judgments Recognition Act of 2005*, p. 1, available at http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra_final_05.pdf (last visited Jan. 5, 2018).

³⁶ *Id.* at p. 13, ¶ 11 (citing *The Society of Lloyd's v. Turner*, 303 F.3d 325, 330 (5th Cir. 2002); *CIBC Mellon Trust Co. v. Mora Hotel Corp.*, N.V., 743 N.Y.S.2d 408, 415 (N.Y. App. 2002); *Society of Lloyd's v. Ashenden*, 233 F.3d 473, 477 (7th Cir. 2000)).

³⁷ See *Tropp v. Corp. of Lloyd's*, 07 CIV. 414 (NRB), 2008 WL 5758763, at *1 (S.D.N.Y. Mar. 26, 2008), *aff'd*, 385 Fed. Appx. 36 (2d Cir. 2010) ("This case presents the latest episode in an epic saga between Names such as Tropp and Lloyd's. The story—Dickensian in length and complexity—has been retold countless times by American courts.") (citing *Soc'y of Lloyd's v. Siemon-Netto*, 457 F.3d 94, 96 (D.C.Cir.2006)).

³⁸ 385 Fed. Appx. 36, 38 (2d Cir. 2010) (quoting *See CIBC Mellon Trust Co. v. Mora Hotel Corp. N.V.*, 100 N.Y.2d 215, 762 N.Y.S.2d 5, 792 N.E.2d 155, 160 (2003))(internal quotations omitted).

³⁹ *Id.* (emphasis added).

Tropp alternatively (though unsuccessfully) argued that if the judgment was entitled to comity under the 1962 Act, then the 1962 Act violated his federal constitutional rights.⁴⁰

In response to the restrictive view of the 1962 Act expressed in *Tropp* and similar cases, the 2005 Act clarifies that the relevant due process inquiry is not limited only to the systematic analysis of a foreign court system, but also includes the individual fairness of the specific foreign court that rendered the judgment. In other words, rather than establish that the foreign country's entire court system is corrupt or lacking in due process protections, the 2005 Act provides that recognition and enforceability of a foreign judgment may be challenged by establishing that the particular proceeding involved was corrupt or lacking in due process protection.

III. Effect of Proposed Changes:

The bill amends s. 55.605(2), F.S., to add two additional grounds for when a court *may* decline to recognize a foreign judgment based on the specific fairness of the particular foreign court that rendered the particular judgment:

- There is substantial doubt about the integrity of the particular foreign court with respect to the judgment; or
- The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

Initially, the two additional grounds appear to cover the same general due process territory as in existing s. 55.605(1)(a), F.S., which specifies that foreign judgments rendered in a country where the court system fails to provide impartial tribunals and due process protections to ensure fundamental fairness, are not conclusive and will not be recognized. The key difference is that existing s. 55.605(1)(a), F.S., addresses “*systematic* unfairness” in a foreign country's court system, whereas the two additional grounds proposed by the bill address “*specific* unfairness” in the proceedings of or by a particular foreign court.⁴¹

The comments to the 2005 Uniform Foreign-Country Money Judgments Recognition Act (2005 Act) note that, to establish the new grounds of “substantial doubt” about a specific foreign court's “integrity,” the debtor trying to avoid the foreign judgment must show the specific foreign court that rendered the judgment is corrupt. If specific corruption is established, then the foreign judgment may not be recognized.⁴²

Likewise, to establish the new due process grounds, a debtor trying to avoid a foreign judgment must show that the particular proceeding in which the judgment was rendered was fundamentally unfair. If the specific trial or other proceedings leading to the judgment are shown to not be

⁴⁰ *Id.*

⁴¹ See Geoffrey C. Hazard, Jr. and Michael Traynor, *Foreign Judgments: Is “System Fairness” Sufficient or Is “Specific Fairness” Also Required for Recognition and Enforcement?*, PUBLICIST, Vol. 11, Spring 2012 (Apr. 17, 2012), available at <http://bjil.typepad.com/publicist/2012/04/foreign-judgments-is-system-fairness-sufficient-or-is-specific-fairness-also-required-for-recognition-and.html#end> (last visited Jan. 5, 2018); Nat'l Conference of Comm'rs on Uniform State Laws, *Uniform Foreign-Country Money Judgments Recognition Act of 2005, Comment to § 4. Standards for Recognition of Foreign-Country Judgment*, pp. 13-14, available at http://www.uniformlaws.org/shared/docs/foreign%20country%20money%20judgments%20recognition/ufcmjra_final_05.pdf (last visited Jan. 5, 2018).

⁴² *Id.*

compatible with the requirements of due process of law, the Florida court may decline to recognize the foreign judgment.⁴³

Immediate Effective Date

The bill takes effect upon becoming a law. An immediate effective date means that if the bill becomes law, it will apply to existing foreign judgments that have not yet been recognized.

In Florida, newly enacted statutes that impose a new obligation or duty that interferes with vested rights will not be applied retroactively. On the other hand, statutes that relate to procedure only or are remedial in nature are generally applied retroactively to pending cases.⁴⁴ In the 1997 case of *Chabert v. Bacquie*,⁴⁵ the Fourth District Court of Appeal held that Florida's then recently enacted Uniform Out-of-country Foreign Money–Judgment Recognition Act (Act) applied to cases already pending in Florida courts. The Court reasoned that the Act was remedial in nature, because it codified the already existing common law principles of comity⁴⁶ as opposed to announcing a new duty or obligation.⁴⁷

The bill appears to be remedial in nature, because the two additional permissive grounds for nonrecognition of foreign judgments codifies longstanding, individual due process principles. Although an argument could be made that it expands current common law comity principles to recognize “specific fairness” in addition to “systematic fairness,” it is more likely that the new grounds would be deemed remedial in Florida.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴³ *Id.*

⁴⁴ *Young v. Altenhaus*, 472 So. 2d 1152, 1154 (Fla. 1985). *See also City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986)); *Palm Beach County Sheriff's Office v. Sun-Sentinel Co., LLC*, 226 So. 3d 969, 975–76 (Fla. 4th DCA 2017) (following *City of Orlando v. Desjardins* in holding that newly enacted public records exemption was remedial and applied retroactively).

⁴⁵ *Bacquie*, 694 So. 2d at 811 (following retroactivity analysis in *City of Orlando v. Desjardins*).

⁴⁶ *Id.*

⁴⁷ *Altenhaus*, 472 So. 2d at 1154.

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

None.

B. Private Sector Impact:

This bill offers greater protection against enforcement of foreign money judgments rendered in other countries by providing additional grounds for challenging enforcement in Florida. Rather than having to establish that the foreign country's entire court system is corrupt or lacking in due process protections, a defendant may challenge the recognition and enforceability of the judgment by establishing that the particular foreign court or proceeding involved was corrupt or lacking in due process protection.

These new provisions may also deter some creditors from filing for recognition of some foreign judgments. On the other hand, proving the new grounds for nonrecognition (corruption or lack of specific fairness and due process) could lead to additional litigation and associated costs.

C. Government Sector Impact:

The state court system has not provided information on the fiscal impact of the bill. However, the bill appears unlikely to add significantly to the workload of the courts because the additional bases for challenging a foreign judgment are similar to those grounds already codified in chapter 55, F.S., and recognized in case law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends Section 55.605 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.

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

By Senator Bean

4-00749B-18

2018760__

A bill to be entitled

An act relating to grounds for nonrecognition of out-of-country foreign judgments; amending s. 55.605, F.S.; providing additional circumstances in which an out-of-country foreign judgment need not be recognized; providing an effective date.

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

Section 1. Paragraphs (i) and (j) are added to subsection (2) of section 55.605, Florida Statutes, to read:

55.605 Grounds for nonrecognition.—

(2) An out-of-country foreign judgment need not be recognized if:

(i) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(j) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 11, 2018

I respectfully request that **Senate Bill # 760**, relating to Grounds for Nonrecognition of Out-of-country Foreign Judgements, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

APPEARANCE RECORD

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

2/1
Meeting Date

760
Bill Number (if applicable)

Topic Foreign Judgments

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 W Adams
Street

Phone 221-7177

TLH 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 Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/1/2018

Meeting Date

760

Bill Number (if applicable)

Topic Foreign Judgments

Amendment Barcode (if applicable)

Name Carlos Muñiz

Job Title Attorney, McGuire Woods

Address 204 S. Monroe St.

Phone 850-570-0178

Street

Tallahassee FL 32301

City

State

Zip

Email cmuniz@mcguirewoods.com

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

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

Representing A I F

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

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

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

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

The Florida Senate
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 Rules

BILL: SB 1078

INTRODUCER: Senator Perry

SUBJECT: Public Records/United States Census Bureau

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1078 creates a public records exemption for certain address information maintained by the United States Census Bureau and held by an agency. Specifically, the bill makes confidential and exempt the following information held by an agency pursuant to the federal Local Update of Census Addresses Program (LUCA):

- United States Census Bureau address information, including maps showing structure location points;
- Agency records that verify addresses; and
- Agency records that identify address errors or omissions.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency, to perform its program duties and responsibilities.

The public necessity statement provides as justification for the exemption that the federal LUCA requires this address information to be kept confidential. As such, all individuals directly involved in reviewing the information or who otherwise have access to the information must sign a confidentiality agreement. Without the exemption, agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

An agency is defined as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including 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 a public agency.⁶

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁷ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(2), F.S.

⁷ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁸ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.¹⁰ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

United States Census Bureau

The United States Census Bureau (USCB), based in Maryland, is part of the United States Department of Commerce.²⁴ Amongst its other research duties, the USCB conducts the decennial census. The decennial census is the comprehensive population and housing count of all 50 states, the District of Columbia, Puerto Rico, and the U.S. islands. Thomas Jefferson ordered the first census in 1790, and the federal government has conducted it every 10 years since.

Results of the decennial census determine the number of seats for each state in the U.S. House of Representatives and are relied upon in drawing congressional and state legislative districts. The census is critical to the annual distribution of more than \$675 billion in federal funds.²⁵ Moreover, information collected during the census are used not only by all levels of government, but also by businesses, non-profits, and policy makers.²⁶

Federal law protects the confidentiality of any and all information collected during the census.²⁷

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ U.S. Census Bureau, *Who We Are*, available at: <https://www.census.gov/about/who.html> (last visited Jan. 11, 2018).

²⁵ U.S. Census Bureau, *About the Bureau, U.S. Census Bureau at a Glance*, available at: <https://www.census.gov/about/what/census-at-a-glance.html#censuses> (last visited Jan. 11, 2018).

²⁶ Patrick R. Potyondy, National Conference of State Legislatures, *LegisBrief: The 2020 Census, What You Need to Know About the 2020 Census* (Nov. 2017), available at: <http://www.ncsl.org/research/redistricting/what-you-need-to-know-about-the-2020-census.aspx> (last visited Jan. 11, 2018).

²⁷ U.S. Census Bureau, *supra* note 25.

Local Update of Census Addresses Program (LUCA)

LUCA is a program offered once every ten years to state and local governments by the United States Census Bureau in preparation for the decennial census. Specifically, LUCA enables states and local entities to update address information on a master list maintained by the LUCA, to make the decennial census as accurate as possible. Participants must sign a confidentiality agreement.

Entities eligible to participate in LUCA are:

- States;
- Counties;
- Cities;
- Townships; and
- Federally recognized tribes with a reservation and/or off-reservation trust lands.²⁸

Census 2000 provided the first opportunity for tribal and local governments to access individual residential, rather than block address lists, provided they signed the confidentiality agreement.²⁹

On June 29, 2017, the United States Census Bureau announced that starting in July of 2017 governments across the country could initiate the process of sharing address information through the 2020 Census Local Update of Census Addresses operation.³⁰ All entities intending to participate must sign the Confidentiality Agreement Form provided by the LUCA.³¹

Public Records Law on United States Census Bureau Address Information

The 2007 Legislature passed a public records bill³² to provide an exemption for U.S. Census Bureau address information.³³ The bill made confidential and exempt from disclosure United States Census Bureau address information held by an agency pursuant to the federal LUCA. Included in the bill was a provision that made the exemption subject to the Open Government Sunset Review Act. As such, the exemption would repeal October 2, 2012, unless the Legislature reviewed and reenacted the exemption by that date. The 2012 Legislature approved an Open Government Sunset Review in 2012, and based on the review, voted to repeal the public records exemption. The bill analyses of the OGSR stated that the LUCA program, upon which the

²⁸ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation (LUCA)*, available at <https://www.census.gov/geo/partnerships/luca.html> (last visited Jan. 11, 2018).

²⁹ United States Census Bureau, *The Census Address List Improvement Act of 1994 (P.L. 103-430)(LUCA)*, available at: <https://www.census.gov/geo/partnerships/luca-pl-103-430.html> (last visited Jan. 11, 2018).

³⁰ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation to Begin* (June 29, 2017), available at: <https://www.census.gov/newsroom/press-releases/2017/cb17-109-luca.html> (last visited Jan. 10, 2018).

³¹ The Confidentiality Agreement Form requires signators to agree to keep confidential all information provided through LUCA, including maps that contain structure points showing the location of living quarters. A signature on the form acknowledges recognition that the penalty for a wrongful disclosure is punishable by up to 5 years in prison and a \$250,000 fine. Further, the signator must agree to destroy or return all materials received from the Census Bureau at the conclusion of LUCA. United States Census 2020, Form D-2005, *Confidentiality Agreement Form, 2020 Census Local Update of Census Addresses Operation (LUCA)*(on file with the Senate Committee on Governmental Oversight and Accountability).

³² House Bill 7193.

³³ Chapter 2007-250, L.O.F.

exemption was based, expired March 31, 2010.³⁴ Based on there no longer being a need for the exemption, staff recommended, and the Legislature approved, a repeal of the public records exemption. Therefore, the public records exemption repealed on October 12, 2012.³⁵

III. Effect of Proposed Changes:

This bill creates a public records exemption for certain address information maintained by the United States Census Bureau and held by an agency. Specifically, the bill makes confidential and exempt the following information held by an agency pursuant to the Local Update of Census Addresses Program (LUCA):

- United States Census Bureau address information, including maps showing structure location points;
- Agency records that verify addresses; and
- Agency records that identify address errors or omissions.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency to perform its program duties and responsibilities.

The public necessity statement provides as justification for the exemption that the LUCA program requires this address information to be kept confidential. As such, all individuals directly involved in reviewing the information or who otherwise have access to the information must sign a confidentiality agreement. Without the exemption, agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemption to pass.

³⁴ Florida House of Representatives, *Staff Analysis for HB 7013* (2012); Florida Senate, *Staff Analysis for SB 2078* (2012).

³⁵ Chapter 2012-216, L.O.F.; House Bill 7013.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts certain address information maintained by the United States Census Bureau and provided to an agency. The public necessity statement for the exemption provides that the federal LUCA requires this information to be kept confidential. Without the exemption, agencies would be denied participation in LUCA, which could result in a negative fiscal impact for the state. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Florida's Level of Participation in the 2010 LUCA

The history of Florida's participation in the last U.S. Census Bureau LUCA in preparation for the 2010 Census is significant. Overall, 252 Florida governmental units registered for LUCA. In total, Florida's participants added, submitted, or modified over 4 million addresses. In fact, in its final report, LUCA specifically acknowledged Florida for its substantial level of participation:

After the drop out phase, 57 of the 66 eligible counties or 86.4 percent remained active. Of the 57 counties, 54 or 94.7 percent returned files with 3,244,186 address records processed of the 3,275,790 records submitted.³⁶

Florida's Level of Participation in the 2020 LUCA

Due to the natural disaster that affected Florida, the federal government extended the deadline to January 31, 2018 for entities to sign up for LUCA. Currently, 42 Florida counties and 118 Florida cities have indicated participation in the 2020 LUCA program.³⁷

³⁶ United States Census Bureau, *2010 Census Local Update of Census Addresses Assessment*, No. 199 (Reissue), pg. 62 (Sept. 11, 2012)(on file with the Senate Committee on Governmental Oversight and Accountability).

³⁷ Florida Office of Economic & Demographic Research, *Fiscal Year 2017-2018, Adjustments in Responsibilities Issue, Local Update of Census Addresses Program* (on file with the Senate Committee on Governmental Oversight and Accountability).

Although fiscal impact is unknown at this time, to the extent that the public records exemption makes Florida entities eligible to participate in LUCA and add address information to the master list, the state would likely financially benefit from the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Perry

8-01677-18

20181078__

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; creating an exemption from public records requirements for specified United States Census Bureau address information held by an agency; providing an exception to the exemption; authorizing access to other related confidential or exempt information; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (g) is added to subsection (1) of section 119.071, Florida Statutes, to read:

119.071 General exemptions from inspection or copying of public records.—

(1) AGENCY ADMINISTRATION.—

(g)1. United States Census Bureau address information, including maps showing structure location points, agency records that verify addresses, and agency records that identify address errors or omissions, which is held by an agency pursuant to the Local Update of Census Addresses Program authorized under 13 U.S.C. s. 16, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Such information may be released to another agency or governmental entity in the furtherance of its duties and responsibilities under the Local Update of Census Addresses Program.

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8-01677-18

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3. An agency performing duties and responsibilities under the Local Update of Census Addresses Program shall have access to any other confidential or exempt information held by another agency if such access is necessary in order to perform its duties and responsibilities under the program.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that United States Census Bureau address information, including maps showing structure location points, agency records that verify addresses, and agency records that identify address errors or omissions, which is held by an agency be made confidential and exempt from public records requirements. Pursuant to the Local Update of Census Addresses Program authorized under 13 U.S.C. s. 16, United States Census Bureau address information must be kept confidential. Further, all individuals directly involved in reviewing such information and any individuals with access to such information are required to sign a confidentiality agreement to preserve the confidentiality of the address information. Without this exemption, agencies would be prevented from participating in the program. As such, the effective and efficient administration of the Local Update of Census Addresses Program would be hindered at the federal level. Further, it could result in a negative fiscal impact on the state. For the foregoing reasons, the Legislature finds that such information must be made confidential and exempt from public records requirements.

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8-01677-18

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Section 3. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

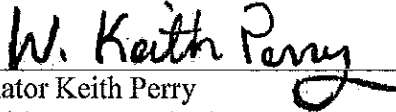
To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 16, 2018

I respectfully request that **Senate Bill #1078**, relating to Public Records/United States Census Bureau, be placed on the:

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



Senator Keith Perry
Florida Senate, District 8

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 Rules

BILL: CS/SB 8

INTRODUCER: Health Policy Committee and Senator Benacquisto and others

SUBJECT: Controlled Substances

DATE: January 31, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Loe</u>	<u>Hansen</u>	<u>AP</u>	<u>Favorable</u>
3.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 8 amends various sections of law to increase the regulation, training, and reporting required when prescribing and dispensing controlled substances. The bill:

- Restricts Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving medication-assisted treatment (MAT) services.
- Requires all prescribing practitioners to complete a two-hour training course on the proper manner to prescribe controlled substances.
- Requires applicable health care regulatory boards to create guidelines for prescribing controlled substances for the treatment of acute pain.
- Limits prescriptions to no more than three days of opioids listed in Schedule II to treat acute pain as defined in the bill. This limit is increased to seven days if determined to be medically necessary, and properly documented, by the prescribing practitioner.
- Requires clinics that are exempt from the requirement to register as a pain management clinic to obtain a certificate of exemption from the Department of Health (DOH).
- Requires pharmacists and dispensing practitioners to verify a patient's identity prior to dispensing controlled substances.
- Conforms an exemption allowing health care practitioners to dispense controlled substances in connection with a surgical procedure to the limits on prescribing established for Schedule II opioid medications.

- Creates an exemption to allow a physician to dispense Schedule II and III controlled substances approved by the United States Food and Drug Administration (FDA) for the MAT of his or her own patients.
- Adds and reschedules substances to the various schedules of controlled substances.
- Substantially rewords the Prescription Drug Monitoring Program (PDMP) with changes including, but not limited to:
 - Including Schedule V controlled substances in the list of drugs that must be reported to the PDMP, and eliminating an exemption for reporting controlled substances dispensed to minors under the age of 16;
 - Requiring prescribing practitioners to consult the PDMP before prescribing controlled substances; and
 - Allowing the DOH to coordinate and share Florida's PDMP data with other states' PDMPs.

The DOH will incur additional costs related to increased investigations of unlicensed pain management clinics. These costs may be offset through fees collected for initial issuance and renewal of pain management clinic exemption certificates.

The bill provides supplemental appropriations of:

- \$27,035,360 in non-recurring federal grants trust funds and \$15,520,000 in recurring general revenue funds to the DCF for substance use disorder treatment services.
 - From the \$15.5 million in recurring general revenue funds, the bill earmarks \$4.7 million of recurring general revenue funds for specific MAT drugs.
- \$6 million in recurring general revenue funds to the state courts administrator for substance abuse treatment services related to the criminal justice system. The bill requires these funds be spent on specific MAT drugs.
- \$5 million in recurring general revenue funds to the DOH to purchase naloxone for emergency medical services (EMS) responders.

The effective date of the bill is July 1, 2018, except that Sections 5, 6, 13, and 14 take effect January 1, 2019.

II. Present Situation:

Opioid Abuse in Florida

Both nationally and in Florida, opioid addiction and abuse has become an epidemic. By nearly every measure, the opioid crisis has worsened in recent years. The Florida Department of Law Enforcement (FDLE) reported that, when compared to 2015, 2016 saw:

- 5,725 (35 percent more) opioid-related deaths;
- 6,658 (24 percent more) individuals died with one or more prescription drugs in their system;¹
- 3,550 (40 percent more) individuals died with at least one prescription drug in their system that was identified as the cause of death;

¹ The drugs were identified as either the cause of death or merely present in the decedent. These drugs may have also been mixed with illicit drugs and/or alcohol. These drugs were not necessarily opioids.

- Occurrences of heroin increased by 31 percent, and deaths caused by heroin increased by 30 percent;
- Occurrences of fentanyl increased by 80 percent, and deaths caused by fentanyl increased by 97 percent;
- Occurrences of methadone (10 percent) and hydrocodone (2 percent) increased. Deaths caused by methadone (40 more) and hydrocodone (9 more) also increased;
- Occurrences of morphine increased by 38 percent, and deaths caused by morphine increased by 49 percent;
- Occurrences of oxycodone increased by 28 percent, and deaths caused by oxycodone also increased by 28 percent; and
- Occurrences of buprenorphine increased by 90 percent, and deaths caused by buprenorphine (14 more) increased.²

Additionally, collateral impacts of controlled substance and opioid misuse have increased. For example, between 2007 and 2015, the instance of neonatal abstinence syndrome – an infant disorder that occurs when babies are exposed to drugs in the womb before birth – increased by nearly 500 percent, from 536 cases to 2,487 cases. Overall hospital costs that can be attributed to the opioid crisis more than doubled between 2010 and 2015, from \$460 million to \$1.1 billion.³

History of the Opioid Crisis

In the late 1990s, pharmaceutical companies reassured the medical community that patients would not become addicted to prescription opioid pain relievers, and health care providers began to prescribe them at greater rates. This subsequently led to widespread diversion and misuse of these medications before it became clear that these medications could indeed be highly addictive.⁴ Between the early 2000s and the early 2010s, 93 of the top 100 oxycodone-dispensing doctors in the United States were in Florida,⁵ and at one point, doctors in Florida bought 89 percent of all Oxycodone sold in the county.⁶

Between 2009 and 2011, the Legislature enacted a series of reforms to combat prescription drug abuse. These reforms included strict regulation of pain management clinics, creating the PDMP, and stricter regulation on selling, distributing, and dispensing controlled substances.⁷ Between 2010 and 2014, deaths from prescription drugs dropped, but deaths from illegal opioids, such as heroin, began to rise.⁸ As evidenced in the prescription controlled substance and opioid-related mortality data reported by the FDLE, deaths from prescription controlled substances are once

² FDLE, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2016 Annual Report* (Nov. 2017) <https://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Annual-Drug-Report.aspx> (last visited on Jan. 6, 2018).

³ Florida Behavioral Health Association, *Florida's Opioid Crisis* (Jan. 2017) http://www.fadaa.org/links/Opioid%20Media%20Kit_FINAL.pdf, (last visited on Jan. 6, 2018).

⁴ National Institute on Drug Abuse, *Opioid Overdose Crisis*, (Jan. 2018) <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis> (last visited on Jan. 6, 2018).

⁵ Elaine Silvestrini, *Florida heals from pill mill epidemic*, TAMPA BAY TIMES, Aug. 30, 2014, available at <http://www.tbo.com/news/crime/florida-heals-from-pill-mill-epidemic-20140830/> (last visited on Jan. 6, 2018).

⁶ Lizette Alvarez, *Florida Shutting 'Pill Mill' Clinics*, THE NEW YORK TIMES, Aug. 31, 2011, available at <http://www.nytimes.com/2011/09/01/us/01drugs.html> (last visited on Jan. 6, 2018).

⁷ See chs. 2009-198, 2010-211, and 2011-141, Laws of Fla.

⁸ *Supra* note 3

again on the rise. In early 2017, the United States Centers for Disease Control and Prevention (CDC) declared the opioid crisis an epidemic, and shortly thereafter, on May 3, 2017, Governor Rick Scott signed executive order 17-146 declaring the opioid epidemic a public health emergency in Florida.

