Tab 1	**SB 2** by **Hooper**; (Identical to H 06007) Relief of the Estate of Molly Parker/Department of Transportation

Tab 2	**SB 12** by **Polsky**; (Similar to CS/H 06021) Relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano/Okeechobee County Sheriff's Office

679014	A	S	RCS	JU, Polsky	Delete L.74 - 87:	04/04 05:17 PM

Tab 3	**SB 828** by **Polsky**; (Identical to H 00851) Grand Juries

Tab 4	**SB 442** by **Gruters (CO-INTRODUCERS) Hooper, DiCeglie**; (Similar to H 00737) Secondhand Dealers

Tab 5	**SB 694** by **Gruters**; (Compare to CS/H 00617) Private Property for Motor Vehicle Parking

528896	D	S	RCS	JU, Gruters	Delete everything after	04/04 05:17 PM

Tab 6	**SB 8** by **Jones (CO-INTRODUCERS) Thompson**; (Identical to H 06001) Relief of Leonard Cure/State of Florida

Tab 7	**SB 1388** by **Wright**; (Identical to H 01143) Immunity of Motor Vehicle Dealer Leasing and Rental Affiliates

Tab 8	**SB 1260** by **Trumbull**; (Similar to CS/H 00755) Asbestos and Silica Claims

Tab 9	**SB 1300** by **Burton**; (Similar to H 01047) Animals Working with Law Enforcement Officers

Tab 10	**SB 1302** by **Torres**; (Similar to CS/H 00853) Translation Services

601620	D	S	RCS	JU, Torres	Delete everything after	04/04 05:17 PM

Tab 11	**SB 582** by **Grall**; (Identical to H 00065) Withholding Funds from the Return of Cash Bonds

Tab 12	**SB 1322** by **Grall**; (Identical to H 01377) Adoption of Children in Dependency Court

583264	D	S	RCS	JU, Grall	Delete everything after	04/04 05:17 PM

Tab 13	**CS/SB 312** by **BI, Collins**; (Similar to CS/H 01111) Insurance

Tab 14	**SB 610** by **Yarborough**; (Identical to H 00367) Registration of Residential Child-caring Agencies and Family Foster Homes

Tab 15	**CS/SB 1458** by **CM, Yarborough**; (Similar to CS/H 01129) Roller Skating Rink Safety

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Yarborough, Chair
Senator Burton, Vice Chair

MEETING DATE: Tuesday, April 4, 2023
TIME: 2:00—4:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators Albritton, Baxley, Book, Boyd, Broxson, DiCeglie, Harrell, Stewart, Thompson, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 2** Hooper (Identical H 6007)	Relief of the Estate of Molly Parker/Department of Transportation; Providing for the relief of the Estate of Molly Parker; providing an appropriation to compensate the estate for Ms. Parker's death as a result of the negligence of the Department of Transportation; providing a limitation on compensation and the payment of attorney fees, etc. SM JU 04/04/2023 Favorable ATD AP	Favorable Yeas 11 Nays 0
2	**SB 12** Polsky (Similar CS/H 6021)	Relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano/Okeechobee County Sheriff's Office; Providing for the relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano, by the Okeechobee County Sheriff's Office; providing for an appropriation of funds to pay Ricardo Medrano-Arzate and Eva Chavez-Medrano for the damages awarded in connection with the death of their daughter as a result of the negligence of the Okeechobee County Sheriff's Office; providing a limitation on the payment of compensation, attorney and lobbying fees, and costs or similar expenses, etc. SM JU 04/04/2023 Fav/CS CA RC	Fav/CS Yeas 11 Nays 0
3	**SB 828** Polsky (Identical H 851)	Grand Juries; Revising the list of persons prohibited from disclosing the testimony of a witness examined before a grand jury or other evidence it receives; creating an exception for a request by the media or an interested person to the prohibited publishing, broadcasting, disclosing, divulging, or communicating of any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, etc. JU 04/04/2023 Favorable CJ RC	Favorable Yeas 12 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 442** Gruters (Similar H 737)	Secondhand Dealers; Revising the definition of "secondhand goods" to exclude certain items, etc. CM 03/27/2023 Favorable JU 04/04/2023 Favorable RC	Favorable Yeas 11 Nays 0
5	**SB 694** Gruters (Compare CS/H 617)	Private Property for Motor Vehicle Parking; Requiring owners and operators of certain property to follow specified rules; prohibiting certain invoices from resembling specified citations; removing a provision prohibiting certain county and municipal regulations, etc. JU 04/04/2023 Fav/CS CA RC	Fav/CS Yeas 11 Nays 0
6	**SB 8** Jones (Identical H 6001)	Relief of Leonard Cure/State of Florida; Providing for the relief of Leonard Cure; providing an appropriation to compensate Mr. Cure for being wrongfully incarcerated for 16 years; providing for the waiver of certain tuition and fees for Mr. Cure; prohibiting funds awarded under this act to Mr. Cure from being used or paid for attorney or lobbying fees, etc. SM JU 04/04/2023 Favorable ACJ AP	Favorable Yeas 11 Nays 0
7	**SB 1388** Wright (Identical H 1143)	Immunity of Motor Vehicle Dealer Leasing and Rental Affiliates; Defining the term "control"; defining the term "motor vehicle dealer's leasing or rental affiliate" to specify the entities that are immune from causes of action and that are not liable for harm to persons and property under certain circumstances, etc. TR 03/27/2023 Favorable JU 04/04/2023 Favorable RC	Favorable Yeas 10 Nays 0
8	**SB 1260** Trumbull (Similar CS/H 755)	Asbestos and Silica Claims; Requiring a claimant to file a sworn information form containing certain information within a certain time period after filing an asbestos or silica claim; authorizing a court to dismiss certain claims upon a motion by a defendant; providing that certain defendants are not liable for certain asbestos or silica exposures, etc. JU 04/04/2023 Favorable CM RC	Favorable Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	**SB 1300** Burton (Similar H 1047)	Animals Working with Law Enforcement Officers; Prohibiting the knowing and willful resistance to, obstruction of, or opposition to a police canine or police horse under certain circumstances; increasing criminal penalties for persons who actually and intentionally maliciously touch, strike, or cause bodily harm to a police canine, fire canine, SAR canine, or police horse, etc. CJ 03/27/2023 Favorable JU 04/04/2023 Favorable RC	Favorable Yeas 11 Nays 0
10	**SB 1302** Torres (Similar CS/H 853)	Translation Services; Authorizing a clerk of the circuit court to provide translation services; authorizing a clerk of the circuit court to contract with a third-party translation service provider to provide translation services; prohibiting a clerk of the circuit court from providing legal advice, etc. JU 04/04/2023 Fav/CS CJ RC	Fav/CS Yeas 11 Nays 0
11	**SB 582** Grall (Identical H 65)	Withholding Funds from the Return of Cash Bonds; Requiring a clerk of the court to withhold from the return of a cash bond posted by a criminal defendant or his or her spouse, rather than to withhold from the return of a cash bond posted on behalf of the criminal defendant by a person other than a bail bond agent, funds for specified purposes; requiring all cash bond forms to display a specified notice, etc. JU 04/04/2023 Favorable CJ RC	Favorable Yeas 11 Nays 0
12	**SB 1322** Grall (Identical H 1377)	Adoption of Children in Dependency Court; Specifying that certain adoption consents are valid, binding, and enforceable by the court; specifying that a consent to adoption is not valid after certain petitions for termination of parental rights have been filed; requiring that the final hearing on a motion to intervene and the change of placement of the child be held by a certain date; requiring the court to grant party status to the current caregivers under certain circumstances; requiring the court to order the transfer of custody of the child to the adoptive parents under certain circumstances and in accordance with a certain transition plan, etc. CF 03/20/2023 Favorable JU 04/04/2023 Fav/CS RC	Fav/CS Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	**CS/SB 312** Banking and Insurance / Collins (Similar CS/H 1111)	Insurance; Revising a minimum coursework qualification for licensure as a life agent; providing that certain restrictions against unfair discrimination or unlawful rebates do not include value-added products or services offered or provided by insurers or their agents if certain conditions are met; providing requirements for and restrictions on insurers or agents offering or providing such products or services, etc. BI 03/29/2023 Fav/CS JU 04/04/2023 Favorable RC	Favorable Yeas 11 Nays 0
14	**SB 610** Yarborough (Identical H 367)	Registration of Residential Child-caring Agencies and Family Foster Homes; Removing obsolete language; making technical changes, etc. CF 03/27/2023 Favorable JU 04/04/2023 Favorable RC	Favorable Yeas 10 Nays 0
15	**CS/SB 1458** Commerce and Tourism / Yarborough (Similar CS/H 1129)	Roller Skating Rink Safety; Providing that an operator of a roller skating rink is not liable for damages or personal injury resulting from inherent risks of roller skating; providing exceptions; providing that certain persons assume the inherent risk of roller skating; providing that an operator is not required to eliminate, alter, or control the inherent risks in roller skating, etc. CM 03/27/2023 Fav/CS JU 04/04/2023 Favorable RC	Favorable Yeas 10 Nays 0
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/30/23	SM	Favorable
4/4/23	JU	Favorable

March 30, 2023

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 2** – Senator Hooper
HB 6007 – Representative Abbott
Relief of Estate of Molly Parker by the Department of Transportation

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM BILL FOR $5,950,000, FROM UNAPPROPRIATED GENERAL REVENUE FUNDS. THE ESTATE OF MOLLY PARKER SEEKS DAMAGES FROM THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) CAUSED BY THE ALLEGED NEGLIGENCE OF AN FDOT EMPLOYEE, WHICH RESULTED IN THE DEATH OF MOLLY PARKER.

FINDINGS OF FACT:

The Accident

On the morning of December 12, 2019, Molly Parker was involved in a crash with a dump truck operated by a Florida Department of Transportation (FDOT) employee. This crash occurred at the intersection of State Road 2 (SR 2), which runs east-west, and County Road 167, which runs north-south. There are stop signs and stop lines on County Road 167 on each side of its intersection with SR 2; on the north side of County Road 167, the stop sign is approximately 40 feet behind the stop line. The posted speed limit at the relevant portion of SR 2 is 55 miles per hour.

Just prior to the crash, the FDOT employee stopped at the stop sign, approximately 40 feet behind the stop line, on the

north side of County Road 167, looked left and right multiple times, and did not see any cars on SR 2. However, the employee's view of SR 2 from the stop sign was obscured by trees.[1] The FDOT employee then entered the intersection and noticed a "brief glance of a car right there in the turning lane as I proceeded across the highway."[2] Ms. Parker's car then collided with the FDOT dump truck.

Damages

Ms. Parker suffered multiple injuries as a result of the crash. At the scene of the crash, witnesses stated that she had a pulse, but was unresponsive, and she was bleeding from her head.[3] Ms. Parker was intubated and airlifted to the nearest trauma care hospital, Southeast Alabama Medical Center. Ms. Parker underwent emergency hemicraniectomy and evacuation upon arrival. Doctors at the hospital diagnosed Ms. Parker with complex comminuted depressed left cranium skull fractures with intracranial hemorrhage, traumatic brain injury, extensive mid-face and skull fractures, a fractured sternum, multiple broken vertebrae, and a comminuted fracture of her right calcaneus (heel fracture).

On December 22, 2019, Ms. Parker died. She was 39 years old.[4] Expert witness Dr. Matthew Lawson concluded that, based on his review of relevant documents from Ms. Parker's medical records, "Molly Parker's severe traumatic brain injury and death were more likely than not directly caused by the trauma she sustained in the motor vehicle accident on December 12, 2019."[5]

Ms. Parker is survived by her husband, Tom Parker, and minor son. Mr. Parker has since been diagnosed with post-traumatic stress disorder and prolonged grief disorder by Michaeleen Burns, a licensed psychologist. Ms. Burns cites the cause of these diagnoses as "related to the trauma of witnessing Ms. Parker's condition" in the hospital for the ten days following the car accident, and witnessing the moment of her death.

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[1] Deposition of J.A.R., Oct. 5, 2021 at 123-124.
[2] Deposition of J.A.R, Oct. 5, 2021 at 60, lines 7-11. *See also*, F*l. Dep't. of Transp. Vehicle Crash/Incident Report*, 1 (Jan. 13, 2020).
[3] Jackson County Sheriff's Office, Emergency CAD Report (911 call details) for Dec. 12, 2019.
[4] Molly Parker's Death Certificate (Dec. 22, 2019).
[5] Affidavit of Matthew F. Lawson, M.D., Apr. 14, 2022.

Litigation History and Settlement
Mr. Parker, acting as a representative of Ms. Parker's estate, filed a civil cause of action in Leon County Circuit Court seeking relief as a result of this incident.[6] Prior to trial, the parties arrived at a settlement agreement[7] and the case was subsequently closed.[8]

Settlement
Counsel for claimant's estate believe the potential jury verdict value of this matter would be in excess of $6 million. The respondent did not admit responsibility for the incident, but did reach a settlement agreement of $6.25 million. As part of the agreement, the respondent agreed to support the passage of a claim bill, and did not present a case or argument at the special master hearing.[9]

Funds Received by Claimants
The claimant has received the full amount of the respondent's statutory limit ($300,000 per incident) from the FDOT and seeks the remaining balance of the settlement ($5.95 million) through this claim bill. According to the claimant's attorney, these funds will be partially held in a trust for the education and care of Ms. Parker's minor child.

CONCLUSIONS OF LAW:

The claim bill hearing held on February 4, 2023, was a *de novo* proceeding to determine whether FDOT is liable in negligence for damages suffered by the claimant, and, if so, whether the amount of the claim is reasonable. This report is based on evidence presented to the special master prior to, during, and after the hearing. The Legislature is not bound by settlements or jury verdicts when considering a claim bill, the passage of which is an act of legislative grace.

Section 768.28, of the Florida Statutes, limits the amount of damages a claimant can collect from the state or any of its agencies as a result of its negligence or the negligence of its

[6] Complaint (Dec. 11, 2020), *Parker, as Personal Representative of the Estate of Molly Morrison Parker, and on behalf of all survivors v. Fl. Dep't. of Transp.*, Case No: 2020-CA-2294 (Fla. 2nd Jud. Circ. 2022).
[7] Stipulated Settlement Agreement (June 21, 2022), *Parker, as Personal Representative of the Estate of Molly Morrison Parker, and on behalf of all survivors v. Fl. Dep't. of Transp.*, Case No: 2020-CA-2294 (Fla. 2nd Jud. Circ. 2022).
[8] Final Judgment (June 23, 2022), *Parker, as Personal Representative of the Estate of Molly Morrison Parker, and on behalf of all survivors v. Fl. Dep't. of Transp.*, Case No: 2020-CA-2294 (Fla. 2nd Jud. Circ. 2022).
[9] Stipulated Settlement Agreement, *supra* at 6.

employees to $200,000 for one individual and $300,000 for all claims or judgments arising out of the same incident. Funds in excess of this limit may only be paid upon approval of a claim bill by the Legislature. Thus, the claimant will not receive the full amount of the judgment unless the Legislature approves this claim bill authorizing the additional payment.

In this matter, the claimant alleges negligence on behalf of an employee of the FDOT. The State is liable for a negligent act committed by an employee acting within the scope of his or her employment.[10]

Negligence

Negligence is "the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances;"[11] and "a legal cause of loss, injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, injury or damage, so that it can reasonably be said that, but for the negligence, the loss, injury or damage would not have occurred."[12]

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.[13]

Duty

Statute, case law, and agency policy describe the duty of care owed by the operator of a motor vehicle. Generally, the operator of a motor vehicle has a duty to use reasonable care, in light of the attendant circumstances, to prevent injury to persons within the vehicle's path.[14]

The FDOT employee had two additional statutory duties pursuant to section 316.123(2)(a), F.S. The first: to "stop at a

[10] *City of Boynton Beach v. Weiss*, 120 So. 3d 606, 611 (Fla. 4th DCA 2013).
[11] Florida Civil Jury Instructions, 401.4 – Negligence.
[12] Florida Civil Jury Instructions, 401.12(a) - Legal Cause, Generally.
[13] *Williams v. Davis*, 974 So.2d 1052, at 1056-1057 (Fla. 2007).
[14] *See Gowdy v. Bell*, 993 So. 2d 585, 586 (Fla. 1st DCA 2008); and *Williams v. Davis*, *supra* at 13,1063.

clearly marked stop line…before entering the intersection [.]" The second: to "yield the right-of-way to any vehicle […] which is approaching so closely on said highway as to constitute an immediate hazard." These duties required the FDOT employee to (1) stop his dump truck at the stop line, rather than the stop sign, and (2) yield the right-of-way to any vehicle which is approaching so closely as to constitute an immediate hazard.

FDOT policy requires its employees to operate the Department's motor vehicles and heavy equipment in a safe manner.[15]

Breach
As the evidence demonstrates, the FDOT employee violated section 316.123(2)(a),of the Florida Statutes., and breached the required standard of care when he failed to stop his vehicle at the stop line, and when he entered the intersection in violation of Ms. Parker's right-of-way, resulting in a collision. This constitutes a failure to use reasonable care to prevent injury to persons within his vehicle's path.

The FDOT employee was cited for his violation of section 316.123(2)(a), of the Florida Statutes, by the Florida Highway Patrol and ultimately found guilty of that violation at a hearing on March 11, 2021.

FDOT issued an official written reprimand to the employee in question for his violation of the FDOT Disciplinary Standards of Conduct, which required he exercise due care and reasonable diligence in the performance of his job duties.[16]

Causation
Ms. Parker's death was the natural and direct consequence of the FDOT employee's breach of his duties. A collision was a foreseeable outcome from the risk produced by the FDOT employee's failure to yield the right-of-way and failure to use reasonable care upon entering the intersection. But for these failures, the accident would not have occurred, Ms. Parker

[15] FDOT Policy 13.5.1(C)(1) requires operators of motor vehicle/heavy industrial equipment to "…safely operate all vehicles or equipment they are assigned to operate." Additionally, FDOT Policy 10.11.1 states that it is the operator's responsibility to safely operate FDOT motor vehicles or equipment. FDOT, *Safety and Loss Prevention Manual*, 107 (May 16, 2018).
[16] The FDOT employee reprimand also cited Policy 10.11.1 of its Safety Loss and Prevention Manual, which states that the "safe operation of Department motor vehicles or equipment is the responsibility of the operator."

would not have been severely injured, and she would not have ultimately died as a result of those injuries.

The employee was acting within the course and scope of his employment with FDOT at the time of the crash. As the employer, FDOT is liable for damages caused by its employee's negligent act.[17]

Damages
Ms. Parker is survived by her husband and minor son, and worked both a full-time and part-time job to help provide financially for them. Additionally, Ms. Parker performed numerous unpaid tasks in and around the home, and in connection with the care of her son and family.

According to the economic analysis done by the Raffa Consulting Economists, Ms. Parker's estate suffered damages of at least $2,365,284.51 due to her premature death.[18] Ms. Parker's funeral expenses totaled $2,549.

Ms. Parker's medical bills initially totaled $255,347.49, but according to documentation submitted by the claimant's attorney, were reduced by partial payments to $164,395.75. According to the terms of the bill, lien interests relating to the care and treatment of Molly Parker will be waived and extinguished, excluding the federal portions of any liens.

In addition, Mr. Parker endured and continues to experience pain and suffering relating to the death of his wife, Ms. Parker.

A representative of Ms. Parker's estate and the FDOT have agreed to settle this matter for $6,250,000. This figure is reasonable based on the evidence and case law. The agreed amount settled upon represents the pain and suffering, expenses incurred, and the loss of services and financial support experienced by Ms. Parker's husband and minor child.

ATTORNEY FEES: Section 768.28(8), of the Florida Statutes, limits a claimant's attorney fees to 25 percent of any judgment or settlement.

[17] Florida Civil Jury Instructions, 401.14(a), *Vicarious Liability - Owner, Lessee, or Bailee of Vehicle Driven by Another*, and 401.12(a) - 401.14(b)(1), *Vicarious Liability – Agency, Master and Servant*.
[18] Raffa Consulting Economists, Economic Damages Analysis for Molly Parker (May 20, 2022).

Claimant's attorney has agreed to this limit and included related lobbying fees within the limit, as follows:

- Attorney fees: 20 percent ($1,119,000); and
- Lobbyist fees: 5 percent ($297,500).

RECOMMENDATIONS:

For the reasons set forth above, the undersigned finds t the claimant has demonstrated the elements of negligence by the greater weight of the evidence and the amount sought is reasonable. The undersigned recommends the bill be reported FAVORABLY.

Respectfully submitted,

Jessie Harmsen
Senate Special Master

cc: Secretary of the Senate

By Senator Hooper

21-00069-23 20232__

A bill to be entitled

An act for the relief of the Estate of Molly Parker; providing an appropriation to compensate the estate for Ms. Parker's death as a result of the negligence of the Department of Transportation; providing a limitation on compensation and the payment of attorney fees; providing legislative intent regarding the waiver of certain liens; providing an effective date.

WHEREAS, on December 12, 2019, 39-year-old Molly Parker was driving her vehicle eastbound on State Road 2 in Jackson County, Florida, approaching the intersection with Old U.S. Road, and

WHEREAS, at the same time, a dump truck loaded with fill dirt and weighing over 40,000 pounds, and owned by the Department of Transportation and driven by an employee of the department, was traveling southbound on Old U.S. Road and arrived at a stop sign at the intersection of Old U.S. Road and State Road 2, and

WHEREAS, the department's employee, failing to yield the right-of-way to Ms. Parker as she entered the intersection, drove the dump truck into the intersection, causing a violent and severe crash in which Ms. Parker's vehicle struck the side of the dump truck, and

WHEREAS, the department's employee was later cited for a violation of s. 316.123(2)(a), Florida Statutes, in connection with the crash, and

WHEREAS, as a result of the impact, Ms. Parker suffered complex comminuted depressed left cranium skull fractures; severe traumatic brain injury; extensive mid-face fractures of

21-00069-23 20232__

her facial bones; a comminuted calcaneal fracture; fractures of her spinal transverse processes at L1, L2, L3, and L4; a fracture of her sternum; pulmonary contusions; and kidney injury, and

WHEREAS, Ms. Parker was designated as being in need of Level 1 trauma care and transported emergently by helicopter to Southeast Alabama Medical Center in Dothan, Alabama, where she underwent emergency brain surgery followed by intensive care, where she died from her injuries on December 22, 2019, and

WHEREAS, Ms. Parker, through no fault of her own, suffered and was treated for multiple traumatic injuries until she died from those injuries, and

WHEREAS, the Estate of Molly Parker incurred costs totaling $255,347.49 for medical and surgical care and treatment related to the injuries Ms. Parker suffered in the crash, and

WHEREAS, prior to her death, Ms. Parker was educated and gainfully employed as a professional photographer; and with a work life expectancy of another 27.61 years, the amount of her lost earnings, lost support, lost services, and net accumulations after reduction to present value is $3,040,393, and

WHEREAS, Ms. Parker's survivors, her husband and her 4-year-old son, have experienced mental pain and suffering in connection with her tragic and traumatic injury and death and, as a result of her death, must endure the loss of her companionship, guidance, and protection, and

WHEREAS, the department completed an internal investigation into the cause of the collision, which included investigations by a department safety specialist, unit manager, and the

District 3 safety manager, each of whom testified under oath that the collision was caused solely by the negligence of the department's employee and that their investigations revealed that Ms. Parker did nothing wrong to cause or contribute to causing the motor vehicle crash that killed her, and

WHEREAS, in resolving the civil action brought by the personal representative of the Estate of Molly Parker against the department in the Circuit Court for the Second Judicial Circuit, in and for Leon County, Case No. 2020-CA-002294, a final judgment was entered on June 23, 2022, pursuant to the parties' settlement agreement, in favor of the estate in the amount of $6.25 million, and

WHEREAS, under the terms of the settlement agreement, a total amount of $6.25 million is to be paid to the Estate of Molly Parker, of which the department has paid $300,000 pursuant to s. 768.28, Florida Statutes, and

WHEREAS, the unpaid settlement amount in excess of the limitations on liability set forth in s. 768.28, Florida Statutes, is $5.95 million, and

WHEREAS, the department has agreed to this claim bill being rendered against the department in this matter and supports passage of this claim bill in the amount agreed upon in the settlement agreement, NOW, THEREFORE,

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

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

Section 2. The sum of $5.95 million is appropriated from

the General Revenue Fund to the Department of Transportation for the relief of the Estate of Molly Parker for injuries and damages sustained as a result of Ms. Parker's death.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of the Estate of Molly Parker in the sum of $5.95 million upon funds of the Department of Transportation in the State Treasury and to pay the same out of such funds in the State Treasury.

Section 4. The amount paid by the Division of Risk Management of the Department of Financial Services pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Molly Parker. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the sum of the total amount previously paid by the Department of Transportation and the amount awarded under this act.

Section 5. Excluding the federal portions of any liens, Medicaid or otherwise, which the claimant must satisfy pursuant to s. 409.910, Florida Statutes, it is the intent of the Legislature that the lien interests relating to the care and treatment of Molly Parker are hereby waived and extinguished.

Section 6. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

To: Senator Clay Yarborough, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 23, 2023

I respectfully request that **Senate Bill # 2**, relating to Relief of the Estate of Molly Parker/Department of Transportation, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ed Hooper
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

April 4, 2023
Meeting Date

Committee on Judiciary
Committee

SB 2
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matthew Blair

Phone (813) 527-0172

Address 112 E. Jefferson Street
Street

Email matt@corcoranpartners.com

Tallahassee Florida 32301
City *State* *Zip*

Reset Form

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
The Claimant

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

SB2 - Relief of Molly Carter
Bill Number or Topic

Amendment Barcode (if applicable)

Name Carter Scott

Phone 850-224-7600

Address 517 N. Calhoun St
Street

Email

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/30/23	SM	Favorable
4/3/23	JU	Fav/CS
	CA	
	RU	

March 30, 2023

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 12** – Committee on Judiciary and Senator Polsky
HB 6021 – Representative Tuck
Relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano by the Okeechobee County Sheriff's Office

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF $1,200,000, PAYABLE BY THE OKEECHOBEE COUNTY SHERIFF'S OFFICE TO RICARDO MEDRANO-ARZATE AND EVA CHAVEZ-MEDRANO AS COMPENSATION FOR DAMAGES AWARDED IN CONNECTION WITH THE DEATH OF THEIR DAUGHTER HILDA MEDRANO.

FINDINGS OF FACT:

Overview of Accident

On December 1, 2013, Elizabeth Arellano Renteria was driving a 2000 Ford Focus, with two passengers: Hilda Medrano in the front seat and Isamar Jaimes in the back seat. At 2:16 am, Renteria was traveling eastbound on State Road 70 and was attempting to make a left-hand turn into a McDonald's restaurant when Okeechobee County Sheriff's Office Deputy Sheriff Joseph A. Gracie struck the Focus with his police car.

Gracie was responding as backup to another call[1] and driving at speeds over 90 miles per hour (mph) on State Road 70, which had a 35 mph speed limit. At the time, Gracie was operating his police vehicle without any emergency lights or sirens. Gracie struck the Focus at 87 mph, which caused the Focus to travel 211 feet down the street. The impact killed Hilda Medrano and the driver, Renteria. Ms. Medrano was pronounced deceased at the scene of the accident at 3:09 am.[2] The backseat passenger, Isamar Jaimes was also severely injured.

Liability of Okeechobee County Sheriff's Office

Deputy Gracie was a deputy for the Okeechobee County Sheriff's Office at the time of the accident and was operating his police cruiser within the course and scope of his employment. The police cruiser was owned by the Sheriff's Office and was operated with the authority, permission, and consent of the Sheriff's Office. The Sheriff's Office is responsible for any negligence of Deputy Gracie.[3]

LITIGATION HISTORY:

On April 30, 2014, the claimant filed a Complaint for Negligence and Demand for Jury Trial in the Nineteenth Judicial Circuit, in and for Okeechobee County.[4]

Prior to commencing trial, the parties participated in non-binding arbitration by a retired circuit court judge Robert Makemson. On May 16, 2018, the arbitrator filed his decision finding the sole and proximate cause of the motor vehicle accident and fatalities was the excessive speed of Deputy Gracie and his failure to use emergency equipment. The arbitrator awarded the claimants $4,700,000.[5]

On August 20, 2018, a three-day jury trial of the claimant's negligence claim was begun. On August 22, 2018, the jury

[1] The call was a reported domestic disturbance nearby. Prior to Deputy Gracie's response, Lieutenant K.J. Ammons had already advised dispatch that he was close to the address and would be providing backup to the Deputy Sheriff responding to the call. Okeechobee County Sheriff's Office, Office of Special Investigations, Internal Investigation Case # 2013-12-01, Claimant's Exhibit 20.
[2] In the Medical Examiner's Report, Dr. Linda O'Neil concluded that Ms. Medrano's cause of death was multiple blunt trauma injuries.
[3] The facts regarding the liability of the Okeechobee County Sheriff's Office were stipulated to by the parties at trial. Transcript of Proceedings, Volume II, Respondent's Exhibit D.
[4] The claimants sued the Sheriff in his official capacity based on the actions of Deputy Gracie in the course and scope of his employment as an Okeechobee County Sheriff's Deputy; Roberta Arellano, as personal representative of the Estate of Elizabeth Arellano Renteria; and Roberta Arellano, individually.
[5] Notice of Filing Arbitrator's Decision under Seal, Claimant's Exhibit 9.

rendered a verdict in favor of the claimant and awarded $5 million in damages to the estate of Ms. Medrano for the mental pain and suffering sustained by the claimants.[6] The jury found the negligence of Sheriff Stephen, as Sheriff for Okeechobee County, and Ms. Renteria were legal causes of Ms. Medrano's death. The jury found that Sheriff Stephen was 88.5 percent negligent and Ms. Renteria was 11.5 percent negligent.[7]

On October 31, 2018, Circuit Judge Laurie E. Buchanan issued a final judgment for the claimant against Sheriff Stephen totaling $4,425,000, the proportion of the total verdict attributed to the negligence of the Sheriff's Office. The final judgment stated that this amount shall be reported to the Legislature and may only be paid by further act of the Legislature pursuant to the claim bill process.

Further appeals and motions for a new trial by the Defendant were denied.[8]

Separately, claimants brought a federal section 1983 civil rights claim against the Sheriff's Office, alleging that two conflicting Sheriff's Office policies caused Ms. Medrano's death. This claim was rejected by the trial court, federal appellate court, and United States Supreme Court.[9]

On February 25, 2021, a special master, held a hearing on a previous version of this bill, SB 226 (2021). The Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

CONCLUSIONS OF LAW:

Section 768.28, Florida Statutes, waives sovereign immunity for tort liability up to $200,000 per person and $300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

[6] The jury determined that Ms. Medrano's parents were each entitled $2.5 million in damages for their pain and suffering.
[7] Jury Verdict, Claimant's Exhibit 13.
[8] Order Denying Defendant's Motion for New Trial, Claimant's Exhibit 17, and Fourth District Court of Appeal Order, Claimant's Exhibit 18.
[9] Claimant's Brief Summary of Case. *See* Complaint and Amended Complaint [S.D. of Florida], 11th Circuit Opinion, and Supreme Court of the United States Denial of Petition for Writ of Certiorari, Claimant's Exhibits 5-8.

Negligence

There are four elements to a negligence claim: (1) *duty*–where the defendant has a legal obligation to protect others against unreasonable risks; (2) *breach*–which occurs when the defendant has failed to conform to the required standard of conduct; (3) *causation*–where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) *damages*–actual harm.[10]

Duty

Section 316.1925(1), Florida Statutes, provides that "any person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. Failure to drive in such manner shall constitute careless driving and a violation of this section."

Pursuant to section 316.126(3), of the Florida Statutes, an emergency vehicle traveling to an existing emergency "shall warn all other vehicular traffic along the emergency route by an audible signal, siren, exhaust whistle, or other adequate device or by a visible signal by the use of displayed blue or red lights. While en route to such emergency, the emergency vehicle shall otherwise proceed in a manner consistent with the laws regulating vehicular traffic upon the highways of this state." Section 316.126(5), of the Florida Statutes, further states that "this section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway."

Deputy Gracie, as an officer of the Okeechobee County Sheriff's Office, had a clear duty to use his sirens or lights while responding to an emergency. Regardless of whether he was responding to an emergency, Deputy Gracie had a clear duty to operate his vehicle in a careful and prudent manner with due regard for the safety of other drivers using the roadway.

Breach

Under Florida law, law enforcement officers are required to obey traffic laws, including speed limits, and must use lights

[10] *Williams v. Davis*, 974 So.2d 1052, at 1056–1057 (Fla. 2007).

and sirens to alert other motorists of their presence. Deputy Sheriff Gracie violated these laws and operated his vehicle at speeds 55-60 mph over the speed limit without using his vehicle's lights or sirens. Evidence presented shows Deputy Gracie had sufficient time to activate the emergency equipment on his patrol car.

Gracie received a traffic citation from the Florida Highway Patrol for violation of section 316.1925(1), of the FloridaStatutes, for careless driving, and violation of section 316.126(3), of the Florida Statutes, for failing to use a warning device.[11] Gracie pled guilty to these violations and received six-month suspension of his license and was fined $1000 and $250.[12]

Causation

The Florida Highway Patrol Traffic Homicide Report concluded that the cause of the accident, deaths of Ms. Renteria and Ms. Medrano, injuries to Ms. James, and property damage were solely due to Deputy Gracie's speed.[13] The report also noted Deputy Gracie was a sworn police officer who was on duty and driving a marked police car to an active emergency call without the vehicle's emergency equipment engaged.

In the Medical Examiner's Report, Dr. Linda Rush O'Neil concluded Ms. Medrano's cause of death was multiple blunt trauma injuries. Dr. O'Neil also testified that Ms. Medrano's lacerated aorta, caused by the impact of the crash, would have also separately caused her death.[14]

It was argued in the underlying case that Ms. Medrano was comparatively negligent in not wearing a seatbelt.[15] However, case law is clear that whether a victim wore a seat belt only affects a finding of negligence if the seat belt would have made a difference in the accident.[16] The medical examiner

[11] Florida Highway Patrol, Traffic Homicide Report, Respondent's Exhibit E.
[12] Excerpt of Deputy Joseph A. Gracie Deposition, Respondent's Exhibit I.
[13] Florida Highway Patrol, Traffic Homicide Report, Respondent's Exhibit E.
[14] Deposition of Dr. Linda Rush O'Neil, Claimant's Exhibit 48.
[15] Defendant Roberta Arellano's Answer to Plaintiff's Complaint, Claimant's Exhibit 2, and Defendant Okeechobee County Sheriff's Answer/Affirmative Defenses, Claimant's Exhibits 3 and 4.
[16] *Insurance Co. of North America v. Pasakarnis*, 451 So. 2d 447, 454 (Fla. 1984).

concluded a seatbelt would not have prevented Ms. Medrano's injuries and death.[17]

Additionally, it was argued in the underlying case that the driver, Ms. Renteria, was negligent in making the left turn and should bear some responsibility for the collision.[18] However, the traffic homicide report concluded that speed was the cause of the accident, despite the left turn made by the driver.[19]

Florida law requires "[t]he driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway [to] yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or *so close thereto as to constitute an immediate hazard*"[20] (emphasis added).

The accident reconstruction expert concluded Ms. Renteria could not have known Deputy Gracie was an immediate hazard,[21] and would not have been able to accurately judge his speed or approach due to his not using his emergency lights or sirens. Despite this, the jury verdict and final judgment allocated comparative negligence to both Deputy Gracie and Ms. Renteria.

Damages
Through the provision of medical records and supporting evidence, claimants established that the jury verdict and final judgment of $4,425,000 for the mental pain and suffering[22] of Ms. Medrano's parents is reasonable.

Sovereign Immunity
The Okeechobee Sheriff's Office had $500,000 in insurance coverage, which was paid out to the other two victims of the accident.[23] Insurance coverage was provided in the amount

[17] Deposition of Dr. Linda Rush O'Neil, Claimant's Exhibit 48.
[18] Section 316.122, of the Florida Statutes states that "the driver of a vehicle intending to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction, or vehicles lawfully passing on the left of the turning vehicle, which is within the intersection or so close thereto as to constitute an immediate hazard."
[19] Florida Highway Patrol, Traffic Homicide Report, Respondent's Exhibit E.
[20] Section 316.122, F.S.
[21] Excerpt of Trial Transcript: Direct and Redirect of Michael Knox, Claimant's Exhibit 52.
[22] Section 768.21, F.S. authorizes damages for wrongful death.
[23] Respondent Sheriff's Statement Regarding Self-Insurance/Payment, Respondent's Exhibit 2.

of $300,000, the statutory cap on damages, plus an additional $200,000 in contingent claim bill coverage. $100,000 was paid to the rear-seated passenger, Isamar Sanchez Jaimes. The claimants were offered the remaining $400,000, but elected to proceed to trial. As a result, the remaining $400,000 was offered to the family of the deceased driver, Elizabeth Arellano Renteria, who accepted payment of the $400,000.

Settlement with Estate of Elizabeth Arellano Renteria

The claimants settled their claim against the estate of Ms. Renteria through a confidential settlement made before the trial. During the special master hearing, claimant's counsel testified that claimants received $21,185.64 in net settlement proceeds from Ms. Renteria's motor vehicle insurance coverage.[24] Claimant's counsel stated that he could not disclose the full amount of the settlement due to a confidentiality agreement with the insurance company.[25] However, claimant's counsel received $44,126.50 in settlement proceeds.[26] Claimant's counsel attested that no settlement funds were derived from the $400,000 payment made by the Florida Sheriff's Risk Management Fund.[27]

Conclusion

Deputy Sheriff Gracie's negligence led to the traffic accident and fatality of Hilda Medrano and the Okeechobee County Sheriff's Office is responsible for the acts of their employees. The claimants introduced sufficient evidence to prove, by a preponderance of the evidence that Detective Gracie breached a duty of care and caused Ms. Medrano's death.

ATTORNEY FEES:

Section 768.28(8), of the Florida Statutes, states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement.

The claimant's attorneys have submitted an affidavit to limit attorney fees to 25 percent of the total amount awarded under

[24] Recording of Special Master Hearing, discussion of confidential settlement beginning at about 1 hour, 22 minutes; Sworn Amended Affidavit of Edward H. Zebersky.
[25] *Id*.
[26] Sworn Affidavit of Edward H. Zebersky, Claimant's Exhibit 66 and additional Affidavit of Edward H. Zebersky, (Dec. 1, 2022).
[27] Recording of Special Master Hearing, discussion of Claimants' use of award beginning at about 1 hour, 25 minutes.

the claim bill and lobbying fees to 5 percent of the total amount awarded under the claim bill.[28]

FISCAL IMPACT:

Impact of Award to Claimants
During the special master hearing, Mrs. Chavez-Medrano indicated if the Legislature passed the claim bill, the family would use the award for living expenses and would support the community by funding scholarships for students going to college.[29] Mr. Medrano-Arzate stated further that he would like to create a scholarship in his daughter's name for students who are studying ultrasound, as his daughter was at the time of her death, and for students who need financial assistance to attend college.[30]

Impact of Award to Respondent
The respondent has already paid the total coverage provided by the Florida Sheriff's Risk Management Fund. The Respondent attests it has no other insurance coverage for the claim.[31] This includes the statutory maximum of $300,000.00,[32] as well as $200,000.00 in contingent claim coverage.

The attorneys for the claimant and respondent have reached an agreement to settle this claim for $1,200,000. The first $300,000 will be paid within 30 days of the bill becoming law. The three remaining payments will be paid by July 1 of each of the following years.

The total amount of attorney fees paid for this claim may not exceed $240,000; the total amount paid for lobbying fees may not exceed $60,000; and the total amount paid for costs or other similar expenses may not exceed $4,945.49

The amount awarded and paid by the Okeechobee County Sheriff's Office under this claim bill is intended to provide the sole compensation for all present and future claims arising from this accident.

[28] Sworn Affidavit of Edward H. Zebersky, Claimant's Exhibit 66 and additional Affidavit of Edward H. Zebersky, (Dec. 1, 2022).
[29] *Id*., discussion of claimants' use of award beginning at about 1 hour, 31 minutes.
[30] *Id*., discussion ofcClaimants' use of award beginning at about 1 hour, 52 minutes.
[31] Affidavit of Sheriff Noel E. Stephen, Respondent's Exhibit A, (Nov. 30, 2022).
[32] The negligence claim involved three claimants, so the cap on damages is $300,000. Section 768.28(5), F.S.

RECOMMENDATIONS: Based upon the foregoing, I recommend the bill be amended to reflect the terms of the settlement discussed above and SB 12 be reported FAVORABLY.

Respectfully submitted,

Eva M. Davis
Senate Special Master

cc: Tracy Cantella, Secretary of the Senate

CS by Judiciary:
The committee substitute differs from the underlying bill by incorporating the terms of the settlement reached between the parties. According to the settlement, the Okeechobee County Sheriff's Office will pay $1,200,000 to the Medrano family in four installments of $300,000, with the first payment due within 30 days after the bill becomes law and each succeeding payment made by July1 of each following year. Attorney fees may not exceed $240,000, lobbying fees may not exceed $60,000, and costs may not exceed $4,945.49.

679014

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
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	.	

The Committee on Judiciary (Polsky) recommended the following:

Senate Amendment

Delete lines 74 - 87
and insert:
encumbered and to draw four warrants in the sum of $300,000 each, payable to Ricardo Medrano-Arzate and Eva Chavez-Medrano for damages awarded in connection with the death of their daughter, Hilda Medrano. The first $300,000 shall be paid within 30 days after the effective date of this act, and the three remaining payments shall each be paid by July 1 of each of the following years.

Section 3. The amount paid by the Okeechobee County Sheriff's Office and awarded under this act is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the award of damages to Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano. The total amount paid for attorney fees relating to this claim may not exceed $240,000, the total amount paid for lobbying fees may not exceed $60,000, and the total amount paid for costs or other similar expenses may not exceed $4,945.49.

By Senator Polsky

30-00064-23 202312__

A bill to be entitled

An act for the relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano, by the Okeechobee County Sheriff's Office; providing for an appropriation of funds to pay Ricardo Medrano-Arzate and Eva Chavez-Medrano for the damages awarded in connection with the death of their daughter as a result of the negligence of the Okeechobee County Sheriff's Office; providing a limitation on the payment of compensation, attorney and lobbying fees, and costs or similar expenses; providing an effective date.

WHEREAS, shortly after 2 a.m. on December 1, 2013, Hilda Medrano was riding in the passenger side of her cousin's vehicle, traveling eastbound on State Road 70 in downtown Okeechobee, and

WHEREAS, at the same time, Okeechobee County Sheriff's Deputy Joseph Gracie was driving westbound on State Road 70 at a speed in excess of 95 miles per hour while responding as backup to a 911 call for law enforcement assistance, and

WHEREAS, the speed limit on that portion of State Road 70 is 35 miles per hour, and

WHEREAS, Deputy Gracie recklessly sped without activating his emergency lights or sirens to warn other motorists in the area of his presence and that he was driving at such a high rate of speed, and

WHEREAS, Deputy Gracie's police cruiser struck the vehicle in which Hilda Medrano was a passenger on the passenger side

30-00064-23 202312__

door at a speed of 87 miles per hour, killing Hilda Medrano and her cousin and severely injuring a second passenger in that vehicle, and

WHEREAS, the Florida Highway Patrol's investigation found that Deputy Gracie violated s. 316.126(3) and (5), Florida Statutes, and

WHEREAS, an Okeechobee County Sheriff's Office internal affairs department investigation found that Deputy Gracie's actions were unbecoming of an officer and in violation of four standard operating procedures of the Okeechobee County Sheriff's Office, and

WHEREAS, at the time of her death, Hilda Medrano was a 21-year-old college student with dreams of becoming an X-ray technician, and

WHEREAS, Hilda Medrano's parents, Ricardo Medrano-Arzate and Eva Chavez-Medrano, are legal immigrants to the United States, who came to this country to work and provide their children with opportunities to achieve the American dream and have resided in the Mexican-American community in Okeechobee for more than 30 years, and

WHEREAS, Ricardo Medrano-Arzate's and Eva Chavez-Medrano's dreams for their daughter Hilda Medrano were destroyed by the reckless actions of Deputy Gracie, and

WHEREAS, after a 4-day trial, a jury awarded Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano, $5 million in damages, and

WHEREAS, based on the jury's apportionment of fault, finding that Deputy Gracie was 88.5 percent liable for the collision, the trial court reduced the jury's award to

$4,425,000, and that decision was affirmed by the Fourth District Court of Appeal, and

WHEREAS, in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, the Okeechobee County Sheriff's Office settled the claims of the other two victims but has not paid any money toward the damages awarded to Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano, NOW, THEREFORE,

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

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

Section 2. The Okeechobee County Sheriff's Office is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $4,425,000 payable to Ricardo Medrano-Arzate and Eva Chavez-Medrano for damages awarded in connection with the death of their daughter, Hilda Medrano.

Section 3. The amount paid by the Okeechobee County Sheriff's Office and awarded under this act is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the award of damages to Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano. The total amount paid for attorney fees relating to this claim may not exceed $885,000, the total amount paid for lobbying fees may not exceed $221,250, and the total amount paid for costs or other similar expenses may not exceed $4,030.89.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Committee on Agriculture, Environment, and General Government
Appropriations Committee on Transportation, Tourism, and Economic Development
Criminal Justice
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR TINA SCOTT POLSKY
30th District

December 15, 2022

Chairman Clay Yarborough
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Yarborough,

I respectfully request that you place SB 12, relating to Relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano/Okeechobee County Sheriff's Office, on the agenda of the Committee on Judiciary at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

Senator Tina S. Polsky
Florida Senate, District 29

cc: Tom Cibula, Staff Director
Lisa Larson, Administrative Assistant

REPLY TO:
❒ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
❒ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

12
Bill Number or Topic

Amendment Barcode (if applicable)

Name Albert Balido

Phone 8502573440

Address 201 w Park
Street

Tal FL 32301
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Estate of Hilda Medrano

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 828
INTRODUCER:	Senator Polsky
SUBJECT:	Grand Juries
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Favorable**
2.			CJ	
3.			RC	

I. Summary:

SB 828 amends s. 905.27, F.S., the statute which prohibits the disclosure of testimony or evidence received by a grand jury. The statute currently authorizes a court to require that testimony be disclosed for three purposes: ascertaining whether the testimony is consistent with the testimony given by the witness before the court, determining whether the witness is guilty of perjury, or furthering justice.

The bill amends the third exception of "furthering justice" by expanding that concept to include furthering a public interest when the disclosure of testimony is requested by the media or an interested person. The testimony may be disclosed if:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who was a minor at the time of the inquiry;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

Even if these provisions are met, the court may limit the disclosure of testimony, including redacting certain testimony.

The bill also amends s. 905.27, F.S., to include the custodian of a grand jury record to the list of persons who may not disclose the testimony of a witness examined before a grand jury or disclose other evidence received by the grand jury.

The act takes effect July 1, 2023.

II. Present Situation:

The Grand Jury

Background

The state court system has two types of juries: grand juries and petit juries. While a petit jury, also known as a trial jury, weighs evidence and returns a verdict of guilt or innocence after hearing from both sides, a grand jury does not hear from both sides. A grand jury only hears witnesses presented by a state attorney and determines whether there is sufficient evidence to formally indict, or charge, an accused person with a crime.[1] In other words, the grand jury simply initiates the criminal prosecution.[2]

The modern grand jury is rooted in ancient tradition. It originated in England centuries ago and was brought to this country by the early colonists. A grand jury was formally recognized in the Magna Carta in 1215 but can be traced even earlier to 997 A.D., when an Anglo-Saxon king, unfortunately named "Ethelred the Unready," tasked an investigative body to perform "its duty by accusing no innocent person and sheltering no guilty one."[3]

The State Constitution

According to the State Constitution, no one may be tried for a capital crime, a crime punishable by death, unless he or she is indicted by a grand jury.[4] This is the only instance in which a grand jury indictment is required. For all other crimes, the state attorney may initiate criminal charges.

Composition and Investigative Power

A grand jury is composed of at least 15 and no more than 21 citizens who have been summoned and empaneled by a circuit court judge.[5,6] In order to return an indictment, at least 12 grand jurors must agree.[7] Although the grand jury is considered an agency of the circuit court, it works separately and independently from the court.[8]

To aid a grand jury in its broad power of investigation, it is given the authority to subpoena witnesses through the state attorney.[9] While grand juries primarily focus on capital cases, they may also be used to investigate controversies involving the alleged illegal acts of public officials.[10]

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[1] The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *Chapter 30 Florida Grand Jury Handbook* (on file with the Senate Committee on Judiciary).
[2] Gregg D. Thomas, Carol Jean LoCicero, and Linda R. Norbut, The Florida Bar, *The Grand Jury* (Revised Aug. 1, 2020) https://www.floridabar.org/news/resources/rpt-hbk/rpt-hbk-13/.
[3] The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 1.
[4] FLA. CONST. art. I, s. 15(a). The full text of section 15 is "No person shall be tried for capital crime without presentment or indictment by a grand jury, or for other felony without such presentment or indictment or an information under oath filed by the prosecuting officer of the court, except persons on active duty in the militia when tried by courts martial."
[5] Section 905.01(1), F.S.
[6] The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 1.
[7] Section 905.23, F.S.
[8] The Supreme Court Committee on Standard Jury Instructions in Criminal Cases, *supra* note 1.
[9] Section 905.185, F.S.
[10] Thomas, et al., *supra* at note 2.

The Work of the Grand Jury

Secrecy

The majority of the grand jury's work is focused on listening to witnesses and deciding whether the evidence presented justifies an indictment. For the proceedings to function as they are designed, it is essential that the proceedings are kept secret. Section 905.24, F.S., states:

> Grand jury proceedings are secret, and a grand juror or an interpreter appointed pursuant s. 90.6063(2) shall not disclose the nature or substance of the deliberations or vote of the grand jury.

Consistently and similarly applying the need for secrecy, s. 905.25, F.S., states:

> A grand juror shall not be permitted to state or testify in any court how she or he or any other grand juror voted on any matter before them or what opinion was expressed by herself or himself or any other grand juror about the matter.

Who May Attend a Grand Jury Session

To underscore the importance of secrecy, the statutes provide the limited number and specific persons who may be present during a session. No person may be present at the grand jury sessions except:

- The witness under examination;
- One attorney who represents the witness and advises and consults the witness;
- The state attorney and her or his assistant state attorneys;
- The court reporter or stenographer; and
- The interpreter.[11]

No one is allowed to be present while the grand jurors are deliberating or voting, except an interpreter who may be present after he or she swears to refrain from making any personal interjections and who also commits to uphold the secrecy of the proceeding.[12]

Confidential Nature of Notes and Transcripts

The notes, records, and transcripts of the stenographer or court reporter are filed with the clerk who is charged with keeping them in a sealed container that is not subject to public inspection. They are confidential and exempt from the provisions of s. 119.071(1) and s. 24(a), Art. I of the State Constitution and may be released by the clerk *only* upon the request by a grand jury for use by the grand jury or upon order of the court pursuant to s. 905.27, F.S.[13]

[11] Section 905.17(1), F.S.
[12] Section 905.17(3), F.S.
[13] Section 905.17(1), F.S.

Grand Jury Testimony May Not Be Disclosed

Section 905.27(1), F.S., prohibits a grand juror, state attorney, assistant state attorney, reporter, stenographer, interpreter, or any other person who appears before the grand jury from disclosing the testimony of a witness who was examined before the grand jury or any other evidence received by it except when required by a court to disclose the testimony for the purpose of:

- Ascertaining whether it is consistent with the testimony given by the witness before the court;
- Determining whether the witness is guilty of perjury; or
- Furthering justice.[14]

Section 905.27(2), F.S., states that it is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause, or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, except when the testimony is or has been disclosed in a court proceeding.

When the court orders the disclosure of the testimony for use in a *criminal* case it may be disclosed:

- To the prosecuting attorney in the court where the case is pending.
- By the prosecuting attorney to his or her assistants, associates, and employees.
- To the defendant.
- To the defendant's attorney.
- By the defendant's attorney to his or her legal associates and employees.

When the court orders the disclosure of the testimony for use in a *civil* case, it may be disclosed to the parties and their attorneys, and by the attorneys to their legal associates and employees. However, the grand jury testimony provided to those persons by the court may only be used in the defense or prosecution of the civil and criminal case and for no other purpose.

Whoever is convicted of violating these provisions is guilty of a first degree misdemeanor and the violation constitutes contempt of court.[15]

Jeffrey Epstein Grand Jury Testimony, 2006

In 2006, Jeffrey Epstein was investigated by the Palm Beach Police Department for allegedly sexually abusing five young girls, all under the age of 16 years, at his mansion. In addition, several other young girls who were not yet 18 years old also alleged that they were sexually abused by Jeffrey Epstein at his mansion.[16]

The Palm Beach Police Department contacted State Attorney Barry Krischer and asked that he charge Mr. Epstein with four counts of unlawful sexual activity with a minor and one count of

[14] Section 905.27(1), F.S.
[15] Section 905.27 (4) and (5), F.S.
[16] Holly Baltz, The Palm Beach Post, *Why Was Jeffrey Epstein in 2006 Charged Only with Picking Up a Prostitute? Where We Stand* (Feb.9, 2023) https://www.palmbeachpost.com/story/news/2023/02/09/palm-beach-post-lawsuit-to-unseal-jeffrey-epstein-grand-jury-records/69867241007/.

lewd and lascivious molestation. If convicted of those charges, Mr. Epstein would have been sent to prison for decades. Instead of charging Jeffrey Epstein as the police recommended, State Attorney Krischer chose an unusual legal maneuver and presented the case to a grand jury. Surprisingly, the grand jury returned only one charge, that of soliciting a prostitute. Mr. Epstein was arrested after the indictment and charged with one felony count of soliciting a prostitute.[17]

According to one media report, this was the first time a sex crime case was presented to a grand jury by State Attorney Krischer's office. Although 13 teenage girls gave virtually identical accounts of their interactions with Mr. Epstein, the state attorney's office called only one 14-year-old girl to testify before the grand jury.[18]

In November 2019, The Palm Beach Post sued the current State Attorney, who was no longer Mr. Krischer, and the Clerk and Comptroller of Court in an effort to obtain a court order to unseal the grand jury proceedings and reveal why the grand jury returned only minimal charges. Because the grand jury's proceedings are private, The Post relied on s. 905.27(1), F.S., which allows a judge to disclose testimony for the purpose of "furthering justice."

The Palm Beach Post, through its attorney, argued in part:

> Access to the grand jury materials will allow the public to determine whether the grand jury process, and the secrecy that comes with it, was used to further justice or, instead, operated to shield Epstein and his co-conspirators from the consequences of their criminal activities.[19]

In December 2021, the circuit judge determined that the grand jury documents and records could not be released. The Palm Beach Post has appealed this ruling to the Fourth District Court of Appeal.[20]

III. Effect of Proposed Changes:

SB 828 amends s. 905.27, F.S., the statute which prohibits the disclosure of testimony or evidence received by a grand jury. The statute currently authorizes a court to require that testimony be disclosed for three purposes: ascertaining whether the testimony is consistent with the testimony given by the witness before the court, determining whether the witness is guilty of perjury, or furthering justice.

The bill amends the third exception of "furthering justice" by expanding that concept to include furthering a public interest when the disclosure of testimony is requested by the media or an interested person. The testimony may be disclosed if:

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[17] *Id*.
[18] Jane Musgrave, John Pacenti, and Lulu Ramadan, The Palm Beach Post, *How the Epstein Saga Could've Been Ended Years Ago: To His First Prosecutors, Victims Were Prostitutes* (Nov. 20, 2019) https://www.usatoday.com/story/news/2019/11/20/jeffrey-epstein-saga-couldve-been-ended-attorney-barry-krischer/4237757002/.
[19] *CA Florida Holdings, LLC, Publisher of THE PALM BEACH POST, v. DAVE ARONBERG, as State Attorney of Palm Beach County, Florida; SHARON R. BOCK, as Clerk and Comptroller of Palm Beach, County, Florida*, Motion of Plaintiff for Summary Judgment, p. 3 (April 22, 2021) (on file with the Senate Committee on Judiciary).
[20] Baltz, *supra* at note 15.

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who was a minor at the time of the inquiry;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

Even if these provisions are met, the court may limit the disclosure of testimony, including redacting certain testimony.

The bill also amends s. 905.27(1), F.S., to include the custodian of a grand jury record to the list of persons who may not disclose the testimony of a witness examined before a grand jury or other evidence received by the grand jury.

The bill also amends s. 905.27(2), F.S., to provide that, if a court orders the disclosure of testimony for use in a criminal case to the prosecuting attorney and his or her assistants and to the defendant and his or her attorney and assistants, the testimony can only be used in the defense or prosecution of the criminal case and for no other purpose.

Section 2 of the bill reenacts s. 905.17(1) and (2), F.S., which relates to who may be present during a session of a grand jury, to incorporate the amendments made to s. 905.27, F.S.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an indeterminate impact on the clerks of court if additional grand jury records are required to be released by a court. However, because the provisions of this bill are drawn very narrowly, the impact should be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 905.27 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 Polsky

30-00390B-23 2023828__

A bill to be entitled

An act relating to grand juries; amending s. 905.27, F.S.; revising the list of persons prohibited from disclosing the testimony of a witness examined before a grand jury or other evidence it receives; creating an exception for a request by the media or an interested person to the prohibited publishing, broadcasting, disclosing, divulging, or communicating of any testimony of a witness examined before the grand jury, or the content, gist, or import thereof; providing criminal penalties; providing construction; making technical changes; reenacting s. 905.17(1) and (2), F.S., relating to who may be present during a session of a grand jury, to incorporate the amendment made to s. 905.27, F.S., in references thereto; providing an effective date.

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

Section 1. Section 905.27, Florida Statutes, is amended to read:

905.27 Testimony not to be disclosed; exceptions.—

(1) Persons present or appearing during a grand jury proceeding, including a grand juror, a state attorney, an assistant state attorney, a reporter, a stenographer, or an interpreter, as well as the custodian of a grand jury record, may not ~~or any other person appearing before the grand jury shall not~~ disclose the testimony of a witness examined before the grand jury or other evidence received by it except when

30-00390B-23 2023828__

required by a court to disclose the testimony for the purpose of:

(a) Ascertaining whether it is consistent with the testimony given by the witness before the court;

(b) Determining whether the witness is guilty of perjury; or

(c) Furthering justice, which can encompass furthering a public interest when the disclosure is requested pursuant to paragraph (2)(c).

(2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a court proceeding in any of the following circumstances: ~~.~~

(a) When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his or her assistants, legal associates, and employees, and to the defendant and the defendant's attorney, and by the latter to his or her legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the criminal case and for no other purpose.

(b) When a court orders the ~~such~~ disclosure of such testimony ~~is ordered by a court~~ pursuant to subsection (1) for

use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil ~~or criminal~~ case and for no other purpose ~~whatsoever~~.

(c) When a court orders the disclosure of such testimony pursuant to subsection (1) in response to a request by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, it may be disclosed so long as the subject of the grand jury inquiry is deceased, the grand jury inquiry related to criminal or sexual activity between a subject of the grand jury investigation and a person who at the time was a minor, the testimony was previously disclosed by a court order, and the state attorney is provided notice of the request. This paragraph does not limit the court's ability to limit the disclosure of testimony, including, but not limited to, redaction.

(3) ~~Nothing in~~ This section does not ~~shall~~ affect the attorney-client relationship. A client has ~~shall have~~ the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

(4) A person who violates ~~Persons convicted of violating~~ this section commits ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding $5,000, or both.

(5) A violation of this section constitutes ~~shall constitute~~ criminal contempt of court.

Section 2. For the purpose of incorporating the amendment made by this act to section 905.27, Florida Statutes, in references thereto, subsections (1) and (2) of section 905.17, Florida Statutes, are reenacted to read:

905.17 Who may be present during session of grand jury.—

(1) No person shall be present at the sessions of the grand jury except the witness under examination, one attorney representing the witness for the sole purpose of advising and consulting with the witness, the state attorney and her or his assistant state attorneys, designated assistants as provided for in s. 27.18, the court reporter or stenographer, and the interpreter. The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.

(2) The witness may be represented before the grand jury by one attorney. This provision is permissive only and does not create a right to counsel for the grand jury witness. The attorney for the witness shall not be permitted to address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. The attorney for the witness shall be permitted to advise and counsel the witness and shall be subject to the provisions of s. 905.27 in the same

manner as all who appear before the grand jury. An attorney or law firm may not represent more than one person or entity in an investigation before the same grand jury or successive grand juries in the same investigation.

Section 3. This act shall take effect July 1, 2023.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Committee on Agriculture, Environment, and General Government
Appropriations Committee on Transportation, Tourism, and Economic Development
Criminal Justice
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR TINA SCOTT POLSKY
30th District

February 24, 2023

Chairman Clay Yarborough
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Yarborough,

I respectfully request that you place SB 828, relating to Grand Juries, on the agenda of the Committee on Judiciary, at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

Senator Tina S. Polsky
Florida Senate, District 30

cc: Tom Cibula, Staff Director
Lisa Larson, Administrative Assistant

REPLY TO:
❒ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
❒ 220 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

Filing # 125411406 E-Filed 04/22/2021 11:42:00 AM

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CA FLORIDA HOLDINGS, LLC, Publisher of *THE PALM BEACH POST*,

Plaintiff,

v.

DAVE ARONBERG, as State Attorney of Palm Beach County, Florida; SHARON R. BOCK, as Clerk and Comptroller of Palm Beach County, Florida,

Defendants.

CASE NO.: 50-2019-CA-014681-XXXX-MB

DIVISION: AG

MOTION OF PLAINTIFF CA FLORIDA HOLDINGS, LLC FOR SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Plaintiff, CA Florida Holdings, LLC, publisher of *The Palm Beach Post*, moves pursuant to Fla. R. Civ. P. 1.510(a) for Summary Judgment and states:

I. INTRODUCTION

The material facts in this case are not in dispute. Jeffrey Epstein was an extraordinarily wealthy, influential, and serial pedophile. It is indisputable that the State failed or refused to use the tools available to charge and prosecute obvious serial child sexual abuse, emboldening Epstein to continue his exploitation of young women and girls, even after dozens of his victims bravely came forward with their tragic stories of abuse. It is further not in dispute that Epstein received favorable treatment by the Florida State Attorney's Office during the prosecution, extending to the minimal sentence he received for his well-documented crimes.

The only determination left to be made by this Court is whether, as a matter of law, the grand jury transcripts that allowed Epstein's crimes to remain out of the public eye and cloaked

(1) Epstein was treated like others accused of similar heinous crimes, or (2) as appears more likely, those who chose to give Epstein favorable — "unusual," in the words of the Town of Palm Beach Police Chief — treatment, are exposed and held accountable. From the incomplete information now in the public domain, the State Attorney's choice to refer Epstein's case to the grand jury — which was extraordinary for this type of case — gives rise to a strong inference of favoritism and corresponding disregard for the rights of the minor victims of Epstein's habitual sex trafficking. Access to the grand jury materials will allow the public to determine whether the grand jury process, and the secrecy that comes with it, was used to further justice or, instead, operated to shield Epstein and his co-conspirators from the consequences of their criminal activities. Accordingly, Fla. Stat. Section 905.27 authorizes the disclosure of Epstein's 2006 grand jury proceedings.

Even in the absence of such a statutory basis, this Court is empowered to order public disclosure pursuant to its inherent authority and supervisory powers over the grand jury. Indeed, courts throughout the country in the past several decades, including in the case of the controversial Breonna Taylor shooting in 2020, have done exactly that where the public's interest in high–profile grand jury proceedings has outweighed the general need for secrecy. This is particularly so where, as here, many of the details of Epstein's criminal misdeeds have already been made available in the public domain through extensive news reporting by, among others, *The Palm Beach Post*; by the many civil suits brought against Epstein and his co-conspirators; and by the victims themselves.

II. FACTS NOT IN DISPUTE

As reflected in the respective Answers of the Defendants, as well as filings by the parties, the material facts underlying this action are uncontested. *See* Answer of State Attorney; Answer of Clerk.

bedroom was of a naked girl who was "[y]ounger than ten." Appendix at 1 (Recarey Depo. 150:13–151:7).

6. The police search of Epstein's residence also found two hidden cameras and, throughout the house, large numbers of nude photos of girls, including victims whom the police had not interviewed in the course of their investigation. It appeared, however, that some evidence was removed and the house had been "sanitized." Appendix at 1 (Recarey Depo. 119:21–120:10). The PBPD believe that Epstein was tipped off about the search, likely through a leak in the State Attorney's office. Appendix at 3 (Department of Justice Office of Professional Responsibility Report ("OPR Report" p. 21).