The federal government and many states have mobilized to combat the opioid epidemic. The United States Department of Health and Human Services (HHS) has focused its efforts on five major priorities:

- Improving access to treatment and recovery services;
- Promoting use of overdose-reversing drugs;
- Strengthening the understanding of the epidemic through better public health surveillance;
- Providing support for cutting-edge research on pain and addiction; and
- Advancing better practices for pain management.⁹

Individual states have taken actions to combat the opioid crisis, such as: increasing the availability of Naloxone and other related medications to prevent overdose deaths, increasing the availability and funding of MAT, and establishing stricter guidelines and regulations on the prescribing and dispensing of controlled substances.

Medication-Assisted Treatment

Medication-assisted treatment is the use of medications in combination with counseling and behavioral therapies for the treatment of substance use disorders.¹⁰ Medications including buprenorphine (Suboxone and Subutex), methadone, and extended release naltrexone (Vivitrol) are effective in treating opioid use disorders. MAT medications do not substitute one addiction for another since, when properly administered, MAT medications do not cause a high but serve to reduce opioid cravings and withdrawal. Additionally, diversion of buprenorphine is uncommon and when diversion does occur it is primarily used to manage withdrawal symptoms. Patients treated with medications were more likely to remain in therapy compared to patients receiving treatment without medication.¹¹

State and Federal Prescribing Guidelines

CDC Prescribing Guidelines

The CDC has established guidelines to reduce the risk of addiction and dependency when prescribing opioids. These guidelines are applicable to both chronic and acute pain and include:

- Not using opioids as first-line therapy.
- Establishing realistic goals for pain and function and discontinuing opioid therapy if the benefits do not outweigh the risks.
- Discussing the risks and benefits with patients before and during opioid therapy.

⁹ Supra note 4

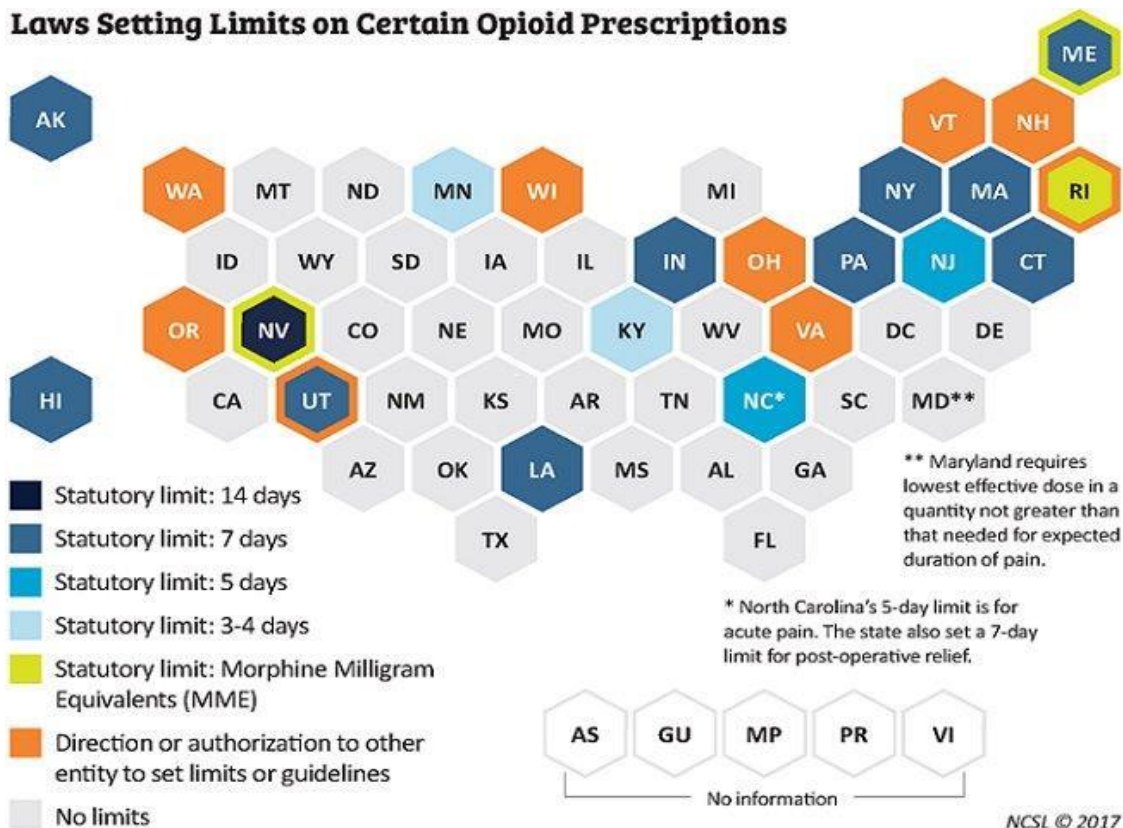
¹⁰ MAT overview, Substance Abuse and Mental Health Services Administration, available at <https://www.integration.samhsa.gov/clinical-practice/mat/mat-overview>, (last visited on Jan. 17, 2018).

¹¹ Effective Treatments of Opioid Addiction, National Institute on Drug Abuse, available at <https://www.drugabuse.gov/publications/effective-treatments-opioid-addiction/effective-treatments-opioid-addiction>, (last visited Jan. 17, 2018).

- Using immediate-release opioids at first and using the lowest effective dose.
- Prescribing short durations for acute pain. The CDC states that, generally, three days or less will be sufficient and more than seven days will rarely be needed.
- Evaluating benefits and harms within one to four weeks of starting the medication and at least every three months throughout the course the medication is prescribed.
- Reviewing PDMP data, using urine drug testing, and avoiding prescribing opioids and benzodiazepine concurrently.
- Offering treatment for opioid use disorders.¹²

State Opioid Prescription Limits

Beginning in 2016, more than 30 states have considered at least 130 bills related to opioid prescribing, and 24 states have enacted legislation that imposes some type of limit, guideline, or requirement related to opioid prescribing. Most legislation limits first time opioid prescriptions to a certain number of days’ supply, with seven days being most common. Some states have set limits as low as three days and as high as 14 days. In some cases, states may also set dosage limits using morphine milligram equivalents. Most states also specify that the dosage limits are for acute pain only or exclude chronic pain, palliative care, and cancer treatment.¹³ Specific states’ laws can be seen on the map below:



¹² CDC Guidelines for Prescribing Opioids for Chronic Pain https://www.cdc.gov/drugoverdose/pdf/guidelines_at-a-glance-a.pdf, (last visited Jan. 10, 2018).

¹³ Prescribing policies: States Confront Opioid Overdose Epidemic, National Conference of State Legislatures, <http://www.ncsl.org/research/health/prescribing-policies-states-confront-opioid-overdose-epidemic.aspx> (last visited Jan. 10, 2018). A table of specific legislation is also available at this site under the tab: “Table: Legislation.”

Florida's Prescription Drug Monitoring Program

Chapter 2009-197, Laws of Florida, established the PDMP in s. 893.055, F.S. The PDMP uses a comprehensive electronic database to monitor the prescribing and dispensing of certain controlled substances.¹⁴ The PDMP became operational on September 1, 2011, when it began receiving prescription data from pharmacies and dispensing practitioners.¹⁵ Dispensers have reported over 232 million controlled substance prescriptions to the PDMP since its inception.¹⁶ Health care practitioners began accessing the PDMP on October 17, 2011.¹⁷ Law enforcement agencies began requesting data from the PDMP in support of active criminal investigations on November 14, 2011.¹⁸

Dispensers of controlled substances listed in Schedule II, Schedule III, or Schedule IV¹⁹ must report specific information to the PDMP database each time the controlled substance is dispensed by the close of the next business day after dispensing. The information required to be reported includes the:²⁰

- Name of the dispensing practitioner and Drug Enforcement Administration registration number, National Provider Identification, or other applicable identifier;
- Date the prescription is dispensed;
- Name, address, and date of birth of the person to whom the controlled substance is dispensed; and
- Name, national drug code, quantity, and strength of the controlled substance dispensed.²¹

Certain acts of dispensing or administering are exempt from PDMP reporting. Current law exempts:

- A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
- A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in Florida.
- A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.
- A practitioner when administering a controlled substance in the emergency room of a licensed hospital.

¹⁴ Section 893.055(2)(a), F.S.

¹⁵ Florida Dep't of Health, *2012-2013 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2013), available at http://www.floridahealth.gov/reports-and-data/e-forcse/news-reports/_documents/2012-2013pdmp-annual-report.pdf (last visited on Jan. 7, 2018).

¹⁶ Florida Dep't of Health, *2016-2017 Prescription Drug Monitoring Program Annual Report* (Dec. 1, 2017), available at <http://www.floridahealth.gov/statistics-and-data/e-forcse/funding/2017PDMPAnnualReport.pdf> (last visited on Jan. 7, 2017).

¹⁷ *Supra* note 13

¹⁸ *Supra* note 13

¹⁹ Currently, Florida is one of 16 states that do not require the dispensing of Schedule V controlled substances to be reported to their state's PDMP. For more details please see http://pdmpassist.org/pdf/PDMP_Substances_Tracked_20171205.pdf, (last visited on Jan. 8, 2018).

²⁰ The specific information reported depends upon the whether the reporter is a pharmacy or practitioner.

²¹ *See* s. 893.055(3), F.S.

- A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
- A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
- A rehabilitative hospital, assisted living facility, or nursing home dispensing a certain dosage of a controlled substance, as needed, to a patient while the patient is present and receiving care as ordered by the patient's treating physician.²²

Accessing the PDMP database

Section 893.0551, F.S., makes certain identifying information²³ of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. 893.055, F.S., confidential and exempt from the public records laws in s. 119.07(1), F.S., and in article I, section 24(a) of the State Constitution.²⁴

Direct access to the PDMP database is presently limited to medical doctors, osteopathic physicians, dentists, podiatric physicians, advanced registered nurse practitioners, physician assistants, and pharmacists, and their designees.²⁵ Currently, prescribers are not required to consult the PDMP database before prescribing a controlled substance for a patient; however, physicians and pharmacists queried the database more than 3.7 million times in 2012, over 9.3 million times in 2014, over 18.6 million times in 2015, and over 35.8 million times in 2016.²⁶ Qualified physicians who are issuing physician certifications for the medical use of marijuana under s. 381.986, F.S., are currently required to review the patient's controlled drug prescription history in the PDMP.²⁷

Indirect access to the PDMP database is provided to:

- The DOH or certain health care regulatory boards;
- The Attorney General for Medicaid fraud cases;
- Law enforcement agencies during active investigations²⁸ involving potential criminal activity, fraud, or theft regarding prescribed controlled substances if the law enforcement agency has entered into a user agreement with the DOH;
- Patients, or the legal guardians or designated health care surrogates, of incapacitated patients; and
- Impaired practitioner consultants.²⁹

²² Section 893.055(5), F.S.

²³ Such information includes name, address, telephone number, insurance plan number, government-issued identification number, provider number, and Drug Enforcement Administration number, or any other unique identifying information or number.

²⁴ Section 893.0551(2)(a)-(h), F.S.

²⁵ Section 893.055(7)(b), F.S.

²⁶ *Supra* notes 14 and 15.

²⁷ See s. 381.986(4)(a)5., F.S.

²⁸ Section 893.055(1)(h), F.S., defines an "active investigation" as an investigation being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

²⁹ Section 893.055(7)(c)1.-5., F.S.

Indirect access means the person must request the information from the PDMP manager at the DOH. After an extensive process to validate and authenticate the request and the requestor, the PDMP manager or support staff provides the specific information requested.³⁰

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and methaqualone.
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

Pain Management Clinics

A pain management clinic is any facility that advertises pain management services or a facility where a majority of patients are prescribed opioids, benzodiazepines, barbiturates, or carisoprodol for the treatment of chronic nonmalignant pain.³¹ Pain management clinics must register with the DOH and meet provisions concerning staffing, sanitation, recordkeeping, and quality assurance.³² A clinic is exempt from these provisions if it is:

- Licensed as a hospital, ambulatory surgical center, or mobile surgical facility;
- Staffed primarily by surgeons;

³⁰ See s. 893.055(7)(c), F.S., and Rule 64K-1.003, F.A.C.

³¹ “Chronic nonmalignant pain” is defined as pain unrelated to cancer which persists beyond the usual course of disease or injury that is the cause of pain for more than 90 days after surgery. See ss. 458.3265 and 459.0137, F.S.

³² Sections 458.3265 and 459.0137, F.S. Chapter 458, F.S., is the Medical Practice Act, and Chapter 459, F.S., is the Osteopathic Medical Practice Act. The two sections regulating pain management clinics are substantively identical.

- Owned by a publicly-held corporation with total assets exceeding \$50 million;
- Affiliated with an accredited medical school;
- Not involved in prescribing controlled substances for the treatment of pain;
- Owned by a corporate entity exempt from federal taxation as a charitable organization;
- Wholly owned and operated by board-eligible or board-certified anesthesiologists, psychiatrists, rheumatologists, or neurologists; or
- Wholly owned and operated by a physician multispecialty practice with physicians holding credentials in pain medicine that perform interventional pain procedures routinely billed using surgical codes.

All clinics must be owned by at least one licensed physician or be licensed as a health care clinic under part X of ch. 400, F.S., to be eligible for registration as a pain management clinic. Pain management clinics must also designate a physician who is responsible for complying with all the registration and operation requirements designated in ss. 458.3265 or 459.0137, F.S. A pain management clinic may not be owned by, or have a contractual or employee relationship with, a physician who has had his or her Drug Enforcement Administration (DEA) license number revoked, has had his or her application for a license to practice using controlled substances denied by any jurisdiction, or has had any convictions or pleas for illicit drug felonies within the previous 10 years.

The DOH must conduct an annual inspection of each pain management clinic. Through the inspection, the DOH ensures the following requirements are met:

- The pain management clinic is registered with the DOH and the DOH has been notified of the designated physician;
- Every physician meets the training requirements to practice at the clinic;
- The clinic, including its grounds, buildings, furniture, appliances, and equipment is structurally sound, in good repair, clean, and free from health and safety hazards;
- Storage and handling of prescription drugs complies with ss. 499.0121 and 893.07, F.S.;
- Physicians maintain control and security of prescription blanks and other methods for prescribing controlled substances and report in writing any theft or loss of prescription blanks to the DOH within 24 hours;
- Physicians are in compliance with the requirements for counterfeit-resistant prescription blanks; and
- The designated physician has reported all adverse incidents to the DOH as set forth in s. 458.351, F.S.³³

The DOH may suspend or revoke a clinic registration or impose administrative fines of up to \$5,000 per violation for any offenses against state pain management clinic provisions or related federal laws and rules. If the registration for a pain management clinic is revoked for any reason, the clinic must cease to operate immediately, remove all signs or symbols identifying the facility as a pain management clinic, and dispose of any medication on the premises. The DOH may impose an administrative fine of up to \$5,000 per day for a clinic that operates without a registration, unless exempt. No owner or operator of a pain management clinic that has had its

³³ Department of Health, *Senate Bill 450 Analysis* (2016) (on file with the Senate Committee on Health Policy).

registration revoked may own or operate another pain clinic for five years after such revocation.³⁴

Currently, if a pain clinic meets one of the statutorily approved exemptions from registering with the DOH, they are not required to register or show proof of a valid exemption from registration nor are they required to meet any of the requirements established pursuant to sections 458.3265 and 459.0137, F.S. The determination as to whether the pain clinic meets one of the exemptions is made by the owner of the pain clinic and the DOH is unaware of which approved exemption the unregistered clinic meets and, without a formal complaint being filed, does not have the authority to inquire. If a clinic no longer qualifies for an exemption they are required to register; however, because the DOH is not aware of clinics that qualify for an exemption from registration and inspection, it is also not aware when the clinic no longer meets the criteria for an exemption from registration.³⁵

In 2010, when pain management clinic registration was first required by law, there were 921 registered pain management clinics. There were 259 clinics at the end of the 2016-2017 fiscal year. It is indeterminate how many clinics closed voluntarily because they could not meet the more stringent requirements established by law and how many were no longer registered because they self-determined they operated under one of the exemptions outlined earlier in this section.³⁶

III. Effect of Proposed Changes:

Sections 1 and 9 amend ss. 409.967 and 627.42392, F.S., respectively, to restrict Medicaid managed care plans and health insurers from requiring prior authorization or step therapy or imposing any other conditions as a prerequisite to receiving MAT services. Section 627.42392, F.S., defines “health insurer” to include health insurers, managed care plans, and health maintenance organizations.

Section 2 creates s. 456.0301, F.S., to require that, if not already required under a licensee’s individual practice act, each appropriate board must require a practitioner licensed with the DEA and authorized to prescribe controlled substances to complete a board-approved two-hour continuing education course on prescribing controlled substances when renewing his or her license.³⁷ Each licensee must submit confirmation of completing the course when applying for licensure renewal, and the DOH is prohibited from renewing the license of any practitioner who has failed to complete the course. The course may be offered in a distance learning format and be included within the number of continuing education hours required by law. The course must include:

- Information on the current standards regarding prescribing controlled substances, particularly opiates;
- Alternatives to these standards; and
- Information on the risks of opioid addiction following all stages of treatment in the management of acute pain.

³⁴ Section 458.3265, F.S. Similar language is found in s. 459.0137, F.S. Related rules are found in Rules 64B8-9 and 64B15-14, F.A.C.

³⁵ DOH, *Senate Bill 8 Analysis* (Oct. 23, 2017) (on file with the Senate Committee on Health Policy).

³⁶ *Id.*

³⁷ Beginning on January 31, 2019.

Each board may adopt rules to implement the required course.

Section 3 amends s. 456.072, F.S., to add violations of ss. 893.055 or 893.0551, F.S., relating to the PDMP and the public records exemption for the PDMP to the list of actions that constitute grounds for disciplinary action against a health care practitioner.

Section 4 amends s. 456.44, F.S., to establish standards for the treatment of acute pain.

The bill defines the term “acute pain” to mean the normal, predicted, physiological, and time-limited response to an adverse chemical, thermal, or mechanical stimulus associated with surgery, trauma, or acute illness. The applicable regulatory boards are required to adopt rules establishing guidelines for prescribing controlled substances for acute pain, including:

- Evaluating the patient;
- Creating and maintaining a treatment plan;
- Obtaining informed consent;
- Periodic review of the treatment plan;
- Consultation;
- Medical record review; and
- Compliance with controlled substances laws and regulations.

The bill specifies that failure to follow these guidelines is a practice act violation.

The bill restricts a practitioner from prescribing more than a three-day supply of an opioid listed in Schedule II when treating acute pain except that up to a seven-day supply may be prescribed if:

- The practitioner, in his or her professional judgement, believes that more than a three-day supply is medically necessary;
- The practitioner indicates “medically necessary” on the prescription; and
- The practitioner adequately documents in the patient’s medical record the acute patient’s acute condition and lack of alternative treatment options.

Sections 5 and 6 amend ss. 458.3265 and 459.0137, F.S., respectively, to require clinics that are exempt from registration as pain management clinics to obtain a certificate of exemption from the DOH. The bill requires the DOH to adopt an application form in rule for a certificate of exemption. The form must include:

- The name or names under which the applicant does business;
- The address where the pain management clinic is located;
- The specific exemption, with supporting documentation, that the applicant is claiming; and
- Any other information deemed necessary by the DOH.

The DOH must approve or deny a certificate within 30 days, and certificates must be renewed biennially.³⁸ A certificate holder must prominently display the certificate and make it available to the DOH or board upon request. A new certificate is required for a change of address and

³⁸ The DOH may issue initial certificates for three years in order to stagger renewal dates.

certificates are only valid for the applicant, owners, licenses, registrations, certifications, and services provided under the specific exemption claimed. A certificate holder must notify the DOH at least 60 days before any anticipated relocation, name change, or change of ownership. If a pain management clinic ceases to qualify for a certificate of exemption, the certificate holder must notify the DOH within three days and register as a pain management clinic or cease operations.

Sections 5 and 6 take effect January 1, 2019.

Sections 7 and 8 amend ss. 465.0155 and 465.0276, F.S., to require pharmacists and dispensing practitioners to confirm a person's identity before dispensing controlled substances to that person if he or she is not personally known to the pharmacist. If the person does not have proper identification,³⁹ the dispenser must verify the validity of the prescription and the identity of the patient with the prescriber or his or her agent. This requirement does not apply in an institutional setting or long-term care facility including, but not limited to, an assisted living facility or a hospital.

Section 8 amends several provisions in s. 465.0276, F.S., related to the dispensing of controlled substances by health care practitioners. Current law allows health care practitioners who are authorized to prescribe medicinal drugs to dispense such drugs if they are registered with their professional licensing boards; however, current law also restricts such practitioners from dispensing Schedule II or III controlled substances unless there is a specific exemption that allows them to do so. One such exemption allows practitioners to dispense up to a 14-day supply of Schedule II or III controlled substances in connection with the performance of a surgical procedure. The bill amends this exemption to require practitioners to follow the prescribing limits established in **section 4** of the bill when dispensing Schedule II controlled substances under the exemption. The bill creates a new exemption for practitioners authorized under 21 U.S.C. 823⁴⁰ to dispense Schedule II or III controlled substances that are approved for MAT by the FDA to their own patients for MAT of opiate addiction.

Section 10 amends s. 893.03, F.S., to add substances to lists of controlled substances as follows:

- Dihydroetorphine, hydrocodone combination products, oripavine, remifentanyl, tapentadol, thiafentanyl, lisdexamfetamine, and dornabinol (synthetic THC) in oral solution in a drug product approved by the FDA are added to Schedule II.
- Buprenorphine,⁴¹ embutramide, and perampanel are added to Schedule III.
- Alfaxalone, dexfenfluramine, dichloralphenazone, eluxadoline, eszopiclone, fospropofol, lorcaserin, modafinil, petrichloral, sibutramine, suvorexant, tramadol, zaleplon, zolpidem, and zopiclone are added to Schedule IV.

³⁹ The bill defines "proper identification" as an identification that is issued by a state or federal government containing the person's photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B). The verification of health plan eligibility is also considered to be proper identification.

⁴⁰ Such practitioners include qualifying physicians (who must be licensed under state law and hold a specialty in addiction treatment or has had specified training) and nurse practitioners and physician assistants who are supervised by, or working in collaboration with, a qualifying physician.

⁴¹ Buprenorphine is rescheduled from Schedule V to Schedule III.

- Not more than .5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dose, and any amount of brivaracetum, ezogabine, lacosamide, and pregabalin are added to Schedule V.

These changes conform Florida law to federal law.⁴²

Section 11 substantially rewords s. 893.055, F.S., creating the PDMP. Many of the provisions in existing law are reordered. The section:

- Defines the terms:
 - “Active investigation” to mean an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
 - “Administration” to mean the obtaining and giving of a single dose of controlled substance by a legally authorized person to a patient for his or her consumption.
 - “Controlled substance” to mean a controlled substance listed in Schedule II, III, IV, or V of s. 893.03, F.S., or 21 U.S.C. s. 812. Schedule Vs are added to the reporting requirements. Most states include the dispensing of Schedule V controlled substances in their PDMPs.⁴³
 - “Dispense” to mean the transfer of possession of one or more doses of a controlled substance by a dispenser to the ultimate consumer or to his or her agent.
 - “Dispenser” to mean a dispensing health care practitioner, pharmacy or pharmacist licensed to dispense controlled substances in or into Florida.
 - “Health care practitioner,” or “practitioner,” means any practitioner licensed under chapters 458, 459, 461, 463, 464, 465, or 466, F.S.
 - “Health care regulatory board” to have the same meaning as s. 456.001(1), F.S.
 - “Law enforcement agency” to mean the Department of Law Enforcement, a sheriff’s office or police department in Florida, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and which its agents and officers are empowered by law to conduct criminal investigations and make arrests.
 - “Pharmacy” to include a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, or an Internet pharmacy that is licensed by the DOH under chapter 465 and that dispenses or delivers controlled substances, including controlled substances, to an individual or address in Florida.
 - “Prescriber” to mean a prescribing physician, practitioner, or other health care practitioner authorized by the laws of this state to order controlled substances.
 - “Program manager” to mean an employee of, or a person contracted by, the DOH who is designated to ensure the integrity of the PDMP in accordance with the requirements established in this section.