7. Then-Palm Beach County State Attorney Barry Krischer, among other influential members of Palm Beach society, told the PBPD to "back off" the investigation of Epstein's crimes. Appendix at 4 (Reiter Depo. at 71:3–16).

8. Another member of the State Attorney's Office further gave Detective Recarey the feeling "that she was trying to brush this case under the carpet." Appendix at 2 (Recarey Depo. 491:17–492:5).

9. In March 2006, a State grand jury was scheduled at which all of Epstein's victims identified during the investigation by law enforcement authorities were expected to testify. The proceeding was postponed, however, due to meetings between the State Attorney's Office and Epstein's prominent criminal defense lawyer and personal friend, Alan Dershowitz. Appendix at 3; 2 (OPR Report, p. 15; Recarey Depo. 476:12–19).

2. Police Chief Reiter Chastises the State Attorney.

10. Another grand jury was convened in April 2006, but canceled the day before it was to begin receiving evidence. Appendix at 2 (Recarey Depo. 477:14–22).

and some of the crimes, felonies, that he should write a notice to appear for a misdemeanor and the scheduling of a grand jury on an issue like this is extremely rare. [And] [t]he fact that he and I had an excellent relationship...[a]nd [yet] he wouldn't return my phone calls, I mean it was clear to me by his actions that he could not objectively look at this case." Appendix at 4 (Reiter Depo. 104:13–105:25).

3. The State Attorney's Referral to the Grand Jury: A Single Victim Testifies.

15. Chief Reiter's letter to State Attorney Krischer enclosed the Town of Palm Beach Police Department's probable cause affidavits charging Epstein and two of his assistants with multiple counts of unlawful sex acts with a minor and one count of sexual abuse, and requested that either an arrest warrant be issued for Epstein or the State Attorney directly initiate the charges against him, which charges would be public. Appendix at 5 (Reiter Letter).

16. Instead, State Attorney Krischer elected to refer the case to a grand jury, which is mandatory for capital cases but rarely used for all other crimes. This was the first time that a sex crimes case was presented to a grand jury in Palm Beach County. Appendix at 4 (Reiter Depo. 301:10–12).

17. In April 2006, the Palm Beach Police Department learned that Assistant State Attorney Lanna Belohlavek, who was in charge of prosecuting sex crimes, had offered a plea deal to Epstein's attorneys Alan Dershowitz and Guy Fronstin, without first discussing the matter with the police. The plea deal allowed Epstein to plead to a single count of aggravated assault with intent to commit a felony and receive no more than five years' probation, upon the completion of which he would not have a criminal record. Epstein rejected the deal. Appendix at 3 (OPR Report, p. 14).

18. At the July 2006 grand jury proceedings, the State Attorney's Office presented testimony and evidence from just one victim, even though the State Attorney was "aware of the

State Attorney's Office not to charge molestation type cases…when it was consensual." Appendix at 4 (Reiter Depo. 157:21–158:15). Krischer also told Chief Reiter that he chose a grand jury because it "was a noteworthy investigation, a noteworthy prosecution." Appendix at 4 (Reiter Depo. 152:19–153:2).

23. During the grand jury appearance of the single victim who testified, the State Attorney presented evidence that vilified the victim and attacked her credibility, including soliciting testimony regarding underage drinking and questionable personal behavior that was unrelated to the charges against Epstein. This information was initially brought to the attention of the State Attorney's Office by Epstein's defense counsel. Appendix at 3; 1 (OPR Report, pp. 14–15; Recarey Depo. 301:5–302:22).

24. The State Attorney who presented the case to the grand jury did not believe that some of the victims were "victims based on the [social media] materials that were supplied" by Epstein's defense team. Appendix at 2 (Recarey Depo. 484:24–486:5).

4. The Federal Investigation: the State Attorney "Intentionally Torpedoed" the Case Before the Grand Jury.

25. Following the deficient July 2006 indictment, and with Chief Reiter's encouragement, the FBI began its own investigation of Epstein, because Chief Reiter did not "feel as though justice had been sufficiently served" by the State. Appendix at 4 (Reiter Depo. 299:25–300:8). Detective Recarey shared the same view that "it wasn't any justice served." Appendix at 2 (Recarey Depo. 496:1–2).

26. Deputy Chief of the Criminal Division of the U.S. Attorney's Office, Andrew Lourie, in a transmittal letter with the prosecution memo of Assistant U.S. Attorney Ann Marie Villafaña, told Criminal Chief Matthew Menchel: "***The state intentionally torpedoed [the case] in the grand jury so it was brought to us.***" Appendix at 3 (OPR Report, p. 26 (emphasis supplied)).

USAO team agreed, with Acosta's subsequent approval, to permit Epstein to plead guilty to one state charge of solicitation of minors to engage in prostitution, rather than the three charges the USAO had originally specified. The State prosecutor assured Lourie that the selected charge would require Epstein to register as a sexual offender. Shortly thereafter, the USAO was told by defense counsel that despite the assurances made to Lourie, the State prosecutor had advised Epstein — incorrectly, it turned out — that a plea to that particular offense would *not* require him to register as a sexual offender. Yet, despite this evidence, which at least suggested that the State Attorney should not have been considered to be a reliable partner in enforcing the NPA, Acosta did not alter his decision about proceeding with a process that depended completely on State authorities for its successful execution. Appendix at 3 (OPR Report, p. 174).

32. Throughout the remainder of 2007 and through the first half of 2008, Epstein's lawyers and the U.S. Attorney continued negotiating the plea arrangement. Epstein's lawyers insisted that (1) the victims not be notified; (2) the deal be kept confidential and under seal; and (3) all grand jury subpoenas (including one that had already been issued for Epstein's computers) be withdrawn. Appendix at 3; 4 (OPR Report, pp. 69, 176, 212–216; Reiter Depo. 97:2–20).

33. Upon learning of a plea deal offered by State Attorney Krischer that would result in a mere 90–day jail term for Epstein, Villafaña wrote to her immediate supervisor: "Please tell me that you are joking. Maybe we should throw him [Epstein] a party and tell him we are sorry to have bothered him." Villafaña and her immediate supervisor later had phone and email exchanges with Krischer and with Epstein's local counsel to insist that the State plea comply with the terms of the NPA, or "we will consider it a breach of the agreement and proceed accordingly." Villafaña further advised her superior: "Someone really needs to talk to Barry [Krischer]." Appendix at 3 (OPR Report, p. 109).

41. Epstein's victims only learned after the fact about his plea in State court and filed an emergency petition to force federal prosecutors to comply with the Crime Victims' Rights Act (18 U.S.C. § 3771, "CVRA"), which mandates certain rights for crime victims, including the right to be informed about plea agreements and the right to appear at sentencing. U.S. District Judge for the Southern District of Florida, Kenneth A. Marra, ruled in 2019 that federal prosecutors violated the CVRA by failing to notify Epstein's victims before allowing him to plead guilty to only the two State offenses. Appendix at 3 (OPR Report, p. 242–243).

42. Following publicity exposing the extraordinary leniency of Epstein's plea deal, public records reveal that dozens of civil suits were brought against Epstein, most of which Epstein's lawyers settled out–of–court.

43. In 2010, Epstein was registered as a "level three" (*i.e.*, high risk of repeat offense) sex offender in New York, a lifelong designation. In 2011, the New York County District Attorney's office unsuccessfully sought to lower his registration to low–risk "level one."

44. During the course of the Town of Palm Beach and FBI investigations, Epstein retained private investigators to follow, harass, and photograph his victims and their families, as well as Chief Reiter and the Town of Palm Beach detective who investigated the case against Epstein. Appendix at 4; 2 (Reiter Depo. 53:10–55:23; Recarey Depo. 627:18–629:23).

45. Epstein's victims were threatened against cooperating with law enforcement and told that they would be compensated only if they did not cooperate with law enforcement. Appendix at 2 (Recarey Depo. 537:14–24).

46. Detective Recarey died on May 25, 2018.

B. <u>The Second Epstein Sex Crimes Investigation, Indictment, Suicide: 2019.</u>

47. On July 6, 2019, Epstein was arrested on federal sex trafficking charges. Appendix at 3. (OPR Report, p. iv).

52. On or about August 6, 2019, Florida Gov. Ron DeSantis ordered a State criminal probe into the actions of the Palm Beach Sheriff and former State Attorney Krischer for their handling of the Epstein underage sex trafficking case. Appendix at 3 (OPR Report, p. vii).

53. On August 10, 2019, Epstein was found dead in his cell at the Metropolitan Correctional Center. His cause of death was determined to be suicide. Appendix at 3 (OPR Report, p. v).

C. <u>The August 27, 2019, SDNY Hearing: Epstein's Victims Speak.</u>

54. On account of his death, prosecutors sought to dismiss the indictment against Epstein, while maintaining that they would continue to investigate his co-conspirators.

55. United States Senior District Judge Richard M. Berman ordered a hearing on August 27, 2019, on the prosecutors' decision to dismiss the indictment and allowed victims to speak at the hearing. Appendix at 11 (August 27, 2019 Hearing Transcript before the Honorable Richard M. Berman ("Hearing Transcript")).

56. In the course of the hearing, more than two dozen victims delivered their personal stories of pain, frustration, and sexual abuse at the hands of Epstein. Several victims spoke of violent rape by Epstein. Many more victims were present in the courtroom but did not testify. Appendix at 11 (Hearing Transcript, 28:22–85:15).

57. While some questioned the reasoning behind the court's decision to give the victims voice after Epstein's death, District Judge Berman noted that "a public hearing is [the] preferred vehicle for its resolution," emphasizing that "public hearings are exactly what judges do. Hearings promote transparency and they provide the court with insights and information which the court may not otherwise be aware of." Indeed, even Epstein's defense lawyer noted at the hearing that the court "is the institution that most people have confidence in, in these very troubled times." Appendix at 11 (Hearing Transcript, 4:1–3, 5:14–17, 18:25-19:2).

D. *The Palm Beach Post's* Extensive 15-Year Reporting On Epstein's Crimes.

61. Plaintiff, *The Palm Beach Post*, is a community newspaper serving readers in Palm Beach County and the Treasure Coast vicinity.

62. *The Palm Beach Post* has been a Pulitzer Prize winner and nominated as a finalist three other times.

63. Beginning in 2004, *The Palm Beach Post* has extensively investigated and reported on the allegations against, the law enforcement investigation of, and the crimes committed by Epstein and his co-conspirators. A true and correct copy of a compilation of the *The Palm Beach Post*'s reportage, in either the computerized format in which the articles are maintained in *The Palm Beach Post*'s electronic archives or the news print edition in which originally published, is included in the Appendix at 12.

64. Since the filing of the initial Complaint in this matter, *The Palm Beach Post* — along with media worldwide — has continued to report on Epstein's crimes and the ongoing official proceedings resulting from those crimes.

E. Procedural History.

65. The initial Complaint in this action was filed on November 14, 2019. It alleged one count under Florida Statutes Section 905.27.

66. Both Defendants named in the Complaint, the Clerk of Palm Beach County and Dave Aronberg as the State Attorney, moved to dismiss the Complaint.

67. In response to the Defendants' motions, *The Palm Beach Post* filed an Amended Complaint on January 17, 2020, adding an additional count for declaratory relief.

68. On January 24, 2020, both Defendants, the Clerk and the State Attorney's Office, answered Count I of the Amended Complaint (declaratory relief) and moved to dismiss Count II of the Amended Complaint (Section 905.27).

proceedings. The Court also does not render any opinion as to whether releasing these records is appropriate for the purpose of 'furthering justice' within the meaning of section 905.27. Rather, the Court's dismissal of Count II is necessitated by precedent and the simple fact that a civil lawsuit against the State Attorney and Clerk under section 905.27 is not the proper mechanism for The Post to pursue its goal." Order at 6.

74. In its Amended Motion for Attorneys' Fees, filed on November 9, 2020, the State Attorney's Office stated that the "State Attorney has no objection to the Clerk producing and disclosing the Requested Materials should the Court grant an order to that effect..." Amended Motion for Attorneys' Fees, ¶ 20; *see also* ¶ 25 ("the State Attorney has no objection, and never has had any objection, to the Clerk releasing the records sought by Plaintiff . . . ").

75. In November 2020, the Office of Professional Responsibility at the Department of Justice released the results of its investigation into allegations that in 2007–2008 prosecutors in the U.S. Attorney's Office for the Southern District of Florida improperly resolved a federal investigation into the criminal conduct of Jeffrey Epstein by negotiating and executing the NPA referenced above. Appendix at 3 (OPR Report, p. i).

76. The OPR "collected and reviewed materials relating to the state investigation and prosecution of Epstein, including sealed pleadings, grand jury transcripts, and grand jury audio recordings . . . " Appendix at 3 (OPR Report, p. 283).

III. ARGUMENT

A. Legal Standard.

77. A party moving for summary judgment must show the absence of any genuine issue of material fact. *O'Donnell v. W.F. Taylor Co.*, 292 So.3d 785, 787–88 (Fla. Dist. Ct. App. 2020) (citing *Moore v. Morris*, 475 So.2d 666, 668 (Fla. 1985)). Inferences must be drawn in favor of the non–moving party; "[h]owever, '[t]he judgment sought must be rendered immediately if the

legislature therefore clearly intended to empower a court to order the disclosure of grand jury proceedings for, among other reasons, to further justice, as this Court should do here.

80. Subsequent to such disclosure, *The Palm Beach Post* is not, as the State Attorney has previously argued (State Attorney Motion to Dismiss at pp. 12-13), constrained by the statute from using the materials for public disclosure–nor could it be, under the First Amendment.[3]

2. *The Palm Beach Post* Has Standing Under Section 905.27.

81. *The Palm Beach Post* has the right to maintain this private right of action because the furtherance of justice, an express legislative exception to grand jury secrecy, is intended for the public benefit, and *The Palm Beach Post* seeks access on behalf of the public it serves. Fla. Stat. § 905.27(1)(c). It is further mandated in Fla. Stat. § 905.27 that the legislature intended for a *court* to be the party to make the determination of disclosure. Fla. Stat. § 905.27(1). In other words, the legislature granted *the judiciary* the power to consider and determine the propriety and scope of grand jury secrecy.

82. The United States Supreme Court has "recognized that the invocation of grand jury interests is not 'some talisman that dissolves all constitutional protections.'" *Butterworth*, 494 U.S. at 630–31 (quoting *U.S. v. Dionisio*, 410 U.S. 1, 11 (1973)); *see also Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838 (1978) (balancing state's interest in preserving confidentiality of judicial misconduct proceedings against rights of newspaper reporting on such proceedings).

83. The Supreme Court has further recognized that the press has a constitutional right of access to criminal proceedings, *see, e.g.*, *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555,

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[3] Indeed, such a limitation would render the statute a prior restraint, "the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) (noting a "deeply-seated American hostility to prior restraints"). To the extent redactions to the grand jury materials may be required to protect the privacy of unnamed victims or third parties, the Court of course may require such redactions prior to ordering disclosure of the records.

85. Here, the continued denial of access to the information sought by *The Palm Beach Post* on behalf of its journalists and the public "unquestionably constitutes irreparable injury." *Gainesville Woman Care, LLC v. State of Florida*, 210 So.3d 1243, 1263 (Fla. 2017); *see also Zerilli v. Smith*, 656 F.2d 705, 711 (D.C. Cir. 1981) (noting that "the press's function as a vital source of information is weakened whenever the ability of journalists to gather news is impaired," as it is by Attorney General's refusal to disclose unredacted report and underlying grand jury materials).

86. *The Palm Beach Post* does not disagree that Section 905.27 makes no express provision for a civil suit or civil liability, but that is just the start of the inquiry. Where a statute, like 905.27, "forbids the doing of an act which may be to [the plaintiff's] injury, though no action be given in express terms by the statute for the omission or commission, the general rule of law is that the party injured should have an action; for where a statute gives a right, there, although in express terms it has not given a remedy, the remedy which by law is properly applicable to that right follows as an incident." *Smith v. Piezo Tech. and Prof'l Adm'rs*, 427 So.2d 182, 184 (Fla. 1983) (Supreme Court of Florida implied a statutory cause of action for the wrongful discharge of employees who sought workers' compensation benefits). Here, the forbidding of disclosure of grand jury proceedings injures *The Palm Beach Post.* The statute, in turn gives a "right" to disclosure of those proceedings, and *The Palm Beach Post* should have a cause of action to enforce that right.

87. In determining whether a private right of action lies in a statute, courts in Florida consider: (1) whether the plaintiff is one of the class for whose special benefit the statute was enacted; (2) whether there is any indication, either explicit or implicit, of a legislative intent to create or deny such a remedy; and (3) whether judicial implication is consistent with the underlying

existence of a legislative intent that the statute shall effect private rights.") (quoting Florida Statutes, Section 475.482 (1989)).

90. In such circumstances, consideration of the third factor — whether judicial implication is consistent with the underlying purposes of the legislative scheme — is particularly instructive. When scrutinizing the history of legislation to determine legislative intent, it is appropriate to consider acts passed at subsequent sessions. *Fischer*, 543 So.2d at 790. In 1994, at the same time Section 905.27 was reenacted to expressly provide the three exceptions to grand jury secrecy, including furthering justice, the Florida legislature also reenacted Fla. Stat. § 905.395, which concerns the secrecy of statewide grand juries. 1994 Fla. ALS 285, 1994 Fla. Laws ch. 285, 1994 Fla. SB 114; Fla. Stat. § 905.395. Like Section 905.27, Section 905.395 has a general prohibition on disclosure of grand jury proceedings, absent a court order. Fla. Stat. § 905.395. Tellingly, however, Section 905.395 does not provide any specific exceptions to nondisclosure. Through the intentional omission of these exceptions, including the fundamental "furthering justice" exception, it can be understood that the legislature did not intend for court–ordered disclosure of statewide grand jury records to further justice, and did not anticipate such disclosures would benefit the public. By contrast, the legislature's decision to include the catchall "furthering justice" exception in Section 905.27 reflects an intent to protect and inform the public — the ultimate benefactors of the criminal justice system — by providing a means of access in those rare situations where the integrity and legitimacy of the grand jury process have been called into serious question. Accordingly, implying a private right of action is consistent with the purposes underlying the legislative scheme in Chapter 900 of the Florida Statutes.

95. The Florida Supreme Court has noted that it is "of vital importance to maintain the dignity and the integrity of both the grand jury and the presiding judge." *State v. Clemmons*, 150 So.2d 231, 233–34 (Fla. 1963).[4] "[I]n states such as Florida, where the grand jury is preserved, it is an important appendage of the court which impanels it…[and] it should not be forgotten that the judge of that court is equally important and he is generally charged with the supervision of the grand jury's activities . . . ." *Id.* "The importance of public confidence in the integrity of judges stems from the place of the judiciary in the government." *Williams–Yulee v. Fla. Bar*, 575 U.S. 433, 445 (2015). Courts do not command armies and have "no influence over either the sword or the purse[.]" *Id.* (citing The Federalist No. 78, p. 465 (C. Rossiter ed. 1961) (A. Hamilton)). "The judiciary's authority therefore depends in large measure on the public's willingness to respect and follow its decisions." *Id.*; *see also Carlson v. United States*, 837 F.3d at 765 (recognizing the court's "wide discretion" to use its "inherent power" to fashion exceptions pertaining to the release of grand jury records). "The perception of a viable healthy judiciary is of critical importance to our system of justice." 1980 U.S.C.C.A.N. 4315, 4321. This "perception" is of equal importance with respect to state courts, which are invested with primary responsibility for overseeing the investigation and prosecution of crimes.

96. The Supreme Court of the United States, while acknowledging the value in grand jury secrecy, has long authorized the disclosure of grand jury records where the need for transparency outweighs any remaining interest in secrecy. *Douglas Oil Co. of California v. Petrol Stops Northwest*, 441 U.S. 211, 223 (1979). Courts around the country have followed suit. *See, e.g., In re Petition of Nat'l Sec. Archive*, No. 08 CIV. 6599, 2008 WL 8985358 (S.D.N.Y. Aug. 26, 2008) (release of grand jury records concerning the indictment of Julius and Ethel Rosenberg);

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[4] *State v. Clemons* was superseded by statute. *See Kelly v. Sturgis*, 453 So.2d 1179 (Fla. 5th DCA 1984).

transparency, permitted grand jurors who desired to speak out to do so." *Estate of Jones v. City of Martinsburg*, Nos. 18–0927, 18–1045, 2020 W. Va. LEXIS 709, at *68 n.51 (Oct. 30, 2020) (citing *Commonwealth v. Hankison*, No. 20CR1473, Order of Arraignment and Discovery (Ky. Jefferson Cir. Ct. Div. 13 entered September 29, 2020)).

100. Following the court's order authorizing disclosure in the Taylor case, grand jurors informed the public that the prosecutor did not present the jury with any options other than first–degree wanton endangerment charges. One grand juror said the prosecutors did not walk the jury through Kentucky's homicide laws or explain why they decided that two other officers who shot at Breonna Taylor were justified. When the panel asked about additional charges, prosecutors told them there would not be any because they "didn't feel they could make them stick," the juror said. *Estate of Jones*, 2020 W. Va. LEXIS 709, at *68 n.51 (citing https://www.washingtonpost.com/national/2nd–breonna–taylor–grand–juror–criticizes–proceedings/2020/10/22/c26ee432–14bb–11eb–a258614acf2b906dstory.html). In all probability, the grand jury transcripts in the Epstein proceedings will similarly reveal what charges were presented, how they were presented, how questions from grand jurors were handled by the State Attorney, the testimony of witnesses, and whether the *post hoc* explanations provided by the State Attorney's Office align with what actually transpired.

101. There is no evidence that the disclosures resulting from the above cases have adversely affected the grand jury process. On the other hand, there is no doubt that the release of these materials has contributed greatly to the historical record and public understanding of significant events in our country's history, as well as exposing failures in our justice system. And, in the case of Breonna Taylor, as a result of the transparency surrounding the events that led to her

conduct of the [criminal] trial is pre-eminently a matter of public interest . . . More importantly, public access to trials acts as an important check, akin in purpose to the other checks and balances that infuse our system of government."); *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 606 (1982) ("the right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole.").

104. Second, the defendant to the grand jury proceeding is deceased, and the government has unequivocally stated that is not opposed to the disclosure requested by *The Palm Beach Post*.

105. Third, disclosure is being sought–based on information learned by *The Palm Beach Post* from (1) a series of Florida Public Records Law requests, (2) law enforcement sources with direct knowledge of the grand jury evidence and proceedings, (3) judicial documents obtained from independent but related court proceedings, and (4) documents otherwise available in the public record–to inform the public as to whether the then State Attorney for Palm Beach County presented truncated evidence of Epstein's criminal wrongdoing to the 2006 grand jury in a manner that precluded Epstein's indictment for the serious crimes he committed, including sex trafficking and sexual assault.

106. Fourth, the records being sought are the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury. The evidence known to date strongly supports the conclusion that the State Attorney willfully skewed and downplayed his case before the grand jury through a seriously under-charged indictment that ignored the true extent of Epstein's crimes and denigrated his victims as prostitutes unworthy of legal protection. Indeed, the State Attorney appears to have ignored the evidence of how Epstein had groomed the girls and how he had manipulated them into doing his bidding. Plainly, Epstein's payments to them were part of his scheme to attack the girls should he be charged with crimes, and to convince the State

administration of justice cannot function in the dark; no community catharsis can occur if justice is done in a corner [or] in any covert manner." *Id.*

113. *The Palm Beach Post* is accordingly entitled to disclosure of the Epstein grand jury materials maintained by the Clerk of Palm Beach County pursuant to this Court's inherent authority and supervisory powers, which allow the Court to take appropriate and necessary action to preserve, promote, and protect the integrity of the justice system. The citizens of Palm Beach County and throughout the State of Florida are entitled to nothing less in this case of paramount importance and public interest.

114. As a surrogate for the public it serves, *The Palm Beach Post* respectfully requests that the Court declare, pursuant to Fla. Stat. Section 905.27(1), that it is entitled to access the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury because such disclosure would be in the furtherance of justice. Fla. Stat. § 905.27(1)(c). Because *The Palm Beach Post* is not seeking these materials in connection with either a civil or criminal case, it also seeks a declaration that the scope of its use of the disclosed materials is not so limited. *See* Fla. Stat. § 905.27(2).

115. *The Palm Beach Post* further seeks a declaration that disclosure of the testimony, minutes, and other evidence presented in 2006 to the Palm Beach County grand jury is appropriate pursuant to this Court's inherent authority over grand jury proceedings because of the exceptional public interest in this case and the compelling circumstances supporting transparency.

IV. CONCLUSION

116. *The Palm Beach Post* respectfully requests that this Court, pursuant to Fla. Stat. Section 905.27(1) and the Court's inherent authority, order the Clerk of the Court to file with this Court copies of the testimony, minutes, and other evidence presented in 2006 to the Palm Beach

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2021, a true and correct copy of the foregoing has been filed with the Clerk of the Court using the State of Florida e-filing system, which will send a notice of electronic service for all parties of record herein

/s/ Stephen A. Mendelsohn
STEPHEN A. MENDELSOHN

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 442
INTRODUCER:	Senator Gruters and others
SUBJECT:	Secondhand Dealers
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	**Favorable**
2.	Collazo	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 442 amends the definition of "secondhand goods" for purposes of part I, ch. 538, F.S., which regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. The purpose of such regulations is to assist law enforcement in recovering stolen property and in solving other theft-related crimes.

Specifically, the bill revises the definition of "secondhand goods" to exclude money and gold bullion, silver bullion, platinum bullion, palladium bullion, or rhodium bullion if such bullion has been assayed and is properly marked as to its weight and fineness.

The bill also removes coins from the list of items which are expressly excluded from the definition of "secondhand goods." However, because the bill revises the definition of "secondhand goods" to exclude money, and coins are a form of money, the effect of the bill is to exclude paper money, in addition to coins, from the regulation of secondhand goods.

By excluding money and the listed kinds of bullions from the definition of "secondhand goods," these items will no longer be regulated as secondhand goods under state law, thus secondhand dealers will no longer be subject to transaction recordkeeping or holding period requirements in connection with them.

The bill takes effect July 1, 2023.

II. Present Situation:

Chapter 538, F.S., regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. The purpose of such regulations is to assist law enforcement in recovering stolen property and in solving other theft-related crimes.[1]

A secondhand dealer is defined as any person, corporation, or other business organization or entity that is not a secondary metals recycler and is engaged in the business of purchasing, consigning, or trading secondhand goods. The term also includes a secondhand dealer engaged in purchasing secondhand goods by means of an automated kiosk.[2]

Secondhand goods are previously owned or used personal property that is purchased, consigned, or traded as used property. The term also includes gift certificates and credit memos[3] that are purchased, consigned, or traded by a secondhand dealer. Secondhand goods do not include office furniture, pianos, books, clothing, organs, coins, motor vehicles, costume jewelry, cardio and strength training or conditioning equipment designed primarily for indoor use, and secondhand sports equipment that is not permanently labeled with a serial number.[4]

A secondhand dealer must annually register his or her business with the Department of Revenue.[5]

Upon each acquisition of secondhand goods, a secondhand dealer must complete a transaction form that details the goods purchased and the seller's identity. The secondhand dealer must retain this document for at least 3 years and forward a copy to the appropriate law enforcement agency within 24 hours after the acquisition of the secondhand goods.[6] In addition to the descriptive statements of the secondhand goods and the seller's identity, the transaction record must also include:

- A statement of the date, time, and place of the transaction;
- A summary of the goods acquired, including brand name, model number, serial number, and other unique identifiers;
- Digital photographs of the goods acquired in the report that is submitted to law enforcement; and
- A description of the person from whom the goods were acquired, including his or her right thumbprint, name and address, and a physical description.[7]

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[1] *See* ss. 538.04, 538.06, F.S. (identifying recordkeeping requirements and holding periods in connection with secondhand goods); *see also* Jarret C. Oeltjen, *Florida Pawnbroking: An Industry in Transition,* 23 FLA. ST. U. L. REV. 995, 1013 (Spring 1996) (noting that "[t]he main impetus behind [ch. 538, F.S.] was to confront the problem of property theft and drug-related crimes by facilitating recovery of stolen goods and apprehending those criminals who may turn to secondhand dealers for cash").

[2] Section 538.03(1)(h), F.S.

[3] Section 501.95, F.S., defines "credit memo" as a certificate, card, stored value card, or similar instrument issued in exchange for returned merchandise when the certificate, card, or similar instrument is redeemable for merchandise, food, or services regardless of whether any cash may be paid to the owner of the certificate, card, or instrument as part of the redemption transaction.

[4] Section 538.03(1)(i), F.S.

[5] *See generally* s. 538.09, F.S. (providing for registration).

[6] Section 538.04(1), F.S.

[7] *Id.*

Secondhand dealers are required to hold all secondhand goods for at least 15 days after they acquire the property. However, secondhand dealers are required to hold a precious metal,[8] gemstone, jewelry; antique furnishings, fixtures, or decorative objects; or an item of art as defined in s. 686.501, F.S.,[9] within 30 days after they acquire the property.[10] Additionally, a secondhand good must be held for 30 days if the secondhand dealer uses an automated kiosk.[11]

If a law enforcement officer has probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written hold order on the goods.[12] This prevents the secondhand dealer from selling the goods and preserves them for use as evidence in a criminal trial. Additionally, this allows for the possibility of the goods to be returned to their rightful owner.[13]

Law enforcement agencies having jurisdiction enforce compliance with registration, record keeping, holding periods, and inspection requirements.[14] A person who knowingly violates the requirements governing secondhand dealers in ch. 538, F.S., commits a first degree misdemeanor, punishable by up to 1 year in jail and a $10,000 fine.[15]

Methods for Return of Stolen Goods held by a Secondhand Dealer

A victim of a theft may recover his or her goods, or their value, through one of three methods:

- A victim may purchase his or her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.
- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.[16] If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer.[17]
- A victim may file a civil action for replevin against the secondhand dealer.[18]

[8] Section 538.03(1)(f), F.S., defines "precious metals" as any item containing any gold, silver, or platinum, or any combination thereof, excluding any chemical or any automotive, photographic, electrical, medical, or dental materials or electronic parts.
[9] Section 686.501(1), F.S., defines "art" as a painting, sculpture, drawing, work of graphic art, pottery, weaving, batik, macramé, quilt, print, photograph, or craft work executed in materials including, but not limited to, clay, textile, paper, fiber, wood, tile, metal, plastic, or glass. The term includes a rare map which is offered as a limited edition or a map 80 years old or older; or a rare document or rare print which includes, a print, engraving, etching, woodcut, lithograph, or serigraph which is offered as a limited edition, or one 80 years old or older.
[10] Section 538.06(1), F.S.
[11] *Id.* An "automated kiosk" is an interactive device that is permanently installed within a secure retail space and that has the following technological functions: remotely monitored by a live representative during all business hours; verification of a seller's identity by government-issued photographic identification card; automated reading and recording of item serial numbers; ability to compare item serial numbers against databases of stolen items; secure storage of goods accepted by the kiosk; and capture and storage of images during the transaction. Section 538.03(1)(c), F.S.
[12] Section 538.06(3), F.S.
[13] *See id.*
[14] Section 538.05, F.S.
[15] Section 538.07(1), F.S.
[16] Section 538.07(2), F.S.
[17] Section 538.06(4), F.S.
[18] Section 538.08, F.S.

Replevin is an action for the repossession of personal property that was wrongfully taken or detained by the defendant, where the plaintiff secures a bond for and holds the property until the court decides the rightful owner.[19] Petitions for replevin must contain the following information:

- Proof of ownership or right of possession of the property in question and a description of the property;
- A description of how, to the best of plaintiff's knowledge, the property was wrongfully taken by the defendant; and
- A statement that the property was not taken under any legal basis such as execution, tax, or fine.[20]

In an action for replevin, a court is required to award the prevailing party attorney fees and costs. When the petitioner is the prevailing party, the court may also order payment of the filing and service fees.[21]

Victims of theft and prevailing plaintiffs in an action for replevin are entitled to damages for loss of use, which are limited to no more than the value of the property before it was taken or damaged.[22]

The plaintiff is also entitled to the summary procedure provided in s. 51.011, F.S.[23]

A secondhand dealer commits a noncriminal violation, punishable by a fine of up to $2,500 if the following occurs:

- An owner or lienor makes a written demand for return of the property and provides proof of ownership or proof of the right of possession to the secondhand dealer at least 5 days before filing a replevin action;
- The secondhand dealer knows or should have known, based on the proof provided above, the property belongs to the owner or lienor;
- The secondhand dealer fails to return the property and does not file an action for interpleader[24] to determine conflicting claims to the property; and
- The owner or lienor prevails in the replevin action against the secondhand dealer.[25]

III. Effect of Proposed Changes:

SB 442 amends the definition of "secondhand goods" for purposes of part I, ch. 538, F.S., which regulates secondhand dealers and secondary metal recyclers in the trade of secondhand goods. The purpose of such regulations is to assist law enforcement agencies in recovering stolen property and in solving other theft-related crimes.

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[19] BLACK'S LAW DICTIONARY (11th ed. 2019) (defining the term "replevin"); *see also* ch. 78, F.S. (creating a right of replevin and describing associated court procedures).
[20] *See generally* ss. 78.055 and 538.08, F.S.
[21] Section 538.08(2), F.S. Otherwise, the filing and services fees are waived.
[22] *Foresight Enterprises, Inc. v. Leisure Time Properties, Inc.*, 466 So. 2d 283, 286, 288-89 (Fla. 5th DCA 1985).
[23] Section 538.08(3), F.S.
[24] Generally, interpleader is a suit to determine a right to property held by a disinterested third party (called a stakeholder) who is in doubt about ownership and who therefore deposits the property with the court to permit interested parties to litigate ownership. BLACK'S LAW DICTIONARY (11th ed. 2019) (defining the term "interpleader").
[25] Section 538.08(5), F.S.

Specifically, the bill revises the definition of "secondhand goods" to exclude money and gold bullion, silver bullion, platinum bullion, palladium bullion, or rhodium bullion if such bullion has been assayed and is properly marked as to its weight and fineness.

The bill also removes coins from the list of items which are expressly excluded from the definition of "secondhand goods." However, because the bill revises the definition of "secondhand goods" to exclude money, and coins are a form of money,[26] the effect of the bill is to exclude paper money, in addition to coins, from the regulation of secondhand goods.

By excluding money and the listed kinds of bullions from the definition of "secondhand goods," these items will no longer be regulated as secondhand goods under state law, thus secondhand dealers will no longer be subject to transaction recordkeeping or holding period requirements in connection with them.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[26] Part I, ch. 583, F.S., does not include a definition of money. However, Part II, ch. 583, F.S., does include a definition for "money" that is applicable to that part only. *See* s. 538.18(5), F.S. (defining money to mean "a medium of exchange authorized or adopted by a domestic or foreign government as part of its currency").

B. Private Sector Impact:

Secondhand dealers who purchase the types of bullion listed in the bill may see a cost benefit because these items are expressly excluded from the definition of a secondhand good and, therefore, are no longer subject to transaction recordkeeping or holding period requirements in connection with them. Additionally, the elimination of the holding period will reduce the risk associated with the market price volatility of the metals.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 538.03 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 Gruters

22-00372A-23 2023442__

A bill to be entitled

An act relating to secondhand dealers; amending s. 538.03, F.S.; revising the definition of "secondhand goods" to exclude certain items; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 538.03, Florida Statutes, is amended to read:

538.03 Definitions; applicability.—

(1) As used in this part, the term:

(i) "Secondhand goods" means personal property previously owned or used which is not regulated metals property regulated under part II and which is purchased, consigned, or traded as used property. The term includes gift certificates and credit memos as defined in s. 501.95 which are purchased, consigned, or traded by a secondhand dealer. The term does not include office furniture~~;~~ pianos~~;~~ books~~;~~ clothing~~;~~ organs~~;~~ money; ~~coins,~~ motor vehicles~~;~~ costume jewelry; gold bullion, silver bullion, platinum bullion, palladium bullion, or rhodium bullion if such bullion has been assayed and is properly marked as to its weight and fineness~~;~~ cardio and strength training or conditioning equipment designed primarily for indoor use~~;~~ and secondhand sports equipment that is not permanently labeled with a serial number. As used in this paragraph, the term "secondhand sports equipment" does not include golf clubs.

Section 2. This act shall take effect July 1, 2023.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOE GRUTERS
22nd District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations
Appropriations Committee on Agriculture, Environment, and General Government
Appropriations Committee on Health and Human Services
Commerce and Tourism
Community Affairs
Transportation

SELECT COMMITTEE:
Select Committee on Resiliency

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight, *Alternating Chair*

March 27, 2023

The Honorable Clay Yarborough, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Yarborough:

I am writing to request that Senate Bill 442, Secondhand Dealers to be placed on the agenda of the next Judiciary committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Joe Gruters

Cc: Tom Cibula, Staff Director
Lisa Larson, Committee Administrative Assistant

REPLY TO:
❒ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
❒ 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

4/42
Bill Number or Topic

Amendment Barcode (if applicable)

Name Josh Burkett

Phone 727-656-3316

Address 110 South Monroe St
Street

Email Josh@consultanderson.com

Tallahassee FL 32301
City *State* *Zip*

Speaking: [X] For [ ] Against [ ] Information **OR** **Waive Speaking:** [ ] In Support [ ] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[ ] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing:

[ ] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

David Reynolds Jewelry & Coin

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 694
INTRODUCER:	Judiciary Committee and Senator Gruters
SUBJECT:	Private Property for Motor Vehicle Parking
DATE:	April 4, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Fav/CS**
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 694 amends s. 715.075, F.S., which authorizes the owners and operators of privately-owned parking facilities to establish rules and rates in connection with their use by consumers.

The bill provides that owners and operators of privately-owned parking facilities:

- Must send an invoice, by certified mail, to the registered owner of a vehicle for parking charges.
- May not assess a late fee for at least 30 days after the postmarked date of the mailing.

The bill also limits the scope of the existing statutory preemption to ordinances or regulations purporting to restrict the parking rates charged by owners and operators. Other ordinances or regulations will be permissible so long as they do not otherwise conflict with state law.

The bill also prohibits the owners and operators of privately-owned parking facilities from charging vehicle owners for merely entering their facilities, if such vehicle owners are on the property for less than 10 minutes and do not park.

The bill takes effect on July 1, 2023.

II. Present Situation:

Local and State Regulation of Private Parking Facilities

Over the past 5 years, some owners and operators of privately-owned parking facilities in south Florida have been accused of engaging in unscrupulous business practices.[1] This has prompted local governments to take a closer look at how such facilities are operated, and to enact ordinances regulating such facilities.

For example, the City of Miami passed an emergency ordinance in 2019 banning the operators of privately-owned parking facilities in the city from issuing citations for violations of facility rules, claiming that such citations caused confusion for the recipients who sometimes thought the citations were city-issued and could lead to civil or criminal penalties.[2]

However, 2 years later, in apparent response to lobbying from the parking industry, the city amended the ordinance to permit the issuance of private parking citations if they are not called a "violation, citation, or ticket" and include a notice informing the recipient that "[t]his invoice is privately issued, is not issued by a governmental entity, and is not subject to civil or criminal penalties."[3]

And in 2021, Broward County enacted an ordinance making it "unlawful for any person, including a parking facility operator or agent, to issue a private ticket to a motor vehicle or to the owner of any such vehicle."[4] County commissioners originally enacted the ordinance in response to complaints similar to those cited by City of Miami commissioners in 2019.[5]

In response to these and similar ordinances, in 2022 the Legislature enacted chapter 2022-171, Laws of Fla., which among other things created s. 715.075, F.S.[6]

That statute creates a state preemption, which prohibits any county or municipal government from enacting an ordinance or regulation restricting or prohibiting the right of a private property owner or operator to establish rules, rates, and fines governing parking on the privately-owned

---

[1] *See* Local10.com, Hatzel Vela, *Consumer protection: Professional Parking Management faces another lawsuit,* May 4, 2022, https://www.local10.com/news/local/2022/05/04/consumer-protection-professional-parking-management-faces-another-lawsuit/ (describing a class-action lawsuit filed against a parking company with a Better Business Bureau rating of "F" and 755 complaints).

[2] City of Miami, Fla., Ord. No. 13840 (enacted May 23, 2019); s. 35-292, City of Miami, Fla. Code of Ordinances; *see also* Terence Cantarella, *Sharking Lots: Private Businesses Can Now Legally Issue Parking Tickets in Miami,* Nov. 2, 2021, MIAMI NEW TIMES, https://www.miaminewtimes.com/news/private-businesses-can-now-issue-parking-tickets-in-miami-13245504 (referencing and discussing this ordinance).

[3] City of Miami, Fla., Ord. No. 13990 (enacted Apr. 22, 2021); s. 35-292, City of Miami, Fla. Code of Ordinances; *see also* Cantarella, *supra* note 1 (referencing and discussing this ordinance).

[4] Broward County, Fla., Ord. No. 2021-43 (enacted Sept. 21, 2021); s. 20-164.2, Broward County, Fla. Code of Ordinances; *see also* Local10.com, Hatzel Vela, *'It's a scam': Broward commissioners make private parking citations unlawful,* Sept. 21, 2021, https://www.local10.com/news/local/2021/09/21/its-a-scam-broward-commissioners-make-private-parkings-citations-unlawful/ (referencing and discussing this ordinance).

[5] *See* Local10.com, *'It's a scam', supra* note 4 (citing, among other things, the confusion created by private owners' giving out "citations that look like they're from law enforcement").

[6] Chapter 2022-171, s. 4, Laws of Fla., codifying s. 715.075, F.S.

property. Under the statute, any such ordinance or regulation is a violation of the statute, and is null and void.[7]

The statute also provides that the owner or operator of a privately-owned parking facility may establish rules and rates that govern private persons parking motor vehicles on such property.[8] These rules and rates, which may include parking charges for violating the property owner's or operator's rules, must be posted and be clearly visible to persons parking motor vehicles on such private property.[9] Moreover, any invoice for parking charges issued under the statute must include the following statement in uppercase type:

> THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL PENALTIES.[10]

Following enactment of the statute in 2022, Broward County repealed its ordinance due to the state preemption.[11]

Local Government Authority

The State Constitution grants local county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[12] Those counties operating under a county charter have all powers of self-government not inconsistent with general or with special law approved by the vote of the electors.[13] Likewise, municipalities[14] have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[15]

There are two ways that a local enactment can be inconsistent with state law and therefore unconstitutional. First, a local government cannot legislate in a field if the subject area has been preempted to the state. Second, in a field where both the state and local government can legislate concurrently, a local government cannot enact an ordinance that directly conflicts with the state statute.[16]

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[7] Section 715.075(2), F.S.
[8] Section 715.075(1), F.S.
[9] *Id.*
[10] *Id.*
[11] *See* Local10.com, *Consumer protection, supra* note 1 (noting that if Gov. Ron DeSantis signed the legislation, "Broward County would have to repeal the ordinance"); *see also* Broward County, Fla., Ord. No. 2022-33 (enacted Jun. 15, 2022) and s. 20-164.2, Broward County Code of Ordinances (repealing Ord. No. 2021-43 in response to ch. 2022-171, s. 4, Laws of Fla.).
[12] FLA. CONST. art. VIII, s. 1(f).
[13] FLA. CONST. art. VIII, s. 1(g).
[14] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[15] FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.
[16] *Orange County v. Singh,* 268 So. 3d 668, 673 (Fla. 2019) (citing *Phantom of Brevard, Inc. v. Brevard County,* 3 So. 3d 309, 314 (Fla. 2008)); *see also* James Wolf & Sarah Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict*

State law recognizes two types of state preemption: express and implied. Express preemption requires a specific legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.[17] In contrast, implied preemption exists if the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.[18] Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.[19]

State law currently preempts to the state the regulation of privately-owned parking facilities.[20] Therefore, local governments may not regulate such facilities.

III. Effect of Proposed Changes:

CS/SB 694 amends a recently-enacted statute, s. 715.075, F.S., which authorizes the owners and operators of privately-owned parking facilities to establish rules and rates in connection with their use by consumers.

Under the bill, owners and operators of privately-owned parking facilities:

- Must send an invoice, by certified mail, to the registered owner of the vehicle for parking charges issued under the statute.
- May not assess a late fee for a period of at least 30 days after the postmarked date of the mailing.

The bill revises the provision preempting to the state all regulation of privately-owned parking facilities, by limiting its scope to ordinances or regulations that restrict, in any manner, the parking rates charged by owners and operators of privately-owned parking facilities, including the parking charges they impose for violating their rules. Accordingly, any local government ordinance or regulation purporting to restrict such parking rates and charges will be null and void, but any ordinance or regulation that does not restrict parking rates and charges will be permissible so long as it does not otherwise conflict with state law.

The bill also prohibits the owners and operators of privately-owned parking facilities from charging the registered owner, or other legally authorized person in charge of the vehicle, for merely entering their privately-owned parking facilities, if they are on the property for less than 10 minutes and do not park.

The bill takes effect on July 1, 2023.

Analysis, 83 FLA. BAR J. 92 (2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (discussing these concepts).

[17] *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Brevard, Inc.*, 3 So. 3d at 1018.

[18] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

[19] *See, e.g., National Rifle Association of America, Inc. v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002) (concluding that a City of South Miami local government ordinance, which purported to provide safety standards for firearms, was null and void because the Legislature expressly preempted the entire field of firearm and ammunition regulation when it enacted s. 790.33, F.S.).

[20] *See* s. 715.075(2), F.S. (providing that "such ordinance or regulation is a violation of this section and is null and void").

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Owners and operators will incur new costs associated with sending invoices to vehicle owners by certified mail, which they are not currently required to do. They will also lose any revenue associated with either imposing late fees fewer than 30 days after the postmarked date of the certified mailing, or charging vehicle owners for entering their parking facilities and remaining there for fewer than 10 minutes without parking.

On the other hand, the requirement for the use of certified mail and a 30-day payment period will protect consumers from the imposition of accelerating late fees without having a reasonable time to pay them.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 715.075 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 Judiciary on April 4, 2023:

- Replaces the bill with its House companion, CS/HB 617.
- Provides that owners and operators of privately-owned parking facilities:
  - Must send an invoice, by certified mail, to the registered owner of a vehicle for parking charges.
  - May not assess a late fee for at least 30 days after the postmarked date of the mailing.
- Limits the scope of the existing statutory preemption to ordinances or regulations purporting to restrict the parking rates charged by owners and operators.
- Prohibits the owners and operators of privately-owned parking facilities from charging vehicle owners for merely entering their facilities, if such vehicle owners are on the property for less than 10 minutes and do not park.

B. Amendments:

None.

528896

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
	.	
	.	
	.	

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 715.075, Florida Statutes, is amended to read:

715.075 Vehicles parked on private property; rules and rates authorized.—

(1)(a) The owner or operator of a private property used for motor vehicle parking may establish rules and rates that govern private persons parking motor vehicles on such private property.

528896

Such rules and rates may include parking charges for violating the property owner's or operator's rules and must be posted and clearly visible to persons parking motor vehicles on such private property.

(b) An invoice for parking charges issued under this section must include the following statement in uppercase type: THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL PENALTIES.

(c) An invoice for parking charges issued under this section must be sent to the registered owner of the vehicle by certified mail. The owner or operator of a private property used for motor vehicle parking may not assess a late fee for a period of at least 30 days after the postmarked date of the mailing.

(2) A county or municipality may not enact an ordinance or a regulation restricting in any manner the parking rates charged by ~~or prohibiting a right of~~ a private property owner or operator, including parking charges for violating the rules of the property owner or operator ~~established under subsection (1)~~. Any such ordinance or regulation is a violation of this section and is null and void.

(3) The owner or operator of a private property used for motor vehicle parking may not charge the registered owner or other legally authorized person in control of the vehicle that enters the private property if the owner or other legally authorized person is on the property for less than 10 minutes and does not park.

Section 2. This act shall take effect July 1, 2023.

528896

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to private property for motor vehicle parking; amending s. 715.075, F.S.; requiring that invoices for parking charges be sent by certified mail to a specified party; prohibiting the assessment of a late fee before a certain period; prohibiting a county or municipality from adopting a certain ordinance or regulation; prohibiting a private property owner or operator from charging specified parties under certain conditions; providing an effective date.

By Senator Gruters

22-01395-23 2023694__

A bill to be entitled

An act relating to private property for motor vehicle parking; amending s. 715.075, F.S.; requiring owners and operators of certain property to follow specified rules; prohibiting certain invoices from resembling specified citations; removing a provision prohibiting certain county and municipal regulations; providing an effective date.

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

Section 1. Section 715.075, Florida Statutes, is amended to read:

715.075 Vehicles parked on private property; rules and rates authorized.—

(1) The owner or operator of a private property used for motor vehicle parking:

(a) Must have a physical location in this state.

(b) May establish rules ~~and rates~~ that govern private persons parking motor vehicles on such private property. Such rules ~~and rates~~ may include parking charges for violating the property owner's or operator's rules ~~and must be posted and clearly visible to persons parking motor vehicles on such private property~~.

(c) Must establish fines and penalties equal to the fines and penalties set for municipal parking.

(d) Must have posted signage that is clearly visible to persons parking motor vehicles on such private property and includes:

22-01395-23 2023694__

1. Any rules established under paragraph (b), including any parking charges for violations.

2. The fines and penalties established under paragraph (c).

3. The name of the owner of the private property.

4. A customer service phone number and hours of operation.

(e) May not report an invoice to a credit bureau.

(2)(a) An invoice for parking charges issued under this section must include the following statement in uppercase type: THIS INVOICE IS PRIVATELY ISSUED, IS NOT ISSUED BY A GOVERNMENTAL AUTHORITY, AND IS NOT SUBJECT TO CRIMINAL PENALTIES.

(b) An invoice issued under this section may not resemble the citations issued by local authorities.

~~(2) A county or municipality may not enact an ordinance or a regulation restricting or prohibiting a right of a private property owner or operator established under subsection (1). Any such ordinance or regulation is a violation of this section and is null and void.~~

Section 2. This act shall take effect July 1, 2023.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations
Appropriations Committee on Agriculture, Environment, and General Government
Appropriations Committee on Health and Human Services
Commerce and Tourism
Community Affairs
Transportation

SELECT COMMITTEE:
Select Committee on Resiliency

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight, *Alternating Chair*

SENATOR JOE GRUTERS
22nd District

March 14, 2023

The Honorable Clay Yarborough, Chair
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Yarborough:

I am writing to request that Senate Bill 694, Private Property for Motor Vehicle Parking to be placed on the agenda of the next Judiciary committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

Joe Gruters

Cc: Tom Cibula, Staff Director
Lisa Larson, Committee Administrative Assistant

REPLY TO:
❒ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
❒ 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

694
Bill Number or Topic

Amendment Barcode (if applicable)

Name Albert Balido

Phone 8506251340

Address 201 W Park Ave
Street

Tall FL 32301
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Professional Parking Management

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

April 4, 2023
Meeting Date

Judiciary
Committee

694
Bill Number or Topic

Amendment Barcode (if applicable)

Name David R. Custin

Phone (305) 607-8576

Address 6401 SW 113 Place
Street

Email CustinDR@DavidRCustin.com

Miami FL 33173
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Asta Parking, Inc.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

April 4, 2023
Meeting Date

Judiciary
Committee

694
Bill Number or Topic

528896
Amendment Barcode (if applicable)

Name David R. Custin

Phone (305) 607-8576

Address 6401 SW 113 Place
Street

Email CustinDR@DavidRCustin.com

Miami FL 33173
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Asta Parking, Inc.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
3/30/23	SM	Favorable
4/3/23	JU	Favorable

March 29, 2023

The Honorable Kathleen Passidomo
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 8** – Senator Jones
HB 6001 – Representative Gottlieb
Relief of Leonard Cure by the State of Florida

SPECIAL MASTER'S FINAL REPORT

THIS IS A SUPPORTED CLAIM FOR $817,000 TO BE APPROPRIATED FROM THE GENERAL REVENUE FUND TO THE DEPARTMENT OF FINANCIAL SERVICES, AND A WAIVER OF TUITION AND FEES FOR UP TO 120 HOURS OF INSTRUCTION, TO COMPENSATE LEONARD CURE FOR 16 YEARS OF WRONGFUL INCARCERATION.

FINDINGS OF FACT:

General Overview of the Crime

On November 10, 2003, at 7:15 a.m., a man with a firearm forced his way into a Dania Beach Walgreens store. The man threatened one of the employees with the firearm and then left with $1,700 in cash. Only two employees, Ashraf Rizk and Kathy Venhuizen, were present during the robbery.[1]

Rizk, the manager of the Walgreens, saw the perpetrator in the parking lot when he arrived at work and asked the perpetrator if he needed anything. This occurred at

[1] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 1.

approximately 7:00 a.m.[2] The perpetrator responded that he was waiting to make sure his child got on the bus. When Rizk opened the door at 7:15 a.m. to let Venhuizen in the door, the perpetrator fought with Rizk and threatened him with a firearm. The perpetrator retrieved money from the store safe and fled the scene at approximately 7:24 a.m.[3] The perpetrator was described as wearing long jean shorts, a denim jacket, and a red baseball cap.[4]

Identification of Mr. Cure

The two witnesses gave conflicting statements as to the appearance of the perpetrator. Venhuizen described a black male, five foot eight inches, stocky, and missing teeth on the left side of his mouth, like a "vicious animal." She also described him as "neat" and "well-dressed." Rizk described the perpetrator as wearing a blue jean jacket and long blue jean shorts. He had no recollection of the perpetrator missing teeth. [5]

On November 12, 2003, both Rizk and Venhuizen met with Detective Gajate to work on a composite sketch. Detective Gajate, was not a trained sketch artist. Rizk and Venhuizen argued over the sketch, and Venhuizen "did most of the talking," in relation to the composite.[6]

Deputy Bell was posted outside of a nearby elementary school on the day of the robbery. Deputy Bell saw a boy walking to school with a man who was wearing blue jean shorts, a blue jean jacket, and a red baseball cap at approximately 7-8 a.m. Deputy Bell recognized the boy because she sees him regularly walking with his sister to school. She did not recognize the man at the time she saw him walking past her patrol car.[7]

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[2] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[3] *Id*.; Innocence Project of Florida, Inc, *Statement of Facts and Case*, 1-2.
[4] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[5] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.
[6] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2, (December 8, 2020).
[7] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.

At approximately 7:24 a.m., a dispatch regarding the robbery went out. Deputy Bell arrived at the scene of the robbery where she learned the description of the perpetrator was a black male wearing blue jeans and a jacket. Deputy Bell did not mention seeing a man matching that description. It was not until a few days later that she remembered seeing a person matching the description of the perpetrator walk past her patrol car.[8]

A few days later, Lieutenant Stewart showed Deputy Bell a photograph of Leonard Cure, and Deputy Bell concluded Mr. Cure was the man she saw walking. After Lieutenant Stewart gave Deputy Bell Mr. Cure's name, Deputy Bell met Mr. Cure at his residence a few months earlier while she was reviewing criminal registrants and prison releases.[9]

Lieutenant Stewart stated she went onto a computer to search a program called "TRAP," which is a program that had information and photographs of people who have been arrested, or were on prisoner release, and lived in the area.[10] Lieutenant Stewart chose a photograph from the database based on Venhuizen's statement that the perpetrator's physical appearance was "neat." Stewart chose only Mr. Cure's photograph because it appeared he maintained a well-kept appearance.[11]

Approximately a week after the robbery, detectives constructed a lineup and asked both Venhuizen and Rizk to identify the suspect independently.[12]

Lineup and Arrest

On November 17, 2003, Vehuizen was presented six men in a photo lineup, and she chose number three, Leonard Cure, but noted he did not have the same skin tone as the perpetrator. Detective Mellies then showed her a second four-

[8] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2-3, (December 8, 2020).
[9] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.
[10] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 6, (December 8, 2020).
[11] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 6, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 2.
[12] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.

person photo lineup where all four photos were of Leonard Cure.[13]

On November 19, 2003, Rizk was presented a photo lineup and narrowed it down to numbers one and three. He stated he was not 100 percent sure.[14] Rizk also stated he was not sure which person it was, and noted the issue of complexion. Detective Mellies then presented a second lineup with photos of only Leonard Cure.[15] Rizk did not realize the second set of photos were the same person and at trial testified "I thought they [were] three different people."[16]

Leonard Cure was arrested on November 20, 2003 for robbery with a firearm and assault with a firearm based on this identification.[17]

Trial and Conviction

The state relied on Venhuizen's identification of Mr. Cure and the fact he had a missing side tooth.[18]

The witness Venhuizen described the perpetrator as missing a tooth on the left side of his face. Mr. Cure had both a missing side and front tooth. Mr. Cure's girlfriend, Enid Roman testified that Mr. Cure wore a bridge and never left home without it. She never knew his teeth were missing until after they started dating. [19]

Detective Mellies testified at trial that he identified the young boy seen by Deputy Bell, and the boy selected Mr. Cure from a lineup. This boy was not called as a witness, the prosecutor had no knowledge of the boy's identity, and Mellies had no report of the boy's identification.[20]

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[13] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 5, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.
[14] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[15] Innocence Project of Florida, Inc, *Statement of Facts and Case*, p. 3.
[16] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 3, (December 8, 2020).
[17] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.
[18] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.
[19] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[20] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 3.

Alibi Defense

Mr. Cure presented evidence of an alibi. Mr. Cure left home the morning of the robbery at 6:00 a.m. with his girlfriend Enid Roman and her three children. After Roman dropped the children off at school and daycare, she dropped Mr. Cure off at a bus stop. After exiting the first bus and before catching the second bus on the route he took to work, Mr. Cure stopped by an ATM. Mr. Cure withdrew 20 dollars at 6:52 a.m.[21]

Mr. Cure's manager testified Mr. Cure was a permanent worker with the company because Mr. cure was always on time. On the day of the robbery, Marty Weiss testified he entered the work site at 8:00 a.m., and Mr. Cure was already present. Additionally, Wayne Knox, Mr. Cure's co-worker, stated in his sworn statement that he arrived to work at 7:00 a.m., on the day of the robbery and Mr. Cure got there after him, between 7:00 a.m. and 7:20 a.m.[22]

Mr. Cure's work attire was construction boots and clothing suitable for construction work, including long pants.[23]

On August 17, 2004, the jury could not reach a unanimous decision and the court ordered a mistrial. Mr. Cure refused an offer of 7 years of incarceration in exchange for a guilty plea.

The second trial began several weeks later, and Rizk testified as a defense witness. Rizk testified he was not sure that Mr. Cure was the person who committed the robbery.[24]

Mr. Cure was found guilty and sentenced to life in prison for armed robbery and assault with a firearm.[25]

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[21] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[22] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[23] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 4.
[24] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5.
[25] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5,

Conviction Review Unit Findings and Recommendation

The Conviction Review Unit (CRU) of the 17th Judicial Circuit received a request from Mr. Cure to re-investigate his case. After initial review, Assistant State Attorney Arielle Demby Berger reached out to the Innocence Project of Florida, who became counsel for Mr. Cure in February 2020.[26]

As a result of the CRU's initial investigation, the Office of the State Attorney for the 17th Judicial Circuit agreed to resentence Mr. Cure to time-served to allow for his immediate release while the reinvestigation continued. [27] The order, in part, stated "[t]he CRU recommends that in light of all the facts and circumstances of the case it is in the best interest of justice to release Cure to a time-served sentence." Mr. Cure was released on April 14, 2020.[28]

The CRU made the following factual conclusions:

The Alibi: The CRU found undisputed evidence of Mr. Cure's alibi, including an ATM receipt showing Mr. Cure at a Wachovia at 6:52 a.m., 3.2 miles from the crime scene. Additionally, there was undisputed testimony Mr. Cure was at work at approximately 7:00 a.m., 7 miles from the crime scene. Mr. Cure did not have access to a car on the morning of the crime, and was relying on the bus system to get to work. The CRU timed the route and determined it was not possible for Mr. Cure to be at the ATM, go to the crime scene, and get back to work by the time he was seen by his coworker.[29]

The Identification: The CRU concluded the only reason Mr. Cure was in the photo lineup was because of Venhuizen's description that the perpetrator was "neat," and Lieutenant Stewart chose the only photo depicting a man who seemed to fit that description. Furthermore, the CRU's investigation determined "it is clear that Leonard Cure was not identified through the 'TRAP' program," as stated by Lieutenant Stewart. It is unclear how Mr. Cure's photo was retrieved.[30]

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[26] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5.
[27] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 5.
[28] Claimant, Leonard Cure, Exhibit List, *Tab E –Resentencing Order* (April 14, 2020).
[29] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 15-17, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[30] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 8, (December 8, 2020).

The CRU further discovered a second photo array was shown to both victims that included four photos all of which were Mr. Cure. The CRU had serious concerns about the reliability of the identification due to the suggestive nature of the multiple lineups.[31]

The boy: The witnesses described the perpetrator with or waiting for a young boy. The State's theory was that this boy was Enid Roman's son. Detective Mellies indicated he spoke with the boy who identified Mr. Cure, but there was no corroborative documentation of this. The CRU's investigation determined the boy was not Enid Roman's son, and the police never spoke to Enid Roman's son regarding this case.[32]

Teeth: Venhuizen described the perpetrator as missing teeth on the left side of his mouth. Mr. Cure was missing a front tooth and one side tooth. Mr. Cure never left his house without wearing his bridge.[33] Based on an expert report the CRU determined Mr. Cure's teeth were different than that described by Venhuizen.[34] Additionally, the second eye witness, Rizk, did not describe the perpetrator as missing teeth. [35]

The CRU concluded the only item tying Mr. Cure to the crime is the identification by Venhuizen, who was under a great deal of stress during and following the crime.[36] Additionally, "a complete review of the evidence presented at trial and in discovery, as well as further investigation of that evidence demonstrates that the case against Mr. Cure gives rise to a reasonable doubt as to his culpability, and that he is most likely innocent."[37, 38]

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[31] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[32] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 12-14, (December 8, 2020); Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[33] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 8, (December 8, 2020).
[34] Claimant, Leonard Cure, Exhibit List, *Tab H –Expert Dental Report by Dr. Carrigan Parish, DMD, PhD,* (September 28, 2020).
[35] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[36] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 19, (December 8, 2020).
[37] Innocence Project of Florida, Inc, *Statement of Facts and Case*, 6.
[38] Claimant, Leonard Cure, Exhibit List, *Tab B – Conviction Review Unit Memorandum with independent Review Panel's Findings,* 2, (December 8, 2020).

Mr. Cure's convictions were vacated on December 10, 2020.[39] [40] [41] [42]

LITIGATION HISTORY:

November 20, 2003, Leonard Cure was arrested for robbery with a firearm and assault with a firearm.

August 17, 2004, there was a mistrial after the jury could not reach a unanimous decision. Several weeks later, another trial was held and Mr. Cure was convicted and sentenced to life in prison.

April 14, 202, Mr. Cure was released from prison.

December 10, 2020, Mr. Cure's conviction was vacated.

CONCLUSIONS OF LAW:

Standard of Proof in Wrongful Incarceration Compensation Claims

The appropriate standard of proof applied in a wrongful incarceration claim bill is whether there is *clear and convincing evidence* the claimant committed neither the act nor the offense that served as the basis for the conviction and the claimant did not aid, abet, or act as an accomplice.

Generally, the standard of proof in the claim bill process is preponderance of the evidence. However, in 2008, the Legislature established a clear and convincing standard of proof for wrongful incarceration claims under chapter 961, of the FloridaStatutes. While the Legislature is not bound to the statutory requirements, precedent[43] and equitability suggest the applicable standard of proof in a wrongful incarceration claim bill should be consistent with these statutory requirements. There have been two wrongful incarceration claim bills passed since the enactment of chapter 961, of the FloridaStatutes. Both of these bills have utilized a clear and convincing standard.[44] Additionally, a person who is barred from receiving compensation under the statutory framework

[39] Innocence Project of Florida, Inc, *Statement of Facts and Case*, p. 7.
[40] Claimant, Leonard Cure, Exhibit List, *Tabs F- Order Vacating Convictions and Sentences* (December 10, 2020) and *G- Nolle Prosequie*, (December 10, 2020).
[41] Special Master Hearing (March 1, 2021), Testimony of Teresa Hall at 17:14-17:26.
[42] *Id.* at 17:35-18:01.
[43] Senate Special Master Report Re: CS/SB 2 (2012) (November 1, 2011) (recommending relief regarding Mr. William Dillon's wrongful incarceration claim); Senate Special Master Report Re: SB 28 (2020) (January 23, 2020) (recommending relief regarding Mr. Clifford Williams' wrongful incarceration claim).
[44] *Id*.

due to prior felony convictions may only be compensated for a wrongful conviction through an act of grace by the Legislature. Applying a lower standard of proof to those barred from statutory relief would create an inequitable result.