⁴² Supra note 33

⁴³ Supra note 13

- Requires the DOH to maintain an electronic system to collect and store controlled substance dispensing information and release the information as authorized in s. 893.0551, F.S.⁴⁴ The system must:
 - Not infringe on the legitimate prescribing and dispensing of controlled substances;
 - Be consistent with standards of the American Society for Automation in Pharmacy; and
 - Comply with the Health Insurance Portability and Accountability Act (HIPAA) and all other relevant state and federal privacy and security laws and regulations;
- Allows the DOH to collaborate with health care regulatory boards, appropriate organizations, and other state agencies to identify indicators of controlled substance abuse.
- Requires the dispenser, when dispensing a controlled substance to a patient, to report the following information to the PDMP no later than the close of business the day after the controlled substance was dispensed:
 - The name of the prescribing practitioner, his or her DEA registration number, his or her National Provider Identification (NPI), and the date of the prescription.
 - The date the prescription was filled and the method of payment.
 - The full name, address, telephone number, and date of birth of the person for whom the prescription was written.
 - The name, national drug code, quantity, and strength of the controlled substance dispensed.
 - The full name, DEA registration number, DOH pharmacy permit number, and address of the pharmacy where the controlled substance was dispensed or, if dispensed by a practitioner other than a pharmacist, the practitioner's name, address, DEA registration number, DOH license number, and NPI.
 - Whether the drug was dispensed as an initial prescription or a refill and the number of refills ordered;
 - The name of the individual picking up the controlled substance prescription and type of identification provided; and
 - Other appropriate identifying information as determined by the DOH in rule.
- Exempts all acts of administration from the reporting requirement.
- Eliminates an exemption for reporting the dispensing of controlled substances to minors under the age of 16.
- Grants direct access to the PDMP system to:
 - Prescribers and dispensers and their designees;
 - Employees of the United State Department of Veterans Affairs,⁴⁵ the United States Department of Defense, or the Indian Health Service who provide health care services pursuant to such employment and who have authority to prescribe controlled substances;
 - The program manager and designated support staff to administer the PDMP system. The program manager or designated support staff:
 - Must complete a level II background screening;
 - May have access to de-identified data in order to calculate performance measures; and
 - Must provide the DOH de-identified data for public health care and safety initiatives;
 - The program manager:

⁴⁴ Section 893.0551, F.S., establishes the public records exemption for information in the PDMP.

⁴⁵ Employees of the US Department of Veterans Affairs were allowed access last year in Ch. 2017-169, Laws of Fla.

- May provide relevant information to the prescriber and dispenser when determining a pattern that indicates controlled substance abuse; and
 - May provide relevant information to law enforcement upon determining a pattern of controlled substance abuse and upon having cause to believe that a violation of controlled substance laws has occurred.
- Grants indirect access to the PDMP system to:
 - The DOH and its health care regulatory boards for investigations involving licensees authorized to prescribe or dispense controlled substances. The bill removes access for the DOH's regulatory boards;
 - The Attorney General for Medicaid fraud cases involving prescribed controlled substances;
 - A law enforcement agency during an active investigation of potential criminal activity, fraud, or theft regarding prescribed controlled substances;
 - A medical examiner when conducting an authorized investigation to determine the cause of death of an individual;⁴⁶
 - An impaired practitioner consultant who is retained by the DOH to review the PDMP system information of an impaired practitioner program participant or a referral who has agreed to be evaluated or monitored through the program and has agreed in writing to the consultant's access; and
 - A patient, legal guardian, or designated health care surrogate of an incapacitated patient who submits a written and notarized request including the patient's name, address, phone number, date of birth, and a copy of a government-issued photo identification.
- Allows the DOH to enter into a reciprocal agreement or contract to share PDMP information with other states, districts, and territories if their PDMPs are compatible with Florida's.⁴⁷ To determine compatibility, the DOH must consider for the other states', districts', or territories' PDMP:
 - Privacy safeguards and the program's success in protecting patient privacy;
 - The persons who are authorized to view the data collected by the program. Persons and entities in other states who are comparable to those granted access to Florida's PDMP may have access to Florida's PDMP upon approval by the DOH;
 - The schedules of controlled substances monitored;
 - Data reported to the program;
 - Any implementing criteria deemed essential; and
 - The costs and benefits to Florida of sharing prescription information.
- Requires the DOH to assess continued compatibility every four years and requires any agreements with other states to contain the same restrictions as Florida's program and s. 893.0551, F.S.
- Allows the DOH to enter into agreements and contracts to establish secure connections between the PDMP and health care providers' electronic health recordkeeping system.
- Requires all prescribers and dispensers, or their designees, to consult the PDMP system before prescribing or dispensing a controlled substance. Prescribers and dispensers are exempt from this requirement if the system is not operational or temporarily cannot be accessed. Any prescriber or dispenser who does not consult the system must document the reason why he or she could not consult the system and may not prescribe or dispense more

⁴⁶ This access is newly added.

⁴⁷ This authorization to share data is newly added.

than a three-day supply of a controlled substance. The DOH is required to issue a non-disciplinary citation pursuant to the procedure in s. 456.077, F.S., to any prescriber or dispenser who fails to consult the system. Under s. 456.077, F.S., the first citation is non-disciplinary and the second and subsequent citations are disciplinary.

- Establishes the penalty of a first-degree misdemeanor for any person who willfully and knowingly fails to report the dispensing of a controlled substance to the PDMP.
- Restricts information in the PDMP system from being released other than as specified in this section and s. 893.0551, F.S.
- Specifies that the content of the PDMP system is informational only.
- Restricts information in the PDMP system from being introduced as evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient and exempts the program manager and staff from being required to testify to any findings, recommendations, evaluations, opinions, or other actions taken in connection with the management of the system.
- Allows a prescriber or dispenser, or his or her designee, to have access to information in the PDMP system that relates to his or her patient as needed for the purpose of reviewing the patient's controlled substance prescription history. A prescriber or dispenser acting in good faith is immune from civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information in the system. The bill specifies that accessing or failing to access information in the system does not create a private cause of action against a prescriber or dispenser.
- Specifies that the PDMP must be funded through federal grants, private funding, or state funds appropriated in the General Appropriations Act. The DOH may not commit funds for the PDMP without ensuring funding is available and may not use funds provided directly or indirectly by prescription drug manufacturers.
- Allows the DOH to establish a direct support organization to raise funds for the PDMP and incorporates an automatic repeal date of October 1, 2027, that is in existing law unless saved from repeal by the Legislature.
- Requires the DOH to conduct or contract for studies to examine the feasibility of enhancing the PDMP for public health initiatives and statistical reporting. Such studies must respect the privacy of patients and be focused on:
 - Improving the quality of health care services and safety by improving the prescribing and dispensing practices for prescription drugs;
 - Taking advantage of advances in technology;
 - Reducing duplicative prescriptions and the overprescribing of prescription drugs; and
 - Reducing drug abuse.
- Requires the DOH to annually report to the Governor and the Legislature on specific performance measures for the PDMP.
- Requires the DOH to adopt rules necessary to implement this section.

Section 12 amends s. 893.0551, F.S., to amend the public records exemption for the PDMP to conform to changes made to s. 893.055, F.S., and to conform the section to the requirement in s. 381.986, F.S., that a qualified physician must check the PDMP prior to issuing a physician certification recommending the medical use of marijuana.

Sections 13 through 19 amend various sections of law to conform cross references to changes made in the bill.

Section 20 provides supplemental appropriations for the 2018-2019 fiscal year as follows:

- \$27,035,360 in nonrecurring funds from the Federal Grants Trust Fund and \$15,520,000 in recurring general revenue funds are appropriated to the Department of Children and Families (DCF) for outpatient, case management, and after care services; residential treatment; MAT, including the purchase and medical use of methadone, buprenorphine, and naltrexone extended-release injectable; peer recovery support; hospital and first responder outreach; and targeted outreach to pregnant women.
 - From the \$15.5 million in recurring general revenue funds, the DCF must use \$4,720,000 to contract with a nonprofit organization for the distribution of drugs for MAT as follows:
 - \$472,000 for methadone;
 - \$1,888,000 for buprenorphine; and
 - \$2,360,000 for naltrexone extended-release injectable.
- \$6 million in recurring general revenue funds are appropriated to the Office of the State Courts Administrator (OSCA) for treatment of substance abuse disorders in individuals involved in the criminal justice system, individuals who have a high likelihood of criminal justice involvement, or who are in court-ordered, community-based drug treatment. The OSCA must contract with a non-profit entity to make available the following drugs:
 - \$600,000 for methadone;
 - \$2.4 million for buprenorphine; and
 - \$3 million for naltrexone extended-release injectable.
- \$5 million of recurring general revenue funds are appropriated to the DOH for the purchase of naloxone to be made available to EMS responders.

Section 21 establishes an effective date of July 1, 2018, unless otherwise specified in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill establishes fees for the issuance of certificates of exemption for pain management clinics.

B. Private Sector Impact:

CS/SB 8 may cost clinics that are required to obtain a certificate of exemption from the requirement to register as a pain management clinic.

The bill may cost health care practitioners who are required to attend the additional training established in the bill.

The bill may cost patients due to the supply limits imposed for prescription of opioid medications listed in Schedule II.

The bill may increase the cost of the administrative operations of health care providers who are required to consult the PDMP prior to prescribing controlled substances and do not currently do so.

Any non-profit entities that are awarded contracts with the DCF or the OSCA to provide MAT medications, pursuant to the supplemental appropriations established in the bill, will have increased revenues.

C. Government Sector Impact:

The DOH will incur additional costs related to increased investigations of unlicensed pain management clinics. These costs may be offset through fees collected for initial issuance and renewal of pain management clinic exemption certificates.⁴⁸

The bill provides appropriations as detailed in the Effects of Proposed Changes section above.

VI. Technical Deficiencies:

CS/SB 8 amends the public records exemption for the PDMP and consolidates access to the PDMP for pharmacists with other health care practitioners on lines 1669-1672. This change is a result of pharmacists being added to the definition of “health care practitioner” in s. 893.055, F.S., by the bill; however, the bill leaves out a reference to s. 893.04, F.S., when allowing access to health care practitioners that is currently incorporated into the access allowed to pharmacists by s. 893.0551(3)(e), F.S. The reference to s. 893.04, F.S., should be added to line 1671 of the bill.

VII. Related Issues:

None.

⁴⁸ Supra note 28.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.967, 456.072, 456.44, 458.3265, 459.0137, 465.0155, 465.0276, 627.42392, 893.03, 893.055, 893.0551, 458.331, 459.015, 463.0055, 782.04, 893.13, 893.135, and 921.0022.

This bill creates section 456.0301 and one unnumbered section 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 Health Policy on January 16, 2018.

The CS makes several substantive changes along with numerous conforming, clarifying, and technical changes. Substantive changes include:

- Restricting Medicaid and health insurers from requiring prior authorization for MAT.
- Requiring applicable boards, rather than the DOH, to establish guidelines for prescribing controlled substances to treat acute pain.
- Requiring physicians to maintain treatment plans when prescribing Schedule II opioids for the treatment of acute pain.
- Conforming provisions relating to practitioners dispensing Schedule II and Schedule III controlled substances.
- Establishing an exception to allow physicians to dispense MAT drugs to their own patients to treat substance abuse disorders.
- Modifying the definitions of “dispense” and “dispenser” within the PDMP to ensure that out-of-state dispensers must report controlled substances dispensed into the state.
- Reestablishing indirect access to the PDMP for the DOH’s health care regulatory boards.
- Eliminating language stating that the content of the PDMP creates no obligations or legal duties for prescribers, dispensers, pharmacies, or patients.
- Providing supplemental appropriations of:
 - \$27,035,360 in nonrecurring federal grants trust funds and \$15,520,000 in recurring general revenue funds to the DCF for substance use disorder treatment services.
 - From the \$15.5 million in recurring general revenue funds, the bill earmarks \$4.7 million of recurring general revenue funds for specific MAT drugs.
 - \$6 million in recurring general revenue funds to the state courts administrator for substance abuse treatment services related to the criminal justice system. The bill requires these funds be spent on specific MAT drugs.
 - \$5 million in recurring general revenue funds to the DOH to purchase naloxone for EMS responders.

B. Amendments:

None.

By the Committee on Health Policy; and Senators Benacquisto,
Perry, Stargel, Bean, and Passidomo

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1 A bill to be entitled
2 An act relating to controlled substances; amending s.
3 409.967, F.S.; prohibiting managed care plans and
4 their fiscal agents or intermediaries from imposing
5 certain requirements or conditions on recipients as a
6 prerequisite to receiving medication-assisted
7 treatment (MAT) services to treat substance abuse
8 disorders; creating s. 456.0301, F.S.; authorizing
9 certain boards to require practitioners to complete a
10 specified board-approved continuing education course
11 to obtain authorization to prescribe controlled
12 substances as part of biennial license renewal;
13 providing exceptions; providing course requirements;
14 prohibiting the Department of Health from renewing a
15 license of a prescriber under specified circumstances;
16 requiring a licensee to submit confirmation of course
17 completion; providing for each licensing board
18 requiring such continuing education course to include
19 hours of completion with the total hours of continuing
20 education required in certain circumstances;
21 authorizing rulemaking; amending s. 456.072, F.S.;

22 authorizing disciplinary action against practitioners
23 for violating specified provisions relating to
24 controlled substances; amending s. 456.44, F.S.;

25 defining the term "acute pain"; requiring the
26 applicable boards to adopt rules establishing certain
27 guidelines for prescribing controlled substances for
28 acute pain; providing that failure of a practitioner
29 to follow specified guidelines is grounds for

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30 disciplinary action; limiting opioid drug
31 prescriptions for the treatment of acute pain to a
32 specified period under certain circumstances;
33 authorizing prescriptions for such opioids for an
34 extended period if specified requirements are met;
35 amending ss. 458.3265 and 459.0137, F.S.; requiring
36 certain pain management clinic owners to register
37 approved exemptions with the department; requiring
38 certain clinics to obtain certificates of exemption;
39 providing requirements for such certificates;
40 requiring the department to adopt rules necessary to
41 administer such exemptions; amending s. 465.0155,
42 F.S.; providing requirements for pharmacists for the
43 dispensing of controlled substances to persons not
44 known to them; defining the term "proper
45 identification"; amending s. 465.0276, F.S.;

46 prohibiting the dispensing of certain controlled
47 substances in an amount that exceeds a 3-day supply or
48 a medically necessary 7-day supply if certain criteria
49 are met; providing an exception for the dispensing of
50 certain controlled substances by a practitioner to the
51 practitioner's own patients for the medication-
52 assisted treatment of opiate addiction; providing
53 requirements for practitioners for the dispensing of
54 controlled substances to persons not known to them;
55 defining the term "proper identification"; amending s.
56 627.42392, F.S.; prohibiting a health insurer from
57 imposing certain requirements or conditions on
58 insureds as a prerequisite to receiving medication-

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59 assisted treatment (MAT) services to treat substance
60 abuse disorders; amending s. 893.03, F.S.; conforming
61 the state controlled substances schedule to the
62 federal controlled substances schedule; amending s.
63 893.055, F.S.; revising and providing definitions;
64 revising requirements for the prescription drug
65 monitoring program; authorizing rulemaking; requiring
66 the department to maintain an electronic system for
67 certain purposes which meets specified requirements;
68 requiring certain information to be reported to the
69 system by a specified time; specifying direct access
70 to system information; authorizing the department to
71 enter into reciprocal agreements or contracts to share
72 prescription drug monitoring information with certain
73 entities; providing requirements for such agreements;
74 authorizing the department to enter into agreements or
75 contracts for secure connections with practitioner
76 electronic systems; requiring specified persons to
77 consult the system for certain purposes within a
78 specified time; providing exceptions to the duty of
79 specified persons to consult the system under certain
80 circumstances; authorizing the department to issue
81 citations to specified entities for failing to meet
82 certain requirements; prohibiting the failure to
83 report the dispensing of a controlled substance when
84 required to do so; providing penalties; authorizing
85 the department to enter into agreements or contracts
86 for specified purposes; providing for the release of
87 information obtained by the system; allowing specified

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88 persons to have direct access to information for the
89 purpose of reviewing the controlled drug prescription
90 history of a patient; providing prescriber or
91 dispenser immunity from liability for review of
92 patient history when acting in good faith; providing
93 construction; prohibiting the department from
94 specified uses of funds; requiring the department to
95 conduct or participate in studies for specified
96 purposes; requiring an annual report to be submitted
97 to the Governor and Legislature by a specified date;
98 providing report requirements; authorizing the
99 department to establish a certain direct-support
100 organization for specified purposes; defining the term
101 "direct-support organization"; requiring a direct-
102 support organization to operate under written contract
103 with the department; providing contract requirements;
104 requiring the direct-support organization to obtain
105 written approval from the department for specified
106 purposes; authorizing the department to adopt certain
107 rules relating to resources used by the direct-support
108 organization; providing for an independent annual
109 financial audit by the direct-support organization;
110 providing that copies of such audit be provided to
111 specified entities; providing for future repeal of
112 provisions relating to the direct-support
113 organization; requiring the department to adopt rules
114 to implement the system; amending s. 893.0551, F.S.;
115 revising provisions concerning the release of
116 information held by the prescription drug monitoring

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117 program; amending ss. 458.331, 459.015, 463.0055,
 118 782.04, 893.13, 893.135, and 921.0022, F.S.;
 119 correcting cross-references; conforming provisions to
 120 changes made by the act; providing appropriations;
 121 providing effective dates.

122
 123 Be It Enacted by the Legislature of the State of Florida:

124
 125 Section 1. Paragraph (c) of subsection (2) of section
 126 409.967, Florida Statutes, is amended to read:

127 409.967 Managed care plan accountability.—

128 (2) The agency shall establish such contract requirements
 129 as are necessary for the operation of the statewide managed care
 130 program. In addition to any other provisions the agency may deem
 131 necessary, the contract must require:

132 (c) Access.—

133 1. The agency shall establish specific standards for the
 134 number, type, and regional distribution of providers in managed
 135 care plan networks to ensure access to care for both adults and
 136 children. Each plan must maintain a regionwide network of
 137 providers in sufficient numbers to meet the access standards for
 138 specific medical services for all recipients enrolled in the
 139 plan. The exclusive use of mail-order pharmacies may not be
 140 sufficient to meet network access standards. Consistent with the
 141 standards established by the agency, provider networks may
 142 include providers located outside the region. A plan may
 143 contract with a new hospital facility before the date the
 144 hospital becomes operational if the hospital has commenced
 145 construction, will be licensed and operational by January 1,

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146 2013, and a final order has issued in any civil or
 147 administrative challenge. Each plan shall establish and maintain
 148 an accurate and complete electronic database of contracted
 149 providers, including information about licensure or
 150 registration, locations and hours of operation, specialty
 151 credentials and other certifications, specific performance
 152 indicators, and such other information as the agency deems
 153 necessary. The database must be available online to both the
 154 agency and the public and have the capability to compare the
 155 availability of providers to network adequacy standards and to
 156 accept and display feedback from each provider's patients. Each
 157 plan shall submit quarterly reports to the agency identifying
 158 the number of enrollees assigned to each primary care provider.

159 2. Each managed care plan must publish any prescribed drug
 160 formulary or preferred drug list on the plan's website in a
 161 manner that is accessible to and searchable by enrollees and
 162 providers. The plan must update the list within 24 hours after
 163 making a change. Each plan must ensure that the prior
 164 authorization process for prescribed drugs is readily accessible
 165 to health care providers, including posting appropriate contact
 166 information on its website and providing timely responses to
 167 providers. For Medicaid recipients diagnosed with hemophilia who
 168 have been prescribed anti-hemophilic-factor replacement
 169 products, the agency shall provide for those products and
 170 hemophilia overlay services through the agency's hemophilia
 171 disease management program.

172 3. Managed care plans, and their fiscal agents or
 173 intermediaries, must accept prior authorization requests for any
 174 service electronically.

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175 4. Managed care plans, and their fiscal agents and
 176 intermediaries, may not implement, manage, or require a prior
 177 authorization process or step therapy procedures and may not
 178 impose any other conditions on recipients as a prerequisite to
 179 receiving medication-assisted treatment (MAT) services, as
 180 defined in s. 397.311, to treat substance abuse disorders.

181 5. Managed care plans serving children in the care and
 182 custody of the Department of Children and Families must maintain
 183 complete medical, dental, and behavioral health encounter
 184 information and participate in making such information available
 185 to the department or the applicable contracted community-based
 186 care lead agency for use in providing comprehensive and
 187 coordinated case management. The agency and the department shall
 188 establish an interagency agreement to provide guidance for the
 189 format, confidentiality, recipient, scope, and method of
 190 information to be made available and the deadlines for
 191 submission of the data. The scope of information available to
 192 the department shall be the data that managed care plans are
 193 required to submit to the agency. The agency shall determine the
 194 plan's compliance with standards for access to medical, dental,
 195 and behavioral health services; the use of medications; and
 196 followup on all medically necessary services recommended as a
 197 result of early and periodic screening, diagnosis, and
 198 treatment.

199 Section 2. Section 456.0301, Florida Statutes, is created
 200 to read:

201 456.0301 Requirement for instruction on controlled
 202 substance prescribing.-

203 (1) (a) If not already required by the licensee's practice

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204 act, the appropriate board shall require each person registered
 205 with the United States Drug Enforcement Administration and
 206 authorized to prescribe controlled substances pursuant to 21
 207 U.S.C. s. 822 to complete a board-approved 2-hour continuing
 208 education course on prescribing controlled substances as part of
 209 biennial license renewal. The course must include information on
 210 the current standards for prescribing controlled substances,
 211 particularly opiates; alternatives to these standards; and
 212 information on the risks of opioid addiction following all
 213 stages of treatment in the management of acute pain. The course
 214 may be offered in a distance learning format and must be
 215 included within the number of continuing education hours
 216 required by law. The department may not renew the license of any
 217 prescriber registered with the United States Drug Enforcement
 218 Administration to prescribe controlled substances who has failed
 219 to complete the course. When required by this paragraph, the
 220 course must be completed by January 31, 2019, and at each
 221 subsequent renewal.

222 (b) Each such licensee shall submit confirmation of having
 223 completed such course when applying for biennial license
 224 renewal.

225 (2) Each board may adopt rules to administer this section.

226 Section 3. Paragraph (gg) of subsection (1) of section
 227 456.072, Florida Statutes, is amended to read:

228 456.072 Grounds for discipline; penalties; enforcement.-

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

232 (gg) Engaging in a pattern of practice when prescribing

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233 medicinal drugs or controlled substances which demonstrates a
 234 lack of reasonable skill or safety to patients, a violation of
 235 ~~any provision of this chapter or ss. 893.055 and 893.0551~~, a
 236 violation of the applicable practice act, or a violation of any
 237 rules adopted under this chapter or the applicable practice act
 238 of the prescribing practitioner. Notwithstanding s. 456.073(13),
 239 the department may initiate an investigation and establish such
 240 a pattern from billing records, data, or any other information
 241 obtained by the department.

242 Section 4. Paragraphs (a) through (g) of subsection (1) of
 243 section 456.44, Florida Statutes, are redesignated as paragraphs
 244 (b) through (h), respectively, a new paragraph (a) is added to
 245 that subsection, subsection (3) is amended, and subsections (4)
 246 and (5) are added to that section, to read:

247 456.44 Controlled substance prescribing.—

248 (1) DEFINITIONS.—As used in this section, the term:

249 (a) “Acute pain” means the normal, predicted,
 250 physiological, and time-limited response to an adverse chemical,
 251 thermal, or mechanical stimulus associated with surgery, trauma,
 252 or acute illness.

253 (3) STANDARDS OF PRACTICE FOR TREATMENT OF CHRONIC
 254 NONMALIGNANT PAIN.—The standards of practice in this section do
 255 not supersede the level of care, skill, and treatment recognized
 256 in general law related to health care licensure.

257 (a) A complete medical history and a physical examination
 258 must be conducted before beginning any treatment and must be
 259 documented in the medical record. The exact components of the
 260 physical examination shall be left to the judgment of the
 261 registrant who is expected to perform a physical examination

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262 proportionate to the diagnosis that justifies a treatment. The
 263 medical record must, at a minimum, document the nature and
 264 intensity of the pain, current and past treatments for pain,
 265 underlying or coexisting diseases or conditions, the effect of
 266 the pain on physical and psychological function, a review of
 267 previous medical records, previous diagnostic studies, and
 268 history of alcohol and substance abuse. The medical record shall
 269 also document the presence of one or more recognized medical
 270 indications for the use of a controlled substance. Each
 271 registrant must develop a written plan for assessing each
 272 patient’s risk of aberrant drug-related behavior, which may
 273 include patient drug testing. Registrants must assess each
 274 patient’s risk for aberrant drug-related behavior and monitor
 275 that risk on an ongoing basis in accordance with the plan.

276 (b) Each registrant must develop a written individualized
 277 treatment plan for each patient. The treatment plan shall state
 278 objectives that will be used to determine treatment success,
 279 such as pain relief and improved physical and psychosocial
 280 function, and shall indicate if any further diagnostic
 281 evaluations or other treatments are planned. After treatment
 282 begins, the registrant shall adjust drug therapy to the
 283 individual medical needs of each patient. Other treatment
 284 modalities, including a rehabilitation program, shall be
 285 considered depending on the etiology of the pain and the extent
 286 to which the pain is associated with physical and psychosocial
 287 impairment. The interdisciplinary nature of the treatment plan
 288 shall be documented.