Clear and convincing evidence is "evidence making the truth of the facts asserted 'highly probable."[45] A clear and convincing standard "is a greater burden than preponderance of the evidence, the standard applied in most civil trials, but less than evidence beyond a reasonable doubt, the norm for criminal trials."[46] Florida jury instructions provide clear and convincing evidence is "evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue."[47]

Compensation for Wrongful Incarceration Compensation Claims

Chapter 961,of the Florida Statutes, provides that compensation for wrongful incarceration is calculated at a rate of $50,000 for each year of wrongful incarceration, and is prorated as necessary.[48] Additionally, a petitioner may receive a waiver of tuition and fees for up to 120 hours of instruction at a career center, Florida College System Institution, or any state university;[49] the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person;[50] and the amount of reasonable attorney's fees and expenses incurred by the wrongfully incarcerated person.[51] The total amount awarded may not exceed $2 million.[52]

Similar to the standard of proof, the Legislature is not bound by the statutory requirements of chapter 961, of the Florida Statues, but precedent and equitability suggest these requirements be applied.

[45] *Slomowitz v. Walker*, 429 So. 2d 797, 799 (4th DCA 1983).
[46] Bryan A. Garner, Black's Law Dictionary (2006).
[47] Standard Jury Instructions-Civil (No. 405.4).
[48] Section 961.06(1)(a), F.S.
[49] Section 961.06(1)(b), F.S.
[50] Section 961.06(1)(c), F.S.
[51] Section 961.06(1)(d), F.S.
[52] Section 961.06(1), F.S.

Conclusion Based upon Findings of Fact and Clear and Convincing Evidence

Mr. Cure presented strong, undisputed evidence of an alibi. There was an ATM receipt showing Mr. Cure at a Wachovia at 6:52 a.m., 3.2 miles from the crime scene. Additionally, there was undisputed testimony Mr. Cure was at work at approximately 7:00 a.m., 7 miles from the crime scene. Mr. Cure did not have access to a car on the morning of the crime, and was relying on the bus system to get to work. It was not possible for Mr. Cure to be at the ATM, go to the crime scene, and get back to work by the time he was seen by his coworker.

Further, the evidence relating to the identification of Mr. Cure was unreliable and suggestive in nature. The only reason Mr. Cure was in the photo lineup was because of Venhuizen's description that the perpetrator was "neat," and Lieutenant Stewart chose the only photo depicting a man who seemed to fit that description. The CRU's investigation determined Mr. Cure was not identified through the TRAP program as stated by the Lieutenant. It remains unclear how Mr. Cure's photo was retrieved. The second photo array shown to both victims only included four photos all of which were Mr. Cure.

Additionally, one victim described the perpetrator as missing teeth on the left side of his mouth. Mr. Cure was missing a front tooth and one side tooth, but never left his house without wearing his bridge. Based on an expert report the CRU determined Mr. Cure's teeth were different than that described by the victim.

The State's theory that the boy seen with the perpetrator was Enid Roman's son has been proven wrong. Detective Mellies indicated he spoke with the boy who identified Mr. Cure, but there was no corroborative documentation of this. The CRU's investigation determined the boy was not Enid Roman's son, and that the police never spoke to Enid Roman's son regarding this case.

The only evidence tying Mr. Cure to the crime is the identification by Venhuizen, who was under a great deal of stress during and following the crime.

The materials presented did not include any substantiated evidence demonstrating Mr. Cure's involvement in the crime.

Given the evidence provided during the claim bill process, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence.

The claimant was wrongfully incarcerated and the amount of $817,000, calculated at the rate of $50,000 per year is reasonable.

ATTORNEY FEES:

This bill does not allocate any funds for attorney or lobbying fees. Additionally, the claimant's attorney submitted a Statement on Payment for Attorney, stating the claimant had retained attorney Seth Miller of the Innocence Project of Florida, to represent him during the Special Master hearing. Mr. Miller, nor any other individuals rendering services on behalf of Mr. Cure in support of this claim bill are receiving any form of payment or compensation, and all representation is *pro bono*.[53]

RECOMMENDATIONS:

Based upon the evidence submitted prior to and during the special master hearing, the undersigned finds the claimant has demonstrated actual innocence by clear and convincing evidence. There is clear and convincing evidence that the claimant committed neither the act nor the offense that served as the basis for the conviction and that the petitioner did not aid, abet, or act as an accomplice, and the relief sought is reasonable.

The undersigned recommends the bill be reported FAVORABLY.

Respectfully submitted,

Amanda Stokes
Senate Special Master

cc: Secretary of the Senate

[53] *See*, Innocence Project of Florida, Inc. *Statement on Payment for Attorney* (2023).

By Senator Jones

34-00092-23 20238__

A bill to be entitled

An act for the relief of Leonard Cure; providing an appropriation to compensate Mr. Cure for being wrongfully incarcerated for 16 years; directing the Chief Financial Officer to draw a warrant payable directly to Mr. Cure; requiring the Chief Financial Officer to pay the directed funds without requiring that Mr. Cure sign a liability release; providing for the waiver of certain tuition and fees for Mr. Cure; declaring that the Legislature does not waive certain defenses or increase the state's limits of liability with respect to this act; prohibiting funds awarded under this act to Mr. Cure from being used or paid for attorney or lobbying fees; prohibiting Mr. Cure from submitting a compensation application under certain provisions upon his receipt of payment under this act; requiring specific reimbursement to the state should a civil award be issued subsequent to Mr. Cure's receipt of payment under this act; requiring Mr. Cure to notify the Department of Legal Affairs upon filing certain civil actions; requiring the department to file a specified notice under certain circumstances; providing that certain benefits are vacated upon specified findings; providing an effective date.

WHEREAS, Leonard Cure was arrested on November 20, 2003, for the November 10, 2003, robbery of a Dania Beach Walgreens drug store and was convicted on November 3, 2004, of armed robbery with a firearm and aggravated assault with a firearm,

34-00092-23 20238__

and

WHEREAS, Mr. Cure was sentenced to life imprisonment and spent 16 years incarcerated, and

WHEREAS, Mr. Cure has maintained his innocence since his arrest and for the entirety of his incarceration, and

WHEREAS, on April 2, 2020, the Conviction Review Unit for the State Attorney's Office for the 17th Judicial Circuit issued a 14-page "Conviction Review Unit Memorandum" recommending the modification of Mr. Cure's sentence to allow for his immediate release while the Conviction Review Unit investigated Mr. Cure's case, and

WHEREAS, on April 14, 2020, the Circuit Court for the 17th Judicial Circuit modified Mr. Cure's sentence to time served, and Mr. Cure was released, and

WHEREAS, on October 16, 2020, the Conviction Review Unit for the State Attorney's Office for the 17th Judicial Circuit issued a "Conviction Review Unit Addendum Memorandum with Independent Review Panel's Findings" reaching the conclusion that the court should "vacate the defendant's judgment and sentence and enter a nolle prosequi as to both counts" due to the finding by the Independent Review Panel that "the case against Mr. Cure is so weak that it gives rise to a reasonable doubt as to his culpability, and that he is most likely innocent," and

WHEREAS, on December 11, 2020, the Circuit Court for the 17th Judicial Circuit issued, with the concurrence of the state, an "Agreed Order Vacating Judgment and Sentence" on the basis that Mr. Cure "is most likely innocent," and

WHEREAS, on December 14, 2020, as the result of the

Conviction Review Unit report, the state filed a notice of nolle prosequi, and Mr. Cure was exonerated, and

WHEREAS, the Legislature acknowledges that the state's system of justice yielded an imperfect result that had tragic consequences in this case, and

WHEREAS, the Legislature acknowledges that, as a result of his physical confinement, Mr. Cure suffered significant damages that are unique to him, and that the damages are due to the fact that he was physically restrained and prevented from exercising the freedom to which all innocent citizens are entitled, and

WHEREAS, before his conviction for the aforementioned crimes, Mr. Cure had prior convictions for unrelated felonies, and

WHEREAS, due to his prior felony convictions, Mr. Cure is ineligible for compensation under chapter 961, Florida Statutes, and

WHEREAS, the Legislature apologizes to Mr. Cure on behalf of the state, NOW, THEREFORE,

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

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

Section 2. The sum of $817,000 is appropriated from the General Revenue Fund to the Department of Financial Services for the relief of Leonard Cure for his wrongful incarceration. The Chief Financial Officer is directed to draw a warrant in favor of Mr. Cure in the sum of $817,000 payable directly to Leonard Cure.

Section 3. The Chief Financial Officer shall pay the funds directed by this act without requiring that the wrongfully incarcerated person, Mr. Cure, sign a liability release.

Section 4. Tuition and fees for Mr. Cure shall be waived for up to a total of 120 hours of instruction at any career center established pursuant to s. 1001.44, Florida Statutes, any Florida College System institution established under part III of chapter 1004, Florida Statutes, or any state university. For any educational benefit made, Mr. Cure must meet and maintain the regular admission and registration requirements of the career center, institution, or state university and make satisfactory academic progress as defined by the educational institution in which he is enrolled.

Section 5. With respect to the relief for Mr. Cure as described in this act, the Legislature does not waive any defense of sovereign immunity or increase the limits of liability on behalf of the state or any person or entity that is subject to s. 768.28, Florida Statutes, or any other law. Funds awarded under this act to Mr. Cure may not be used or be paid for attorney fees or lobbying fees related to this claim.

Section 6. Upon his receipt of payment under this act, Mr. Cure may not submit an application for compensation under chapter 961, Florida Statutes.

Section 7. If, after the time that monetary compensation is paid under this act, a court enters a monetary judgment in favor of Mr. Cure in a civil action related to his wrongful incarceration, or Mr. Cure enters into a settlement agreement with the state or any political subdivision thereof related to his wrongful incarceration, Mr. Cure must reimburse the state

for the monetary compensation awarded under this act, less any sums paid for attorney fees or costs incurred in litigating the civil action or obtaining the settlement agreement. The reimbursement required under this section may not exceed the amount of monetary award Mr. Cure receives for damages in the civil action or settlement agreement. The court must include in the order of judgment an award to the state of any amount required to be deducted under this section. Claimant Leonard Cure must notify the Department of Legal Affairs upon filing any such civil action.

Section 8. The department must then file a notice of payment of monetary compensation in the civil action, and the notice shall constitute a lien upon any judgment or settlement recovered under the civil action which is equal to the sum of monetary compensation paid to the claimant under this act, less any attorney fees and litigation costs.

Section 9. If any future judicial determination concludes that Mr. Cure, by DNA evidence or otherwise, participated in any manner in the armed robbery and aggravated assault for which he was incarcerated, the unused benefits to which he is entitled under this act are vacated.

Section 10. This act shall take effect upon becoming a law.

The Florida Senate

Committee Agenda Request

Senator Shevrin D. “Shev” Jones
218 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

To: Chair Clay Yarborough
Committee on Judiciary

Subject: Committee Agenda Request

Date: April 4, 2023

I respectfully request that **SB 8: Relief of Leonard Cure/State of Florida,** be placed on the:

☒ Committee agenda at your earliest possible convenience.

☐ Next committee agenda.

Senator Shevrin Jones
Florida Senate, District 34

File signed original with committee office

.0The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 1388
INTRODUCER:	Senator Wright
SUBJECT:	Immunity of Motor Vehicle Dealer Leasing and Rental Affiliates
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	Bond	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 1388 defines the terms "control" and "motor vehicle dealer's leasing or rental affiliate" for purposes of provisions relating to immunity from vicarious liability of a motor vehicle dealer, or of a motor vehicle dealer's leasing or rental affiliate, who provides a temporary replacement vehicle to a service customer. The effect of these changes is to limit the scope of the statutory exemption related to motor vehicle dealer loaner cars.

The fiscal impact is indeterminate. However, definitional specificity may serve to curtail litigation.

The bill takes effect July 1, 2023.

II. Present Situation:

The Dangerous Instrumentality Doctrine

The court-created dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. Whether the owner was negligent or at fault is irrelevant. The rationale for holding an innocent person responsible for such damages is that the owner of an instrumentality capable of causing death or destruction should be liable for damages caused by anyone operating it with the owner's consent.[1]

The dangerous instrumentality doctrine originated in English common law and was adopted by the Florida Supreme Court in 1920 in *Southern Cotton Oil Company v. Anderson*, 86 So. 629

[1] *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).

(1920).[2] The Court acknowledged the doctrine was originally limited to fire, water, and poisons, but had expanded over time:

> It is true that, in the early development of this very salutary doctrine, the dangerous agencies consisted largely of fire, flood, water, and poisons. In Dixon v. Bell . . . Lord Ellenborough extended the doctrine to include loaded firearms. With the discovery of high explosives, they were put in the same class. As conditions changed it was extended to include other objects that common knowledge and common experience proved to be as potent sources of danger as those embraced in the earlier classifications. The underlying principle was not changed, but other agencies were included in the classification. Among them are locomotives, push cars, street cars, etc., and it is now well settled that these come within the class of dangerous agencies, and the liability of the master is determined by the rule applicable to them. The reasons for putting these agencies in the class of dangerous instrumentalities apply with equal, if not greater, force to automobiles.[3]

In a 1990 Florida Supreme Court case, a man leased a car from a lessor and then loaned the leased car to a friend. The friend caused a motor vehicle crash in the leased car, killing another person. The victim's estate sued the lessor of the car directly. The Court held that the lessor was liable for the death of the victim under the dangerous instrumentality doctrine, even though the lessor did not cause the accident. The Court acknowledged that the dangerous instrumentality doctrine was "unique to Florida" but justified the doctrine as necessary "to provide greater financial responsibility to pay for the carnage on our roads."[4]

Once a court decides that an item is a dangerous instrumentality, an owner of such instrumentality is liable for damages the instrumentality causes, even if the owner was not in control of the instrumentality at the time. Whether an item is a dangerous instrumentality is a question of law depending on several factors, none of which alone is dispositive, including:

- Whether the instrumentality is a motor vehicle.[5]
- Whether the instrumentality is frequently operated near the public, regardless of whether the incident at issue occurred on public property.

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[2] *Id.* at 1014.

[3] *S. Cotton Oil Company v. Anderson*, 86 So. 629, 631 (Fla. 1920).

[4] *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990). The Second District Court of Appeal has acknowledged that the dangerous instrumentality doctrine creates "real and perceived inequities" and "has drawn its fair share of criticism." *Fischer v. Alessandrini*, 907 So. 2d 569, 570 (Fla. 2d DCA 2005).

[5] A motor vehicle is a "wheeled conveyance that does not run on rails and is self-propelled, especially one powered by an internal combustion engine, a battery or fuel-cell, or a combination of these." *Newton v. Caterpillar Financial Servs. Corp.*, 253 So. 3d 1054, 1056 (Fla. 2018) (quoting Black's Law Dictionary (10th ed. 2014)). For purposes of Chapter 324, F.S., Florida's financial responsibility law, "motor vehicle" means every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device, mobile carrier, bicycle, electric bicycle, or moped. Section 324.021(1), F.S.

- The instrumentality's peculiar dangers relative to other objects that courts have found to be dangerous instrumentalities.
- The extent to which the Legislature has regulated the instrumentality.[6]

If the court decides an item is a dangerous instrumentality, the owner is liable regardless of the facts of the particular case. Over time, Florida courts have expanded the applicability of the doctrine to include automobiles,[7] trucks, buses,[8] tow-motors,[9] golf carts, and other motorized vehicles.[10]

The dangerous instrumentality doctrine has been limited in Florida law with respect to a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate that provides a temporary replacement vehicle to a motor vehicle dealer's service customer.[11]

Legislation enacted in 2020[12] provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being held for repair, service, or adjustment by the motor vehicle dealer is immune from any cause of action. The dealer is also not liable, vicariously or directly, under general law solely by reason of being the owner of the temporary replacement vehicle for harm to persons or property that arises out of the use or operation of the temporary replacement vehicle by any person during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer. However, this only applies if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner, or its leasing or rental affiliate.[13]

The enacted legislation also provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that gives possession, control, or use of a temporary replacement vehicle to a motor vehicle dealer's service customer may not be adjudged liable in a civil proceeding absent negligence or criminal wrongdoing on the part of the motor vehicle dealer. This only applies if the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate executes a written rental or use agreement and obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in this state.[14]

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[6] *Newton*, 253 So. 3d at 1056.
[7] *S. Cotton Oil*, 86 So. at 629.
[8] *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984).
[9] *Eagle Stevedores, Inc. v. Thomas*, 145 So. 2d 551 (Fla. 3d DCA 1962) (where plaintiff was struck in a dock area by a "tow-motor," a small motor-operated vehicle, dangerous instrumentality doctrine applied).
[10] *Meister*, 462 So. 2d at 1072.
[11] The term "service customer" does not include an agent or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate, and does not include an employee of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate unless the employee was provided a temporary replacement vehicle: While the employee's personal vehicle was being held for repair, service, or adjustment by the motor vehicle dealer; in the same manner as other customers who are provided a temporary replacement vehicle while the customer's vehicle is being held for repair, service, or adjustment; and the employee was not acting within the course and scope of his or her employment. Section 324.021(9)(c)3.a., F.S.
[12] Chapter 2020-108, Laws of Fla.
[13] Section 324.021(9)(c)3.a., F.S.
[14] Section 324.021(9)(c)3.b., F.S.

The 2020 legislation did not, however, define the term "motor vehicle dealer's leasing or rental affiliate."

The Graves Amendment

In 2005, Congress passed 49 U.S.C. § 30106, commonly known as the Graves Amendment, to prohibit states from imposing vicarious liability on car rental companies.[15] Vicarious liability is "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate (such as an employee) based on the relationship between the two parties."[16] To benefit from the Graves Amendment, the "owner" must be "engaged in the business of renting or leasing motor vehicles." A vehicle "owner" may be the titleholder, lessee, or bailee[17] of the vehicle.[18]

The Graves Amendment, however, does not protect a rental company from its own negligence or criminal wrongdoing. If an injury is caused by a rental company's negligent or criminal act, the rental company could still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.[19] Federal law supersedes Florida's dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.[20]

In 2011, the Florida Supreme Court held that as it relates to rental car companies the Graves Amendment specifically preempts Florida law[21] and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver.[22]

In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis in *Vargas*, held that the Graves Amendment applies to a motor vehicle dealer that provides a customer with a temporary replacement vehicle.[23]

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[15] Auto Rental News, The Graves Amendment: Challenges, Interpretations, Answers, https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers (last visited February 7, 2020).
[16] Black's Law Dictionary 427 (3rd pocket ed. 2006).
[17] According to legaldictionary.net, the elements of a bailment include delivery, acceptance, and consideration. The property must be delivered by the bailor to the actual care and/or control of the bailee. The bailee must knowingly accept possession and/or control of the property (because a bailment is a type of contract, knowledge and acceptance of the bailment terms are essential). However, unlike a typical contract in which both parties receive something of value, only one party need receive something of value in a bailment. So, *e.g.*, when one party loans the use of his car to another, a bailment is created, even though the bailor receives nothing of value. *See* legaldictionary.net, Bailment - Definition, Examples, Cases, Processes (legaldictionary.net) (last visited March 21, 2023).
[18] Auto Rental News, *supra* note 15.
[19] *Id.*
[20] 49 U.S.C. § 30106.
[21] Section 324.021(9)(b)2., F.S.
[22] *Vargas v. Enterprise Leasing Co.*, 60 So. 3d 1037 (Fla. 2011).
[23] *Collins v. Auto Partners V, LLC*, 276 So. 3d 817 (Fla. 4th DCA 2019).

III. Effect of Proposed Changes:

The bill amends s. 324.021(9)(c), F.S., to clarify the legislation enacted in 2020 by defining the terms "motor vehicle dealer's leasing or rental affiliate" and "control."

The bill defines "motor vehicle dealer's leasing or rental affiliate" to mean a "person"[24] that directly or indirectly controls, is controlled by, or is under common control with the motor vehicle dealer.

"Control" is defined as the power to direct the management and policies of a person whether through ownership of voting securities[25] or otherwise.

If a person does not directly or indirectly control the motor vehicle dealer (by virtue of the person having the power to direct the management and policies of the dealer), is not controlled by the motor vehicle dealer (by virtue of the dealer having the power to direct the management and policies of the person), or is not under common control with the motor vehicle dealer (by virtue of another entity having the power to direct the management and policies of the person *and* the motor vehicle dealer), that person is not the motor vehicle dealer's leasing or rental affiliate.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[24] The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

[25] An owner of stock in a company owns either voting securities or non-voting securities. Most "common" stock ownership gives the owner one vote for each share of stock owned. Companies can also divide common stock into different classes; *e.g.*, one class might confer more than one vote per share or no voting rights at all. "Preferred" stock provides the owner with ownership in the company, and a fixed dividend, but usually no voting rights. If a company does pay dividends (which it doesn't have to pay if it lacks the ability to do so), owners of preferred stock are paid before owners of common stock. *See* finance.zacks.com, What Is an Owner of Voting Securities? (zacks.com) (last visited March 21, 2023).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. However, by clarifying the definition of "motor vehicle dealer's leasing or rental affiliate," the bill may result in reduced litigation.

C. Government Sector Impact:

Indeterminate. However, by clarifying the definition of "motor vehicle dealer's leasing or rental affiliate," the bill may result in reduced litigation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 324.021 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 Wright

8-01003A-23 20231388__

A bill to be entitled

An act relating to immunity of motor vehicle dealer leasing and rental affiliates; amending s. 324.021, F.S.; defining the term "control"; defining the term "motor vehicle dealer's leasing or rental affiliate" to specify the entities that are immune from causes of action and that are not liable for harm to persons and property under certain circumstances; providing an effective date.

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

Section 1. Paragraph (c) of subsection (9) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(9) OWNER; OWNER/LESSOR.—

(c) *Application.*—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with

8-01003A-23 20231388__

no direct or indirect affiliation with the rental company. The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in s. 627.732, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least

$5,000,000 combined property damage and bodily injury liability.

3.a. A motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being held for repair, service, or adjustment by the motor vehicle dealer is immune from any cause of action and is not liable, vicariously or directly, under general law solely by reason of being the owner of the temporary replacement vehicle for harm to persons or property that arises out of the use, or operation, of the temporary replacement vehicle by any person during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner, or its leasing or rental affiliate.

b. For purposes of this section, and notwithstanding any other provision of general law, a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that gives possession, control, or use of a temporary replacement vehicle to a motor vehicle dealer's service customer may not be adjudged liable in a civil proceeding absent negligence or criminal wrongdoing on the part of the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, if the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate executes a written rental or use agreement and obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in the state. Any subsequent determination that the

driver license or insurance information provided to the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, was in any way false, fraudulent, misleading, nonexistent, canceled, not in effect, or invalid does not alter or diminish the protections provided by this section, unless the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, had actual knowledge thereof at the time possession of the temporary replacement vehicle was provided.

c. For purposes of this subparagraph, the term:

(I) "Control" means the power to direct the management and policies of a person whether through ownership of voting securities or otherwise.

(II) "Motor vehicle dealer's leasing or rental affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with the motor vehicle dealer.

d.~~c.~~ For purposes of this subparagraph, the term "service customer" does not include an agent or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate, and does not include an employee of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate unless the employee was provided a temporary replacement vehicle:

(I) While the employee's personal vehicle was being held for repair, service, or adjustment by the motor vehicle dealer;

(II) In the same manner as other customers who are provided a temporary replacement vehicle while the customer's vehicle is being held for repair, service, or adjustment; and

(III) The employee was not acting within the course and

scope of his or her employment.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate

Committee Agenda Request

To: Senator Clay Yarborough, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 27, 2023

I respectfully request that **Senate Bill 1388**, relating to Immunity of Motor Vehicle Dealer Leasing and Rental Affiliates, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Thank you for your consideration.

Tom A. Wright

Senator Tom A. Wright
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

1388
Bill Number or Topic

Amendment Barcode (if applicable)

Name Leslie Dughi

Phone

Address
Street

Email Leslie.Dughi@mhdfirm.com

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: Enterprise, National & Alamo

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 1260
INTRODUCER:	Senator Trumbull
SUBJECT:	Asbestos and Silica Claims
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Favorable**
2.			CM	
3.			RC	

I. Summary:

SB 1260 changes the pleading requirements for a claim alleging injury from exposure to asbestos or silica to allow up to 30 days after filing the complaint to file a report supporting the claim together with certain information supporting the claim. Currently, the report and information must be filed with the complaint. The bill also increases the required information to be furnished to the defendant, primarily by requiring more specificity.

The bill also codifies the "bare metal" defense, by which a manufacturer of goods that did not use asbestos or silica in manufacturing a product is not liable for asbestos or silica exposure resulting from another manufacturer adding asbestos or silica to the product.

The bill is effective July 1, 2023.

II. Present Situation:

In 2005, the state enacted the "Asbestos and Silica Compensation Fairness Act."[1] The purposes of the act are to:

- Give priority to true victims of asbestos and silica, claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;
- Fully preserve the rights of claimants who were exposed to asbestos or silica to pursue compensation if they become impaired in the future as a result of the exposure;
- Enhance the ability of the judicial system to supervise and control asbestos and silica litigation; and

[1] Section 774.201, F.S.

- Conserve the scarce resources of the defendants to allow compensation to cancer victims and others who are physically impaired by exposure to asbestos or silica while securing the right to similar compensation for those who may suffer physical impairment in the future.[2]

The act accomplishes its purposes by prohibiting speculative claims and focusing on persons who can demonstrate an actual physical impairment caused by asbestos.[3] One means of doing so is through requirements to provide detailed information at the outset of the litigation.

In order to file a case governed by the act, the plaintiff must supply a number of facts regarding the exposure to the asbestos and the resultant injuries. The complaint must include a written report and supporting test results constituting prima facie evidence of the exposed person's asbestos-related or silica-related physical impairment.[4] In addition to the written report, the plaintiff must include with the complaint a sworn information form containing:

- The claimant's name, address, date of birth, and marital status;
- If the claimant alleges exposure to asbestos or silica through the testimony of another person or alleges other than direct or bystander exposure to a product, the name, address, date of birth, and marital status for each person by which the claimant alleges exposure, hereinafter the "index person," and the claimant's relationship to each such person;
- The specific location of each alleged exposure;
- The beginning and ending dates of each alleged exposure as to each asbestos product or silica product for each location at which exposure allegedly took place for the plaintiff and each index person;
- The occupation and name of the employer of the exposed person at the time of each alleged exposure;
- The specific condition related to asbestos or silica claimed to exist; and
- Any supporting documentation of the condition claimed to exist.

III. Effect of Proposed Changes:

SB 1260 changes the pleading requirements for a claim alleging injury from exposure to asbestos or silica to allow up to 30 days after filing the complaint to file the written report and provide certain information supporting the claim, rather than filing the report and information with the complaint. The bill also adds to the list of required information, requiring the following additional information:

- Occupation of the exposed person.
- Smoking history of the exposed person.
- All current and past worksites of the exposed person.
- All current and past employers of the exposed person.
- The name of any person who may have exposed the exposed person to the asbestos or silica.
- The name, address, and relationship to the exposed person for each person who is knowledgeable regarding the exposed person's exposures to asbestos or silica.

[2] Section 774.202, F.S.
[3] Section 774.204(1), F.S.
[4] Section 774.205(2), F.S. The proof must meet the requirements of s. 774.204(2), (3), (5), or (6), F.S. The details of such proof are not relevant to this analysis.

- The identity of the manufacturer or seller and specific name of each asbestos-containing product or silica-related product, including, but not limited to, all brand and trade names of the asbestos-containing or silica-related product, to which the exposed person was exposed or the other person was exposed if exposure was through another person.
- For each product identified, each site and the specific location at each site, including the address of each site, at which the exposed person was exposed to asbestos or silica or the other person was exposed if exposure was through another person.
- The beginning and ending dates of each exposure, the specific manner of each exposure, the frequency and length of time of each exposure, and the proximity of the product or its use to the exposed person and each person through whom the exposed person alleges exposure to asbestos or silica.

A court must dismiss a defendant from the case, without prejudice, if that defendant's product or premises is not specifically identified in the sworn information form. A court must dismiss the case in its entirety if the report or form is not filed.

The bill also provides that a product liability defendant in a civil action alleging an asbestos or a silica claim is not liable for an exposure from a later-added product manufactured, distributed, or sold by a third party.[5] This provision is a codification of an existing defense in asbestos and silica cases sometimes referred to as the "bare metal defense."[6]

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[5] An example may be helpful: Company A builds electric motors for various uses. No asbestos or silica is used to make the motors. Company B buys motors from Company A and attaches them to a pump mechanism that uses asbestos or silica. In a later asbestos or silica claim, Company A is not liable, but Company B may be.

[6] "A manufacturer's duty to warn, whether premised in negligence or strict liability theory, generally does not extend to hazards arising exclusively from other manufacturer's products, regardless of the foreseeability of the combined use and attendant risk." *Faddish v. Buffalo Pumps*, 881 F.Supp.2d 1361, 1371 (S.D. Fla. 2012); *Waite v. AII Acquisition Corp.*, 194 F. Supp. 3d 1298, 1317 (S.D. Fla. 2016).

E. Other Constitutional Issues:

None identified.

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 the following sections of the Florida Statutes: 774.205 and 774.209.

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 Trumbull

2-00680A-23 20231260__

A bill to be entitled

An act relating to asbestos and silica claims; amending s. 774.205, F.S.; requiring a claimant to file a sworn information form containing certain information within a certain time period after filing an asbestos or silica claim; authorizing a court to dismiss certain claims upon a motion by a defendant; amending s. 774.209, F.S.; providing that certain defendants are not liable for certain asbestos or silica exposures; providing an effective date.

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

Section 1. Subsection (3) of section 774.205, Florida Statutes, is amended, and subsections (4) and (5) are added to that section, to read:

774.205 Claimant proceedings.—

(3) Within 30 days after filing an asbestos or a silica claim in this state, the claimant must ~~All asbestos claims and silica claims filed in this state on or after the effective date of this act must include~~, in addition to the written report described in subsection (2) and the information required by s. 774.207(2), file a sworn information form specifying the evidence that provides the basis for each claim against each defendant and containing all of the following information:

(a) The ~~claimant's~~ name, address, date of birth, ~~and~~ marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed person and any person through whom the exposed person alleges exposure

2-00680A-23 20231260__

to asbestos or silica.~~;~~

(b) The name, address, and relationship to the exposed person for each person who is knowledgeable regarding the exposed person's exposures to asbestos or silica.

(c) The identity of the manufacturer or seller and specific name of each asbestos-containing product or silica-related product, including, but not limited to, all brand and trade names of the asbestos-containing or silica-related product, to which the exposed person was exposed or the other person was exposed if exposure was through another person.

(d) For each product identified under paragraph (c), each site and the specific location at each site, including the address of each site, at which the exposed person was exposed to asbestos or silica or the other person was exposed if exposure was through another person.

(e) The beginning and ending dates of each exposure, the specific manner of each exposure, the frequency and length of time of each exposure, and the proximity of the product or its use to the exposed person and each person through whom the exposed person alleges exposure to asbestos or silica.

(f) The specific condition related to asbestos or silica claimed to exist.

(g) Any supporting documentation relating to the information required under this section.

(4) The court, upon motion by a defendant, shall dismiss a plaintiff's asbestos or silica claim without prejudice as to any defendant whose product or premises is not specifically identified in the sworn information form under subsection (3).

(5) The court, upon motion by a defendant, shall dismiss a

claimant's asbestos or silica claim without prejudice as to the moving defendant or as to all defendants, as applicable, if the claimant fails to comply with this section.

~~(b) If the claimant alleges exposure to asbestos or silica through the testimony of another person or alleges other than direct or bystander exposure to a product, the name, address, date of birth, and marital status for each person by which the claimant alleges exposure, hereinafter the "index person," and the claimant's relationship to each such person;~~

~~(c) The specific location of each alleged exposure;~~

~~(d) The beginning and ending dates of each alleged exposure as to each asbestos product or silica product for each location at which exposure allegedly took place for the plaintiff and each index person;~~

~~(e) The occupation and name of the employer of the exposed person at the time of each alleged exposure;~~

~~(f) The specific condition related to asbestos or silica claimed to exist; and~~

~~(g) Any supporting documentation of the condition claimed to exist.~~

Section 2. Present subsections (1) through (5) of section 774.209, Florida Statutes, are redesignated as subsections (2) through (6), respectively, and a new subsection (1) is added to that section, to read:

774.209 Miscellaneous provisions.—

(1) A product liability defendant in a civil action alleging an asbestos or a silica claim is not liable for an exposure from a later-added product manufactured, distributed, or sold by a third party.

Section 3. This act shall take effect July 1, 2023.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Appropriations Committee on Transportation, Tourism, and Economic Development, *Vice Chair*
Appropriations Committee on Agriculture, Environment, and General Government
Banking and Insurance
Fiscal Policy
Judiciary
Transportation

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR JAY TRUMBULL
2nd District

March 28, 2003

Re: SB 1260

Dear Chair Yarborough,

I am respectfully requesting Senate Bill 1260, related to Asbestos, be placed on the agenda for the next Judiciary committee.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

Senator Jay Trumbull
District 2

REPLY TO:
❒ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: *www.flsenate.gov*

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/14/23
Meeting Date

SB 1260
Bill Number (if applicable)

Topic Asbestos

Amendment Barcode (if applicable)

Name Bill Cotterall

Job Title General Counsel

Address 218 S Monroe ST
Street

Phone

Tallahassee FL 32308
City *State* *Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Justice Assoc.

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
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4/4/23
Meeting Date

Judiciary
Committee

1260
Bill Number or Topic

Amendment Barcode (if applicable)

Name Bill Helwich

Phone 251 3126

Address 120 S. Monroe St
Street

Tallahassee FL 32301
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
VFW / American Legion

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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4/4/23
Meeting Date

1260
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Stuart Scott, American Legion Phone 850 443 8769

Address 1912 Lee St. Email Stuartscottfl@gmail

Street

Orlando FL

City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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04/04/2023
Meeting Date

Judiciary
Committee

1260
Bill Number or Topic

Amendment Barcode (if applicable)

Name Chad Kunde

Phone (850) 766-7896

Address 136 S Bronough St.
Street

Email ckunde@flchamber.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Chamber of Commerce

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

04.04.23
Meeting Date

Judiciary
Committee

1260
Bill Number or Topic

Amendment Barcode (if applicable)

Name Evelyn Davis

Phone 404-614-7400

Address 303 Peachtree ST NE, Suite 4000
Street

Atlanta
City *State* *Zip*

Email edavis@hpylaw.com

Speaking: ☑ For ☐ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:

Florida Justice Reform Institute

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

1260
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name ERIC KING

Phone 850.445.1077

Address 6119 OX BOTTOM MANOR
Street

Email ericking@conself.net

TAL FL 32312
City State Zip

Speaking: ☐ For ☑ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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April 1
Meeting Date

Judiciary
Committee

1260
Bill Number or Topic

Amendment Barcode (if applicable)

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Street

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Tallahassee FL 32312
City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Florida Insurance Council

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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April 4
Meeting Date

Judiciary
Committee

1260
Bill Number or Topic

Amendment Barcode (if applicable)

Name Mark Behrens

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City State Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: U.S. Chamber of Commerce

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 1300
INTRODUCER:	Senator Burton
SUBJECT:	Animals Working with Law Enforcement Officers
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Favorable**
2.	Bond	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 1300 increases the penalty for violations of s. 843.19(3), F.S., from a first degree misdemeanor to a third degree felony for any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine, fire canine, SAR canine, or police horse.[1]

The penalty for a person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police canine, fire canine, SAR canine, or police horse while the animal is in the performance of its duties, a violation of s. 843.19(4), F.S., is increased from a second degree misdemeanor to a first degree misdemeanor.[2]

Additionally, the bill revises s. 843.01, F.S., the "Resisting with Violence" statute,[3] and includes a police canine or police horse,[4] working at the direction of or in tandem with an officer or an authorized person, as among those that may be the victim of the crime of "Resisting with Violence."

A preliminary estimate obtained from the Office of Economic and Demographic Research is that the bill may have a "positive indeterminate" prison bed impact. See Section V. Fiscal Impact.

The bill is effective July 1, 2023.

[1] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[2] Section 843.19(4), F.S. A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. Sections 775.082, and 775.083, F.S.
[3] Section 843.01, F.S.
[4] *See* s. 843.19, F.S.

II. Present Situation:

Special K-9 and Mounted Units

Specially-trained dogs are used by various agencies and departments throughout the state in their K-9 units. These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection,[5] and building and article searches.[6] Additionally, some fire departments use dogs as part of arson detection programs.[7]

Though not as frequently used as K-9 units, select law enforcement agencies throughout the state have mounted units,[8] whereby specially-trained horses are used to assist with crowd control, special events, and additional patrol functions, among other tasks.[9]

Offenses Against Police Animals

Intentional offenses against police animals most often occur while the animals are on duty. Because of this, offenses against police horses are infrequent because mounted units are most commonly used for non-crime related purposes. However, one instance of intentional harm occurred several years ago when an attendee at the Gasparilla parade in Tampa punched a horse that was used to patrol the event.[10]

In contrast, police canines are frequently used in conjunction with high-intensity, criminal situations and are often deployed by their handlers to chase after fleeing felons. As a result, the canines can be caught in the line of fire while on the job. Two recent incidents resulted in the death of a police canine while the canine was on duty. In September 2018, 3-year old Fang, a member of Jacksonville Sheriff's Office canine unit, was shot and killed by a teenager who was fleeing a scene after carjacking two women at a gas station minutes earlier.[11] Similarly, in December 2018, Palm Beach County Sheriff's Office's canine, 3-year-old Cigo, was shot and killed by an attempted murder suspect outside of a shopping mall.[12]

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[5] City of Orlando, *K-9 Unit*, http://www.cityoforlando.net/police/k-9-unit/ (last visited March 23, 2023).
[6] St. Petersburg Police Department, *K-9 Unit*, https://police.stpete.org/k-9/index.html#gsc.tab=0, (last visited March 23, 2023).
[7] City of Orlando, Fire Department, Special Investigative Services Division, https://www.orlando.gov/Our-Government/Departments-Offices/Orlando-Fire-Department, (last visited March 23, 2023).
[8] The following agencies have mounted units: Escambia County Sheriff's Office *see* http://www.escambiaso.com/mounted-unit/; Marion County Sheriff's Office *see* http://www.marionso.com/mounted-unit/; Orlando Police Department *see* http://www.cityoforlando.net/police/mounted-patrol/; Palm Beach County Sheriff's Office *see* https://www.pbso.org/services/countywide-operations/mounted-unit/; and Pinellas Park Police Department https://www.pinellas-park.com/642/Mounted-Patrol; http://police.stpete.org/usb/mounted-unit.html (last visited March 23, 2023).
[9] City of Orlando, *Mounted Patrol*, http://www.cityoforlando.net/police/mounted-patrol/ (last visited March 23, 2023).
[10] Ashley Yore, *Chad the police horse retires after 13 years of service in Tampa*, ABC ACTION NEWS (May 11, 2018), https://www.abcactionnews.com/news/region-tampa/chad-the-police-horse-retires-after-13-years-of-service-in-tampa (last visited March 23, 2023).
[11] Colette DuChanois and Tarik Minor, *Audio, video evidence released in case of teen held in K-9's death*, NEWS4JAX (Nov. 12, 2018), https://www.news4jax.com/news/local/jacksonville/new-evidence-details-case-against-teen-accused-of-killing-jso-k-9. (last visited March 23, 2023).
[12] Mark Osborne and Jason M. Volack, *Suspect kills police dog in shootout outside mall on Christmas eve, police say*, ABC NEWS (Dec. 25, 2018), https://abcnews.go.com/US/suspect-kills-police-dog-shootout-mall-christmas-eve/story?id=60007552. (last visited March 23, 2023).

The Polk County Sheriff's Office reports that in March 2020, K-9 Vise suffered 9 stab wounds and an arterial bleed when he went into a closet after a suspect who had broken into an occupied home. Fortunately, the responding officers were able to pull the suspect away from the dog and he was rushed to the emergency veterinarian. K-9 Vise was expected to make a full recovery after undergoing emergency surgery.[13]

These particular service animals have specific definitions in law and are defined in the following manner:

- "Police canine" and "police horse" means any canine or horse, respectively, that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders;
- "Fire canine" means any dog that is owned, or the service of which is employed, by a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of flammable materials or the investigation of fires; and
- "SAR canine" means any search and rescue dog that is owned, or the service of which is employed, by a fire department, a law enforcement agency, a correctional agency, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of missing persons, including, but not limited to, persons who are lost, who are trapped under debris as the result of a natural, manmade, or technological disaster, or who are drowning victims.[14]

Currently, Florida law provides that:

- It is a second degree felony to intentionally and knowingly, without lawful cause or justification, cause great bodily harm, permanent disability, or death to, or use a deadly weapon upon a police canine, police horse, fire canine, or SAR canine.[15]
- Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine, fire canine, SAR canine, or police horse commits a misdemeanor of the first degree.[16]
- Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police canine, fire canine, SAR canine, or police horse while the animal is in the performance of its duties commits a misdemeanor of the second degree.[17]
- A person convicted of an offense under s. 843.19, F.S., must make restitution for injuries caused to the police canine, fire canine, SAR canine, or police horse and pay the replacement cost of the animal if, as a result of the offense, the animal can no longer perform its duties.[18]

[13] E-mail from Polk County Sheriff's Office, March 9, 2023, on file with the Senate Criminal Justice Committee.
[14] Section 843.19(1)(a)-(c), F.S.
[15] Section 843.19(2), F.S. A second degree felony is punishable by a state prison term not exceeding 15 years, a fine not exceeding $10,000, or both. Sections 775.082, and 775.083, F.S.
[16] Section 843.19(3), F.S. A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. Sections 775.082, and 775.083, F.S.
[17] Section 843.19(4), F.S. A second degree misdemeanor is punishable by up to 60 days in the county jail and a $500 fine. Sections 775.082, and 775.083, F.S.
[18] Section 843.19(5), F.S.

Section 843.01, F.S., prohibits a person from knowingly and willfully resisting, obstructing, or opposing any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person.[19]

III. Effect of Proposed Changes:

The bill increases the penalty for violations of s. 843.19(3), F.S., from a first degree misdemeanor to a third degree felony for any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine, fire canine, SAR canine, or police horse.[20]

The penalty for a person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with a police canine, fire canine, SAR canine, or police horse while the animal is in the performance of its duties, a violation of s. 843.19(4), F.S., is increased from a second degree misdemeanor to a first degree misdemeanor.[21]

Additionally, the bill revises s. 843.01, F.S., the "Resisting with Violence" statute,[22] and includes a police canine or police horse,[23] working at the direction of or in tandem with an officer or an authorized person, as among those who may be the victim of the crime of "Resisting with Violence."

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[19] "Resisting with Violence" is a third degree felony, punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[20] A third degree felony is punishable by up to 5 years' incarceration and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[21] Section 843.19(4), F.S. A first degree misdemeanor is punishable by up to 1 year in the county jail and a $1,000 fine. Sections 775.082, and 775.083, F.S.
[22] Section 843.01, F.S.
[23] *See* s. 843.19, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official prison bed impact, if any, of legislation has not yet considered this bill. However, a preliminary estimate obtained from the Office of Economic and Demographic Research is that the bill may have a "positive indeterminate" prison bed impact ("positive indeterminate" means that there is an unquantifiable prison bed impact).[24]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 843.19 and 921.0022.

IX. Additional Information:

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

None.

[24] Office of Economic & Demographic Research, e-mail dated March 21, 2023, on file with the Senate Criminal Justice Committee.

B. Amendments:

None.

By Senator Burton

12-01458A-23 20231300__

A bill to be entitled

An act relating to animals working with law enforcement officers; amending s. 843.01, F.S.; prohibiting the knowing and willful resistance to, obstruction of, or opposition to a police canine or police horse under certain circumstances; providing criminal penalties; making technical changes; amending s. 843.19, F.S.; increasing criminal penalties for persons who actually and intentionally maliciously touch, strike, or cause bodily harm to a police canine, fire canine, SAR canine, or police horse; increasing criminal penalties for persons who intentionally or knowingly maliciously harass, tease, interfere with, or attempt to interfere with a police canine, fire canine, SAR canine, or police horse while the animal is in the performance of its duties; providing an effective date.

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

Section 1. Section 843.01, Florida Statutes, is amended to read:

843.01 Resisting officers, other persons, or police animals ~~officer~~ with violence ~~to his or her person~~.—A person who ~~Whoever~~ knowingly and willfully resists, obstructs, or opposes any of the following officers, persons, or police animals by offering or doing violence to any such officers, persons, or animals commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

12-01458A-23 20231300__

(1) An officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9).~~;~~

(2) A member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission.~~;~~

(3) A parole and probation supervisor.~~;~~

(4) A county probation officer.~~;~~

(5) Any personnel or representative of the Department of Law Enforcement.~~; or~~

(6) Any other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty.

(7) A police canine or police horse as those terms are defined in s. 843.19 working at the direction of or in tandem with an officer or a legally authorized person~~, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

Section 2. Subsections (3) and (4) of section 843.19, Florida Statutes, are amended to read:

843.19 Offenses against police canines, fire canines, SAR canines, or police horses.—

(3) Any person who actually and intentionally maliciously touches, strikes, or causes bodily harm to a police canine, fire canine, SAR canine, or police horse commits a felony of the third ~~misdemeanor of the first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

(4) Any person who intentionally or knowingly maliciously harasses, teases, interferes with, or attempts to interfere with

a police canine, fire canine, SAR canine, or police horse while the animal is in the performance of its duties commits a misdemeanor of the <u>first</u> ~~second~~ degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. This act shall take effect July 1, 2023.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Judiciary, *Vice Chair*
Appropriations Committee on Education
Appropriations Committee on Health and Human Services
Banking and Insurance
Fiscal Policy
Rules
Transportation

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR COLLEEN BURTON
12th District

March 27th, 2023

The Honorable Clay Yarborough
Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Yarborough,

I respectfully request SB 1300: Animals Working with Law Enforcement Officers be placed on the Committee on Judiciary agenda at your earliest convenience.

Thank you for your consideration.

Regards,

Colleen Burton
State Senator, District 12

CC: Tom Cibula, Staff Director
Lisa Larson, Administrative Assistant

REPLY TO:
❒ 100 South Kentucky Avenue, Suite 260, Lakeland, Florida 33801 (863) 413-1529
❒ 318 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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4/4/23
Meeting Date

Judiciary
Committee

SB 1300
Bill Number or Topic

Amendment Barcode (if applicable)

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Lakeland FL 33802
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Polk County Sheriff's Office

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1302
INTRODUCER:	Judiciary Committee and Senator Torres
SUBJECT:	Translation Services
DATE:	April 5, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Fav/CS**
2.			CJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1302 authorizes, but does not require, a clerk of court to offer translation services to individuals interacting with the court system where such services are not already required by state or federal law.

The bill is effective October 1, 2023.

II. Present Situation:

Clerks of the Court

The State Constitution mandates that there be an elected clerk of the circuit court in each of Florida's 67 counties to serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.[1] As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.[2]

[1] The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and Art. VIII, s. 1, Fla. Const.; Florida Department of State, *County Governments*, https://dos.myflorida.com/library-archives/research/florida-information/government/local-resources/fl-counties/.

[2] "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

English Language in the Court System

Over 60 million people living in the United States over the age of 5 speak a language other than English at home.[3] Of these, over 25 million speak English "less than very well."[4] In Florida alone, nearly 30 percent of the state's population over the age of 5 speaks a language other than English at home.[5]

Court proceedings are conducted in the English language.[6] Many individuals do not speak or understand the English language, and some disabled persons need an interpreter as required by the Americans with Disabilities Act.

The statutes provide that, when a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, an interpreter who is qualified to interpret for the witness shall be sworn to do so.[7] The statute is silent as to payment of the cost of the interpreter.

Court rules provide that, in any criminal or juvenile delinquency proceeding in which the accused, the parent or legal guardian of the accused juvenile, the victim, or the alleged victim cannot understand or has limited understanding of English, or cannot express himself or herself in English sufficiently to be understood, an interpreter must be appointed.[8]

In all other proceedings in which a non-English-speaking or limited-English-proficient person is a litigant, an interpreter for the non-English-speaking or limited English-proficient litigant must be appointed if the court determines that the litigant's inability to comprehend English deprives the litigant of an understanding of the court proceedings, that a fundamental interest is at stake (such as in a civil commitment, termination of parental rights, paternity, or dependency proceeding), and that no alternative to the appointment of an interpreter exists.[9]

There are numerous types of civil cases and legal matters that do not require the appointment of an interpreter.

III. Effect of Proposed Changes:

The bill adds translation services to the list of court-related functions that a clerk of court may fund from filing fees, service charges, court costs, and fines collected by the clerk.

The bill allows a clerk of the court to contract with a third-party translation service provider for civil cases, regardless of whether the person is indigent or represented by an attorney. The

[3] U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html.
[4] *Id.*
[5] U.S. Census Bureau, *Quick Facts: Florida*, https://www.census.gov/quickfacts/fact/table/FL/POP815221 (last visited March 27, 2023).
[6] FLA.CONST. article II, s. 9.
[7] Section 90.606(1)(a), F.S.
[8] Fla. R. Gen. Prac. & Jud. Admin. 2.560(a).
[9] Fla. R. Gen. Prac. & Jud. Admin. 2.560(b).

service is ministerial only, the interpreter may not furnish legal advice. The bill does not prohibit or limit a party from providing his or her own translation service.

The bill is clear that a clerk is not required by the bill to provide translation services.

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 the following sections of the Florida Statutes: 28.35 and 28.215. This bill creates section 28.217 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 April 4, 2023:
The CS added a clause to make clear that a clerk is not required by the bill to provide translation services.

B. Amendments:

None.

601620

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
	.	
	.	
	.	

The Committee on Judiciary (Torres) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (3) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case

 601620

maintenance; records management; court preparation and attendance; translation services; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; data collection and reporting; determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.

Section 2. Section 28.215, Florida Statutes, is amended to read:

28.215 Pro se assistance.—The clerk of the circuit court shall provide ministerial assistance to pro se litigants.

(1) Assistance may ~~shall~~ not include the provision of legal advice.

(2) Assistance may include translation services to pro se litigants under s. 28.217.

Section 3. Section 28.217, Florida Statutes, is created to read:

28.217 Translation services.—

(1) The clerk of the circuit court may contract with a third-party translation service provider for translation services for civil cases. The provision of such services is ministerial and constitutes a court-related function under s. 28.35(3)(a), and such services are an allowable expenditure by the clerk of the circuit court under s. 28.36.

(2) Translation services may be made available to any party requesting such services, regardless of whether the party is represented by counsel. The clerk of the circuit court shall provide ministerial assistance only in making such services

601620

available, and such assistance may not include the provision of legal advice.

(3) Nothing in this section may be construed to prohibit a party from providing for his or her own translation service or third-party translation service provider.

(4) The provision of translation services under this section is an optional court-related function, and nothing in this section requires the clerk of the circuit court to provide such services.

Section 4. This act shall take effect October 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to translation services; amending ss. 28.35 and 28.215, F.S.; authorizing a clerk of the circuit court to provide translation services; creating s. 28.217, F.S.; authorizing a clerk of the circuit court to contract with a third-party translation service provider to provide translation services; requiring that such service by a clerk of the circuit court be ministerial assistance only; prohibiting a clerk of the circuit court from providing legal advice; providing construction; providing that the clerk of the circuit court is not required to provide translation services; providing an effective date.

By Senator Torres

25-01824-23 20231302__

A bill to be entitled

An act relating to translation services; amending ss. 28.35 and 28.215, F.S.; authorizing a clerk of the circuit court to provide translation services; creating s. 28.217, F.S.; authorizing a clerk of the circuit court to contract with a third-party translation service provider to provide translation services; requiring that such service by a clerk of the circuit court be ministerial assistance only; prohibiting a clerk of the circuit court from providing legal advice; providing construction; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 28.35, Florida Statutes, is amended to read:

28.35 Florida Clerks of Court Operations Corporation.—

(3)(a) The list of court-related functions that clerks may fund from filing fees, service charges, court costs, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; translation services; processing the assignment, reopening, and reassignment of cases; processing of appeals; collection and distribution of fines, fees, service charges, and court costs; processing of bond forfeiture payments; data collection and reporting; determinations of indigent status; and paying reasonable administrative support costs to enable the

25-01824-23 20231302__

clerk of the court to carry out these court-related functions.

Section 2. Section 28.215, Florida Statutes, is amended to read:

28.215 Pro se assistance.—The clerk of the circuit court shall provide ministerial assistance to pro se litigants.

(1) Assistance may ~~shall~~ not include the provision of legal advice.

(2) Assistance may include translation services to pro se litigants authorized under s. 28.217.

Section 3. Section 28.217, Florida Statutes, is created to read:

28.217 Translation services.—

(1) The clerk of the circuit court may contract with a third-party translation service provider for translation services for civil cases. The provision of such services is ministerial and constitutes a court-related function under s. 28.35(3)(a), and such services are an allowable expenditure by the clerk of the circuit court under s. 28.36.

(2) Translation services may be made available to any party requesting such services, regardless of whether the party is represented by counsel. The clerk of the circuit court shall provide ministerial assistance only in making such services available, and such assistance may not include the provision of legal advice.

(3) This section may not be construed to prohibit a party from providing for his or own translation service or third-party translation service provider.

Section 4. This act shall take effect October 1, 2023.

The Florida Senate

Committee Agenda Request

To: Senator Clay Yarborough, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 20, 2023

I respectfully request that **Senate Bill #1302**, relating to Translation Services, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Victor M. Torres, Jr.
Florida Senate, District 25

File signed original with committee office

S-020 (03/2004)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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4 April 2023
Meeting Date

Judiciary
Committee

SB 1302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jason Harrell

Phone 850-577-4516

Address 215 S. Calhoun Street Suite 600
Street

Email jasonharrell@flclerks.com

Tallahassee — *City* | Florida — *State* | 32301 — *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ **I am appearing without compensation or sponsorship.**

☑ **I am a registered lobbyist, representing:**
Florida Court Clerks and Comptrollers

☐ **I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:**

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4/4/23
Meeting Date

Judiciary
Committee

1302
Bill Number or Topic

Amendment Barcode (if applicable)

Name Albert Balido

Phone 850 251 3440

Address 201 W Park Ave
Street

Tall FL 32301
City State Zip

Email

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:
Unidos U.S.

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 582
INTRODUCER:	Senator Grall
SUBJECT:	Withholding Funds from the Return of Cash Bonds
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Favorable**
2.			CJ	
3.			RC	

I. Summary:

SB 582 limits the withholding of costs, fines and fees from a cash bond posted on behalf of a criminal defendant to only apply when the bond was posted by the defendant or his or her spouse. Currently, upon final disposition of a criminal case the clerk withholds costs, fines and fees from the return of any cash bond posted in the criminal case.

The clerks of court estimate that this bill will have an indeterminate but potentially significant negative fiscal impact to the clerks and other state trust funds.

The bill is effective July 1, 2023.

II. Present Situation:

Pretrial Release — In General

The Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable grounds.[1] A judge is required to presume that nonmonetary conditions[2] are sufficient for any person who is not charged with a dangerous crime to be granted pretrial release.[3] Although a

[1] FLA. CONST. article I, s. 14.

[2] Nonmonetary conditions include any condition that does not require the payment of a financial guarantee, such as releasing the arrestee on his or her recognizance, placement in a pretrial release program, or placing restrictions on the arrestee's travel, association, or place of abode. *See* Fla. R. Crim. P. 3.131.

[3] Section 907.041(3), F.S. "Dangerous crimes" include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30,

court has the authority to impose any number of pretrial release conditions, it must impose conditions of release that require the defendant to refrain from criminal activity and to refrain from contact with a victim, if applicable.[4] If a defendant violates pretrial release conditions, he or she may be arrested and held to answer before the court having jurisdiction to try the defendant.[5]

Monetary Bail as a Condition of Pretrial Release

Monetary bail is a common condition of pretrial release. Bail requires a defendant, or a person acting on behalf of the defendant, to pay a set sum of money to the court to be released from jail while awaiting further court proceedings.[6] If a defendant released on bail fails to appear before the court for any proceeding where his or her presence is required, the bail money may be forfeited and a warrant issued for the defendant's arrest.

In determining whether to release a defendant on bail and setting a bail amount, a judge must consider:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail or procure an appearance bond.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S., relating to criminal gangs or subject to reclassification under s. 843.22, F.S., for committing the offense of traveling across county lines with the intent to commit a burglary.
- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor criminal traffic offense under ch. 316, F.S., is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.[7]

F.S.; manufacturing any substances in violation of ch. 893, F.S.; attempting or conspiring to commit any such crime; and human trafficking. S. 907.041(4), F.S.

[4] Section 903.047, F.S.

[5] Sections 903.0471 and 907.041, F.S.

[6] Section 903.011, F.S.

[7] Section 903.046(2), F.S.

Posting Bail with Cash and Clerk Withholding

While many bail amounts are satisfied using a bail bondsman, some defendants, or a person acting on the defendant's behalf such as a spouse, family member, or friend, post the entire bail amount to secure the defendant's release. This is commonly referred to as a cash bond.[8]

Section 903.286(1), F.S., requires the clerk of the court, after the final disposition of a defendant's court proceeding, and provided the bail was not forfeited for failure to appear, to withhold from the return of a cash bond posted on behalf of a criminal defendant by any person other than a bail bond agent sufficient funds to pay any:

- Costs of prosecution;[9]
- Costs of representation by the public defender;[10]
- Court fees;
- Court costs; and
- Criminal penalties.[11]

If, after payment of such fines, fees, and costs, there are funds remaining from the cash bond, the balance of the cash bond is returned to the defendant or other person that posted the cash bond. If the cash bond is insufficient to pay the amount of the fines, fees, and costs, the balance due is charged to the defendant.

Section 903.286(2), F.S., requires all cash bond forms to prominently display a notice that the cash bond is subject to forfeiture if a defendant fails to appear for court, and that the clerk of court, after the final disposition of a defendant's case, is authorized to withhold sufficient funds from the cash bond to pay specified fines, fees, and court costs on behalf of the defendant.

III. Effect of Proposed Changes:

SB 582 amends s. 903.286(1), F.S., to require the clerk of the court to withhold funds from the return of a cash bond to pay fines, fees, and court costs imposed at the conclusion of a criminal case only when the bail was posted by a criminal defendant or his or her spouse. Thus, where a defendant's cash bond is posted by a third party such as a non-spouse relative or friend, the clerk of the court may not withhold funds from the cash bond at the conclusion of the defendant's

[8] In the alternative, a defendant may elect to use a criminal surety bail bond executed by a bail bond agent. Generally, to use the services of a bail bond agent, an incarcerated person must pay a nonrefundable fee to the bail bond agent equal to 10 percent of the bond amount set by the court. This contract obligates the bail bond agent to ensure a defendant appears at all required court appearances. Section 903.105, F.S. *See also* Florida Dept. of Financial Services, *Bail Bonds Overview* https://www.myfloridacfo.com/division /consumers/understandingcoverage/bailbondsoverview.htm (last visited Feb. 15, 2023).

[9] Costs of prosecution are generally set at $50 for a misdemeanor or criminal traffic offense and $100 for a felony offense. The court may award a higher amount upon a showing of sufficient proof that higher costs were incurred by the prosecution. Proceeds are deposited into the State Attorneys Revenue Trust Fund. Section 938.27(8), F.S.

[10] Costs of representation by the public defender include a $50 initial application fee and a $50 fee for legal representation for a misdemeanor or criminal traffic offense and $100 for legal representation for a felony offense. The court may award a higher amount upon a showing of sufficient proof that higher fees or costs were incurred by the public defender. Proceeds are deposited into the Indigent Criminal Defense Trust Fund. Sections 27.52 and 938.29, F.S.

[11] Section 903.286, F.S. The amount of court fees, court costs, and criminal penalties vary depending on the jurisdiction and the nature of the defendant's criminal charge. The fees, costs, and fines are used to fund the operations of the court system, as well as various other programs related to criminal justice. *See* ch. 938, F.S.

criminal case to pay specified fees and costs associated with the defendant's criminal court case. Instead, the obligation to pay such fees and costs will be on the defendant.

The bill also amends s. 903.286(2), F.S., to revise the notice provided on all cash bond forms to specify that the clerk of the court may withhold funds posted by the defendant or his or her spouse to pay specified fines, fees, and costs.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The clerks of court estimate that this bill "would have an indeterminate but potentially significant negative fiscal impact to the Clerks and other state Trust Funds." The clerks currently collect approximately 9% of all monies due from defendants in felony criminal cases.[12]

[12] Florida Court Clerks and Comptrollers, *Bill Analysis to HB 65 and SB 582*, page 2.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.286 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 Grall

29-00359-23 2023582__

A bill to be entitled

An act relating to withholding funds from the return of cash bonds; amending s. 903.286, F.S.; requiring a clerk of the court to withhold from the return of a cash bond posted by a criminal defendant or his or her spouse, rather than to withhold from the return of a cash bond posted on behalf of the criminal defendant by a person other than a bail bond agent, funds for specified purposes; requiring all cash bond forms to display a specified notice; providing an effective date.

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

Section 1. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, and court costs; cash bond forms.—

(1) Notwithstanding s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted by ~~on behalf of~~ a criminal defendant or his or her spouse ~~by a person other than a bail bond agent licensed pursuant to chapter 648~~ sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or

29-00359-23 2023582__

enroll the defendant in a payment plan pursuant to s. 28.246.

(2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining all of the following:

(a) ~~That~~ All funds are subject to forfeiture. ~~and withholding by~~

(b) The clerk of the court is authorized to withhold funds posted by a criminal defendant or his or her spouse for the payment of costs of prosecution, costs of representation as provided by ss. 27.52 and 938.29, court fees, court costs, and criminal penalties ~~on behalf of the criminal defendant regardless of who posted the funds~~.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate

Committee Agenda Request

To: Senator Clay Yarborough, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 17, 2023

I respectfully request that **Senate Bill #582**, relating to Withholding Funds from the Return of Cash Bonds, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Erin K. Grall

Senator Erin Grall
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

FCCC | 3544 Maclay Blvd | Tallahassee, Florida 32312 | (850) 921-0808

BILL ANALYSIS

BILL NUMBER:	HB 0065
SUBJECT:	Withholding Funds from Cash Bonds
SPONSOR:	Rep. Andrade
COMMITTEE REFERENCE:	Criminal Justice Subcommittee; Justice Appropriations Subcommittee; Judiciary Committee
SIMILAR/IDENTICAL BILL:	SB 0582 - Withholding Funds from the Return of Cash Bonds
LEAD STAFF:	Jason Harrell, FCCC Director of Government Relations

Bill Summary:

The legislation removes the statutory requirement to withhold from certain outstanding court financial obligations from the return of cash bonds posted on behalf of criminal defendants by anyone other than the defendant or his or her spouse.

Current Situation:

Currently, the Clerk refunds cash bonds after the final disposition of a case or by order of the Judge. However, pursuant to s. 903.286(1), F.S. the Clerk deducts all unpaid fines, fees, and courts costs (for all cases associated to the defendant) before refunding any bond. This requirement was enacted in 2005 as part of the implementation of Revision 7 to the Florida Constitution shifting the responsibility for funding the State Court System.

S. 903.286(2), F.S. provides that individuals seeking to post cash bond on behalf of a defendant must be notified of this requirement on the cash bond form that is filled out at the county jail or other applicable location within the county.

Effect of Bill:

The bill provides that upon conclusion of the criminal case or charge, unpaid criminal costs will not be deducted from the return of cash bonds posted by a person other than the defendant or his or her spouse.

Operational Impact:

Clerks generally do not identify and/or verify bonds posted by individuals other than the defendant. Clerks would need to create a new process for identifying and distinguishing bonds posted by any person other than the defendant or his or her spouse. In some instances, this could be difficult depending on current procedures and resource constraints.

The cash bond form (each county may have different procedures) could potentially include some notification that the Clerk could use to verify.

Fiscal Impact:

The bill would have an indeterminate but potentially significant negative fiscal impact to the Clerks and other state Trust Funds. **It stands to reason that the legislation may lead to a behavior change in which individuals and/or their spouses know to ask a 3rd party to post the cash bond on their behalf simply to avoid the withholding requirement.**

Clerks' services are generally funded by the fines, fees, and court costs that they collect on behalf of the State/Courts. The current statutory practice of withholding returned bail for the purpose of paying outstanding fines, fees, and court costs from those who post the bail provides additional assurance to Clerks and the State/Courts that these fines and fees will be paid.