289 (c) The registrant shall discuss the risks and benefits of
 290 the use of controlled substances, including the risks of abuse

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291 and addiction, as well as physical dependence and its
 292 consequences, with the patient, persons designated by the
 293 patient, or the patient's surrogate or guardian if the patient
 294 is incompetent. The registrant shall use a written controlled
 295 substance agreement between the registrant and the patient
 296 outlining the patient's responsibilities, including, but not
 297 limited to:

- 298 1. Number and frequency of controlled substance
 299 prescriptions and refills.
- 300 2. Patient compliance and reasons for which drug therapy
 301 may be discontinued, such as a violation of the agreement.
- 302 3. An agreement that controlled substances for the
 303 treatment of chronic nonmalignant pain shall be prescribed by a
 304 single treating registrant unless otherwise authorized by the
 305 treating registrant and documented in the medical record.
- 306 (d) The patient shall be seen by the registrant at regular
 307 intervals, not to exceed 3 months, to assess the efficacy of
 308 treatment, ensure that controlled substance therapy remains
 309 indicated, evaluate the patient's progress toward treatment
 310 objectives, consider adverse drug effects, and review the
 311 etiology of the pain. Continuation or modification of therapy
 312 shall depend on the registrant's evaluation of the patient's
 313 progress. If treatment goals are not being achieved, despite
 314 medication adjustments, the registrant shall reevaluate the
 315 appropriateness of continued treatment. The registrant shall
 316 monitor patient compliance in medication usage, related
 317 treatment plans, controlled substance agreements, and
 318 indications of substance abuse or diversion at a minimum of 3-
 319 month intervals.

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320 (e) The registrant shall refer the patient as necessary for
 321 additional evaluation and treatment in order to achieve
 322 treatment objectives. Special attention shall be given to those
 323 patients who are at risk for misusing their medications and
 324 those whose living arrangements pose a risk for medication
 325 misuse or diversion. The management of pain in patients with a
 326 history of substance abuse or with a comorbid psychiatric
 327 disorder requires extra care, monitoring, and documentation and
 328 requires consultation with or referral to an addiction medicine
 329 specialist or a psychiatrist.

330 (f) A registrant must maintain accurate, current, and
 331 complete records that are accessible and readily available for
 332 review and comply with the requirements of this section, the
 333 applicable practice act, and applicable board rules. The medical
 334 records must include, but are not limited to:

- 335 1. The complete medical history and a physical examination,
 336 including history of drug abuse or dependence.
- 337 2. Diagnostic, therapeutic, and laboratory results.
- 338 3. Evaluations and consultations.
- 339 4. Treatment objectives.
- 340 5. Discussion of risks and benefits.
- 341 6. Treatments.
- 342 7. Medications, including date, type, dosage, and quantity
 343 prescribed.
- 344 8. Instructions and agreements.
- 345 9. Periodic reviews.
- 346 10. Results of any drug testing.
- 347 11. A photocopy of the patient's government-issued photo
 348 identification.

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349 12. If a written prescription for a controlled substance is
350 given to the patient, a duplicate of the prescription.

351 13. The registrant's full name presented in a legible
352 manner.

353 (g) A registrant shall immediately refer patients with
354 signs or symptoms of substance abuse to a board-certified pain
355 management physician, an addiction medicine specialist, or a
356 mental health addiction facility as it pertains to drug abuse or
357 addiction unless the registrant is a physician who is board-
358 certified or board-eligible in pain management. Throughout the
359 period of time before receiving the consultant's report, a
360 prescribing registrant shall clearly and completely document
361 medical justification for continued treatment with controlled
362 substances and those steps taken to ensure medically appropriate
363 use of controlled substances by the patient. Upon receipt of the
364 consultant's written report, the prescribing registrant shall
365 incorporate the consultant's recommendations for continuing,
366 modifying, or discontinuing controlled substance therapy. The
367 resulting changes in treatment shall be specifically documented
368 in the patient's medical record. Evidence or behavioral
369 indications of diversion shall be followed by discontinuation of
370 controlled substance therapy, and the patient shall be
371 discharged, and all results of testing and actions taken by the
372 registrant shall be documented in the patient's medical record.

373
374 This subsection does not apply to a board-eligible or board-
375 certified anesthesiologist, physiatrist, rheumatologist, or
376 neurologist, or to a board-certified physician who has surgical
377 privileges at a hospital or ambulatory surgery center and

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378 primarily provides surgical services. This subsection does not
379 apply to a board-eligible or board-certified medical specialist
380 who has also completed a fellowship in pain medicine approved by
381 the Accreditation Council for Graduate Medical Education or the
382 American Osteopathic Association, or who is board eligible or
383 board certified in pain medicine by the American Board of Pain
384 Medicine, the American Board of Interventional Pain Physicians,
385 the American Association of Physician Specialists, or a board
386 approved by the American Board of Medical Specialties or the
387 American Osteopathic Association and performs interventional
388 pain procedures of the type routinely billed using surgical
389 codes. This subsection does not apply to a registrant who
390 prescribes medically necessary controlled substances for a
391 patient during an inpatient stay in a hospital licensed under
392 chapter 395.

393 (4) STANDARDS OF PRACTICE FOR TREATMENT OF ACUTE PAIN.-The
394 applicable boards shall adopt rules establishing guidelines for
395 prescribing controlled substances for acute pain, including
396 evaluation of the patient, creation and maintenance of a
397 treatment plan, obtaining informed consent and agreement for
398 treatment, periodic review of the treatment plan, consultation,
399 medical record review, and compliance with controlled substance
400 laws and regulations. Failure of a prescriber to follow such
401 guidelines constitutes grounds for disciplinary action pursuant
402 to s. 456.072(1)(gg), punishable as provided in s. 456.072(2).

403 (5) PRESCRIPTION SUPPLY.-

404 (a) Except as provided in paragraph (b), a prescription for
405 an opioid drug listed as a Schedule II controlled substance in
406 s. 893.03 or 21 U.S.C. s. 812, for the treatment of acute pain

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407 may not exceed a 3-day supply.

408 (b) Up to a 7-day supply of an opioid described in
409 paragraph (a) may be prescribed if:

410 1. The practitioner, in his or her professional judgment,
411 believes that more than a 3-day supply of such an opioid is
412 medically necessary to treat the patient's pain as an acute
413 medical condition.

414 2. The practitioner indicates "MEDICALLY NECESSARY" on the
415 prescription.

416 3. The prescriber adequately documents in the patient's
417 medical records the acute medical condition and lack of
418 alternative treatment options that justify deviation from the 3-
419 day supply limit established in this subsection.

420 Section 5. Effective January 1, 2019, subsections (2)
421 through (5) of section 458.3265, Florida Statutes, are
422 renumbered as subsections (3) through (6), respectively,
423 paragraphs (a) and (g) of subsection (1), paragraph (a) of
424 present subsection (2), paragraph (a) of present subsection (3)
425 and paragraph (a) of present subsection (4) of that section, are
426 amended, and a new subsection (2) is added to that section, to
427 read:

428 458.3265 Pain-management clinics.—

429 (1) REGISTRATION.—

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

431 a. "Board eligible" means successful completion of an
432 anesthesia, physical medicine and rehabilitation, rheumatology,
433 or neurology residency program approved by the Accreditation
434 Council for Graduate Medical Education or the American
435 Osteopathic Association for a period of 6 years from successful

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436 completion of such residency program.

437 b. "Chronic nonmalignant pain" means pain unrelated to
438 cancer which persists beyond the usual course of disease or the
439 injury that is the cause of the pain or more than 90 days after
440 surgery.

441 c. "Pain-management clinic" or "clinic" means any publicly
442 or privately owned facility:

443 (I) That advertises in any medium for any type of pain-
444 management services; or

445 (II) Where in any month a majority of patients are
446 prescribed opioids, benzodiazepines, barbiturates, or
447 carisoprodol for the treatment of chronic nonmalignant pain.

448 2. Each pain-management clinic must register with the
449 department or hold a valid certificate of exemption pursuant to
450 subsection (2). ~~unless:~~

451 3. The following clinics are exempt from the registration
452 requirement of paragraphs (c)-(m), and must apply to the
453 department for a certificate of exemption:

454 a. A ~~The~~ clinic ~~is~~ licensed as a facility pursuant to
455 chapter 395;

456 b. A clinic in which the majority of the physicians who
457 provide services in the clinic primarily provide surgical
458 services;

459 c. A ~~The~~ clinic ~~is~~ owned by a publicly held corporation
460 whose shares are traded on a national exchange or on the over-
461 the-counter market and whose total assets at the end of the
462 corporation's most recent fiscal quarter exceeded \$50 million;

463 d. A ~~The~~ clinic ~~is~~ affiliated with an accredited medical
464 school at which training is provided for medical students,

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465 residents, or fellows;

466 e. ~~A~~ The clinic that does not prescribe controlled
467 substances for the treatment of pain;

468 f. ~~A~~ The clinic is owned by a corporate entity exempt from
469 federal taxation under 26 U.S.C. s. 501(c)(3);

470 g. ~~A~~ The clinic is wholly owned and operated by one or more
471 board-eligible or board-certified anesthesiologists,
472 physiatrists, rheumatologists, or neurologists; or

473 h. ~~A~~ The clinic is wholly owned and operated by a physician
474 multispecialty practice where one or more board-eligible or
475 board-certified medical specialists, who have also completed
476 fellowships in pain medicine approved by the Accreditation
477 Council for Graduate Medical Education or who are also board-
478 certified in pain medicine by the American Board of Pain
479 Medicine or a board approved by the American Board of Medical
480 Specialties, the American Association of Physician Specialists,
481 or the American Osteopathic Association, perform interventional
482 pain procedures of the type routinely billed using surgical
483 codes.

484 (g) The department may revoke the clinic's certificate of
485 registration and prohibit all physicians associated with that
486 pain-management clinic from practicing at that clinic location
487 based upon an annual inspection and evaluation of the factors
488 described in subsection ~~(4)(3)~~.

489 (2) CERTIFICATE OF EXEMPTION.-

490 (a) A pain management clinic claiming an exemption from the
491 registration requirements of subsection (1) must apply for a
492 certificate of exemption on a form adopted in rule by the
493 department. The form must require the applicant to provide:

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494 1. The name or names under which the applicant does
495 business.

496 2. The address at which the pain management clinic is
497 located.

498 3. The specific exemption the applicant is claiming with
499 supporting documentation.

500 4. Any other information deemed necessary by the
501 department.

502 (b) The department must approve or deny the application
503 within 30 days after the receipt of a complete application.

504 (c) The certificate of exemption must be renewed
505 biennially, except that the department may issue the initial
506 certificates of exemption for up to 3 years in order to stagger
507 renewal dates.

508 (d) A certificateholder must prominently display the
509 certificate of exemption and make it available to the department
510 or the board upon request.

511 (e) A new certificate of exemption is required for a change
512 of address and is not transferable. A certificate of exemption
513 is valid only for the applicant, qualifying owners, licenses,
514 registrations, certifications, and services provided under a
515 specific statutory exemption and is valid only to the specific
516 exemption claimed and granted.

517 (f) A certificateholder must notify the department at least
518 60 days before any anticipated relocation or name change of the
519 pain management clinic or a change of ownership.

520 (g) If a pain management clinic no longer qualifies for a
521 certificate of exemption, the certificateholder must notify the
522 department within 3 days after becoming aware that the clinic no

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523 longer qualifies for a certificate of exemption and register as
 524 a pain management clinic under subsection (1) or cease
 525 operations.

526 ~~(3)(2)~~ PHYSICIAN RESPONSIBILITIES.—These responsibilities
 527 apply to any physician who provides professional services in a
 528 pain-management clinic that is required to be registered in
 529 subsection (1).

530 (a) A physician may not practice medicine in a pain-
 531 management clinic, as described in subsection ~~(5)(4)~~, if the
 532 pain-management clinic is not registered with the department as
 533 required by this section. Any physician who qualifies to
 534 practice medicine in a pain-management clinic pursuant to rules
 535 adopted by the Board of Medicine as of July 1, 2012, may
 536 continue to practice medicine in a pain-management clinic as
 537 long as the physician continues to meet the qualifications set
 538 forth in the board rules. A physician who violates this
 539 paragraph is subject to disciplinary action by his or her
 540 appropriate medical regulatory board.

541 ~~(4)(3)~~ INSPECTION.—

542 (a) The department shall inspect the pain-management clinic
 543 annually, including a review of the patient records, to ensure
 544 that it complies with this section and the rules of the Board of
 545 Medicine adopted pursuant to subsection ~~(5)(4)~~ unless the clinic
 546 is accredited by a nationally recognized accrediting agency
 547 approved by the Board of Medicine.

548 ~~(5)(4)~~ RULEMAKING.—

549 (a) The department shall adopt rules necessary to
 550 administer the registration, exemption, and inspection of pain-
 551 management clinics which establish the specific requirements,

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552 procedures, forms, and fees.

553 Section 6. Effective January 1, 2019, subsections (2)
 554 through (5) of section 459.0137, Florida Statutes, are
 555 renumbered as subsections (3) through (6), respectively,
 556 paragraphs (a) and (g) of subsection (1), paragraph (a) of
 557 present subsection (2), paragraph (a) of present subsection (3)
 558 and paragraph (a) of present subsection (4) of that section, are
 559 amended, and a new subsection (2) is added to that section, to
 560 read:

561 459.0137 Pain-management clinics.—

562 (1) REGISTRATION.—

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

564 a. "Board eligible" means successful completion of an
 565 anesthesia, physical medicine and rehabilitation, rheumatology,
 566 or neurology residency program approved by the Accreditation
 567 Council for Graduate Medical Education or the American
 568 Osteopathic Association for a period of 6 years from successful
 569 completion of such residency program.

570 b. "Chronic nonmalignant pain" means pain unrelated to
 571 cancer which persists beyond the usual course of disease or the
 572 injury that is the cause of the pain or more than 90 days after
 573 surgery.

574 c. "Pain-management clinic" or "clinic" means any publicly
 575 or privately owned facility:

576 (I) That advertises in any medium for any type of pain-
 577 management services; or

578 (II) Where in any month a majority of patients are
 579 prescribed opioids, benzodiazepines, barbiturates, or
 580 carisoprodol for the treatment of chronic nonmalignant pain.

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581 2. Each pain-management clinic must register with the
 582 department or hold a valid certificate of exemption pursuant to
 583 subsection (2). ~~unless:~~

584 3. The following clinics are exempt from the registration
 585 requirement of paragraphs (c)-(m), and must apply to the
 586 department for a certificate of exemption:

587 a. ~~A~~ A ~~That~~ clinic ~~is~~ licensed as a facility pursuant to
 588 chapter 395;

589 b. A clinic in which the majority of the physicians who
 590 provide services in the clinic primarily provide surgical
 591 services;

592 c. ~~A~~ A ~~The~~ clinic ~~is~~ owned by a publicly held corporation
 593 whose shares are traded on a national exchange or on the over-
 594 the-counter market and whose total assets at the end of the
 595 corporation's most recent fiscal quarter exceeded \$50 million;

596 d. ~~A~~ A ~~The~~ clinic ~~is~~ affiliated with an accredited medical
 597 school at which training is provided for medical students,
 598 residents, or fellows;

599 e. ~~A~~ A ~~The~~ clinic ~~that~~ does not prescribe controlled
 600 substances for the treatment of pain;

601 f. ~~A~~ A ~~The~~ clinic ~~is~~ owned by a corporate entity exempt from
 602 federal taxation under 26 U.S.C. s. 501(c) (3);

603 g. ~~A~~ A ~~The~~ clinic ~~is~~ wholly owned and operated by one or more
 604 board-eligible or board-certified anesthesiologists,
 605 physiatrists, rheumatologists, or neurologists; or

606 h. ~~A~~ A ~~The~~ clinic ~~is~~ wholly owned and operated by a physician
 607 multispecialty practice where one or more board-eligible or
 608 board-certified medical specialists, who have also completed
 609 fellowships in pain medicine approved by the Accreditation

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610 Council for Graduate Medical Education or the American
 611 Osteopathic Association or who are also board-certified in pain
 612 medicine by the American Board of Pain Medicine or a board
 613 approved by the American Board of Medical Specialties, the
 614 American Association of Physician Specialists, or the American
 615 Osteopathic Association, perform interventional pain procedures
 616 of the type routinely billed using surgical codes.

617 (g) The department may revoke the clinic's certificate of
 618 registration and prohibit all physicians associated with that
 619 pain-management clinic from practicing at that clinic location
 620 based upon an annual inspection and evaluation of the factors
 621 described in subsection ~~(4)~~(3).

622 (2) CERTIFICATE OF EXEMPTION.-

623 (a) A pain management clinic claiming an exemption from the
 624 registration requirements of subsection (1) must apply for a
 625 certificate of exemption on a form adopted in rule by the
 626 department. The form shall require the applicant to provide:

627 1. The name or names under which the applicant does
 628 business.

629 2. The address at which the pain management clinic is
 630 located.

631 3. The specific exemption the applicant is claiming with
 632 supporting documentation.

633 4. Any other information deemed necessary by the
 634 department.

635 (b) Within 30 days after the receipt of a complete
 636 application, the department must approve or deny the
 637 application.

638 (c) The certificate of exemption must be renewed

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639 biennially, except that the department may issue the initial
 640 certificates of exemption for up to 3 years in order to stagger
 641 renewal dates.

642 (d) A certificateholder must prominently display the
 643 certificate of exemption and make it available to the department
 644 or the board upon request.

645 (e) A new certificate of exemption is required for a change
 646 of address and is not transferable. A certificate of exemption
 647 is valid only for the applicant, qualifying owners, licenses,
 648 registrations, certifications, and services provided under a
 649 specific statutory exemption and is valid only to the specific
 650 exemption claimed and granted.

651 (f) A certificateholder must notify the department at least
 652 60 days before any anticipated relocation or name change of the
 653 pain management clinic or a change of ownership.

654 (g) If a pain management clinic no longer qualifies for a
 655 certificate of exemption, the certificateholder must notify the
 656 department within 3 days after becoming aware that the clinic no
 657 longer qualifies for a certificate of exemption and register as
 658 a pain management clinic under subsection (1) or cease
 659 operations.

660 (3)-(2) PHYSICIAN RESPONSIBILITIES.—These responsibilities
 661 apply to any osteopathic physician who provides professional
 662 services in a pain-management clinic that is required to be
 663 registered in subsection (1).

664 (a) An osteopathic physician may not practice medicine in a
 665 pain-management clinic, as described in subsection (5)-(4), if
 666 the pain-management clinic is not registered with the department
 667 as required by this section. Any physician who qualifies to

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668 practice medicine in a pain-management clinic pursuant to rules
 669 adopted by the Board of Osteopathic Medicine as of July 1, 2012,
 670 may continue to practice medicine in a pain-management clinic as
 671 long as the physician continues to meet the qualifications set
 672 forth in the board rules. An osteopathic physician who violates
 673 this paragraph is subject to disciplinary action by his or her
 674 appropriate medical regulatory board.

675 (4)-(3) INSPECTION.—

676 (a) The department shall inspect the pain-management clinic
 677 annually, including a review of the patient records, to ensure
 678 that it complies with this section and the rules of the Board of
 679 Osteopathic Medicine adopted pursuant to subsection (5)-(4)
 680 unless the clinic is accredited by a nationally recognized
 681 accrediting agency approved by the Board of Osteopathic
 682 Medicine.

683 (5)-(4) RULEMAKING.—

684 (a) The department shall adopt rules necessary to
 685 administer the registration, exemption, and inspection of pain-
 686 management clinics which establish the specific requirements,
 687 procedures, forms, and fees.

688 Section 7. Section 465.0155, Florida Statutes, is amended
 689 to read:

690 465.0155 Standards of practice.—

691 (1) Consistent with the provisions of this act, the board
 692 shall adopt by rule standards of practice relating to the
 693 practice of pharmacy which shall be binding on every state
 694 agency and shall be applied by such agencies when enforcing or
 695 implementing any authority granted by any applicable statute,
 696 rule, or regulation, whether federal or state.

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697 (2) (a) Before dispensing a controlled substance to a person
 698 not known to the pharmacist, the pharmacist must require the
 699 person purchasing, receiving, or otherwise acquiring the
 700 controlled substance to present valid photographic
 701 identification or other verification of his or her identity. If
 702 the person does not have proper identification, the pharmacist
 703 may verify the validity of the prescription and the identity of
 704 the patient with the prescriber or his or her authorized agent.
 705 Verification of health plan eligibility through a real-time
 706 inquiry or adjudication system is considered to be proper
 707 identification.

708 (b) This subsection does not apply in an institutional
 709 setting or to a long-term care facility, including, but not
 710 limited to, an assisted living facility or a hospital to which
 711 patients are admitted.

712 (c) As used in this subsection, the term "proper
 713 identification" means an identification that is issued by a
 714 state or the Federal Government containing the person's
 715 photograph, printed name, and signature or a document considered
 716 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

717 Section 8. Paragraph (b) of subsection (1) of section
 718 465.0276, Florida Statutes, is amended, and paragraph (d) is
 719 added to subsection (2) of that section, to read:

720 465.0276 Dispensing practitioner.—

721 (1)

722 (b) A practitioner registered under this section may not
 723 dispense a controlled substance listed in Schedule II or
 724 Schedule III as provided in s. 893.03. This paragraph does not
 725 apply to:

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726 1. The dispensing of complimentary packages of medicinal
 727 drugs which are labeled as a drug sample or complimentary drug
 728 as defined in s. 499.028 to the practitioner's own patients in
 729 the regular course of her or his practice without the payment of
 730 a fee or remuneration of any kind, whether direct or indirect,
 731 as provided in subsection (4).

732 2. The dispensing of controlled substances in the health
 733 care system of the Department of Corrections.

734 3. The dispensing of a controlled substance listed in
 735 Schedule II or Schedule III in connection with the performance
 736 of a surgical procedure.

737 a. For a controlled substance listed in Schedule II, the
 738 amount dispensed pursuant to this subparagraph may not exceed a
 739 3-day supply unless the criteria in s. 456.44(5)(b) are met, in
 740 which case the amount dispensed may not exceed a 7-day supply.

741 b. For a controlled substance listed in Schedule III, the
 742 amount dispensed pursuant to ~~this~~ ~~the~~ subparagraph may not
 743 exceed a 14-day supply.

744 c. The exception in this subparagraph ~~exception~~ does not
 745 allow for the dispensing of a controlled substance listed in
 746 Schedule II or Schedule III more than 14 days after the
 747 performance of the surgical procedure.

748 d. For purposes of this subparagraph, the term "surgical
 749 procedure" means any procedure in any setting which involves, or
 750 reasonably should involve:

751 (I) ~~a-~~ Perioperative medication and sedation that allows the
 752 patient to tolerate unpleasant procedures while maintaining
 753 adequate cardiorespiratory function and the ability to respond
 754 purposefully to verbal or tactile stimulation and makes intra-

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755 and postoperative monitoring necessary; or

756 ~~(II)B-~~ The use of general anesthesia or major conduction
757 anesthesia and preoperative sedation.

758 4. The dispensing of a controlled substance listed in
759 Schedule II or Schedule III pursuant to an approved clinical
760 trial. For purposes of this subparagraph, the term "approved
761 clinical trial" means a clinical research study or clinical
762 investigation that, in whole or in part, is state or federally
763 funded or is conducted under an investigational new drug
764 application that is reviewed by the United States Food and Drug
765 Administration.

766 5. The dispensing of methadone in a facility licensed under
767 s. 397.427 where medication-assisted treatment for opiate
768 addiction is provided.

769 6. The dispensing of a controlled substance listed in
770 Schedule II or Schedule III to a patient of a facility licensed
771 under part IV of chapter 400.

772 7. The dispensing of controlled substances listed in
773 Schedule II or Schedule III which have been approved by the
774 United States Food and Drug Administration for the purpose of
775 treating opiate addiction including, but not limited to,
776 buprenorphine and buprenorphine combination products, by a
777 practitioner authorized under 21 U.S.C. 823, as amended, to the
778 practitioner's own patients for the medication-assisted
779 treatment of opiate addiction.

780 (2) A practitioner who dispenses medicinal drugs for human
781 consumption for fee or remuneration of any kind, whether direct
782 or indirect, must:

783 (d)1. Before dispensing a controlled substance to a person

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784 not known to the dispenser, require the person purchasing,
785 receiving, or otherwise acquiring the controlled substance to
786 present valid photographic identification or other verification
787 of his or her identity. If the person does not have proper
788 identification, the dispenser may verify the validity of the
789 prescription and the identity of the patient with the prescriber
790 or his or her authorized agent. Verification of health plan
791 eligibility through a real-time inquiry or adjudication system
792 is considered to be proper identification.

793 2. This paragraph does not apply in an institutional
794 setting or to a long-term care facility, including, but not
795 limited to, an assisted living facility or a hospital to which
796 patients are admitted.

797 3. As used in this paragraph, the term "proper
798 identification" means an identification that is issued by a
799 state or the Federal Government containing the person's
800 photograph, printed name, and signature or a document considered
801 acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

802 Section 9. Subsection (5) is added to section 627.42392,
803 Florida Statutes, to read:

804 627.42392 Prior authorization.—

805 (5) A health insurer may not require a prior authorization
806 process or step therapy procedure or impose any other conditions
807 on insureds as a prerequisite to receiving medication-assisted
808 treatment (MAT) services, as defined in s. 397.311, to treat
809 substance abuse disorders.