Of note, under this proposal fines and fees that are currently automatically withheld and satisfied would now need to be collected by the clerk from the individual. This takes time and resources, and many cases are difficult to collect once the individual has left the courthouse. Accordingly, collection rates may be low and take longer to collect. The statewide 15-month collection rate for felony cases is approximately nine percent. Removing the cash bond holdback will likely reduce that percentage and make collecting these fines and court costs harder to collect. **Additionally, individuals that do not comply with payment of their court obligations are subject to driver license suspension and additional collection fees.**

Suggestions:

If the Legislature seeks to amend this policy/statute through this or other similar legislation, Clerks request consideration of a new or supplemental revenue source to account for the fiscal

and operation impacts of the changes and additional dedicated resources for compliance and collection services.

Rather than remove the withholding requirement, the Legislature may consider additional or more prominent notification of the withholding on the cash bond form.

The Florida Senate

APPEARANCE RECORD

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Senate professional staff conducting the meeting

04/04/2023
Meeting Date

Judiciary
Committee

582
Bill Number or Topic

Amendment Barcode (if applicable)

Name Andrew Kalel

Phone 813 240 7632

Address 113 E College Ave
Street

Email akalel@scgrop.us

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing: FLorida Bail Agents Association

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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The Florida Senate

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4 April 2023
Meeting Date

Judiciary
Committee

SB 582
Bill Number or Topic

Amendment Barcode (if applicable)

Name Jason Harrell

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Address 215 S. Calhoun Street Suite 600
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Email jasonharrell@flclerks.com

Tallahassee | Florida | 32301
City | *State* | *Zip*

Speaking: ☐ For ☐ Against ☐ Information **OR** **Waive Speaking:** ☐ In Support ☑ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ **I am appearing without compensation or sponsorship.**

☑ **I am a registered lobbyist, representing:**
Florida Court Clerks and Comptrollers

☐ **I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:**

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1322
INTRODUCER:	Judiciary Committee and Senator Grall
SUBJECT:	Adoption of Children in Dependency Court
DATE:	April 5, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	**Favorable**
2.	Davis	Cibula	JU	**Fav/CS**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1322 provides that a parent's right to change the prospective adoptive parents of a dependent child becomes increasingly limited as a dependency case proceeds closer to the termination of the parent's rights.

If the child is in dependency court and has been in his or her current placement with prospective adoptive parents for at least 9 continuous months, or 15 of the last 24 months, the bill creates a rebuttable presumption that it is in the child's best interest to remain in the current placement. In evaluating whether the presumption is rebutted, the court must hold a hearing and evaluate several factors to determine whether the current placement or the proposed placement by an adoption entity is in the best interest of the child. If, however, a petition for the termination of parental rights has been filed, any consent to the adoption of the child with an adoption entity or a prospective parent is not valid.

The bill also creates an unnumbered section of law requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a national comparative analysis of state processes that allow private adoption entities to intervene or participate in dependency cases and requires the DCF and licensed child-caring and child-placing agencies to provide OPPAGA with certain data by dates certain. The analysis and report is due to the President of the Senate and Speaker of the House of Representatives by January 1, 2024.

The bill does not appear to have a fiscal impact on the government or private sector. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida's Child Welfare System

Chapter 39, F.S., creates the state's dependency system that is charged with protecting the welfare of children in Florida; this system is often referred to as the "child welfare system." The DCF Office of Child and Family Well-Being works in partnership with local communities and the courts to ensure the safety, timely permanency, and well-being of children.

Child welfare services are directed toward the prevention of abandonment, abuse, and neglect of children.[1] The DCF practice model is based on the safety of the child within his or her home, using in-home services such as parenting coaching and counseling to maintain and strengthen that child's natural supports in his or her home environment. Such services are coordinated by DCF-contracted community-based care lead agencies (CBC).[2]

Community-based Care

The DCF, through the CBCs, administers a system of care[3] for children which is required to focus on:

- Prevention of separation of children from their families;
- Intervention to allow children to remain safely in their own homes;
- Reunification of families who have had children removed from their care;
- Safety for children who are separated from their families;
- Promoting the well-being of children through emphasis on educational stability and timely health care;
- Permanency; and
- Transition to independence and self-sufficiency.[4]

The CBCs must give priority to services that are evidence-based and trauma informed.[5] The CBCs contract with a number of subcontractors for case management and direct care services to children and their families. There are 17 CBCs statewide, which together serve the state's 20 judicial circuits.[6] The CBCs employ case managers that serve as the primary link between the child welfare system and families under the DCF's supervision. These case managers work with affected families to ensure that a child reaches his or her permanency goal in a timely fashion.[7]

---

[1] Section 39.001(8), F.S.
[2] Section 409.986(1), F.S.; *See generally* The Department of Children and Families (The DCF), *About Community-Based Care*, https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/about-community-based-care (last viewed March 15, 2023).
[3] *Id.*
[4] *Id.*; *Also see generally* s. 409.988, F.S.
[5] Section 409.988(3), F.S.
[6] The DCF, *Lead Agency Information*, https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care/lead-agency-information (last visited March 15, 2023).
[7] Section 409.988(1), F.S.

Out-of-home Placement

When a child protective investigator determines that in-home services are not enough to ensure safety in a child's home, the investigator removes and places the child with a safe and appropriate temporary placement.[8] These temporary placements, referred to as out-of-home care or foster care, provide housing and services to a child until the conditions in his or her home are safe enough to return or the child achieves permanency with another family through another permanency option, like adoption.[9]

The CBCs must place all children in out-of-home care in the most appropriate available setting after conducting an assessment using child-specific factors.[10] Legislative intent is to place a child in the least restrictive, most family-like environment in close proximity to parents when removed from his or her home.[11]

Case planning

The DCF must develop and draft a case plan for each child receiving services within the dependency system.[12] The purpose of a case plan is to develop a document that details the identified concerns and barriers within the family unit, the permanency goal or goals, and the services designed to ameliorate those concerns and barriers and achieve the permanency goal.[13]

The services detailed in a case plan must be designed in collaboration with the parent and stakeholders to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement.[14] The services offered must be the least intrusive possible into the life of the parent and child and must provide the most efficient path to quick reunification or other permanent placement.[15]

The Florida Adoption Act

The Florida Adoption Act, ch. 63, F.S., applies to all adoptions, whether private or from the child welfare system, involving the following entities:

- The Department of Children and Families (DCF) under ch. 39, F.S.;
- Child-placing agencies licensed by the DCF under s. 63.202, F.S.;
- Child-caring agencies registered under s. 409.176, F.S.;
- An attorney licensed to practice in Florida; or
- A child-placing agency licensed in another state which is licensed by the DCF to place children in Florida.[16]

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[8] Sections 39.401 through 39.4022, F.S.
[9] The Office of Program Policy and Government Accountability, *Program Summary*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5053 (last visited March 15, 2023).
[10] Rule 65C-28.004, Fla. Admin. Code, provides that the child-specific factors include age, sex, sibling status, physical, educational, emotional, and developmental needs, maltreatment, community ties, and school placement.
[11] Sections 39.001(1) and 39.4021(1), F.S.
[12] *See* Part VII of ch. 39, F.S.
[13] Section 39.6012(1), F.S.
[14] *Id.*
[15] *Id.*
[16] Section 63.032(3), F.S.

Chapter 39 Adoptions

Ultimately, if a child's home remains unsafe and the court is unable to reunify him or her, the child welfare system may seek a permanent home for that child through the adoption process.[17] Adoption is the act of creating a legal relationship between a parent and child where one did not previously exist, declaring the child to be legally the child of the adoptive parents and entitled to all rights and privileges and subject to all obligations of a child born to the adoptive parents.[18] Adoption is one of the legally recognized child-welfare permanency goals that may be ordered by a court for a child within the child welfare system.[19]

To free a child for adoption, the DCF must terminate the legal relationship between the child and his or her current parents in a proceeding known as a termination of parental rights. Once this process has occurred and parental rights have been terminated, the court retains jurisdiction over the child until the child is adopted.[20] The DCF may place the child with a licensed child-placing agency, a registered child-caring agency, or a family home for prospective adoption if given custody of a child that has been made available for a subsequent adoption under ch. 39, F.S.[21]

Intervention by an Adoption Entity into a Dependency Proceeding

Chapter 63, F.S., provides extensive legislative intent for the purpose and process of adoption,[22] and for cooperation between private adoption entities and DCF in matters relating to permanent placement options for children in the care of DCF whose parents wish to participate in a private adoption plan.[23] In 2003, the Legislature created s. 63.082(6), F.S., which is a path to allow a child-welfare involved parent to place his or her child for adoption with a private adoption agency, while the child is under the jurisdiction of the dependency court and receiving services from the DCF and CBCs, as long as parental rights have not been terminated.[24]

Upon execution of a consent for adoption by a child-welfare involved parent with an adoption entity, the court is required to accept that consent as valid, binding, and enforceable and requires the court to allow that adoption entity to intervene in the dependency case.[25] The intervention process allows a child welfare-involved parent to potentially have his or her dependent child removed from the child's current judicially approved placement and subsequently placed with and adopted by a person chosen by the child-welfare involved parent or adoption entity. Current law requires courts to notify child welfare-involved parents about the option of consent and adoption through a private adoption entity at certain points in the dependency case, including

[17] Section 39.811(2), F.S.; *See generally* Parts VIII and X of ch. 39, F.S.
[18] Section 39.01(5), F.S.
[19] Section 39.01(59), F.S., defines "permanency goal" to mean the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time as another permanency goal is pursued. *See also* Section 39.621(3), F.S.
[20] Section 39.811(9)
[21] Section 39.812(1), F.S.; *See generally* Parts VIII and X of ch. 39, F.S.
[22] Section 63.022, F.S.
[23] Section 63.022(5), F.S.
[24] Chapter 2003-58, Laws of Fla., codified as s. 63.082(6), F.S.
[25] Section 63.082(6)(a), F.S.; *See also* Rule 65C-16.019, Fla. Admin. Code.

when it has been determined that reunification is not a viable permanency option and a case plan goal of adoption has been added.[26]

After a child-welfare involved parent executes the valid and binding consent, the process is as follows:

- The court must permit the adoption entity to intervene in the dependency case.[27]
- The adoption entity provides the court with a copy of the preliminary home study of the prospective adoptive parents and any other evidence of the suitability of the proposed placement.[28] The home study must be deemed sufficient and no additional home study needs to be performed by the DCF unless the court has concerns about the qualifications of the home study provider or adequacy of the home study.[29]
- The dependency court must hold a hearing to determine if the required documents to intervene have been filed and whether a change in the child's placement is in the best interests of the child.[30]
- After consideration of all relevant factors, if the court determines that the prospective adoptive parent is properly qualified and the adoption is in the best interest of the minor child, the court must promptly order transfer of custody of the minor child to the prospective adoptive parents, under the supervision of the adoption entity.[31] The court may establish reasonable requirements for the transfer of custody, including time for a reasonable transition from the child's current placement to the new prospective adoptive placement.[32]
- The adoption entity must keep the dependency court informed of the status of the adoption proceedings at least every 90 days from the date of the order changing placement of the child until the date the adoption is finalized.[33]

The court has always been required to consider certain factors to determine the best interest of the child. Prior to 2016, the court was required to only consider the following factors:

- Rights of the parent to determine an appropriate placement for the child;
- Permanency offered;
- Child's bonding with any potential adoptive home that the child has been residing in; and
- Importance of maintaining sibling relationships, if possible.[34]

In 2016, the Legislature broadened these best interest factors to give more deference to the court to make a best interest determination and better align the best interest factors in ch. 63, F.S., with those already in ch. 39, F.S.[35] To determine whether the transfer of custody and subsequent adoption is in the best interest of the child, the court is required to consider and weigh all relevant factors, including, but not limited to:

- The permanency offered;

[26] Section 63.082(6)(g), F.S.
[27] Section 63.082(6)(b), F.S.
[28] *Id.*
[29] *Id.*
[30] Section 63.082(6)(c), F.S.
[31] Section 63.082(6)(d), F.S.
[32] *Id.*
[33] Section 63.082(6)(f), F.S.
[34] Chapter 2003-58 s. 15, Laws of Fla.
[35] Chapter 2016-71 s. 2, Laws of Fla.

- The established bonded relationship between the child and his or her current potential adoptive caregiver with whom the child is residing;
- The stability of the potential adoptive home in which the child currently resides and the desirability of maintaining continuity of placement;
- The importance of maintaining sibling relationships, if possible;
- The reasonable preferences and wishes of the child, if the child is of sufficient maturity, understanding, and experience to express a preference;
- Whether a petition for termination of parental rights has been filed pursuant to certain statutes;
- What is best for the child; and
- The right of a parent to determine an appropriate placement for the child.[36]

Florida courts have interpreted these 2016 changes differently.

Judicial Treatment of Adoption Intervention into Dependency Cases

The Florida Supreme Court has held that while a parent has a fundamental right to raise his or her child, that right is not absolute and is "subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail."[37]

Circuit Split

In *W.K. v. Department of Children and Families*,[38] Florida's Fourth District Court of Appeal found that "it is not the court's role to determine which placement would be better for the child" and that "the 'best interest' analysis [in s. 63.082(6)] requires a determination that the birth parent's choice of prospective adoptive parents is appropriate and protects the well-being of the child; not that it is the best choice as evaluated by the court or the Department in light of other alternatives."

However, in a more recent case, *Guardian ad Litem v. Campbell*,[39] Florida's Fifth District Court of Appeal found that a trial court's order applying the standard set in *W.K.* inappropriately elevated one statutory factor, the right of the parent to determine an appropriate placement for the child, over the other seven statutory factors in its best interest determination.[40] The 5th DCA concluded, in full:

> The current version of section 63.082(6) is clear that when considering a motion to transfer custody of a dependent child who is under the supervision of the Department, the trial court must consider the wishes of the natural parent or parents, if their parental rights have not been terminated, and weigh those wishes with the other seven factors articulated in section 63.082(6)(e), along with "all relevant factors." *see also* E.Q., 208 So. 3d at

[36] Section 63.082(6)(e), F.S.
[37] *Padgett v. Dep't of Health & Rehab. Servs*., 577 So. 2d 565, 570 (Fla. 1991) (citing *In re Camm*, 294 So. 2d 318, 320 (Fla. 1974))
[38] 230 So. 3d 905, 908 (Fla. 4th DCA 2017)
[39] 348 So. 3d 1177, 1182-83 (Fla. 5th DCA 2022).
[40] *Id.* at 1181 – 1183

> 1261 ("It is therefore clear that when considering a motion by a parent to transfer a dependent child, who has been placed with the department or a legal custodian, to a relative, the trial court must consider the wishes of the parent or parents, if their parental rights have not been terminated, and weigh those wishes with the other ... factors articulated in section 63.082(6), which relate to the best interests of the child.") The trial court correctly followed this statutory directive and entered an order with factual findings under section 63.082(6)(e). However, based on its interpretation of W.K.'s statement about the court's role in determining a custody transfer to prospective adoptive parents, the trial court reluctantly ordered custody transferred to the Grandparents, even though it had concluded that this transfer was not in the Child's best interests. Its ultimate conclusion inappropriately elevated one factor over the others and constituted a departure from the essential requirements of the law causing irreparable harm.

Presumptions

A presumption in a legal proceeding is an assumption of the existence of a fact that is in reality unproven by direct evidence. A presumption is derived from another fact or group of facts that has been proven in the action. If a presumption is recognized, the presumed fact must be found to be present if the trier of fact finds that the underlying facts which give rise to the presumption exist. Presumptions usually assist in managing circumstances in which direct proof is rendered difficult. Presumptions arising out of considerations of fairness, public policy, and probability, as well as judicial economy, are also useful devices for allocating the burden of proof.[41] There are two types of presumption applicable to civil actions -- a presumption affecting the burden of producing evidence and a presumption affecting the burden of proof.[42]

Presumptions that are recognized primarily to facilitate the determination of an action, rather than to implement public policy, are presumptions affecting the burden of producing evidence. These so-called bursting bubble presumptions are recognized when the underlying facts are proved to exist and they remain in effect until credible evidence is introduced to disprove the presumed fact. Once the evidence of the nonexistence of the presumed fact is offered, the presumption disappears.[43]

Any presumption not falling within the category of presumptions affecting the burden of producing evidence is a presumption affecting the burden of proof.[44] These presumptions are recognized because they express a policy that society deems desirable. When proof is introduced of the basic facts giving rise to a presumption affecting the burden of proof, the presumption operates to shift the burden of persuasion regarding the presumed fact to the opposing party.[45]

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[41] *Presumptions—Generally*, 1 Fla. Prac., Evidence s. 301.1 (2020 ed.).
[42] Section 90.302, F.S.
[43] *Types of presumptions which affect the burden of producing evidence*, 1 Fla. Prac., Evidence s. 303.1 (2020 ed.).
[44] Section 90.304, F.S.
[45] *Types of presumptions which affect the burden of proof*, 1 Fla. Prac., Evidence § 304.1 (2020 ed.).

Existing Presumption Related To Placement Stability for Children in the Dependency System

Section 39.522, F.S. provides for a rebuttable presumption in ch. 39, F.S., dependency cases that it is in the best interest of a child to remain permanently in his or her current physical location if:

- The child has been in the same safe and stable placement for 9 consecutive months or more;
- Reunification is not a permanency option for the child;
- The caregiver is able, willing, and eligible for consideration as an adoptive parent or permanent custodian for the child;
- The caregiver is not the party requesting the change in placement; and
- The change in placement being sought is not to reunify the child with his or her parent or sibling or transition to a safe and stable relative caregiver.

III. Effect of Proposed Changes:

Chapter 39, F.S., Intervention Adoptions

The bill amends s. 63.082(6), F.S., to change the conditions for when and how a child-welfare involved parent may execute a consent for adoption of his or her child with an adoption entity when that child is under the supervision of the DCF, or otherwise subject to the jurisdiction of the dependency court pursuant to ch. 39, F.S.

Legislative Findings and Intent (Section 63.082(6)(a), F.S.)

The bill details findings and intent of the Legislature that:

- There is a compelling state interest to ensure that a child involved in chapter 39 proceedings is served in a way that minimizes his or her trauma, provides safe placement, maintains continuity of bonded placements, and achieves permanency as soon as possible.
- The use of intervention into dependency cases for the purpose of adoption has the potential to be traumatic for a child and that the disruption of a stable and bonded long-term placement and the change of placement to a person or family to whom the child has no bond or connection may create additional trauma.
- The right of a parent to determine an appropriate placement for a child who has been found dependent is not absolute and must be weighed against other factors that take the child's safety and well-being into account.
- Disruptions of stable and bonded long-term placements that have been identified as potential adoptive placements should be reduced.

Judicial Process (Section 63.082(6)(b),(c), (d), and (f), F.S.)

The bill limits when a consent for adoption of a child with an adoption entity is valid, binding, and enforceable by the court under s. 63.082(6), F.S., by making any consent for adoption of a child with an adoption entity not valid if executed after the filing of a petition for the termination of parental rights by the DCF under s. 39.802, F.S. This change reduces the opportunity for a parent to disrupt a bonded and stable placement late in the pendency of a case, when the DCF has decided that it is in the child's best interest to terminate the legal relationship between the child and his or her parents.

The bill allows, rather than requires, an adoption entity to file a motion for intervention upon the execution of a valid consent. The bill requires the court to promptly grant an evidentiary hearing if a motion to intervene is filed to determine whether the:

- Adoption entity has filed the required documents to be allowed to intervene;
- Preliminary home study is adequate and provides the information required to make a best interest determination; and
- Change of placement of the child to the prospective adoptive family is in the best interests of the child.

The bill deletes language that requires a court to consider a home study sufficient unless the court has concerns as to the qualifications of the home study provider or the adequacy of the home study in general and that no additional home study needs to be performed by the DCF. The bill instead makes the adequacy of the home study a determination made by the court during the evidentiary hearing and is silent as to whether the court may order another home study.

The bill requires the court, when making the determination of whether to change the placement to the prospective adoptive parents selected by the parent or adoption entity, to consider and weigh all relevant factors, including but not limited to the:

- Permanency offered by each placement;
- Established bond between the child and the current caregiver with whom the child is residing if that placement is a potential adoptive home;
- Stability of the current placement if that placement is a potential adoptive home, as well as the desirability of maintaining continuity of that placement;
- Importance of maintaining sibling relationships, if possible;
- Reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;
- What is best for the child; and
- Right of the parent to determine an appropriate placement for the child.

These changes clarify the current factors in statute, removes a factor related to certain grounds for termination of parental rights to be considered (an impossibility under the new language).

Rebuttable Presumption (Section 63.082(6)(e), F.S.)

The bill creates a rebuttable presumption that a placement is stable and that it is in the child's best interest to remain in that current placement if that placement is a prospective adoptive placement and the child has been in that placement for at least 9 continuous months or 15 of the last 24 months preceding the filing of the motion to intervene. The court must grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence for the intervention. The limited party status expires upon the issuance of a final order on the motion to intervene and for the change of placement of the child. To rebut the presumption, the intervening party must prove by clear and convincing evidence that it is in the best interests of the child to disrupt the current stable prospective adoptive placement using the above-described best interest factors, and any other factors the court deems relevant. These changes further highlight the legislative intent to reduce the disruption of stable and bonded long-term placements by increasing the burden of proof on an intervenor in cases in

which a child is in a stable and bonded long-term placement that is a prospective adoptive placement.

Transition Plan (Section 63.082(6)(g), F.S.)

The bill requires the DCF, in consultation with current and prospective caregivers and the child's guardian ad litem, if appointed, to develop a transition plan to minimize the trauma of removal of the child from his or her current placement if the court grants the motion to intervene and orders a change of placement to the prospective adoptive placement identified by the parent or adoption entity.

Chapter 63, F.S., Clean Up

The bill makes multiple changes in other sections of ch. 63, F.S., to conform statutes to practice and clean up terminology and citations.

Specifically, the bill:

- Amends s. 63.087(3), F.S. to revise the clerk of court's responsibilities in adoption proceedings by requiring the clerk to issue a separate case number and also maintain a court file for a petition for adoption that is separate from the termination of the parental rights file. This strengthens the confidentiality of the adoption proceeding by ensuring that the adoption information is not available to a parent who has had his or her parental rights terminated. To conform with this substantive change, the bill also requires that the petition for adoption include a copy of the original birth certificate of the child before the final hearing is held to terminate parental rights. Currently, there is no requirement for this filing and it will ensure the court is aware of any fathers whose rights may be addressed in the ch. 63, F.S., adoption proceeding.
- Amends s. 63.122(2), F.S., to require notice for an adoption proceeding under ch. 63, F.S., be provided as prescribed by the Florida Family Law Rules of Procedure, not the Florida Rules of Civil Procedure, to conform with current practice.
- Amends s. 63.212(1)(c), F.S, to delete the "medical needs" limiting language referring to certain expenses that are payable to a mother within 6 weeks after the birth of the child. Currently, to pay for certain expenses to a mother for up to 6 weeks after the birth of the child, the law required medical need to require such support.

The bill also changes "minor child" to "child" and makes other conforming changes throughout ch. 63, F.S.[46]

Office of Program Policy Analysis and Government Accountability (OPPAGA) Study

The bill also creates an unnumbered section of law requiring the DCF to provide the OPPAGA a list of all licensed adoption entities on or before July 15, 2023, and for all licensed child-caring and child-placing agencies to provide the OPPAGA with any data requested, on or before October 1, 2023, related to contact information for any intermediary adoption entities the agency

[46] Sections 63.082, 63.087, 63.122, 63.132, and 63.212, F.S.

contracts with, fees and compensation for any portion of intervention adoptions, and related costs.

The OPPAGA is required to:

- Update OPPAGA Report No. 08-05 and expand the report to include an analysis of time to permanency by adoption and barriers to timely permanency.
- Provide a general overview and analysis of adoptions under ch. 63, F.S., including adoptions of children outside of the child welfare system.
- Conduct a national comparative analysis of state processes that allow private adoption entities to intervene or participate in dependency cases; statutory fee limits, to include attorney fees, recruitment fees, marketing fees, matching fees, and counseling fees; and any regulations on marketing and client recruitment.

The OPPAGA analysis and report is due to the President of the Senate and Speaker of the House of Representatives by January 1, 2024.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The United States Supreme Court has long recognized that even parents in dependency proceedings have not entirely lost their fundamental rights to parent, as guaranteed by the 14th Amendment of the U.S. Constitution. As stated in *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), the "fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." Therefore, certain due process protections are required, including the burden of proof in a termination of parental rights case. A court must not enter an order terminating parental

rights without a finding of clear and convincing evidence that termination is warranted.[47] Other due process rights include notice and appointment of counsel for indigent parents.[48]

The Florida Supreme court has held in *Padgett v. Dep't of Health & Rehab. Servs*., 577 So. 2d 565, 570 (Fla. 1991), that while a parent has a fundamental right to raise his or her child, that right is not absolute and is subject to the overriding principle that it is the ultimate welfare or best interest of the child which must prevail.[49]

Florida's 3rd DCA stated it succinctly as "the wishes of the parents are a factor, but those wishes must be considered with the other [seven] factors, which relate to a determination of what is in the best interest of the child."[50]

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 sections 63.082, 63.087, 63.122, 63.132, and 63.212 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 April 4, 2023:

[47] *Santosky v. Kramer*, 455 U.S. 745, 756, 769 (1982).
[48] *M.E.K. v. R.L.K.*, 921 So.2d 787, 790 (Fla. 5th DCA 2006).
[49] Citing *In re* Camm, 294 So. 2d 318, 320 (Fla. 1974).
[50] *E.Q. v. Dep't of Child. & Fams*., 208 So. 3d 1258, 1260 (Fla. 3d DCA 2017).

The committee substitute revises the adoption statute to:

- Provide that a parent's consent to adoption, for a child under the supervision of DCF, is not valid if the consent to adoption is executed during the pendency of a petition for the termination of parental rights.
- Require an intervening party to rebut the presumption that the current placement of the child is in the child's best interest by proving by clear and convincing evidence, instead of competent and substantial evidence in the bill that the proposed placement of the child is in the child's best interest.
- Increase the written notice requirements of a parent's right to participate in a private adoption by requiring that written notice be supplied to him or her with the petition for dependency, the order adjudicating the child dependent, and the disposition order while deleting the requirement that written notice be given at the arraignment hearing.
- Revise the clerk of court's responsibilities in adoption proceedings by requiring the clerk to issue a separate case number and also maintain a court file for a petition for adoption that is separate from the termination of the parental rights file.
- Require that the petition for adoption include a copy of the original birth certificate of the child before the final hearing is held to terminate parental rights.
- Delete the "medical needs" limiting language referring to certain expenses that are payable to a mother within 6 weeks after the birth of the child.
- Require that OPPAGA conduct an extensive study concerning adoptions in dependency cases and submit a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2024.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2023	.	
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The Committee on Judiciary (Grall) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(6)(a)1. The Legislature finds that there is a compelling state interest in ensuring that a child involved in chapter 39

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proceedings is served in a way that minimizes his or her trauma, provides safe placement, maintains continuity of bonded placements, and achieves permanency as soon as possible.

2. The Legislature finds that the use of intervention in dependency cases for the purpose of adoption has the potential to be traumatic for a child in the dependency system and that the disruption of a stable and bonded long-term placement by a change of placement to a person or family with whom the child has no bond or connection may create additional trauma.

3. The Legislature finds that the right of a parent to determine an appropriate placement for a child who has been found dependent is not absolute and must be weighed against other factors that take the child's safety, well-being, and best interests into account.

4. It is the intent of the Legislature to reduce the disruption of stable and bonded long-term placements that have been identified as prospective adoptive placements.

(b) If a parent executes a consent for adoption of a child ~~minor~~ with an adoption entity or qualified prospective adoptive parents and the ~~minor~~ child is under the supervision of the department, or otherwise subject to the jurisdiction of the dependency court as a result of the entry of a shelter order or~~,~~ a dependency petition~~, or a petition for termination of parental rights~~ pursuant to chapter 39~~, but parental rights have not yet been terminated~~, the adoption consent is valid, binding, and enforceable by the court. A consent to adoption of a child with an adoption entity or qualified prospective adoptive parents is not valid if executed during the pendency of a petition for termination of parental rights pursuant to s. 39.802.


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(c) ~~(b)~~ Upon execution of the consent of the parent, the adoption entity may file a motion ~~shall be permitted~~ to intervene and change placement of the child in the dependency case as a party in interest and must provide the court that acquired jurisdiction over the child ~~minor~~, pursuant to the shelter order or dependency petition filed by the department, a copy of the preliminary home study of the prospective adoptive parents selected by the parent or adoption entity and any other evidence of the suitability of the placement. The preliminary home study must be maintained with strictest confidentiality within the dependency court file and the department's file. A preliminary home study must be provided to the court in all cases in which an adoption entity has been allowed to intervene ~~intervened~~ pursuant to this section. ~~Unless the court has concerns regarding the qualifications of the home study provider, or concerns that the home study may not be adequate to determine the best interests of the child, the home study provided by the adoption entity shall be deemed to be sufficient and no additional home study needs to be performed by the department.~~

(d)1. ~~(c)~~ If an adoption entity files a motion to intervene and change placement of the child in the dependency case in accordance with this chapter, the dependency court must ~~shall~~ promptly grant an evidentiary ~~a~~ hearing to determine whether:

a. The adoption entity has filed the required documents to be allowed ~~permitted~~ to intervene;

b. The preliminary home study is adequate and provides the information required to make a best interests determination; and

c. The ~~whether a~~ change of placement of the child is in the


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best interests of the child.

2. Absent good cause or mutual agreement of the parties, the final hearing on the motion to intervene and change placement ~~the change of placement~~ of the child must be held within 30 days after the filing of the motion, and a written final order shall be filed within 15 days after the hearing.

(e) If the child has been in his or her current placement for at least 9 continuous months or 15 of the last 24 months immediately preceding the filing of the motion to intervene, and that placement is a prospective adoptive placement, there is a rebuttable presumption that the placement is stable and that it is in the child's best interests to remain in that current stable placement. The court shall grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence pursuant to this subsection. This limited party status expires upon the issuance of a final order on the motion to intervene and change of placement of the child. To rebut the presumption established in this paragraph, the intervening party must prove by clear and convincing evidence that it is in the best interests of the child to disrupt the current stable prospective adoptive placement using the factors set forth in paragraph (f) and any other factors that the court deems relevant.

~~(d) If after consideration of all relevant factors, including those set forth in paragraph (e), the court determines that the prospective adoptive parents are properly qualified to adopt the minor child and that the adoption is in the best interests of the minor child, the court shall promptly order the transfer of custody of the minor child to the prospective~~

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~~adoptive parents, under the supervision of the adoption entity. The court may establish reasonable requirements for the transfer of custody in the transfer order, including a reasonable period of time to transition final custody to the prospective adoptive parents. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption. If the child has been determined to be dependent by the court, the department shall provide information to the prospective adoptive parents at the time they receive placement of the dependent child regarding approved parent training classes available within the community. The department shall file with the court an acknowledgment of the parent's receipt of the information regarding approved parent training classes available within the community.~~

(f) ~~(e)~~ At a hearing to determine ~~In determining~~ whether it is in the best interests of a child to change placement ~~the child are served by transferring the custody of the minor child~~ to the prospective adoptive parents ~~parent~~ selected by the parent or adoption entity, the court shall consider and weigh all relevant factors, including, but not limited to:

1. The permanency offered by both the child's current placement and the prospective adoptive placement selected by the parent or adoption entity;

2. The established bond ~~bonded relationship~~ between the child and the current caregiver with whom the child is residing if that placement is a prospective adoptive placement ~~in any potential adoptive home in which the child has been residing~~;

3. The stability of the prospective adoptive placement ~~potential adoptive home~~ in which the child has been residing,

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which must be presumed stable if the placement meets the requirements of paragraph (e), as well as the desirability of maintaining continuity of placement;

4. The importance of maintaining sibling relationships, if possible;

5. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;

6. ~~Whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f), (g), or (h);~~

~~7.~~ What is best for the child; and

7.~~8.~~ The right of the parent to determine an appropriate placement for the child.

(g) If after consideration of all relevant factors, including those set forth in paragraph (f), the court determines that the home study is adequate and provides the information necessary to make the determination that the prospective adoptive parents are properly qualified to adopt the child and that the change of placement is in the best interests of the child, the court must promptly order the change of placement to the prospective adoptive placement selected by the parent or adoption entity, under the supervision of the adoption entity, in accordance with a transition plan developed by the department in consultation with the current caregivers, the prospective adoptive parent, and the guardian ad litem, if one is appointed, to minimize the trauma of removal of the child from his or her current placement. The adoption entity must thereafter provide monthly supervision reports to the department until finalization of the adoption. If the child has been determined to be

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dependent by the court, the department must provide information to the prospective adoptive parents at the time they receive placement of the dependent child regarding approved parent training classes available within the community. The department must file with the court an acknowledgment of the prospective adoptive parents' receipt of the information regarding approved parent training classes available within the community.