810 Section 10. Subsections (2), (3), (4), and (5) of section
811 893.03, Florida Statutes, are amended to read:

812 893.03 Standards and schedules.—The substances enumerated

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813 in this section are controlled by this chapter. The controlled
 814 substances listed or to be listed in Schedules I, II, III, IV,
 815 and V are included by whatever official, common, usual,
 816 chemical, trade name, or class designated. The provisions of
 817 this section shall not be construed to include within any of the
 818 schedules contained in this section any excluded drugs listed
 819 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
 820 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
 821 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
 822 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
 823 Anabolic Steroid Products."

824 (2) SCHEDULE II.—A substance in Schedule II has a high
 825 potential for abuse and has a currently accepted but severely
 826 restricted medical use in treatment in the United States, and
 827 abuse of the substance may lead to severe psychological or
 828 physical dependence. The following substances are controlled in
 829 Schedule II:

830 (a) Unless specifically excepted or unless listed in
 831 another schedule, any of the following substances, whether
 832 produced directly or indirectly by extraction from substances of
 833 vegetable origin or independently by means of chemical
 834 synthesis:

835 1. Opium and any salt, compound, derivative, or preparation
 836 of opium, except nalmeferone or isoquinoline alkaloids of opium,
 837 including, but not limited to the following:

- 838 a. Raw opium.
- 839 b. Opium extracts.
- 840 c. Opium fluid extracts.
- 841 d. Powdered opium.

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- 842 e. Granulated opium.
- 843 f. Tincture of opium.
- 844 g. Codeine.
- 845 h. Dihydroetorphine.
- 846 ~~i. h.~~ Ethylmorphine.
- 847 ~~j. i.~~ Etorphine hydrochloride.
- 848 k. j. Hydrocodone and hydrocodone combination products.
- 849 ~~l. k.~~ Hydromorphone.
- 850 ~~m. l.~~ Levo-alpha-acetylmethadol (also known as levo-alpha-
- 851 acetylmethadol, levomethadyl acetate, or LAAM).
- 852 ~~n. m.~~ Metopon (methylhydromorphinone).
- 853 ~~o. n.~~ Morphine.
- 854 p. Oripavine.
- 855 ~~q. o.~~ Oxycodone.
- 856 ~~r. p.~~ Oxymorphone.
- 857 ~~s. q.~~ Thebaine.
- 858 2. Any salt, compound, derivative, or preparation of a
- 859 substance which is chemically equivalent to or identical with
- 860 any of the substances referred to in subparagraph 1., except
- 861 that these substances shall not include the isoquinoline
- 862 alkaloids of opium.
- 863 3. Any part of the plant of the species *Papaver somniferum*,
- 864 L.
- 865 4. Cocaine or ecgonine, including any of their
- 866 stereoisomers, and any salt, compound, derivative, or
- 867 preparation of cocaine or ecgonine, except that these substances
- 868 shall not include ioflupane I 123.
- 869 (b) Unless specifically excepted or unless listed in
- 870 another schedule, any of the following substances, including

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871 their isomers, esters, ethers, salts, and salts of isomers,
 872 esters, and ethers, whenever the existence of such isomers,
 873 esters, ethers, and salts is possible within the specific
 874 chemical designation:

- 875 1. Alfentanil.
- 876 2. Alphaprodine.
- 877 3. Anileridine.
- 878 4. Bezitramide.
- 879 5. Bulk propoxyphene (nondosage forms).
- 880 6. Carfentanil.
- 881 7. Dihydrocodeine.
- 882 8. Diphenoxylate.
- 883 9. Fentanyl.
- 884 10. Isomethadone.
- 885 11. Levomethorphan.
- 886 12. Levorphanol.
- 887 13. Metazocine.
- 888 14. Methadone.
- 889 15. Methadone-Intermediate,4-cyano-2-
 890 dimethylamino-4,4-diphenylbutane.
- 891 16. Moramide-Intermediate,2-methyl-
 892 3-morpholino-1,1-diphenylpropane-carboxylic acid.
- 893 17. Nabilone.
- 894 18. Pethidine (meperidine).
- 895 19. Pethidine-Intermediate-A,4-cyano-1-
 896 methyl-4-phenylpiperidine.
- 897 20. Pethidine-Intermediate-B,ethyl-4-
 898 phenylpiperidine-4-carboxylate.
- 899 21. Pethidine-Intermediate-C,1-methyl-4- phenylpiperidine-

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900 4-carboxylic acid.

- 901 22. Phenazocine.
- 902 23. Phencyclidine.
- 903 24. 1-Phenylcyclohexylamine.
- 904 25. Piminodine.
- 905 26. 1-Piperidinocyclohexanecarbonitrile.
- 906 27. Racemethorphan.
- 907 28. Racemorphan.
- 908 29. Remifentanil.
- 909 ~~30.29.~~ Sufentanil.
- 910 31. Tapentadol.
- 911 32. Thiafentanil.

912 (c) Unless specifically excepted or unless listed in
 913 another schedule, any material, compound, mixture, or
 914 preparation which contains any quantity of the following
 915 substances, including their salts, isomers, optical isomers,
 916 salts of their isomers, and salts of their optical isomers:

- 917 1. Amobarbital.
- 918 2. Amphetamine.
- 919 3. Glutethimide.
- 920 4. Lisdexamfetamine.
- 921 ~~5.4.~~ Methamphetamine.
- 922 ~~6.5.~~ Methylphenidate.
- 923 ~~7.6.~~ Pentobarbital.
- 924 ~~8.7.~~ Phenmetrazine.
- 925 ~~9.8.~~ Phenylacetone.
- 926 ~~10.9.~~ Secobarbital.

927 (d) Dronabinol (synthetic THC) in oral solution in a drug
 928 product approved by the United States Food and Drug

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929 Administration.

930 (3) SCHEDULE III.—A substance in Schedule III has a
 931 potential for abuse less than the substances contained in
 932 Schedules I and II and has a currently accepted medical use in
 933 treatment in the United States, and abuse of the substance may
 934 lead to moderate or low physical dependence or high
 935 psychological dependence or, in the case of anabolic steroids,
 936 may lead to physical damage. The following substances are
 937 controlled in Schedule III:

938 (a) Unless specifically excepted or unless listed in
 939 another schedule, any material, compound, mixture, or
 940 preparation which contains any quantity of the following
 941 substances having a depressant or stimulant effect on the
 942 nervous system:

943 1. Any substance which contains any quantity of a
 944 derivative of barbituric acid, including thiobarbituric acid, or
 945 any salt of a derivative of barbituric acid or thiobarbituric
 946 acid, including, but not limited to, butalbital and
 947 butalbital.

948 2. Benzphetamine.

949 3. Buprenorphine.

950 ~~4.3-~~ Chlorhexadol.

951 ~~5.4-~~ Chlorphentermine.

952 ~~6.5-~~ Clortermine.

953 7. Embutramide.

954 ~~8.6-~~ Lysergic acid.

955 ~~9.7-~~ Lysergic acid amide.

956 ~~10.8-~~ Methyprylon.

957 11. Perampanel.

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958 ~~12.9-~~ Phendimetrazine.959 ~~13.10-~~ Sulfondiethylmethane.960 ~~14.11-~~ Sulfonethylmethane.961 ~~15.12-~~ Sulfonmethane.962 ~~16.13-~~ Tiletamine and zolazepam or any salt thereof.

963 (b) Nalorphine.

964 (c) Unless specifically excepted or unless listed in
 965 another schedule, any material, compound, mixture, or
 966 preparation containing limited quantities of any of the
 967 following controlled substances or any salts thereof:

968 1. Not more than 1.8 grams of codeine per 100 milliliters
 969 or not more than 90 milligrams per dosage unit, with an equal or
 970 greater quantity of an isoquinoline alkaloid of opium.

971 2. Not more than 1.8 grams of codeine per 100 milliliters
 972 or not more than 90 milligrams per dosage unit, with recognized
 973 therapeutic amounts of one or more active ingredients which are
 974 not controlled substances.

975 3. Not more than 300 milligrams of hydrocodone per 100
 976 milliliters or not more than 15 milligrams per dosage unit, with
 977 a fourfold or greater quantity of an isoquinoline alkaloid of
 978 opium.

979 4. Not more than 300 milligrams of hydrocodone per 100
 980 milliliters or not more than 15 milligrams per dosage unit, with
 981 recognized therapeutic amounts of one or more active ingredients
 982 that are not controlled substances.

983 5. Not more than 1.8 grams of dihydrocodeine per 100
 984 milliliters or not more than 90 milligrams per dosage unit, with
 985 recognized therapeutic amounts of one or more active ingredients
 986 which are not controlled substances.

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987 6. Not more than 300 milligrams of ethylmorphine per 100
 988 milliliters or not more than 15 milligrams per dosage unit, with
 989 one or more active, nonnarcotic ingredients in recognized
 990 therapeutic amounts.

991 7. Not more than 50 milligrams of morphine per 100
 992 milliliters or per 100 grams, with recognized therapeutic
 993 amounts of one or more active ingredients which are not
 994 controlled substances.

995
 996 For purposes of charging a person with a violation of s. 893.135
 997 involving any controlled substance described in subparagraph 3.
 998 or subparagraph 4., the controlled substance is a Schedule III
 999 controlled substance pursuant to this paragraph but the weight
 1000 of the controlled substance per milliliters or per dosage unit
 1001 is not relevant to the charging of a violation of s. 893.135.
 1002 The weight of the controlled substance shall be determined
 1003 pursuant to s. 893.135(6).

1004 (d) Anabolic steroids.

1005 1. The term "anabolic steroid" means any drug or hormonal
 1006 substance, chemically and pharmacologically related to
 1007 testosterone, other than estrogens, progestins, and
 1008 corticosteroids, that promotes muscle growth and includes:

- 1009 a. Androsterone.
- 1010 b. Androsterone acetate.
- 1011 c. Boldenone.
- 1012 d. Boldenone acetate.
- 1013 e. Boldenone benzoate.
- 1014 f. Boldenone undecylenate.
- 1015 g. Chlorotestosterone (Clostebol).

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- 1016 h. Dehydrochlormethyltestosterone.
- 1017 i. Dihydrotestosterone (Stanolone).
- 1018 j. Drostanolone.
- 1019 k. Ethylestrenol.
- 1020 l. Fluoxymesterone.
- 1021 m. Formebolone (Formebolone).
- 1022 n. Mesterolone.
- 1023 o. Methandrostenolone (Methandienone).
- 1024 p. Methandranone.
- 1025 q. Methandriol.
- 1026 r. Methenolone.
- 1027 s. Methyltestosterone.
- 1028 t. Mibolerone.
- 1029 u. Nortestosterone (Nandrolone).
- 1030 v. Norethandrolone.
- 1031 w. Nortestosterone decanoate.
- 1032 x. Nortestosterone phenylpropionate.
- 1033 y. Nortestosterone propionate.
- 1034 z. Oxandrolone.
- 1035 aa. Oxymesterone.
- 1036 bb. Oxymetholone.
- 1037 cc. Stanozolol.
- 1038 dd. Testolactone.
- 1039 ee. Testosterone.
- 1040 ff. Testosterone acetate.
- 1041 gg. Testosterone benzoate.
- 1042 hh. Testosterone cypionate.
- 1043 ii. Testosterone decanoate.
- 1044 jj. Testosterone enanthate.

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1045 kk. Testosterone isocaproate.
 1046 ll. Testosterone oleate.
 1047 mm. Testosterone phenylpropionate.
 1048 nn. Testosterone propionate.
 1049 oo. Testosterone undecanoate.
 1050 pp. Trenbolone.
 1051 qq. Trenbolone acetate.
 1052 rr. Any salt, ester, or isomer of a drug or substance
 1053 described or listed in this subparagraph if that salt, ester, or
 1054 isomer promotes muscle growth.

1055 2. The term does not include an anabolic steroid that is
 1056 expressly intended for administration through implants to cattle
 1057 or other nonhuman species and that has been approved by the
 1058 United States Secretary of Health and Human Services for such
 1059 administration. However, any person who prescribes, dispenses,
 1060 or distributes such a steroid for human use is considered to
 1061 have prescribed, dispensed, or distributed an anabolic steroid
 1062 within the meaning of this paragraph.

1063 (e) Ketamine, including any isomers, esters, ethers, salts,
 1064 and salts of isomers, esters, and ethers, whenever the existence
 1065 of such isomers, esters, ethers, and salts is possible within
 1066 the specific chemical designation.

1067 (f) Dronabinol (synthetic THC) in sesame oil and
 1068 encapsulated in a soft gelatin capsule in a drug product
 1069 approved by the United States Food and Drug Administration.

1070 (g) Any drug product containing gamma-hydroxybutyric acid,
 1071 including its salts, isomers, and salts of isomers, for which an
 1072 application is approved under s. 505 of the Federal Food, Drug,
 1073 and Cosmetic Act.

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1074 (4) (a) SCHEDULE IV.—A substance in Schedule IV has a low
 1075 potential for abuse relative to the substances in Schedule III
 1076 and has a currently accepted medical use in treatment in the
 1077 United States, and abuse of the substance may lead to limited
 1078 physical or psychological dependence relative to the substances
 1079 in Schedule III.

1080 (b) Unless specifically excepted or unless listed in
 1081 another schedule, any material, compound, mixture, or
 1082 preparation which contains any quantity of the following
 1083 substances, including its salts, isomers, and salts of isomers
 1084 whenever the existence of such salts, isomers, and salts of
 1085 isomers is possible within the specific chemical designation,
 1086 are controlled in Schedule IV:

1087 1. Alfaxalone.
 1088 2. ~~(a)~~ Alprazolam.
 1089 3. ~~(b)~~ Barbital.
 1090 4. ~~(c)~~ Bromazepam.
 1091 5. ~~(iii)~~ Butorphanol tartrate.
 1092 6. ~~(d)~~ Camazepam.
 1093 7. ~~(jjj)~~ Carisoprodol.
 1094 8. ~~(e)~~ Cathine.
 1095 9. ~~(f)~~ Chloral betaine.
 1096 10. ~~(g)~~ Chloral hydrate.
 1097 11. ~~(h)~~ Chlordiazepoxide.
 1098 12. ~~(i)~~ Clobazam.
 1099 13. ~~(j)~~ Clonazepam.
 1100 14. ~~(k)~~ Clorazepate.
 1101 15. ~~(l)~~ Clotiazepam.
 1102 16. ~~(m)~~ Clozapolam.

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1103 17. Dexfenfluramine.
 1104 ~~18.(n)~~ Delorazepam.
 1105 19. Dichloralphenazone.
 1106 ~~20.(p)~~ Diazepam.
 1107 ~~21.(q)~~ Diethylpropion.
 1108 22. Eluxadoline.
 1109 ~~23.(r)~~ Estazolam.
 1110 24. Eszopiclone.
 1111 ~~25.(s)~~ Ethchlorvynol.
 1112 ~~26.(t)~~ Ethinamate.
 1113 27.(u) Ethyl loflazepate.
 1114 ~~28.(v)~~ Fencamfamin.
 1115 ~~29.(w)~~ Fenfluramine.
 1116 ~~30.(x)~~ Fenproporex.
 1117 31.(y) Fludiazepam.
 1118 ~~32.(z)~~ Flurazepam.
 1119 33. Fospropofol.
 1120 ~~34.(aa)~~ Halazepam.
 1121 ~~35.(bb)~~ Haloxazolam.
 1122 ~~36.(cc)~~ Ketazolam.
 1123 ~~37.(dd)~~ Loprazolam.
 1124 ~~38.(ee)~~ Lorazepam.
 1125 39. Lorcaserin.
 1126 ~~40.(ff)~~ Lormetazepam.
 1127 ~~41.(gg)~~ Mazindol.
 1128 ~~42.(hh)~~ Mebutamate.
 1129 ~~43.(ii)~~ Medazepam.
 1130 ~~44.(jj)~~ Mefenorex.
 1131 ~~45.(kk)~~ Meprobamate.

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1132 ~~46.(ll)~~ Methohexital.
 1133 ~~47.(mm)~~ Methylphenobarbital.
 1134 ~~48.(nn)~~ Midazolam.
 1135 49. Modafinil.
 1136 ~~50.(oo)~~ Nimetazepam.
 1137 ~~51.(pp)~~ Nitrazepam.
 1138 ~~52.(qq)~~ Nordiazepam.
 1139 ~~53.(rr)~~ Oxazepam.
 1140 ~~54.(ss)~~ Oxazolam.
 1141 ~~55.(tt)~~ Paraldehyde.
 1142 ~~56.(uu)~~ Pemoline.
 1143 ~~57.(vv)~~ Pentazocine.
 1144 58. Petrichloral.
 1145 ~~59.(ww)~~ Phenobarbital.
 1146 ~~60.(xx)~~ Phentermine.
 1147 61.(yy) Pinazepam.
 1148 ~~62.(zz)~~ Pipradrol.
 1149 ~~63.(aaa)~~ Prazepam.
 1150 64.(e) Propoxyphene (dosage forms).
 1151 ~~65.(bbb)~~ Propylhexedrine, excluding any patent or
 1152 proprietary preparation containing propylhexedrine, unless
 1153 otherwise provided by federal law.
 1154 ~~66.(ccc)~~ Quazepam.
 1155 67. Sibutramine.
 1156 ~~68.(eee)~~ SPA[(-)-1 dimethylamino-1, 2
 1157 diphenylethane].
 1158 69. Suvorexant.
 1159 ~~70.(fff)~~ Temazepam.
 1160 ~~71.(ddd)~~ Tetrazepam.

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1161 72. Tramadol.
 1162 ~~73. (ggg)~~ Triazolam.
 1163 74. Zaleplon.
 1164 75. Zolpidem.
 1165 76. Zopiclone.
 1166 ~~77. (hhh)~~ Not more than 1 milligram of difenoxin and not
 1167 less than 25 micrograms of atropine sulfate per dosage unit.
 1168 (5) SCHEDULE V.—A substance, compound, mixture, or
 1169 preparation of a substance in Schedule V has a low potential for
 1170 abuse relative to the substances in Schedule IV and has a
 1171 currently accepted medical use in treatment in the United
 1172 States, and abuse of such compound, mixture, or preparation may
 1173 lead to limited physical or psychological dependence relative to
 1174 the substances in Schedule IV.
 1175 (a) Substances controlled in Schedule V include any
 1176 compound, mixture, or preparation containing any of the
 1177 following limited quantities of controlled substances, which
 1178 ~~must shall~~ include one or more active medicinal ingredients that
 1179 ~~which~~ are not controlled substances in sufficient proportion to
 1180 confer upon the compound, mixture, or preparation valuable
 1181 medicinal qualities other than those possessed by the controlled
 1182 substance alone:
 1183 1. Not more than 200 milligrams of codeine per 100
 1184 milliliters or per 100 grams.
 1185 2. Not more than 100 milligrams of dihydrocodeine per 100
 1186 milliliters or per 100 grams.
 1187 3. Not more than 100 milligrams of ethylmorphine per 100
 1188 milliliters or per 100 grams.
 1189 4. Not more than 2.5 milligrams of diphenoxylate and not

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1190 less than 25 micrograms of atropine sulfate per dosage unit.
 1191 5. Not more than 100 milligrams of opium per 100
 1192 milliliters or per 100 grams.
 1193 6. Not more than 0.5 milligrams of difenoxin and not less
 1194 than 25 micrograms of atropine sulfate per dosage unit.
 1195 (b) Unless a specific exception exists or unless listed in
 1196 another schedule, any material, compound, mixture, or
 1197 preparation that contains any quantity of the following
 1198 substances is controlled in Schedule V:
 1199 1. Brivaracetam.
 1200 2. Ezogabine.
 1201 3. Lacosamide.
 1202 4. Pregabalin Narcotic drugs. ~~Unless specifically excepted~~
 1203 ~~or unless listed in another schedule, any material, compound,~~
 1204 ~~mixture, or preparation containing any of the following narcotic~~
 1205 ~~drugs and their salts: Buprenorphine.~~
 1206 (c) Stimulants. Unless specifically excepted or unless
 1207 listed in another schedule, any material, compound, mixture, or
 1208 preparation which contains any quantity of the following
 1209 substances having a stimulant effect on the central nervous
 1210 system, including its salts, isomers, and salts of isomers:
 1211 Pyrovalerone.
 1212 Section 11. Section 893.055, Florida Statutes, is amended
 1213 to read:
 1214 (Substantial rewording of section. See
 1215 s. 893.055, F.S., for present text.)
 1216 893.055 Prescription drug monitoring program.—
 1217 (1) As used in this section, the term:
 1218 (a) "Active investigation" means an investigation that is

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1219 being conducted with a reasonable, good faith belief that it
 1220 could lead to the filing of administrative, civil, or criminal
 1221 proceedings, or that is ongoing and continuing and for which
 1222 there is a reasonable, good faith anticipation of securing an
 1223 arrest or prosecution in the foreseeable future.

1224 (b) "Administration" means the obtaining and giving of a
 1225 single dose of a controlled substance by a legally authorized
 1226 person to a patient for her or his consumption.

1227 (c) "Controlled substance" means a controlled substance
 1228 listed in Schedule II, Schedule III, Schedule IV, or Schedule V
 1229 of s. 893.03 or 21 U.S.C. s. 812.

1230 (d) "Dispense" means the transfer of possession of one or
 1231 more doses of a controlled substance by a dispenser to the
 1232 ultimate consumer or to his or her agent.

1233 (e) "Dispenser" means a dispensing health care
 1234 practitioner, pharmacy, or pharmacist licensed to dispense
 1235 controlled substances in or into this state.

1236 (f) "Health care practitioner" or "practitioner" means any
 1237 practitioner licensed under chapter 458, chapter 459, chapter
 1238 461, chapter 463, chapter 464, chapter 465, or chapter 466.

1239 (g) "Health care regulatory board" has the same meaning as
 1240 s. 456.001(1).

1241 (h) "Law enforcement agency" means the Department of Law
 1242 Enforcement, a sheriff's office in this state, a police
 1243 department in this state, or a law enforcement agency of the
 1244 Federal Government which enforces the laws of this state or the
 1245 United States relating to controlled substances and whose agents
 1246 and officers are empowered by law to conduct criminal
 1247 investigations and make arrests.

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1248 (i) "Pharmacy" includes a community pharmacy, an
 1249 institutional pharmacy, a nuclear pharmacy, a special pharmacy,
 1250 or an Internet pharmacy that is licensed by the department under
 1251 chapter 465 and that dispenses or delivers controlled substances
 1252 to an individual or address in this state.

1253 (j) "Prescriber" means a prescribing physician, prescribing
 1254 practitioner, or other prescribing health care practitioner
 1255 authorized by the laws of this state to order controlled
 1256 substances.

1257 (k) "Program manager" means an employee of or a person
 1258 contracted by the department who is designated to ensure the
 1259 integrity of the prescription drug monitoring program in
 1260 accordance with the requirements established in this section.

1261 (2) (a) The department shall maintain an electronic system
 1262 to collect and store controlled substance dispensing information
 1263 and shall release the information as authorized in this section
 1264 and s. 893.0551. The electronic system must:

1265 1. Not infringe upon the legitimate prescribing or
 1266 dispensing of a controlled substance by a prescriber or
 1267 dispenser acting in good faith and in the course of professional
 1268 practice.

1269 2. Be consistent with standards of the American Society for
 1270 Automation in Pharmacy.

1271 3. Comply with the Health Insurance Portability and
 1272 Accountability Act as it pertains to protected health
 1273 information, electronic protected health information, and all
 1274 other relevant state and federal privacy and security laws and
 1275 regulations.

1276 (b) The department may collaborate with professional health

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1277 care regulatory boards, appropriate organizations, and other
 1278 state agencies to identify indicators of controlled substance
 1279 abuse.

1280 (3) For each controlled substance dispensed to a patient in
 1281 the state, the following information must be reported by the
 1282 dispenser to the system as soon thereafter as possible but no
 1283 later than the close of the next business day after the day the
 1284 controlled substance is dispensed unless an extension or
 1285 exemption is approved by the department:

1286 (a) The name of the prescribing practitioner, the
 1287 practitioner's federal Drug Enforcement Administration
 1288 registration number, the practitioner's National Provider
 1289 Identification (NPI) or other appropriate identifier, and the
 1290 date of the prescription.

1291 (b) The date the prescription was filled and the method of
 1292 payment, such as cash by an individual, insurance coverage
 1293 through a third party, or Medicaid payment. This paragraph does
 1294 not authorize the department to include individual credit card
 1295 numbers or other account numbers in the system.

1296 (c) The full name, address, telephone number, and date of
 1297 birth of the person for whom the prescription was written.

1298 (d) The name, national drug code, quantity, and strength of
 1299 the controlled substance dispensed.

1300 (e) The full name, federal Drug Enforcement Administration
 1301 registration number, State of Florida Department of Health
 1302 issued pharmacy permit number, and address of the pharmacy or
 1303 other location from which the controlled substance was
 1304 dispensed. If the controlled substance was dispensed by a
 1305 practitioner other than a pharmacist, the practitioner's full

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1306 name, address, federal Drug Enforcement Administration
 1307 registration number, State of Florida Department of Health
 1308 issued license number, and National Provider Identification
 1309 (NPI).

1310 (f) Whether the drug was dispensed as an initial
 1311 prescription or a refill, and the number of refills ordered.

1312 (g) The name of the individual picking up the controlled
 1313 substance prescription and type and issuer of the identification
 1314 provided.

1315 (h) Other appropriate identifying information as determined
 1316 by department rule.

1317

1318 All acts of administration of controlled substances are exempt
 1319 from the reporting requirements of this subsection.

1320 (4) The following must be provided direct access to
 1321 information in the system:

1322 (a) A prescriber or dispenser or his or her designee.

1323 (b) An employee of the United States Department of Veterans
 1324 Affairs, United States Department of Defense, or the Indian
 1325 Health Service who provides health care services pursuant to
 1326 such employment and who has the authority to prescribe
 1327 controlled substances shall have access to the information in
 1328 the program's system upon verification of employment.

1329 (c) The program manager or designated program and support
 1330 staff may have access to administer the system.

1331 1. In order to calculate performance measures pursuant to
 1332 subsection (14), the program manager or program and support
 1333 staff members who have been directed by the program manager to
 1334 calculate performance measures may have direct access to

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1335 information that contains no identifying information of any
 1336 patient, physician, health care practitioner, prescriber, or
 1337 dispenser.

1338 2. The program manager or designated program and support
 1339 staff must provide the department, upon request, data that does
 1340 not contain patient, physician, health care practitioner,
 1341 prescriber, or dispenser identifying information for public
 1342 health care and safety initiatives purposes.

1343 3. The program manager, upon determining a pattern
 1344 consistent with the department's rules established under
 1345 subsection (16), may provide relevant information to the
 1346 prescriber and dispenser.

1347 4. The program manager, upon determining a pattern
 1348 consistent with the rules established under subsection (16) and
 1349 having cause to believe a violation of s. 893.13(7)(a)8.,
 1350 (8)(a), or (8)(b) has occurred, may provide relevant information
 1351 to the applicable law enforcement agency.

1352

1353 The program manager and designated program and support staff
 1354 must complete a level II background screening.

1355 (5) The following entities may not directly access
 1356 information in the system, but may request information from the
 1357 program manager or designated program and support staff:

1358 (a) The department and its health care regulatory boards,
 1359 as appropriate, for investigations involving licensees
 1360 authorized to prescribe or dispense controlled substances.

1361 (b) The Attorney General for Medicaid fraud cases involving
 1362 prescribed controlled substances.

1363 (c) A law enforcement agency during active investigations

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1364 of potential criminal activity, fraud, or theft regarding
 1365 prescribed controlled substances.

1366 (d) A medical examiner when conducting an authorized
 1367 investigation under s. 406.11, to determine the cause of death
 1368 of an individual.

1369 (e) An impaired practitioner consultant who is retained by
 1370 the department under s. 456.076 to review the system information
 1371 of an impaired practitioner program participant or a referral
 1372 who has agreed to be evaluated or monitored through the program
 1373 and who has separately agreed in writing to the consultant's
 1374 access to and review of such information.

1375 (f) A patient or the legal guardian or designated health
 1376 care surrogate of an incapacitated patient who submits a written
 1377 and notarized request that includes the patient's full name,
 1378 address, phone number, date of birth, and a copy of a
 1379 government-issued photo identification.

1380 (6) The department may enter into a reciprocal agreement or
 1381 contract to share prescription drug monitoring information with
 1382 another state, district, or territory if the prescription drug
 1383 monitoring programs of other states, districts, or territories
 1384 are compatible with the Florida program.

1385 (a) In determining compatibility, the department shall
 1386 consider:

1387 1. The safeguards for privacy of patient records and the
 1388 success of the program in protecting patient privacy.

1389 2. The persons authorized to view the data collected by the
 1390 program. Comparable entities and licensed health care
 1391 practitioners in other states, districts, or territories of the
 1392 United States, law enforcement agencies, the Attorney General's

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1393 Medicaid Fraud Control Unit, medical regulatory boards, and, as
 1394 needed, management staff that have similar duties as management
 1395 staff who work with the prescription drug monitoring program as
 1396 authorized in s. 893.0551 are authorized access upon approval by
 1397 the department.

1398 3. The schedules of the controlled substances that are
 1399 monitored by the program.

1400 4. The data reported to or included in the program's
 1401 system.

1402 5. Any implementing criteria deemed essential for a
 1403 thorough comparison.

1404 6. The costs and benefits to the state of sharing
 1405 prescription information.

1406 (b) The department shall assess the prescription drug
 1407 monitoring program's continued compatibility with the other
 1408 state's, district's, or territory's program every 4 years.

1409 (c) Any agreement or contract for sharing of prescription
 1410 drug monitoring information between the department and another
 1411 state, district, or territory shall contain the same
 1412 restrictions and requirements as this section or s. 893.0551,
 1413 and the information must be provided according to the
 1414 department's determination of compatibility.

1415 (7) The department may enter into agreements or contracts
 1416 to establish secure connections between the system and a
 1417 prescribing or dispensing health care practitioner's electronic
 1418 health recordkeeping system. The electronic health recordkeeping
 1419 system owner or license holder will be responsible for ensuring
 1420 that only authorized individuals have access to prescription
 1421 drug monitoring program information.

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1422 (8) A prescriber or dispenser or a designee of a prescriber
 1423 or dispenser must consult the system to review a patient's
 1424 controlled substance dispensing history before prescribing or
 1425 dispensing a controlled substance.

1426 (a) The duty to consult the system does not apply to a
 1427 prescriber or dispenser or designee of a prescriber or dispenser
 1428 if the system is not operational, as determined by the
 1429 department, or when it cannot be accessed by a health care
 1430 practitioner because of a temporary technological or electrical
 1431 failure.

1432 (b) A prescriber or dispenser or designee of a prescriber
 1433 or dispenser who does not consult the system under this
 1434 subsection shall document the reason he or she did not consult
 1435 the system in the patient's medical record or prescription
 1436 record, and shall not prescribe or dispense greater than a 3-day
 1437 supply of a controlled substance to the patient.

1438 (c) The department shall issue a citation pursuant to the
 1439 procedure in s. 456.077 to any prescriber or dispenser who fails
 1440 to consult the system as required by this subsection.

1441 (9) A person who willfully and knowingly fails to report
 1442 the dispensing of a controlled substance as required by this
 1443 section commits a misdemeanor of the first degree, punishable as
 1444 provided in s. 775.082 or s. 775.083.

1445 (10) Information in the prescription drug monitoring
 1446 program's system may be released only as provided in this
 1447 section and s. 893.0551. The content of the system is intended
 1448 to be informational only. Information in the system is not
 1449 subject to discovery or introduction into evidence in any civil
 1450 or administrative action against a prescriber, dispenser,

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1451 pharmacy, or patient arising out of matters that are the subject
 1452 of information in the system. The program manager and authorized
 1453 persons who participate in preparing, reviewing, issuing, or any
 1454 other activity related to management of the system may not be
 1455 permitted or required to testify in any such civil or
 1456 administrative action as to any findings, recommendations,
 1457 evaluations, opinions, or other actions taken in connection with
 1458 management of the system.

1459 (11) A prescriber or dispenser, or his or her designee, may
 1460 have access to the information under this section which relates
 1461 to a patient of that prescriber or dispenser as needed for the
 1462 purpose of reviewing the patient's controlled drug prescription
 1463 history. A prescriber or dispenser acting in good faith is
 1464 immune from any civil, criminal, or administrative liability
 1465 that might otherwise be incurred or imposed for receiving or
 1466 using information from the prescription drug monitoring program.
 1467 This subsection does not create a private cause of action, and a
 1468 person may not recover damages against a prescriber or dispenser
 1469 authorized to access information under this subsection for
 1470 accessing or failing to access such information.

1471 (12) (a) All costs incurred by the department in
 1472 administering the prescription drug monitoring program shall be
 1473 funded through federal grants, private funding applied for or
 1474 received by the state, or state funds appropriated in the
 1475 General Appropriations Act. The department may not:

1476 1. Commit funds for the monitoring program without ensuring
 1477 funding is available; or

1478 2. Use funds provided, directly or indirectly by
 1479 prescription drug manufacturers to implement the program.

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1480 (b) The department shall cooperate with the direct-support
 1481 organization established under subsection (15) in seeking
 1482 federal grant funds, other nonstate grant funds, gifts,
 1483 donations, or other private moneys for the department if the
 1484 costs of doing so are immaterial. Immaterial costs include, but
 1485 are not limited to, the costs of mailing and personnel assigned
 1486 to research or apply for a grant. The department may
 1487 competitively procure and contract pursuant to s. 287.057 for
 1488 any goods and services required by this section.

1489 (13) The department shall conduct or participate in studies
 1490 to examine the feasibility of enhancing the prescription drug
 1491 monitoring program for the purposes of public health initiatives
 1492 and statistical reporting. Such studies shall respect the
 1493 privacy of the patient, the prescriber, and the dispenser. Such
 1494 studies may be conducted by the department or a contracted
 1495 vendor in order to:

1496 (a) Improve the quality of health care services and safety
 1497 by improving prescribing and dispensing practices for controlled
 1498 substances;

1499 (b) Take advantage of advances in technology;

1500 (c) Reduce duplicative prescriptions and the
 1501 overprescribing of controlled substances; and

1502 (d) Reduce drug abuse.

1503 (14) The department shall annually report on performance
 1504 measures to the Governor, the President of the Senate, and the
 1505 Speaker of the House of Representatives by December 1.
 1506 Performance measures may include, but are not limited to, the
 1507 following outcomes:

1508 (a) Reduction of the rate of inappropriate use of

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1509 controlled substances through department education and safety
1510 efforts.

1511 (b) Reduction of the quantity of controlled substances
1512 obtained by individuals attempting to engage in fraud and
1513 deceit.

1514 (c) Increased coordination among partners participating in
1515 the prescription drug monitoring program.

1516 (d) Involvement of stakeholders in achieving improved
1517 patient health care and safety and reduction of controlled
1518 substance abuse and controlled substance diversion.

1519 (15) The department may establish a direct-support
1520 organization to provide assistance, funding, and promotional
1521 support for the activities authorized for the prescription drug
1522 monitoring program.

1523 (a) As used in this subsection, the term "direct-support
1524 organization" means an organization that is:

1525 1. A Florida corporation not for profit incorporated under
1526 chapter 617, exempted from filing fees, and approved by the
1527 Department of State.

1528 2. Organized and operated to conduct programs and
1529 activities; raise funds; request and receive grants, gifts, and
1530 bequests of money; acquire, receive, hold, and invest, in its
1531 own name, securities, funds, objects of value, or other
1532 property, either real or personal; and make expenditures or
1533 provide funding to or for the direct or indirect benefit of the
1534 department in the furtherance of the prescription drug
1535 monitoring program.

1536 (b) The State Surgeon General shall appoint a board of
1537 directors for the direct-support organization.

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1538 1. The board of directors shall consist of no fewer than
1539 five members who shall serve at the pleasure of the State
1540 Surgeon General.

1541 2. The State Surgeon General shall provide guidance to
1542 members of the board to ensure that moneys received by the
1543 direct-support organization are not received from inappropriate
1544 sources. Inappropriate sources include, but are not limited to,
1545 donors, grantors, persons, prescription drug manufacturers, or
1546 organizations that may monetarily or substantively benefit from
1547 the purchase of goods or services by the department in
1548 furtherance of the prescription drug monitoring program.

1549 (c) The direct-support organization shall operate under
1550 written contract with the department. The contract must, at a
1551 minimum, provide for:

1552 1. Approval of the articles of incorporation and bylaws of
1553 the direct-support organization by the department.

1554 2. Submission of an annual budget for the approval of the
1555 department.

1556 3. The reversion, without penalty, to the department's
1557 grants and donations trust fund for the administration of the
1558 prescription drug monitoring program of all moneys and property
1559 held in trust by the direct-support organization for the benefit
1560 of the prescription drug monitoring program if the direct-
1561 support organization ceases to exist or if the contract is
1562 terminated.

1563 4. The fiscal year of the direct-support organization,
1564 which must begin July 1 of each year and end June 30 of the
1565 following year.

1566 5. The disclosure of the material provisions of the

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1567 contract to donors of gifts, contributions, or bequests,
 1568 including such disclosure on all promotional and fundraising
 1569 publications, and an explanation to such donors of the
 1570 distinction between the department and the direct-support
 1571 organization.

1572 6. The direct-support organization's collecting, expending,
 1573 and providing of funds to the department for the development,
 1574 implementation, and operation of the prescription drug
 1575 monitoring program as described in this section. The direct-
 1576 support organization may collect and expend funds to be used for
 1577 the functions of the direct-support organization's board of
 1578 directors, as necessary and approved by the department. In
 1579 addition, the direct-support organization may collect and
 1580 provide funding to the department in furtherance of the
 1581 prescription drug monitoring program by:

1582 a. Establishing and administering the prescription drug
 1583 monitoring program's electronic system, including hardware and
 1584 software.

1585 b. Conducting studies on the efficiency and effectiveness
 1586 of the program to include feasibility studies as described in
 1587 subsection (13).

1588 c. Providing funds for future enhancements of the program
 1589 within the intent of this section.

1590 d. Providing user training of the prescription drug
 1591 monitoring program, including distribution of materials to
 1592 promote public awareness and education and conducting workshops
 1593 or other meetings, for health care practitioners, pharmacists,
 1594 and others as appropriate.

1595 e. Providing funds for travel expenses.

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1596 f. Providing funds for administrative costs, including
 1597 personnel, audits, facilities, and equipment.

1598 g. Fulfilling all other requirements necessary to implement
 1599 and operate the program as outlined in this section.

1600 7. Certification by the department that the direct-support
 1601 organization is complying with the terms of the contract in a
 1602 manner consistent with and in furtherance of the goals and
 1603 purposes of the prescription drug monitoring program and in the
 1604 best interests of the state. Such certification must be made
 1605 annually and reported in the official minutes of a meeting of
 1606 the direct-support organization.

1607 (d) The activities of the direct-support organization must
 1608 be consistent with the goals and mission of the department, as
 1609 determined by the department, and in the best interests of the
 1610 state. The direct-support organization must obtain written
 1611 approval from the department for any activities in support of
 1612 the prescription drug monitoring program before undertaking
 1613 those activities.

1614 (e) The direct-support organization shall provide for an
 1615 independent annual financial audit in accordance with s.
 1616 215.981. Copies of the audit shall be provided to the department
 1617 and the Office of Policy and Budget in the Executive Office of
 1618 the Governor.

1619 (f) The direct-support organization may not exercise any
 1620 power under s. 617.0302(12) or (16).

1621 (g) The direct-support organization is not considered a
 1622 lobbying firm within the meaning of s. 11.045.

1623 (h) The department may permit, without charge, appropriate
 1624 use of administrative services, property, and facilities of the

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1625 department by the direct-support organization, subject to this
 1626 section. The use must be directly in keeping with the approved
 1627 purposes of the direct-support organization and may not be made
 1628 at times or places that would unreasonably interfere with
 1629 opportunities for the public to use such facilities for
 1630 established purposes. Any moneys received from rentals of
 1631 facilities and properties managed by the department may be held
 1632 in a separate depository account in the name of the direct-
 1633 support organization and subject to the provisions of the letter
 1634 of agreement with the department. The letter of agreement must
 1635 provide that any funds held in the separate depository account
 1636 in the name of the direct-support organization must revert to
 1637 the department if the direct-support organization is no longer
 1638 approved by the department to operate in the best interests of
 1639 the state.

1640 (i) The department may adopt rules under s. 120.54 to
 1641 govern the use of administrative services, property, or
 1642 facilities of the department or office by the direct-support
 1643 organization.

1644 (j) The department may not permit the use of any
 1645 administrative services, property, or facilities of the state by
 1646 a direct-support organization if that organization does not
 1647 provide equal membership and employment opportunities to all
 1648 persons regardless of race, color, religion, gender, age, or
 1649 national origin.

1650 (k) This subsection is repealed October 1, 2027, unless
 1651 reviewed and saved from repeal by the Legislature.

1652 (16) The department shall adopt rules necessary to
 1653 implement this section.

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1654 Section 12. Section 893.0551, Florida Statutes, is amended
 1655 to read:

1656 893.0551 Public records exemption for the prescription drug
 1657 monitoring program.—

1658 (1) For purposes of this section, the terms used in this
 1659 section have the same meanings as provided in s. 893.055.

1660 (2) The following information of a patient or patient's
 1661 agent, a health care practitioner, a dispenser, an employee of
 1662 the practitioner who is acting on behalf of and at the direction
 1663 of the practitioner, a pharmacist, or a pharmacy that is
 1664 contained in records held by the department under s. 893.055 is
 1665 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 1666 of the State Constitution:

1667 (a) Name.

1668 (b) Address.

1669 (c) Telephone number.

1670 (d) Insurance plan number.

1671 (e) Government-issued identification number.

1672 (f) Provider number.

1673 (g) Drug Enforcement Administration number.

1674 (h) Any other unique identifying information or number.

1675 (3) The department shall disclose such ~~confidential and~~
 1676 ~~exempt~~ information to the following persons or entities upon
 1677 request and after using a verification process to ensure the
 1678 legitimacy of the request as provided in s. 893.055:

1679 (a) A health care practitioner, or his or her designee, who
 1680 certifies that the information is necessary to provide medical
 1681 treatment to a current patient in accordance with ss. 893.05 and
 1682 893.055.

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1683 (b) A qualified physician, to review a patient's controlled
 1684 drug prescription history before issuing a physician
 1685 certification pursuant to s. 381.986.

1686 (c) An employee of the United States Department of Veterans
 1687 Affairs, United States Department of Defense, or the Indian
 1688 Health Service who provides health care services pursuant to
 1689 such employment and who has the authority to prescribe
 1690 controlled substances shall have access to the information in
 1691 the program's system upon verification of such employment.

1692 (d) The program manager and designated support staff for
 1693 administration of the program, and to provide relevant
 1694 information to the prescriber, dispenser, and appropriate law
 1695 enforcement agencies, in accordance with s. 893.055.

1696 (e) The department for investigations involving licensees
 1697 authorized to prescribe or dispense controlled substances. The
 1698 department may request information from the program but may not
 1699 have direct access to its system. The department may provide to
 1700 a law enforcement agency pursuant to ss. 456.066 and 456.073
 1701 only information that is relevant to the specific controlled
 1702 substances investigation that prompted the request for the
 1703 information.

1704 (f)(a) The Attorney General or his or her designee when
 1705 working on Medicaid fraud cases involving prescribed controlled
 1706 substances ~~prescription drugs~~ or when the Attorney General has
 1707 initiated a review of specific identifiers of Medicaid fraud or
 1708 specific identifiers that warrant a Medicaid investigation
 1709 regarding prescribed controlled substances ~~prescription drugs~~.
 1710 The Attorney General's Medicaid fraud investigators may not have
 1711 direct access to the department's system database. The Attorney

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1712 General or his or her designee may disclose to a criminal
 1713 justice agency, as defined in s. 119.011, only the ~~confidential~~
 1714 ~~and exempt~~ information received from the department that is
 1715 relevant to an identified active investigation that prompted the
 1716 request for the information.

1717 (g)(b) The department's relevant health care regulatory
 1718 boards responsible for the licensure, regulation, or discipline
 1719 of a practitioner, pharmacist, or other person who is authorized
 1720 to prescribe, administer, or dispense controlled substances and
 1721 who is involved in a specific controlled substances
 1722 investigation for prescription drugs involving a designated
 1723 person. The health care regulatory boards may request
 1724 information from the department but may not have direct access
 1725 to its database. The health care regulatory boards may provide
 1726 to a law enforcement agency pursuant to ss. 456.066 and 456.073
 1727 only information that is relevant to the specific controlled
 1728 substances investigation that prompted the request for the
 1729 information.

1730 (h)(e) A law enforcement agency that has initiated an
 1731 active investigation involving a specific violation of law
 1732 regarding prescription drug abuse or diversion of prescribed
 1733 controlled substances and that has entered into a user agreement
 1734 with the department. A law enforcement agency may request
 1735 information from the department but may not have direct access
 1736 to its ~~system database~~. The law enforcement agency may disclose
 1737 to a criminal justice agency, as defined in s. 119.011, only
 1738 ~~confidential and exempt~~ information received from the department
 1739 that is relevant to an identified active investigation that
 1740 prompted the request for such information.

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1741 (i) A district medical examiner or associate medical
 1742 examiner, as described in s. 406.06, pursuant to his or her
 1743 official duties, as required by s. 406.11, to determine the
 1744 cause of death of an individual. Such medical examiners may
 1745 request information from the department but may not have direct
 1746 access to the system

1747 ~~(d) A health care practitioner, or his or her designee, who~~
 1748 ~~certifies that the information is necessary to provide medical~~
 1749 ~~treatment to a current patient in accordance with ss. 893.05 and~~
 1750 ~~893.055.~~

1751 ~~(e) A pharmacist, or his or her designee, who certifies~~
 1752 ~~that the requested information will be used to dispense~~
 1753 ~~controlled substances to a current patient in accordance with~~
 1754 ~~ss. 893.04 and 893.055.~~

1755 ~~(f) A patient or the legal guardian or designated health~~
 1756 ~~care surrogate for an incapacitated patient, if applicable,~~
 1757 ~~making a request as provided in s. 893.055(7)(c)4.~~

1758 ~~(g) The patient's pharmacy, prescriber, or dispenser, or~~
 1759 ~~the designee of the pharmacy, prescriber, or dispenser, who~~
 1760 ~~certifies that the information is necessary to provide medical~~
 1761 ~~treatment to his or her current patient in accordance with s.~~
 1762 ~~893.055.~~

1763 (j)(h) An impaired practitioner consultant who has been
 1764 authorized in writing by a participant in, or by a referral to,
 1765 the impaired practitioner program to access and review
 1766 information as provided in s. 893.055(5)(e) ~~893.055(7)(c)5.~~

1767 (k) A patient or the legal guardian or designated health
 1768 care surrogate for an incapacitated patient, if applicable,
 1769 making a request as provided in s. 893.055(5)(f).

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1770 (4) If the department determines consistent with its rules
 1771 that a pattern of controlled substance abuse exists, the
 1772 department may disclose such confidential and exempt information
 1773 to the applicable law enforcement agency in accordance with s.
 1774 893.055. The law enforcement agency may disclose to a criminal
 1775 justice agency, as defined in s. 119.011, only ~~confidential and~~
 1776 ~~exempt~~ information received from the department that is relevant
 1777 to an identified active investigation that is specific to a
 1778 violation of s. 893.13(7)(a)8., s. 893.13(8)(a), or s.
 1779 893.13(8)(b).

1780 (5) Before disclosing ~~confidential and exempt~~ information
 1781 to a criminal justice agency or a law enforcement agency
 1782 pursuant to this section, the disclosing person or entity must
 1783 take steps to ensure the continued confidentiality of all
 1784 ~~confidential and exempt~~ information. At a minimum, these steps
 1785 must include redacting any nonrelevant information.

1786 (6) An agency or person who obtains any ~~confidential and~~
 1787 ~~exempt~~ information pursuant to this section must maintain the
 1788 confidential and exempt status of that information and may not
 1789 disclose such information unless authorized by law. Information
 1790 shared with a state attorney pursuant to paragraph (3)(f) ~~(3)(a)~~
 1791 or paragraph (3)(h) ~~(3)(e)~~ may be released only in response to a
 1792 discovery demand if such information is directly related to the
 1793 criminal case for which the information was requested. Unrelated
 1794 information may be released only upon an order of a court of
 1795 competent jurisdiction.

1796 (7) A person who willfully and knowingly violates this
 1797 section commits a felony of the third degree, punishable as
 1798 provided in s. 775.082, s. 775.083, or s. 775.084.

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1799 Section 13. Effective January 1, 2019, paragraphs (pp) and
1800 (qq) of subsection (1) of section 458.331, Florida Statutes, are
1801 amended to read:

1802 458.331 Grounds for disciplinary action; action by the
1803 board and department.—

1804 (1) The following acts constitute grounds for denial of a
1805 license or disciplinary action, as specified in s. 456.072(2):

1806 (pp) Applicable to a licensee who serves as the designated
1807 physician of a pain-management clinic as defined in s. 458.3265
1808 or s. 459.0137:

1809 1. Registering a pain-management clinic through
1810 misrepresentation or fraud;

1811 2. Procuring, or attempting to procure, the registration of
1812 a pain-management clinic for any other person by making or
1813 causing to be made, any false representation;

1814 3. Failing to comply with any requirement of chapter 499,
1815 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
1816 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
1817 the Drug Abuse Prevention and Control Act; or chapter 893, the
1818 Florida Comprehensive Drug Abuse Prevention and Control Act;

1819 4. Being convicted or found guilty of, regardless of
1820 adjudication to, a felony or any other crime involving moral
1821 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
1822 the courts of this state, of any other state, or of the United
1823 States;

1824 5. Being convicted of, or disciplined by a regulatory
1825 agency of the Federal Government or a regulatory agency of
1826 another state for, any offense that would constitute a violation
1827 of this chapter;

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1828 6. Being convicted of, or entering a plea of guilty or nolo
1829 contendere to, regardless of adjudication, a crime in any
1830 jurisdiction of the courts of this state, of any other state, or
1831 of the United States which relates to the practice of, or the
1832 ability to practice, a licensed health care profession;

1833 7. Being convicted of, or entering a plea of guilty or nolo
1834 contendere to, regardless of adjudication, a crime in any
1835 jurisdiction of the courts of this state, of any other state, or
1836 of the United States which relates to health care fraud;

1837 8. Dispensing any medicinal drug based upon a communication
1838 that purports to be a prescription as defined in s. 465.003(14)
1839 or s. 893.02 if the dispensing practitioner knows or has reason
1840 to believe that the purported prescription is not based upon a
1841 valid practitioner-patient relationship; or

1842 9. Failing to timely notify the board of the date of his or
1843 her termination from a pain-management clinic as required by s.
1844 458.3265(3) ~~458.3265(2)~~.

1845 (qq) Failing to timely notify the department of the theft
1846 of prescription blanks from a pain-management clinic or a breach
1847 of other methods for prescribing within 24 hours as required by
1848 s. 458.3265(3) ~~458.3265(2)~~.

1849 Section 14. Effective January 1, 2019, Paragraphs (rr) and
1850 (ss) of subsection (1) of section 459.015, Florida Statutes, are
1851 amended to read:

1852 459.015 Grounds for disciplinary action; action by the
1853 board and department.—

1854 (1) The following acts constitute grounds for denial of a
1855 license or disciplinary action, as specified in s. 456.072(2):

1856 (rr) Applicable to a licensee who serves as the designated

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1857 physician of a pain-management clinic as defined in s. 458.3265
 1858 or s. 459.0137:

- 1859 1. Registering a pain-management clinic through
 1860 misrepresentation or fraud;
- 1861 2. Procuring, or attempting to procure, the registration of
 1862 a pain-management clinic for any other person by making or
 1863 causing to be made, any false representation;
- 1864 3. Failing to comply with any requirement of chapter 499,
 1865 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
 1866 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
 1867 the Drug Abuse Prevention and Control Act; or chapter 893, the
 1868 Florida Comprehensive Drug Abuse Prevention and Control Act;
- 1869 4. Being convicted or found guilty of, regardless of
 1870 adjudication to, a felony or any other crime involving moral
 1871 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
 1872 the courts of this state, of any other state, or of the United
 1873 States;
- 1874 5. Being convicted of, or disciplined by a regulatory
 1875 agency of the Federal Government or a regulatory agency of
 1876 another state for, any offense that would constitute a violation
 1877 of this chapter;
- 1878 6. Being convicted of, or entering a plea of guilty or nolo
 1879 contendere to, regardless of adjudication, a crime in any
 1880 jurisdiction of the courts of this state, of any other state, or
 1881 of the United States which relates to the practice of, or the
 1882 ability to practice, a licensed health care profession;
- 1883 7. Being convicted of, or entering a plea of guilty or nolo
 1884 contendere to, regardless of adjudication, a crime in any
 1885 jurisdiction of the courts of this state, of any other state, or

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1886 of the United States which relates to health care fraud;

- 1887 8. Dispensing any medicinal drug based upon a communication
 1888 that purports to be a prescription as defined in s. 465.003(14)
 1889 or s. 893.02 if the dispensing practitioner knows or has reason
 1890 to believe that the purported prescription is not based upon a
 1891 valid practitioner-patient relationship; or
- 1892 9. Failing to timely notify the board of the date of his or
 1893 her termination from a pain-management clinic as required by s.
 1894 459.0137(3) ~~459.0137(2)~~.

1895 (ss) Failing to timely notify the department of the theft
 1896 of prescription blanks from a pain-management clinic or a breach
 1897 of other methods for prescribing within 24 hours as required by
 1898 s. 459.0137(3) ~~459.0137(2)~~.

1899 Section 15. Paragraph (b) of subsection (4) of section
 1900 463.0055, Florida Statutes, is amended to read:

1901 463.0055 Administration and prescription of ocular
 1902 pharmaceutical agents.—

1903 (4) A certified optometrist shall be issued a prescriber
 1904 number by the board. Any prescription written by a certified
 1905 optometrist for an ocular pharmaceutical agent pursuant to this
 1906 section shall have the prescriber number printed thereon. A
 1907 certified optometrist may not administer or prescribe:

1908 (b) A controlled substance for the treatment of chronic
 1909 nonmalignant pain as defined in s. 456.44(1)(f) ~~456.44(1)(e)~~.

1910 Section 16. Paragraph (a) of subsection (1) of section
 1911 782.04, Florida Statutes, is amended to read:

1912 782.04 Murder.—

1913 (1) (a) The unlawful killing of a human being:

1914 1. When perpetrated from a premeditated design to effect

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1915 the death of the person killed or any human being;

1916 2. When committed by a person engaged in the perpetration

1917 of, or in the attempt to perpetrate, any:

1918 a. Trafficking offense prohibited by s. 893.135(1),

1919 b. Arson,

1920 c. Sexual battery,

1921 d. Robbery,

1922 e. Burglary,

1923 f. Kidnapping,

1924 g. Escape,

1925 h. Aggravated child abuse,

1926 i. Aggravated abuse of an elderly person or disabled adult,

1927 j. Aircraft piracy,

1928 k. Unlawful throwing, placing, or discharging of a

1929 destructive device or bomb,

1930 l. Carjacking,

1931 m. Home-invasion robbery,

1932 n. Aggravated stalking,

1933 o. Murder of another human being,

1934 p. Resisting an officer with violence to his or her person,

1935 q. Aggravated fleeing or eluding with serious bodily injury

1936 or death,

1937 r. Felony that is an act of terrorism or is in furtherance

1938 of an act of terrorism, including a felony under s. 775.30, s.

1939 775.32, s. 775.33, s. 775.34, or s. 775.35, or

1940 s. Human trafficking; or

1941 3. Which resulted from the unlawful distribution by a

1942 person 18 years of age or older of any of the following

1943 substances, or mixture containing any of the following

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1944 substances, when such substance or mixture is proven to be the

1945 proximate cause of the death of the user:

1946 a. A substance controlled under s. 893.03(1);

1947 b. Cocaine, as described in s. 893.03(2)(a)4.;

1948 c. Opium or any synthetic or natural salt, compound,

1949 derivative, or preparation of opium;

1950 d. Methadone;

1951 e. Alfentanil, as described in s. 893.03(2)(b)1.;

1952 f. Carfentanil, as described in s. 893.03(2)(b)6.;

1953 g. Fentanyl, as described in s. 893.03(2)(b)9.;

1954 h. Sufentanil, as described in s. 893.03(2)(b)30.

1955 ~~893.03(2)(b)29.~~; or

1956 i. A controlled substance analog, as described in s.

1957 893.0356, of any substance specified in sub-subparagraphs a.-h.,

1958

1959 is murder in the first degree and constitutes a capital felony,

1960 punishable as provided in s. 775.082.

1961 Section 17. Paragraphs (a), (c), (d), (e), (f), and (h) of

1962 subsection (1), subsection (2), paragraphs (a) and (b) of

1963 subsection (4), and subsection (5) of section 893.13, Florida

1964 Statutes, are amended to read:

1965 893.13 Prohibited acts; penalties.—

1966 (1) (a) Except as authorized by this chapter and chapter

1967 499, a person may not sell, manufacture, or deliver, or possess

1968 with intent to sell, manufacture, or deliver, a controlled

1969 substance. A person who violates this provision with respect to:

1970 1. A controlled substance named or described in s.

1971 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.

1972 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as

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1973 provided in s. 775.082, s. 775.083, or s. 775.084.

1974 2. A controlled substance named or described in s.
1975 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~ (2)(c)6.,
1976 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10. (3), or (4) commits a
1977 felony of the third degree, punishable as provided in s.
1978 775.082, s. 775.083, or s. 775.084.

1979 3. A controlled substance named or described in s.
1980 893.03(5) commits a misdemeanor of the first degree, punishable
1981 as provided in s. 775.082 or s. 775.083.

1982 (c) Except as authorized by this chapter, a person may not
1983 sell, manufacture, or deliver, or possess with intent to sell,
1984 manufacture, or deliver, a controlled substance in, on, or
1985 within 1,000 feet of the real property comprising a child care
1986 facility as defined in s. 402.302 or a public or private
1987 elementary, middle, or secondary school between the hours of 6
1988 a.m. and 12 midnight, or at any time in, on, or within 1,000
1989 feet of real property comprising a state, county, or municipal
1990 park, a community center, or a publicly owned recreational
1991 facility. As used in this paragraph, the term "community center"
1992 means a facility operated by a nonprofit community-based
1993 organization for the provision of recreational, social, or
1994 educational services to the public. A person who violates this
1995 paragraph with respect to:

1996 1. A controlled substance named or described in s.
1997 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
1998 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as
1999 provided in s. 775.082, s. 775.083, or s. 775.084. The defendant
2000 must be sentenced to a minimum term of imprisonment of 3
2001 calendar years unless the offense was committed within 1,000

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2002 feet of the real property comprising a child care facility as
2003 defined in s. 402.302.

2004 2. A controlled substance named or described in s.
2005 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.~~ (2)(c)6.,
2006 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10. (3), or (4) commits a
2007 felony of the second degree, punishable as provided in s.
2008 775.082, s. 775.083, or s. 775.084.

2009 3. Any other controlled substance, except as lawfully sold,
2010 manufactured, or delivered, must be sentenced to pay a \$500 fine
2011 and to serve 100 hours of public service in addition to any
2012 other penalty prescribed by law.

2013
2014 This paragraph does not apply to a child care facility unless
2015 the owner or operator of the facility posts a sign that is not
2016 less than 2 square feet in size with a word legend identifying
2017 the facility as a licensed child care facility and that is
2018 posted on the property of the child care facility in a
2019 conspicuous place where the sign is reasonably visible to the
2020 public.

2021 (d) Except as authorized by this chapter, a person may not
2022 sell, manufacture, or deliver, or possess with intent to sell,
2023 manufacture, or deliver, a controlled substance in, on, or
2024 within 1,000 feet of the real property comprising a public or
2025 private college, university, or other postsecondary educational
2026 institution. A person who violates this paragraph with respect
2027 to:

2028 1. A controlled substance named or described in s.
2029 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
2030 ~~(2)(c)4.~~ commits a felony of the first degree, punishable as

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provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(e) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance not authorized by law in, on, or within 1,000 feet of a physical place for worship at which a church or religious organization regularly conducts religious services or within 1,000 feet of a convenience business as defined in s. 812.171. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(e)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine

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and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(f) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising a public housing facility at any time. As used in this section, the term "real property comprising a public housing facility" means real property, as defined in s. 421.03(12), of a public corporation created as a housing authority pursuant to part I of chapter 421. A person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. ~~(2)(e)4.~~ commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~ (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. Any other controlled substance, except as lawfully sold, manufactured, or delivered, must be sentenced to pay a \$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

(h) Except as authorized by this chapter, a person may not sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 429. A person

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2089 who violates this paragraph with respect to:

2090 1. A controlled substance named or described in s.
2091 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
2092 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as
2093 provided in s. 775.082, s. 775.083, or s. 775.084.

2094 2. A controlled substance named or described in s.
2095 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~, (2)(c)6.,
2096 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a
2097 felony of the second degree, punishable as provided in s.
2098 775.082, s. 775.083, or s. 775.084.

2099 3. Any other controlled substance, except as lawfully sold,
2100 manufactured, or delivered, must be sentenced to pay a \$500 fine
2101 and to serve 100 hours of public service in addition to any
2102 other penalty prescribed by law.

2103 (2)(a) Except as authorized by this chapter and chapter
2104 499, a person may not purchase, or possess with intent to
2105 purchase, a controlled substance. A person who violates this
2106 provision with respect to:

2107 1. A controlled substance named or described in s.
2108 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
2109 ~~(2)(e)4.~~ commits a felony of the second degree, punishable as
2110 provided in s. 775.082, s. 775.083, or s. 775.084.

2111 2. A controlled substance named or described in s.
2112 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~, (2)(c)6.,
2113 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a
2114 felony of the third degree, punishable as provided in s.
2115 775.082, s. 775.083, or s. 775.084.

2116 3. A controlled substance named or described in s.
2117 893.03(5) commits a misdemeanor of the first degree, punishable

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2118 as provided in s. 775.082 or s. 775.083.

2119 (b) Except as provided in this chapter, a person may not
2120 purchase more than 10 grams of any substance named or described
2121 in s. 893.03(1)(a) or (1)(b), or any combination thereof, or any
2122 mixture containing any such substance. A person who violates
2123 this paragraph commits a felony of the first degree, punishable
2124 as provided in s. 775.082, s. 775.083, or s. 775.084.

2125 (4) Except as authorized by this chapter, a person 18 years
2126 of age or older may not deliver any controlled substance to a
2127 person younger than 18 years of age, use or hire a person
2128 younger than 18 years of age as an agent or employee in the sale
2129 or delivery of such a substance, or use such person to assist in
2130 avoiding detection or apprehension for a violation of this
2131 chapter. A person who violates this subsection with respect to:

2132 (a) A controlled substance named or described in s.
2133 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
2134 ~~(2)(e)4.~~ commits a felony of the first degree, punishable as
2135 provided in s. 775.082, s. 775.083, or s. 775.084.

2136 (b) A controlled substance named or described in s.
2137 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(e)5.~~, (2)(c)6.,
2138 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a
2139 felony of the second degree, punishable as provided in s.
2140 775.082, s. 775.083, or s. 775.084.

2141
2142 Imposition of sentence may not be suspended or deferred, and the
2143 person so convicted may not be placed on probation.

2144 (5) A person may not bring into this state any controlled
2145 substance unless the possession of such controlled substance is
2146 authorized by this chapter or unless such person is licensed to

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2147 do so by the appropriate federal agency. A person who violates
2148 this provision with respect to:

2149 (a) A controlled substance named or described in s.
2150 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.
2151 ~~(2)(c)4.~~ commits a felony of the second degree, punishable as
2152 provided in s. 775.082, s. 775.083, or s. 775.084.

2153 (b) A controlled substance named or described in s.
2154 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., ~~(2)(c)5.,~~ (2)(c)6.,
2155 (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) commits a
2156 felony of the third degree, punishable as provided in s.
2157 775.082, s. 775.083, or s. 775.084.

2158 (c) A controlled substance named or described in s.
2159 893.03(5) commits a misdemeanor of the first degree, punishable
2160 as provided in s. 775.082 or s. 775.083.

2161 Section 18. Paragraphs (c) and (f) of subsection (1) of
2162 section 893.135, Florida Statutes, are amended to read:

2163 893.135 Trafficking; mandatory sentences; suspension or
2164 reduction of sentences; conspiracy to engage in trafficking.-

2165 (1) Except as authorized in this chapter or in chapter 499
2166 and notwithstanding the provisions of s. 893.13:

2167 (c)1. A person who knowingly sells, purchases,
2168 manufactures, delivers, or brings into this state, or who is
2169 knowingly in actual or constructive possession of, 4 grams or
2170 more of any morphine, opium, hydromorphone, or any salt,
2171 derivative, isomer, or salt of an isomer thereof, including
2172 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or
2173 (3)(c)4., or 4 grams or more of any mixture containing any such
2174 substance, but less than 30 kilograms of such substance or
2175 mixture, commits a felony of the first degree, which felony

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2176 shall be known as "trafficking in illegal drugs," punishable as
2177 provided in s. 775.082, s. 775.083, or s. 775.084. If the
2178 quantity involved:

2179 a. Is 4 grams or more, but less than 14 grams, such person
2180 shall be sentenced to a mandatory minimum term of imprisonment
2181 of 3 years and shall be ordered to pay a fine of \$50,000.

2182 b. Is 14 grams or more, but less than 28 grams, such person
2183 shall be sentenced to a mandatory minimum term of imprisonment
2184 of 15 years and shall be ordered to pay a fine of \$100,000.

2185 c. Is 28 grams or more, but less than 30 kilograms, such
2186 person shall be sentenced to a mandatory minimum term of
2187 imprisonment of 25 years and shall be ordered to pay a fine of
2188 \$500,000.

2189 2. A person who knowingly sells, purchases, manufactures,
2190 delivers, or brings into this state, or who is knowingly in
2191 actual or constructive possession of, 14 grams or more of
2192 hydrocodone, as described in s. 893.03(2)(a)1.k.

2193 ~~893.03(2)(a)1.j.,~~ codeine, as described in s. 893.03(2)(a)1.g.,
2194 or any salt thereof, or 14 grams or more of any mixture
2195 containing any such substance, commits a felony of the first
2196 degree, which felony shall be known as "trafficking in
2197 hydrocodone," punishable as provided in s. 775.082, s. 775.083,
2198 or s. 775.084. If the quantity involved:

2199 a. Is 14 grams or more, but less than 28 grams, such person
2200 shall be sentenced to a mandatory minimum term of imprisonment
2201 of 3 years and shall be ordered to pay a fine of \$50,000.

2202 b. Is 28 grams or more, but less than 50 grams, such person
2203 shall be sentenced to a mandatory minimum term of imprisonment
2204 of 7 years and shall be ordered to pay a fine of \$100,000.

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2205 c. Is 50 grams or more, but less than 200 grams, such
 2206 person shall be sentenced to a mandatory minimum term of
 2207 imprisonment of 15 years and shall be ordered to pay a fine of
 2208 \$500,000.

2209 d. Is 200 grams or more, but less than 30 kilograms, such
 2210 person shall be sentenced to a mandatory minimum term of
 2211 imprisonment of 25 years and shall be ordered to pay a fine of
 2212 \$750,000.

2213 3. A person who knowingly sells, purchases, manufactures,
 2214 delivers, or brings into this state, or who is knowingly in
 2215 actual or constructive possession of, 7 grams or more of
 2216 oxycodone, as described in s. 893.03(2)(a)1.g. ~~893.03(2)(a)1.e.~~,
 2217 or any salt thereof, or 7 grams or more of any mixture
 2218 containing any such substance, commits a felony of the first
 2219 degree, which felony shall be known as "trafficking in
 2220 oxycodone," punishable as provided in s. 775.082, s. 775.083, or
 2221 s. 775.084. If the quantity involved:

2222 a. Is 7 grams or more, but less than 14 grams, such person
 2223 shall be sentenced to a mandatory minimum term of imprisonment
 2224 of 3 years and shall be ordered to pay a fine of \$50,000.

2225 b. Is 14 grams or more, but less than 25 grams, such person
 2226 shall be sentenced to a mandatory minimum term of imprisonment
 2227 of 7 years and shall be ordered to pay a fine of \$100,000.

2228 c. Is 25 grams or more, but less than 100 grams, such
 2229 person shall be sentenced to a mandatory minimum term of
 2230 imprisonment of 15 years and shall be ordered to pay a fine of
 2231 \$500,000.

2232 d. Is 100 grams or more, but less than 30 kilograms, such
 2233 person shall be sentenced to a mandatory minimum term of

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2234 imprisonment of 25 years and shall be ordered to pay a fine of
 2235 \$750,000.

2236 4.a. A person who knowingly sells, purchases, manufactures,
 2237 delivers, or brings into this state, or who is knowingly in
 2238 actual or constructive possession of, 4 grams or more of:

2239 (I) Alfentanil, as described in s. 893.03(2)(b)1.;

2240 (II) Carfentanil, as described in s. 893.03(2)(b)6.;

2241 (III) Fentanyl, as described in s. 893.03(2)(b)9.;

2242 (IV) Sufentanil, as described in s. 893.03(2)(b)30.

2243 ~~893.03(2)(b)29.~~;

2244 (V) A fentanyl derivative, as described in s.

2245 893.03(1)(a)62.;

2246 (VI) A controlled substance analog, as described in s.

2247 893.0356, of any substance described in sub-sub-subparagraphs
 2248 (I)-(V); or

2249 (VII) A mixture containing any substance described in sub-
 2250 sub-subparagraphs (I)-(VI),

2251 commits a felony of the first degree, which felony shall be
 2252 known as "trafficking in fentanyl," punishable as provided in s.
 2253 775.082, s. 775.083, or s. 775.084.

2254 b. If the quantity involved under sub-subparagraph a.:

2255 (I) Is 4 grams or more, but less than 14 grams, such person
 2256 shall be sentenced to a mandatory minimum term of imprisonment
 2257 of 3 years, and shall be ordered to pay a fine of \$50,000.

2258 (II) Is 14 grams or more, but less than 28 grams, such
 2259 person shall be sentenced to a mandatory minimum term of
 2260 imprisonment of 15 years, and shall be ordered to pay a fine of
 2261 \$100,000.
 2262

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2263 (III) Is 28 grams or more, such person shall be sentenced
 2264 to a mandatory minimum term of imprisonment of 25 years, and
 2265 shall be ordered to pay a fine of \$500,000.

2266 5. A person who knowingly sells, purchases, manufactures,
 2267 delivers, or brings into this state, or who is knowingly in
 2268 actual or constructive possession of, 30 kilograms or more of
 2269 any morphine, opium, oxycodone, hydrocodone, codeine,
 2270 hydromorphone, or any salt, derivative, isomer, or salt of an
 2271 isomer thereof, including heroin, as described in s.
 2272 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or
 2273 more of any mixture containing any such substance, commits the
 2274 first degree felony of trafficking in illegal drugs. A person
 2275 who has been convicted of the first degree felony of trafficking
 2276 in illegal drugs under this subparagraph shall be punished by
 2277 life imprisonment and is ineligible for any form of
 2278 discretionary early release except pardon or executive clemency
 2279 or conditional medical release under s. 947.149. However, if the
 2280 court determines that, in addition to committing any act
 2281 specified in this paragraph:

2282 a. The person intentionally killed an individual or
 2283 counseled, commanded, induced, procured, or caused the
 2284 intentional killing of an individual and such killing was the
 2285 result; or

2286 b. The person's conduct in committing that act led to a
 2287 natural, though not inevitable, lethal result,
 2288
 2289 such person commits the capital felony of trafficking in illegal
 2290 drugs, punishable as provided in ss. 775.082 and 921.142. A
 2291 person sentenced for a capital felony under this paragraph shall

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2292 also be sentenced to pay the maximum fine provided under
 2293 subparagraph 1.

2294 6. A person who knowingly brings into this state 60
 2295 kilograms or more of any morphine, opium, oxycodone,
 2296 hydrocodone, codeine, hydromorphone, or any salt, derivative,
 2297 isomer, or salt of an isomer thereof, including heroin, as
 2298 described in s. 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or
 2299 60 kilograms or more of any mixture containing any such
 2300 substance, and who knows that the probable result of such
 2301 importation would be the death of a person, commits capital
 2302 importation of illegal drugs, a capital felony punishable as
 2303 provided in ss. 775.082 and 921.142. A person sentenced for a
 2304 capital felony under this paragraph shall also be sentenced to
 2305 pay the maximum fine provided under subparagraph 1.

2306 (f)1. Any person who knowingly sells, purchases,
 2307 manufactures, delivers, or brings into this state, or who is
 2308 knowingly in actual or constructive possession of, 14 grams or
 2309 more of amphetamine, as described in s. 893.03(2)(c)2., or
 2310 methamphetamine, as described in s. 893.03(2)(c)5.
 2311 ~~893.03(2)(c)4.~~, or of any mixture containing amphetamine or
 2312 methamphetamine, or phenylacetone, phenylacetic acid,
 2313 pseudoephedrine, or ephedrine in conjunction with other
 2314 chemicals and equipment utilized in the manufacture of
 2315 amphetamine or methamphetamine, commits a felony of the first
 2316 degree, which felony shall be known as "trafficking in
 2317 amphetamine," punishable as provided in s. 775.082, s. 775.083,
 2318 or s. 775.084. If the quantity involved:

2319 a. Is 14 grams or more, but less than 28 grams, such person
 2320 shall be sentenced to a mandatory minimum term of imprisonment

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2321 of 3 years, and the defendant shall be ordered to pay a fine of
 2322 \$50,000.

2323 b. Is 28 grams or more, but less than 200 grams, such
 2324 person shall be sentenced to a mandatory minimum term of
 2325 imprisonment of 7 years, and the defendant shall be ordered to
 2326 pay a fine of \$100,000.

2327 c. Is 200 grams or more, such person shall be sentenced to
 2328 a mandatory minimum term of imprisonment of 15 calendar years
 2329 and pay a fine of \$250,000.

2330 2. Any person who knowingly manufactures or brings into
 2331 this state 400 grams or more of amphetamine, as described in s.
 2332 893.03(2)(c)2., or methamphetamine, as described in s.
 2333 893.03(2)(c)5. ~~893.03(2)(c)4.~~, or of any mixture containing
 2334 amphetamine or methamphetamine, or phenylacetone, phenylacetic
 2335 acid, pseudoephedrine, or ephedrine in conjunction with other
 2336 chemicals and equipment used in the manufacture of amphetamine
 2337 or methamphetamine, and who knows that the probable result of
 2338 such manufacture or importation would be the death of any person
 2339 commits capital manufacture or importation of amphetamine, a
 2340 capital felony punishable as provided in ss. 775.082 and
 2341 921.142. Any person sentenced for a capital felony under this
 2342 paragraph shall also be sentenced to pay the maximum fine
 2343 provided under subparagraph 1.

2344 Section 19. Paragraphs (b) through (e) and (g) of
 2345 subsection (3) of section 921.0022, Florida Statutes, are
 2346 amended to read:

2347 921.0022 Criminal Punishment Code; offense severity ranking
 2348 chart.-

2349 (3) OFFENSE SEVERITY RANKING CHART

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2350 (b) LEVEL 2

2351

2352

Florida Statute	Felony Degree	Description
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2353

379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
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2354

379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
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2355

403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
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2356

517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.
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2357

590.28(1)	3rd	Intentional burning of lands.
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2358

784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor
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2359				
	787.04(1)	3rd		In violation of court order, take, entice, etc., minor beyond state limits.
2360				
	806.13(1)(b)3.	3rd		Criminal mischief; damage \$1,000 or more to public communication or any other public service.
2361				
	810.061(2)	3rd		Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
2362				
	810.09(2)(e)	3rd		Trespassing on posted commercial horticulture property.
2363				
	812.014(2)(c)1.	3rd		Grand theft, 3rd degree; \$300 or more but less than \$5,000.
2364				
	812.014(2)(d)	3rd		Grand theft, 3rd degree; \$100 or more but less than \$300, taken from unenclosed curtilage of dwelling.
2365				

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	812.015(7)	3rd		Possession, use, or attempted use of an antishoplifting or inventory control device countermeasure.
2366				
	817.234(1)(a)2.	3rd		False statement in support of insurance claim.
2367				
	817.481(3)(a)	3rd		Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
2368				
	817.52(3)	3rd		Failure to redeliver hired vehicle.
2369				
	817.54	3rd		With intent to defraud, obtain mortgage note, etc., by false representation.
2370				
	817.60(5)	3rd		Dealing in credit cards of another.
2371				
	817.60(6)(a)	3rd		Forgery; purchase goods, services with false card.
2372				
	817.61	3rd		Fraudulent use of credit cards over \$100 or more within 6 months.

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2373	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
2374	831.01	3rd	Forgery.
2375	831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
2376	831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
2377	831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
2378	831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.
2379	831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
2380	832.05(3) (a)	3rd	Cashing or depositing item with intent to defraud.
2381			

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2382	843.08	3rd	False personation.
	893.13(2) (a)2.	3rd	Purchase of any s. 893.03(1) (c), (2) (c)1., (2) (c)2., (2) (c)3., (2) (c)5. , (2) (c)6., (2) (c)7., (2) (c)8., (2) (c)9., <u>(2) (c)10.</u> , (3), or (4) drugs other than cannabis.
2383	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
2384			
2385			
2386	(c) LEVEL 3		
2387			
2388			
	Florida Statute	Felony Degree	Description
2389	119.10(2) (b)	3rd	Unlawful use of confidential information from police reports.
2390	316.066 (3) (b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
2391	316.193(2) (b)	3rd	Felony DUI, 3rd conviction.
2392	316.1935(2)	3rd	Fleeing or attempting to elude

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			law enforcement officer in patrol vehicle with siren and lights activated.
2393	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
2394	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
2395	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
2396	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
2397	327.35(2)(b)	3rd	Felony BUI.
2398	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
2399	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit

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			or wrong ID number.
2400	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
2401	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, 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.
2402	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
2403	379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
2404	400.9935(4)(a)	3rd	Operating a clinic, or offering

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	or (b)		services requiring licensure, without a license.	
2405	400.9935 (4) (e)	3rd	Filing a false license application or other required information or failing to report information.	
2406	440.1051 (3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.	
2407	501.001 (2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.	
2408	624.401 (4) (a)	3rd	Transacting insurance without a certificate of authority.	
2409	624.401 (4) (b) 1.	3rd	Transacting insurance without a certificate of authority; premium collected less than \$20,000.	
2410	626.902 (1) (a) & (b)	3rd	Representing an unauthorized insurer.	
2411				

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	697.08	3rd	Equity skimming.	
2412	790.15 (3)	3rd	Person directs another to discharge firearm from a vehicle.	
2413	806.10 (1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.	
2414	806.10 (2)	3rd	Interferes with or assaults firefighter in performance of duty.	
2415	810.09 (2) (c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.	
2416	812.014 (2) (c) 2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.	
2417	812.0145 (2) (c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.	
2418	815.04 (5) (b)	2nd	Computer offense devised to defraud or obtain property.	
2419				

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2420	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
2421	817.233	3rd	Burning to defraud insurer.
2422	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
2423	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
2424	817.236	3rd	Filing a false motor vehicle insurance application.
2425	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
2426	817.413(2)	3rd	Sale of used goods as new.
2427	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

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2428	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
2429	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
2430	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
2431	843.19	3rd	Injure, disable, or kill police dog or horse.
2432	860.15(3)	3rd	Overcharging for repairs and parts.
2433	870.01(2)	3rd	Riot; inciting or encouraging.
2434	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., <u>(2)(c)10.</u> , (3), or (4) drugs).
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver

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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., (2)(c)10., (3), or
 (4) drugs within 1,000 feet of
 university.

2435

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., (2)(c)10., (3), or
 (4) drugs within 1,000 feet of
 public housing facility.

2436

893.13(4)(c) 3rd Use or hire of minor; deliver
 to minor other controlled
 substances.

2437

893.13(6)(a) 3rd Possession of any controlled
 substance other than felony
 possession of cannabis.

2438

893.13(7)(a)8. 3rd Withhold information from
 practitioner regarding previous
 receipt of or prescription for
 a controlled substance.

2439

893.13(7)(a)9. 3rd Obtain or attempt to obtain

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controlled substance by fraud,
 forgery, misrepresentation,
 etc.

2440

893.13(7)(a)10. 3rd Affix false or forged label to
 package of controlled
 substance.

2441

893.13(7)(a)11. 3rd Furnish false or fraudulent
 material information on any
 document or record required by
 chapter 893.

2442

893.13(8)(a)1. 3rd Knowingly assist a patient,
 other person, or owner of an
 animal in obtaining a
 controlled substance through
 deceptive, untrue, or
 fraudulent representations in
 or related to the
 practitioner's practice.

2443

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.

2444

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2445	893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.
2446	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.
2447	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
2448	944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
2449	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
2450	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
2451			
2452	(d) LEVEL 4		

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2453	Florida Statute	Felony Degree	Description
2454	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2455	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
2456	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
2457	517.07(1)	3rd	Failure to register securities.
2458	517.12(1)	3rd	Failure of dealer,

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			associated person, or issuer of securities to register.
2459	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
2460	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
2461	784.075	3rd	Battery on detention or commitment facility staff.
2462	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
2463	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
2464	784.081(3)	3rd	Battery on specified official or employee.
2465	784.082(3)	3rd	Battery by detained

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			person on visitor or other detainee.
2466	784.083(3)	3rd	Battery on code inspector.
2467	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
2468	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
2469	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
2470	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated

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	588-02151C-18		20188c1	
				person.
2471	787.07	3rd		Human smuggling.
2472	790.115(1)	3rd		Exhibiting firearm or weapon within 1,000 feet of a school.
2473	790.115(2)(b)	3rd		Possessing electric weapon or device, destructive device, or other weapon on school property.
2474	790.115(2)(c)	3rd		Possessing firearm on school property.
2475	800.04(7)(c)	3rd		Lewd or lascivious exhibition; offender less than 18 years.
2476	810.02(4)(a)	3rd		Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
2477	810.02(4)(b)	3rd		Burglary, or attempted burglary, of an

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				unoccupied conveyance; unarmed; no assault or battery.
2478	810.06	3rd		Burglary; possession of tools.
2479	810.08(2)(c)	3rd		Trespass on property, armed with firearm or dangerous weapon.
2480	812.014(2)(c)3.	3rd		Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
2481	812.014 (2)(c)4.-10.	3rd		Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
2482	812.0195(2)	3rd		Dealing in stolen property by use of the Internet; property stolen \$300 or more.
2483	817.505(4)(a)	3rd		Patient brokering.
2484	817.563(1)	3rd		Sell or deliver substance other than controlled substance

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			agreed upon, excluding s. 893.03(5) drugs.
2485	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
2486	817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
2487	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.
2488	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
2489	837.02(1)	3rd	Perjury in official proceedings.
2490	837.021(1)	3rd	Make contradictory statements in official proceedings.
2491			

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	838.022	3rd	Official misconduct.
2492	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
2493	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
2494	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
2495	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
2496	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
2497	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using

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 computer; offender less
 than 18 years.

2498 874.05(1) (a) 3rd Encouraging or
 recruiting another to
 join a criminal gang.

2499 893.13(2) (a)1. 2nd Purchase of cocaine (or
 other s. 893.03(1) (a),
 (b), or (d), (2) (a),
 (2) (b), or (2) (c) 5.
~~(2) (c) 4.~~ drugs).

2500 914.14(2) 3rd Witnesses accepting
 bribes.

2501 914.22(1) 3rd Force, threaten, etc.,
 witness, victim, or
 informant.

2502 914.23(2) 3rd Retaliation against a
 witness, victim, or
 informant, no bodily
 injury.

2503 918.12 3rd Tampering with jurors.

2504 934.215 3rd Use of two-way
 communications device to

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 facilitate commission of
 a crime.

2505

2506

2507

2508 (e) LEVEL 5

2509

2510

Florida Statute	Felony Degree	Description
2511 316.027(2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
2512 316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
2513 316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
2514 322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
2515 327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.

2516

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	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.
2517	379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
2518	379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
2519	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
2520			

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	440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
2521	440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
2522	440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
2523	624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
2524	626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
2525	790.01(2)	3rd	Carrying a concealed firearm.
2526	790.162	2nd	Threat to throw or discharge destructive device.
2527	790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms

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				in violent manner.
2528	790.221(1)	2nd		Possession of short-barreled shotgun or machine gun.
2529	790.23	2nd		Felons in possession of firearms, ammunition, or electronic weapons or devices.
2530	796.05(1)	2nd		Live on earnings of a prostitute; 1st offense.
2531	800.04(6)(c)	3rd		Lewd or lascivious conduct; offender less than 18 years of age.
2532	800.04(7)(b)	2nd		Lewd or lascivious exhibition; offender 18 years of age or older.
2533	806.111(1)	3rd		Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
2534	812.0145(2)(b)	2nd		Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
2535				

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	812.015(8)	3rd		Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
2536	812.019(1)	2nd		Stolen property; dealing in or trafficking in.
2537	812.131(2)(b)	3rd		Robbery by sudden snatching.
2538	812.16(2)	3rd		Owning, operating, or conducting a chop shop.
2539	817.034(4)(a)2.	2nd		Communications fraud, value \$20,000 to \$50,000.
2540	817.234(11)(b)	2nd		Insurance fraud; property value \$20,000 or more but less than \$100,000.
2541	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 solvency of an insuring entity.
2542	817.568(2)(b)	2nd		Fraudulent use of personal identification information; value of benefit, services

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received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.

2543

817.611(2)(a) 2nd Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

2544

817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

2545

825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

2546

827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

2547

827.071(5) 3rd Possess, control, or intentionally view any photographic material, motion picture, etc., which includes

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sexual conduct by a child.

2548

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.

2549

843.01 3rd Resist officer with violence to person; resist arrest with violence.

2550

847.0135(5)(b) 2nd Lewd or lascivious exhibition using computer; offender 18 years or older.

2551

847.0137 (2) & (3) 3rd Transmission of pornography by electronic device or equipment.

2552

847.0138 (2) & (3) 3rd Transmission of material harmful to minors to a minor by electronic device or equipment.

2553

874.05(1)(b) 2nd Encouraging or recruiting another to join a criminal gang; second or subsequent offense.

2554

874.05(2)(a) 2nd Encouraging or recruiting

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 person under 13 years of age to
 join a criminal gang.

2555 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)5.
~~(2)(c)4.~~ drugs).

2556 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., (2)(c)10., (3), or
 (4) drugs) within 1,000 feet of
 a child care facility, school,
 or state, county, or municipal
 park or publicly owned
 recreational facility or
 community center.

2557 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)5.
~~(2)(c)4.~~ drugs) within 1,000
 feet of university.

2558

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 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., (2)(c)10., (3), or
 (4) within 1,000 feet of
 property used for religious
 services or a specified
 business site.

2559 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)5.
~~(2)(c)4.~~ drugs) within 1,000
 feet of public housing
 facility.

2560 893.13(4)(b) 2nd Use or hire of minor; deliver
 to minor other controlled
 substance.

2561 893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing
 of controlled substance.

2562

2563

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2564	(g) LEVEL 7		
2565			
	Florida Statute	Felony Degree	Description
2566	316.027(2)(c)	1st	Accident involving death, failure to stop; leaving scene.
2567	316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
2568	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
2569	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
2570	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great

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			bodily harm, permanent disfiguration, permanent disability, or death.
2571	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
2572	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
2573	456.065(2)	3rd	Practicing a health care profession without a license.
2574	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
2575	458.327(1)	3rd	Practicing medicine without a license.
2576	459.013(1)	3rd	Practicing osteopathic medicine without a license.
2577	460.411(1)	3rd	Practicing chiropractic medicine without a

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			license.
2578	461.012(1)	3rd	Practicing podiatric medicine without a license.
2579	462.17	3rd	Practicing naturopathy without a license.
2580	463.015(1)	3rd	Practicing optometry without a license.
2581	464.016(1)	3rd	Practicing nursing without a license.
2582	465.015(2)	3rd	Practicing pharmacy without a license.
2583	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
2584	467.201	3rd	Practicing midwifery without a license.
2585	468.366	3rd	Delivering respiratory care services without a license.
2586			

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	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
2587	483.901(7)	3rd	Practicing medical physics without a license.
2588	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
2589	484.053	3rd	Dispensing hearing aids without a license.
2590	494.0018(2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
2591	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
2592	560.125(5)(a)	3rd	Money services business by

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	588-02151C-18		20188c1	unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
2593	655.50(10)(b)1.	3rd		Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
2594	775.21(10)(a)	3rd		Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.
2595	775.21(10)(b)	3rd		Sexual predator working where children regularly congregate.
2596	775.21(10)(g)	3rd		Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
2597	782.051(3)	2nd		Attempted felony murder of a person by a person other

	588-02151C-18		20188c1	than the perpetrator or the perpetrator of an attempted felony.
2598	782.07(1)	2nd		Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
2599	782.071	2nd		Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
2600	782.072	2nd		Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
2601	784.045(1)(a)1.	2nd		Aggravated battery; intentionally causing great bodily harm or disfigurement.
2602	784.045(1)(a)2.	2nd		Aggravated battery; using deadly weapon.
2603				

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2604	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
2605	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
2606	784.048(7)	3rd	Aggravated stalking; violation of court order.
2607	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
2608	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
2609	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
2610	784.081(1)	1st	Aggravated battery on specified official or employee.
	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.

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2611	784.083(1)	1st	Aggravated battery on code inspector.
2612	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
2613	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
2614	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
2615	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
2616	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
2617	790.165(3)	2nd	Possessing, displaying, or

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	588-02151C-18		20188c1	threatening to use any hoax bomb while committing or attempting to commit a felony.
2618	790.166(3)	2nd		Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
2619	790.166(4)	2nd		Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
2620	790.23	1st,PBL		Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
2621	794.08(4)	3rd		Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
2622				

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	796.05(1)	1st		Live on earnings of a prostitute; 2nd offense.
2623	796.05(1)	1st		Live on earnings of a prostitute; 3rd and subsequent offense.
2624	800.04(5)(c)1.	2nd		Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
2625	800.04(5)(c)2.	2nd		Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
2626	800.04(5)(e)	1st		Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
2627	806.01(2)	2nd		Maliciously damage

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2628	810.02(3)(a)	2nd		Burglary of occupied dwelling; unarmed; no assault or battery.
2629	810.02(3)(b)	2nd		Burglary of unoccupied dwelling; unarmed; no assault or battery.
2630	810.02(3)(d)	2nd		Burglary of occupied conveyance; unarmed; no assault or battery.
2631	810.02(3)(e)	2nd		Burglary of authorized emergency vehicle.
2632	812.014(2)(a)1.	1st		Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
2633	812.014(2)(b)2.	2nd		Property stolen, cargo valued at less than

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2634	812.014(2)(b)3.	2nd		Property stolen, emergency medical equipment; 2nd degree grand theft.
2635	812.014(2)(b)4.	2nd		Property stolen, law enforcement equipment from authorized emergency vehicle.
2636	812.0145(2)(a)	1st		Theft from person 65 years of age or older; \$50,000 or more.
2637	812.019(2)	1st		Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
2638	812.131(2)(a)	2nd		Robbery by sudden snatching.
2639	812.133(2)(b)	1st		Carjacking; no firearm, deadly weapon, or other weapon.
2640				

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2641	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
2642	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
2643	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
2644	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
2645	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
2646	817.535(2)(a)	3rd	Filing false lien or other unauthorized document.
	817.611(2)(b)	2nd	Traffic in or possess 15

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	588-02151C-18		20188c1
2647	825.102(3)(b)	2nd	to 49 counterfeit credit cards or related documents.
2648	825.103(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
2649	827.03(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
2650	827.04(3)	3rd	Neglect of a child causing great bodily harm, disability, or disfigurement.
2651	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
	837.05(2)	3rd	Giving false information about alleged capital felony to a law

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	588-02151C-18		20188c1	enforcement officer.
2652				
	838.015	2nd		Bribery.
2653				
	838.016	2nd		Unlawful compensation or reward for official behavior.
2654				
	838.021(3)(a)	2nd		Unlawful harm to a public servant.
2655				
	838.22	2nd		Bid tampering.
2656				
	843.0855(2)	3rd		Impersonation of a public officer or employee.
2657				
	843.0855(3)	3rd		Unlawful simulation of legal process.
2658				
	843.0855(4)	3rd		Intimidation of a public officer or employee.
2659				
	847.0135(3)	3rd		Solicitation of a child, via a computer service, to commit an unlawful sex act.
2660				
	847.0135(4)	2nd		Traveling to meet a minor to commit an unlawful sex

	588-02151C-18		20188c1	act.
2661				
	872.06	2nd		Abuse of a dead human body.
2662				
	874.05(2)(b)	1st		Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
2663				
	874.10	1st,PBL		Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
2664				
	893.13(1)(c)1.	1st		Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or <u>(2)(c)5.</u> (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community

	588-02151C-18		20188c1	
			center.	
2665	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or <u>(2)(c)5.</u> (2)(c)4. , within 1,000 feet of property used for religious services or a specified business site.	
2666	893.13(4)(a)	1st	Use or hire of minor; deliver to minor other controlled substance.	
2667	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.	
2668	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.	
2669	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.	
2670				

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	893.135 (1)(c)2.a.	1st	Trafficking in hydrocodone, 14 grams or more, less than 28 grams.	
2671	893.135 (1)(c)2.b.	1st	Trafficking in hydrocodone, 28 grams or more, less than 50 grams.	
2672	893.135 (1)(c)3.a.	1st	Trafficking in oxycodone, 7 grams or more, less than 14 grams.	
2673	893.135 (1)(c)3.b.	1st	Trafficking in oxycodone, 14 grams or more, less than 25 grams.	
2674	893.135 (1)(c)4.b.(I)	1st	Trafficking in fentanyl, 4 grams or more, less than 14 grams.	
2675	893.135 (1)(d)1.a.	1st	Trafficking in phencyclidine, 28 grams or more, less than 200 grams.	
2676	893.135(1)(e)1.	1st	Trafficking in methaqualone, 200 grams or more, less than 5 kilograms.	
2677				

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2678	893.135(1)(f)1.	1st	Trafficking in amphetamine, 14 grams or more, less than 28 grams.
2679	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
2680	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
2681	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.
2682	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
2683	893.135 (1)(m)2.a.	1st	Trafficking in synthetic cannabinoids, 280 grams or more, less than 500 grams.
	893.135 (1)(m)2.b.	1st	Trafficking in synthetic cannabinoids, 500 grams or

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2684	893.135 (1)(n)2.a.	1st	Trafficking in n-benzyl phenethylamines, 14 grams or more, less than 100 grams.
2685	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
2686	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
2687	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
2688	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.

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2689	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
2690	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
2691	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2692	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2693	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
2694	944.607 (10) (a)	3rd	Sexual offender; failure

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			to submit to the taking of a digitized photograph.
2695	944.607 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2696	944.607 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
2697	985.4815 (10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
2698	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
2699	985.4815 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to

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address verification;
 providing false
 registration information.

2700

2701

2702 Section 20. For the 2018-2019 fiscal year:

2703 (1) (a) The nonrecurring sum of \$27,035,360 from the Federal
 2704 Grants Trust Fund, and the recurring sum of \$15,520,000 from the
 2705 General Revenue Fund are appropriated to the Department of
 2706 Children and Families. These funds shall be used for the
 2707 following services to address opioid and other substance abuse
 2708 disorders: outpatient, case management, and after care services;
 2709 residential treatment; medication-assisted treatment, including
 2710 the purchase and medical use of methadone, buprenorphine, and
 2711 naltrexone extended-release injectable; peer recovery support;
 2712 hospital and first responder outreach; and outreach targeted to
 2713 pregnant women.

2714 (b) From a total of \$4,720,000 of the recurring general
 2715 revenue funds specified in paragraph (a), the Department of
 2716 Children and Families shall contract with a nonprofit
 2717 organization for the distribution and associated costs for the
 2718 following drugs as part of its medication assisted treatment
 2719 program for substance abuse disorders:

2720 1. \$472,000 for methadone;
 2721 2. \$1,888,000 for buprenorphine; and
 2722 3. \$2,360,000 for naltrexone extended-release injectable.

2723 (2) The recurring sum of \$6 million from the General
 2724 Revenue Fund is appropriated to the Office of the State Courts
 2725 Administrator for treatment of substance abuse disorders in

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2726 individuals involved in the criminal justice system, individuals
 2727 who have a high likelihood of criminal justice involvement, or
 2728 who are in court-ordered, community-based drug treatment. The
 2729 Office of the State Courts Administrator shall use the funds to
 2730 contract with a non-profit entity for the purpose of
 2731 distributing the medication. The Office of the State Courts
 2732 Administrator shall make available the following drugs:

2733 (a) \$600,000 for methadone;
 2734 (b) \$2.4 million for buprenorphine; and
 2735 (c) \$3 million for naltrexone extended-release injectable.
 2736 (3) The recurring sum of \$5 million from the General
 2737 Revenue Fund is appropriated to the Department of Health for the
 2738 purchase of naloxone to be made available to emergency
 2739 responders.

2740 Section 21. Except as otherwise expressly provided in this
 2741 act, this act shall take effect July 1, 2018.

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 2/1/2018 11:33:51 AM

Ends: 2/1/2018 12:06:23 PM Length: 00:32:33

11:33:56 AM Chair called meeting to order
11:34:27 AM Roll call quorum present
11:35:02 AM Tab 4 CS/SB 278 by Senator Hutson
11:35:53 AM Roll call for CS/SB 278 reported favorably
11:36:09 AM Tab 7 SB 512 by Senator Young
11:36:47 AM 927498 barcode amendment adopted
11:37:15 AM 671898 barcode amendment adopted
11:37:24 AM on bill as amended
11:38:05 AM Roll call SB 512 reported favorably
11:38:30 AM Tab 3 CS/SB 268 by Senator Passidomo
11:39:44 AM 332120 barcode amendment adopted
11:39:52 AM on bill as amended
11:40:44 AM Roll call for CS/SB 268 reported favorably
11:41:18 AM Tab 8 SR 550 by Senator Broxson
11:42:36 AM Dave Mica speaks in opposition to the bill
11:43:58 AM Senator Broxson closes on bill
11:44:58 AM Roll call on SR 550 reported favorably
11:45:13 AM Tab 2 SB 162 by Senator Steube
11:46:41 AM Roll call on SB 162 reported favorably
11:46:58 AM Tab 5 CS 314 by Senator Baxley
11:47:47 AM Roll call on SB 314 reported favorably
11:48:17 AM Tab 6 CS/SB 1048 by Senator Baxley
11:49:09 AM Senator Thurston has a question on the limitation of number of people who can carry
11:50:21 AM Senator Thurston asks question about who will be authorized to carry
11:50:52 AM Senator Thurston continues with questions
11:51:29 AM Senator Montford asks question
11:56:00 AM Senator Baxley closes on bill
11:56:45 AM Roll call vote on CS/SB 1048
11:57:21 AM Bill reported favorably
11:57:41 AM Tab 9 SB 760 by Senator Bean
11:58:12 AM Tab 9 SB 760 by Senator Bean
11:59:04 AM Roll call on SB 760
11:59:32 AM Bill is reported favorably
11:59:59 AM Tab 52 by Senator Mayfield
12:00:45 PM Roll call vote on SB 52 reported favorably
12:01:23 PM Tab 10 SB1078 by Senator Perry
12:01:51 PM Senator Braynon asks question
12:02:35 PM Senator Braynon in debate of the bill
12:03:06 PM Senator Perry closes on bill
12:03:17 PM Roll call vote on SB 1078
12:03:34 PM Bill reported favorably
12:03:56 PM Chair turned over to Vice Chair Braynon

12:04:32 PM Tab 11 by Senator Benaquisto makes motion to TP bill

12:04:49 PM Gavel passed back to Chair Benacquisto

12:06:09 PM Meeting adjourned