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

(i) ~~(g)~~ The parent who is a party to the dependency case must be provided written notice of his or her right to participate in a private adoption plan, including written notice of the factors identified in paragraph (f). This written notice must be provided with the petition for dependency filed pursuant to s. 39.501, in the order that adjudicates the child dependent issued pursuant to s. 39.507, in the order of disposition issued pursuant to s. 39.521 ~~at the arraignment hearing held pursuant to s. 39.506~~, in the order that approves the case plan issued pursuant to s. 39.603, and in the order that changes the permanency goal to adoption issued pursuant to s. 39.621~~, the court shall provide written notice to the biological parent who is a party to the case of his or her right to participate in a private adoption plan including written notice of the factors provided in paragraph (e)~~.

Section 2. Subsection (3) and paragraph (e) of subsection (4) of section 63.087, Florida Statutes, are amended to read:

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63.087 Proceeding to terminate parental rights pending adoption; general provisions.—

(3) PREREQUISITE FOR ADOPTION.—A petition for adoption may not be filed until after the date the court enters the judgment terminating parental rights pending adoption. The clerk of the court shall issue a separate case number and maintain a separate court file for a petition for adoption. A petition for adoption may not be maintained in the same court file as the proceeding to terminate parental rights. Adoptions of relatives, adult adoptions, or adoptions of stepchildren are not required to file a separate termination of parental rights proceeding pending adoption. In such cases, the petitioner may file a joint petition for termination of parental rights and adoption, attaching all required consents, affidavits, notices, and acknowledgments. Unless otherwise provided by law, this chapter applies to joint petitions.

(4) PETITION.—

(e) The petition must include:

1. The child's ~~minor's~~ name, gender, date of birth, and place of birth. The petition must contain all names by which the child ~~minor~~ is or has been known, excluding the child's ~~minor's~~ prospective adoptive name but including the child's ~~minor's~~ legal name at the time of the filing of the petition. ~~In the case of an infant child whose adoptive name appears on the original birth certificate, the adoptive name shall not be included in the petition, nor shall it be included elsewhere in the termination of parental rights proceeding.~~

2. All information required by the Uniform Child Custody Jurisdiction and Enforcement Act and the Indian Child Welfare

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Act.

3. A statement of the grounds under s. 63.089 upon which the petition is based.

4. The name, address, and telephone number of any adoption entity seeking to place the child ~~minor~~ for adoption.

5. The name, address, and telephone number of the division of the circuit court in which the petition is to be filed.

6. A certification that the petitioner will comply ~~of compliance~~ with the requirements of s. 63.0425 regarding notice to grandparents of an impending adoption.

7. A copy of the original birth certificate of the child, attached to the petition or filed with the court before the final hearing on the petition to terminate parental rights.

Section 3. Subsection (2) of section 63.122, Florida Statutes, is amended to read:

63.122 Notice of hearing on petition.—

(2) Notice of hearing must be given as prescribed by the Florida Family Law Rules of ~~Civil~~ Procedure, and service of process must be made as specified by law for civil actions.

Section 4. Subsections (1) and (3) of section 63.132, Florida Statutes, are amended to read:

63.132 Affidavit of expenses and receipts.—

(1) Before the hearing on the petition for adoption, the prospective adoptive parents ~~parent~~ and any adoption entity must file ~~two copies of~~ an affidavit under this section.

(a) The affidavit must be signed by the adoption entity and the prospective adoptive parents. A copy of the affidavit must be provided to the adoptive parents at the time the affidavit is executed.

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(b) The affidavit must itemize all disbursements and receipts of anything of value, including professional and legal fees, made or agreed to be made by or on behalf of the prospective adoptive parents ~~parent~~ and any adoption entity in connection with the adoption or in connection with any prior proceeding to terminate parental rights which involved the child ~~minor~~ who is the subject of the petition for adoption. The affidavit must also include, for each hourly legal or counseling fee itemized, the service provided for which the hourly fee is being charged, the date the service was provided, the time required to provide the service if the service was charged by the hour, the person or entity that provided the service, and the hourly fee charged.

(c) The affidavit must show any expenses or receipts incurred in connection with:

1. The birth of the child ~~minor~~.

2. The placement of the child ~~minor~~ with the petitioner.

3. The medical or hospital care received by the mother or by the child ~~minor~~ during the mother's prenatal care and confinement.

4. The living expenses of the birth mother. The living expenses must be itemized in detail to apprise the court of the exact expenses incurred.

5. The services relating to the adoption or to the placement of the child ~~minor~~ for adoption that were received by or on behalf of the petitioner, the adoption entity, either parent, the child ~~minor~~, or any other person.

The affidavit must state whether any of these expenses were paid

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for by collateral sources, including, but not limited to, health insurance, Medicaid, Medicare, or public assistance.

(3) The court must issue a separate order approving or disapproving the fees, costs, and expenses itemized in the affidavit. The court may approve only fees, costs, and expenditures allowed under s. 63.097. The court may reject in whole or in part any fee, cost, or expenditure listed if the court finds that the expense is any of the following:

(a) Contrary to this chapter.~~;~~

(b) Not supported by a receipt, if requested ~~in the record~~, if the expense is not a fee of the adoption entity.~~; or~~

(c) Not a reasonable fee or expense, considering the requirements of this chapter and the totality of the circumstances.

Section 5. Paragraph (c) of subsection (1) of section 63.212, Florida Statutes, is amended to read:

63.212 Prohibited acts; penalties for violation.—

(1) It is unlawful for any person:

(c) To sell or surrender, or to arrange for the sale or surrender of, a child ~~minor~~ to another person for money or anything of value or to receive such ~~minor~~ child for such payment or thing of value. If a child ~~minor~~ is being adopted by a relative or by a stepparent, or is being adopted through an adoption entity, this paragraph does not prohibit the person who is contemplating adopting the child from paying, under ss. 63.097 and 63.132, the actual prenatal care and living expenses of the mother of the child to be adopted, or from paying, under ss. 63.097 and 63.132, the actual living and medical expenses of such mother for a reasonable time, not to exceed 6 weeks~~, if~~

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~~medical needs require such support,~~ after the birth of the child ~~minor~~.

Section 6. (1) On or before July 15, 2023, the Department of Children and Families shall provide to the Office of Program Policy Analysis and Government Accountability (OPPAGA) a list of all child-caring agencies registered under s. 409.176, Florida Statutes, and all child-placing agencies licensed under s. 63.202, Florida Statutes, and contact information for each such agency.

(2) On or before October 1, 2023, all registered child-caring agencies and licensed child-placing agencies shall provide OPPAGA with data as requested by OPPAGA related to contact information for any intermediary adoption entities the agency contracts with, fees and compensation for any portion of adoption interventions the agency has been involved with, and related costs for adoption interventions initiated under chapter 39, Florida Statutes.

(3) By January 1, 2024, OPPAGA shall submit a report to the President of the Senate and the Speaker of the House of Representatives which examines the adoption process in this state. At a minimum, the report must include:

(a) An update of OPPAGA Report No. 08-05 from January 2008 and expanded analysis of time to permanency by adoption and barriers to timely permanency.

(b) A general overview and analysis of adoptions under chapter 63, Florida Statutes, including adoptions of children outside of the child welfare system.

(c) A national comparative analysis of state processes that allow private adoption entities to intervene or participate in

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dependency cases and requirements for such intervention or participation.

(d) A national comparative analysis of statutory fee limits for adoption services when private adoption entities intervene in dependency cases, including attorney fees, recruitment fees, marketing fees, matching fees, and counseling fees.

(e) A national comparative analysis of any regulations on marketing and client recruitment methods or strategies of private adoption entities in dependency cases.

Section 7. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to adoption; amending s. 63.082, F.S.; providing legislative findings and intent; specifying that certain adoption consents are valid, binding, and enforceable by the court; specifying that a consent to adoption is not valid during the pendency of a petition for termination of parental rights; authorizing the adoption entity to file a specified motion under certain circumstances; making technical changes; deleting a provision regarding the sufficiency of the home study provided by the adoption entity; requiring that an evidentiary hearing be granted if a certain motion is filed; specifying the determinations to be made at such hearing; providing a

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rebuttable presumption; requiring the court to grant party status to the current caregivers under certain circumstances; providing when such party status expires; requiring the intervening party to prove certain factors to rebut a certain presumption; revising the factors for a best interests consideration at a certain hearing; requiring the court to order the transfer of custody of the child to the adoptive parents under certain circumstances and in accordance with a certain transition plan; requiring certain disclosures related to the right to participate in a private adoption plan; amending s. 63.087, F.S.; requiring the clerk of court to issue a separate case number for a petition for adoption and prohibiting such petition from being maintained in a specified court file; revising requirements for a petition for adoption; amending s. 63.122, F.S.; requiring that a certain notice of hearing be given as prescribed in the Florida Family Law Rules of Procedure; amending s. 63.132, F.S.; making technical changes; specifying that certain fees are hourly fees; amending s. 63.212, F.S.; providing that a person contemplating adoption of a child may make specified payments to the mother of the child for a specified period of time regardless of whether the medical needs of the mother require such support; requiring the Department of Children and Families to provide a certain list of child-caring and child-placing agencies to the Office of Program Policy Analysis and

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Government Accountability by a specified date; requiring certain child-caring and child-placing agencies to provide certain data to OPPAGA by a specified date; requiring OPAGGA to submit a specified report to the Legislature by a specified date; providing requirements for the report; providing an effective date.

By Senator Grall

29-01485-23 20231322__

A bill to be entitled

An act relating to adoption of children in dependency court; amending s. 63.082, F.S.; specifying that certain adoption consents are valid, binding, and enforceable by the court; specifying that a consent to adoption is not valid after certain petitions for termination of parental rights have been filed; making technical changes; requiring that the final hearing on a motion to intervene and the change of placement of the child be held by a certain date; deleting a provision regarding the sufficiency of the home study provided by the adoption entity; requiring that an evidentiary hearing be granted if a certain motion to intervene is filed; specifying the determinations to be made at such hearing; providing legislative findings; providing a rebuttable presumption; requiring the court to grant party status to the current caregivers under certain circumstances; providing when such party status expires; specifying the factors for consideration to rebut the rebuttable presumption; requiring the court to order the transfer of custody of the child to the adoptive parents under certain circumstances and in accordance with a certain transition plan; conforming provisions to changes made by the act; requiring the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct a certain analysis; requiring the Department of Children and Families to provide a certain list of child-caring and child-placing agencies to OPPAGA by a

29-01485-23 20231322__

certain date; requiring certain child-caring and child-placing agencies to provide certain data to OPPAGA by a certain date; requiring OPPAGA to provide a certain analysis and report to the Legislature by a certain date; providing an effective date.

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

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

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

(6)(a) If a parent executes a consent for adoption of a child ~~minor~~ with an adoption entity or qualified prospective adoptive parents and the ~~minor~~ child is under the supervision of the department, or otherwise subject to the jurisdiction of the dependency court as a result of the entry of a shelter order~~, a~~ or dependency petition~~, or a petition for termination of parental rights~~ pursuant to chapter 39~~, but parental rights have not yet been terminated~~, the adoption consent is valid, binding, and enforceable by the court. A consent to adoption of a child with an adoption entity or qualified prospective adoptive parents is not valid if executed after the filing of a petition for termination of parental rights pursuant to s. 39.802.

(b) Upon execution of the consent of the parent, the adoption entity may petition ~~shall be permitted~~ to intervene in the dependency case as a party of ~~in~~ interest and must provide the court that acquired jurisdiction over the child ~~minor~~,

pursuant to the shelter order or dependency petition filed by the department, a copy of the preliminary home study of the identified prospective adoptive parents and any other evidence of the suitability of the placement. The preliminary home study must be maintained with strictest confidentiality within the dependency court file and the department's file. A preliminary home study must be provided to the court in all cases in which an adoption entity has been allowed to intervene ~~intervened~~ pursuant to this section. Absent good cause or mutual agreement of the parties, the final hearing on the motion to intervene and the change of placement of the child must be held within 30 days after the filing of the motion, and a written final order must be filed within 15 days after the hearing ~~Unless the court has concerns regarding the qualifications of the home study provider, or concerns that the home study may not be adequate to determine the best interests of the child, the home study provided by the adoption entity shall be deemed to be sufficient and no additional home study needs to be performed by the department~~.

(c) If a motion to intervene and the change of placement of the child by an adoption entity is filed ~~files a motion to intervene in the dependency case in accordance with this chapter~~, the dependency court must ~~shall~~ promptly grant an evidentiary ~~a~~ hearing to determine whether:

1. The adoption entity has filed the required documents to be allowed ~~permitted~~ to intervene; ~~and~~

2. The fee and compensation structure of the adoption entity creates any undue financial incentive for the parent to consent or for the adoption entity to intervene;

3. The preliminary home study is adequate and provides the information required to make a best interests determination; and

4. The ~~whether a~~ change of placement of the child to the prospective adoptive family is in the best interests of the child. ~~Absent good cause or mutual agreement of the parties, the final hearing on the motion to intervene and the change of placement of the child must be held within 30 days after the filing of the motion, and a written final order shall be filed within 15 days after the hearing.~~

(d)1.a. The Legislature finds that there is a compelling state interest to ensure that a child involved in chapter 39 proceedings is served in a way that minimizes his or her trauma, provides safe placement, maintains continuity of bonded placements, and achieves permanency as soon as possible.

b. The Legislature finds that the use of intervention into dependency cases for the purpose of adoption has the potential to be traumatic for a child in the dependency system and that the disruption of a stable and bonded long-term placement and the change of placement to a person or family to whom the child has no bond or connection may create additional trauma.

c. The Legislature finds that the right of a parent to determine an appropriate placement for a child who has been found dependent is not absolute and must be weighed against other factors that take the child's safety and well-being into account.

d. It is the intent of the Legislature to reduce the disruption of stable and bonded long-term placements that have been identified as potential adoptive placements.

2. If the child has been in his or her current placement

for at least 9 continuous months or 15 of the last 24 months immediately preceding the filing of the motion to intervene and the change of placement of the child and that placement is a prospective adoptive placement, there is a rebuttable presumption that it is in the child's best interest to remain in his or her current placement. The court shall grant party status to the current caregiver who is a prospective adoptive placement for the limited purpose of filing motions and presenting evidence pursuant to this subsection. This limited party status expires upon the issuance of a final order on the motion to intervene and the change of placement of the child. To rebut the presumption established in this subparagraph, the intervening party must prove by competent and substantial evidence that it is in the best interests of the child to disrupt the current stable prospective adoptive placement using the factors set forth in subparagraph 3. and any other factors the court deems relevant.

3. In determining whether changing placement to the prospective adoptive parents selected by the parent or adoption entity is in the best interests of the child, the court shall consider and weigh all relevant factors, including, but not limited to:

a. The permanency offered by each placement;

b. The established bond between the child and the current caregiver with whom the child is residing if that placement is a potential adoptive home;

c. The stability of the current placement if that placement is a potential adoptive home, as well as the desirability of maintaining continuity of that placement;

d. The importance of maintaining sibling relationships, if possible;

e. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference; and

f. The right of the parent to determine an appropriate placement for the child.

(e) If after consideration of all relevant factors, including those set forth in subparagraph (d)3. ~~paragraph (c)~~, the court determines that the home study is adequate and provides the information necessary to determine that the prospective adoptive parents are properly qualified to adopt the ~~minor~~ child and that the change of placement ~~adoption~~ is in the best interests of the ~~minor~~ child, the court must ~~shall promptly~~ order the transfer of custody of the ~~minor~~ child to the prospective adoptive parents, under the supervision of the adoption entity, in accordance with a transition plan developed by the department in consultation with the caregivers of the current placement and the caregivers of the newly ordered placement to minimize the trauma of removal of the child from his or her current placement. The court may establish reasonable requirements for the transfer of custody in the transfer order, including a reasonable period of time to transition final custody to the prospective adoptive parents. The adoption entity shall thereafter provide monthly supervision reports to the department until finalization of the adoption. If the child has been determined to be dependent by the court, the department must ~~shall~~ provide information to the prospective adoptive parents at the time they receive placement of the dependent

child regarding approved parent training classes available within the community. The department shall file with the court an acknowledgment of the prospective adoptive parents' ~~parent's~~ receipt of the information regarding approved parent training classes available within the community.

~~(c) In determining whether the best interests of the child are served by transferring the custody of the minor child to the prospective adoptive parent selected by the parent or adoption entity, the court shall consider and weigh all relevant factors, including, but not limited to:~~

~~1. The permanency offered;~~

~~2. The established bonded relationship between the child and the current caregiver in any potential adoptive home in which the child has been residing;~~

~~3. The stability of the potential adoptive home in which the child has been residing as well as the desirability of maintaining continuity of placement;~~

~~4. The importance of maintaining sibling relationships, if possible;~~

~~5. The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient maturity, understanding, and experience to express a preference;~~

~~6. Whether a petition for termination of parental rights has been filed pursuant to s. 39.806(1)(f), (g), or (h);~~

~~7. What is best for the child; and~~

~~8. The right of the parent to determine an appropriate placement for the child.~~

(f) The adoption entity is ~~shall be~~ responsible for keeping the dependency court informed of the status of the adoption

proceedings at least every 90 days from the date of the order changing placement of the child until the date of finalization of the adoption.

(g) At the arraignment hearing held pursuant to s. 39.506, in the order that approves the case plan pursuant to s. 39.603, and in the order that changes the permanency goal to adoption pursuant to s. 39.621, the court shall provide written notice to the biological parent who is a party to the case of his or her right to participate in a private adoption plan including written notice of the factors set forth ~~provided~~ in subparagraph (d)3. ~~paragraph (c)~~.

Section 2. The Office of Program Policy Analysis and Government Accountability (OPPAGA) shall conduct a comparative analysis nationally of the state processes that allow private adoption entities to intervene or participate in dependency cases, including, at a minimum, processes and requirements for intervention or participation of private adoption entities in dependency cases; any statutory fee limits for intervention adoption services, including attorney fees, recruitment fees, marketing fees, matching fees, and counseling fees; and any regulations on marketing and client recruitment methods or strategies. By July 15, 2023, the Department of Children and Families shall provide to OPPAGA a list of all child-caring agencies registered under s. 409.176, Florida Statutes, and all child-placing agencies licensed under s. 63.202, Florida Statutes, and contact information for each such agency. By October 1, 2023, all registered child-caring agencies and licensed child-placing agencies shall provide OPPAGA with data as requested by OPPAGA related to contact information for any

intermediary adoption entities the agency contracts with, fees and compensation for any portion of an intervention adoption the agency has been involved with, and related costs for adoption interventions initiated under chapter 39, Florida Statutes. OPPAGA shall submit the analysis and report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2024.

Section 3. This act shall take effect July 1, 2023.

The Florida Senate

Committee Agenda Request

To: Senator Clay Yarborough, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 22, 2023

I respectfully request that **Senate Bill #1322**, relating to Adoption of Children in Dependency Court, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Erin K. Grall

Senator Erin Grall
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 312
INTRODUCER:	Banking and Insurance Committee and Senator Collins
SUBJECT:	Insurance
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	**Fav/CS**
2.	Denny	Cibula	JU	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 312 reduces the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts – from 40 hours to 30 hours.

The bill also authorizes an insurer or an agent of the insurer to offer or provide value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy. Such products or services must relate to the insurance coverage and be primarily designed to do one or more of the following:

- Provide loss mitigation or control;
- Reduce claim or claim settlement costs;
- Provide education about liability risks or risk of loss to people or property;
- Monitor or assess risk, identify sources of risk, or develop strategies to eliminate or reduce risk;
- Enhance health;
- Enhance financial wellness through items such as education or financial planning services;
- Provide post-loss services;
- Incentivize behavioral changes to improve the health, or reduce the risk of death or disability; or
- Assist in the administration of employee or retiree benefit insurance coverage.

The bill does not have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2023.

II. Present Situation:

Life Insurance Agents

Section 626.7851, F.S., sets forth education or experience requirements for becoming a life insurance agent. Requirements include:

- Successful completion of 40 hours of coursework in life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Successful completion of at least 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Earned or maintained an active designation as Chartered Financial Consultant from the American College of Financial Services; or Fellow, Life Management Institute from the Life Management Institute;
- Held an active license in life insurance in another state, where such state grants reciprocal treatment to Florida licensees; or
- Been employed full time by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) in life insurance regulatory matters for at least one year if the application for the examination is made within 4 years after leaving employment and if the employee was not terminated for cause.

Unfair Insurance Trade Practices

The Unfair Insurance Trade Practices Act,[1] among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance and prohibits unfair methods of competition and unfair or deceptive acts in the business of insurance.[2] It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination.

There are also many exceptions to the prohibitions defined by law. Among the exceptions is authorization for insurers and their agents to offer and make gifts of charitable contributions, merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items up to $100 per calendar year to an insured, prospective insured, or any person for the purpose of advertising.[3] Insurers are allowed to offer and give

[1] Chapter 626, F.S., part IX, ss. 626.951-626.99, F.S.
[2] Section 626.9541, F.S.
[3] Rule 69B-186.010, F.A.C., Unlawful Rebates and Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However,

insureds goods or services of any value for the purposes of loss control or loss mitigation related to covered risks.[4] There are several similar limitations on advertising gifts under the Florida Insurance Code related to the advertising practices of title insurance agents, agencies and insurers, public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.[5]

A person who commits acts prohibited by the Unfair Insurance Trade Practices Act is generally subject to a fine of up to $5,000 for each nonwillful violation, and up to $40,000 for each willful violation.[6] However, specific violations are subject to greater administrative penalties and are also punishable as criminal misdemeanors.[7] Additionally, a person who willfully submits fraudulent signatures on an application or policy-related document commits a third-degree felony, which is also punishable by the assessment of administrative fines of up to $5,000 for each nonwillful violation, and up to $75,000 for each willful violation.[8]

Anti-Rebating Laws

Rebating is the practice whereby an agent or broker reduces or shares his or her commission with an insured as way to induce a customer to purchase an insurance policy. Historically, rebates were used in the life insurance industry.[9] However, anti-rebate laws began to be enacted when rebates began to threaten the solvency of life insurance companies and raised questions around unfair discriminatory practices.[10] Supporters of the laws argued it kept the consumer's focus on a product's merits, not on the size of the rebate. Opponents suggested the laws infringed on their rights to competition and stifled innovation. Today, most states have enacted anti-rebate statutes and many have enacted the National Association of Insurance Commissioners' (NAIC) Unfair Trade Practices Act (Model #880) created in 1945. The Model Act provides a uniform framework for the state related to anti-rebating issues and concerns. Over time, numerous exceptions have been enacted to these laws. The most common exceptions are for promotion items, referrals, raffles, charity donations, and value-added services.

Rebates are common in many industries, but they present a different set of issues in the insurance area. This is due to a number of reasons:

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federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. s. 2607 (2017).

[4] Section 626.9541(5), F.S.

[5] Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of $25 as an inducement to contract. Section 626.854(9), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. Section 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of $25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. Section 634.282, F.S.

[6] Section 626.9521(2), F.S.

[7] *See, e.g.*, Section 626.9521(3)(a), F.S., which makes the offenses of twisting and churning, which must involve fraudulent conduct, punishable as a first degree misdemeanor.

[8] Section 626.9521(3)(b), F.S.

[9] *Time to Dust Off the Anti-Rebate Laws*, Journal of Insurance Regulation, 2017, https://content.naic.org/sites/default/files/jir-za-36-07-el-dust-off-anti-rebate.pdf (last accessed March 24, 2023).

[10] *Time to Dust Off the Anti-Rebate Laws - Summary*, National Association of Insurance Commissioners, https://content.naic.org/sites/default/files/cipr-brief-time-dust-anti-rebate-laws.pdf (last accessed March 24, 2023).

- In other industries, the rebate is typically offered by the manufacturer directly. For insurance products, the rebate is offered by an intermediary (the agent).
- Insurance rates are set by filing with the state regulators and have the cost of agent commissions built into the premium. If an agent has the capacity to give a rebate on the commission, it may be considered as a factor that the rate is too high.
- Giving rebates on insurance products to the policyholder is not transparent. This may give the agent an advantage over other agents, but does not affect competition between insurers themselves.

Emerging technologies and innovations create new challenges and opportunities regrading insurance products and anti-rebating laws.[11] Value-added services encompass many of the emerging technologies used for risk management and identification, such as water sensors given to homeowners for early detection of water damage or tracking shipping containers. There is substantial movement to update the anti-rebating laws to strike a new balance between protecting the consumer and allowing for innovation.

The NAIC updated its Model Act in 2020 with a substantial rewrite to Section 4(H) regarding anti-rebating.[12] Nine states have enacted some form of the updated rebating provisions - Connecticut, Georgia (property and casualty), Kansas, Nebraska, New Mexico, North Dakota, Ohio, Rhode Island, and Vermont. Indiana has adopted provisions from the National Council of Insurance Legislators' Model Act.[13] Eight states are currently pursuing legislation - Florida, Georgia (life), Hawaii, Iowa, Maryland, Oklahoma, South Dakota, and Wyoming.[14]

A Timeline of Anti-Rebating[15]

• 1887 – Massachusetts enacts the first anti-rebating statute.
• 1889 – New York enacts an anti-discrimination law mandating equal treatment of individuals in the same actuarial class.
• 1895 – Thirty insurers enter into an anti-rebating agreement disallowing the practice by agents.
• 1945 – The federal McCarran-Ferguson Act[16] is passed, and the NAIC develops Model #880.
• 1988 – California repeals anti-rebating with the passage of Proposition 103.
• 1990 – Florida amends the anti-rebating law, keeping rebating illegal but allowing specific exceptions.

[11] *Id.*
[12] *Unfair Trade Practices Act*, National Association of Insurance Commissioners, https://content.naic.org/sites/default/files/inline-files/MO880%20-%202020%20revisions-12042020_As_Amended.pdf (last accessed March 24, 2023).
[13] *Rebate Reform Model Act*, National Council of Insurance Legislators, https://ncoil.org/wp-content/uploads/2020/05/NCOIL-Rebate-Reform-Model-FINAL-3-8-20-3.pdf (last accessed March 24, 2023).
[14] Information provided by email to Committee staff by the NAIC on February 6, 2023 (on file with the Committee on Banking and Insurance).
[15] *See, Time to Dust Off the Anti-Rebate Laws – Summary* fn 86.
[16] 5 U.S. Code section 1011 et seq. Section 1011 of the Act provides "that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."

• 2009 – present – A wave of states begin raising monetary limits for promotional items, clarifying and revising rules for value-added services, and carving out additional exceptions to anti-rebating laws.
• 2019 – The Innovation and Technology (EX) Task Force begins discussion of anti-rebating amendments to Model #880.
• 2020 – The NAIC updates the anti-rebate provisions of Model #880.

III. Effect of Proposed Changes:

Life Insurance Agents

Section 1 amends s. 626.7851, F.S., to reduce the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts – from 40 hours to 30 hours.

Unfair Insurance Trade Practices

Section 2 amends s. 626.9541, F.S., to adopt the NAIC Model Act provisions revising anti-rebating laws. The bill provides that it is not considered discrimination or an unlawful rebate by an insurer or an agent of the insurer, including by or through employees, affiliates, or third-party representatives, to offer value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy, if the product or service relates to the insurance coverage and is primarily designed to do one or more of the following:

- Provide loss mitigation or loss control;
- Reduce claim costs or claim settlement costs;
- Provide education about liability risks or risk of loss to persons or property;
- Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- Enhance health;
- Enhance financial wellness through items such as education or financial planning services;
- Provide post-loss services;
- Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a policyholder, potential policyholder, certificateholder, potential certificateholder, insured, potential insured, or applicant; or
- Assist in the administration of employee or retiree benefit insurance coverage.

The bill provides further that:

- The cost of the value-added product or service to the insurer or agent must be reasonable in comparison to the customer's premiums or insurance coverage for the policy class.
- The insurer or agent must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.
- The availability of the product or service must be based on documented objective evidence, and the product or service must be offered in a manner that is not unfairly discriminatory. The documented evidence must be maintained by the insurer or agent and produced upon request by the OIR or the DFS.

- If an insurer or agent has a good faith belief, but does not have sufficient evidence to demonstrate, that the product or service meets the specified criteria, the insurer or agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for up to 1 year. An insurer or agent must notify the OIR or the DFS, as applicable, of such pilot or testing program offered to consumers in this state before commencing the program. The insurer or agent may commence the program unless the OIR or the DFS, as applicable, objects to the program within 21 days after receiving the notice.
- An insurer, agent, or a representative may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words "free," "no cost," or similar words in an advertisement.

The bill grants rulemaking authority to the Financial Services Commission to administer these provisions to ensure consumer protection by addressing, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill has an indeterminate direct economic impact on the private sector, but the provision of value added products and services may lead to reduced claim costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 626.7851 and 626.9541.

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 Banking and Insurance on March 29, 2023:
The committee substitute makes the following changes:

- Removed provisions in the bill that authorized a life insurer, long-term care insurer, or a disability income insurer authorized to do business in this state to use genetic information for underwriting purposes if the genetic information is contained in the applicant's medical record.
- Removed language describing particular value-added products or services that was redundant of, and potentially conflicted with, existing provisions in the Act regarding gifts given by insurers to policyholders.
- Adds a new section amending s. 626.7851, F.S., to reduce the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts - from 40 hours to 30 hours.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Collins

597-03291-23 2023312c1

A bill to be entitled

An act relating to insurance; amending s. 626.7851, F.S.; revising a minimum coursework qualification for licensure as a life agent; amending s. 626.9541, F.S.; providing that certain restrictions against unfair discrimination or unlawful rebates do not include value-added products or services offered or provided by insurers or their agents if certain conditions are met; providing requirements for and restrictions on insurers or agents offering or providing such products or services; authorizing insurers or agents to provide such products or services as part of a pilot or testing program under certain circumstances; authorizing the Financial Services Commission to adopt rules; providing an effective date.

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

Section 1. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—An applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall not be qualified or licensed unless within the 4 years immediately preceding the date the application for a license is filed with the department he or she has:

(1) Successfully completed <u>30</u> ~~40~~ hours of coursework in life insurance, annuities, and variable contracts approved by the department, 3 hours of which shall be on the subject matter

597-03291-23 2023312c1

of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as Chartered Financial Consultant (ChFC) from the American College of Financial Services; or Fellow, Life Management Institute (FLMI) from the Life Management Institute;

(4) Held an active license in life insurance in another state. This provision may not be used unless the other state grants reciprocal treatment to licensees formerly licensed in the state; or

(5) Been employed by the department or office for at least 1 year, full time in life insurance regulatory matters and who was not terminated for cause, and application for examination is made within 4 years after the date of termination of his or her employment with the department or office.

Prelicensure coursework is not required for an applicant who is a member or veteran of the United States Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation

document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 2. Paragraph (h) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(h) *Unlawful rebates.*—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:

a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;

b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this

paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney, agent, or agency thereof, shall pay, allow, or give, or offer to

pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney fee, any portion of the premium that is not required to be retained by the insurer pursuant to s.

627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

4.a. Paragraph (g) or subparagraph 1. may not be construed as including within the definition of discrimination or unlawful rebates the offer or provision by an insurer or an agent of the insurer, including by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy, if the product or service relates to the insurance coverage and is primarily designed to do one or more of the following:

(I) Provide loss mitigation or loss control;

(II) Reduce claim costs or claim settlement costs;

(III) Provide education about liability risks or risk of loss to persons or property;

(IV) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(V) Enhance health;

(VI) Enhance financial wellness through items such as education or financial planning services;

(VII) Provide post-loss services;

(VIII) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a policyholder, potential policyholder, certificateholder, potential certificateholder, insured, potential insured, or applicant; or

(IX) Assist in the administration of employee or retiree benefit insurance coverage.

b. The cost to the insurer or agent offering the product or

service to a customer must be reasonable in comparison to the customer's premiums or insurance coverage for the policy class.

c. If the insurer or agent is providing the product or service, the insurer or agent must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

d. The availability of the product or service must be based on documented objective evidence, and the product or service must be offered in a manner that is not unfairly discriminatory. The documented evidence must be maintained by the insurer or agent and produced upon request by the office or the department.

e. If an insurer or agent has a good faith belief, but does not have sufficient evidence to demonstrate, that the product or service meets any of the criteria in sub-sub-subparagraphs a.(I)-(IX), the insurer or agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for up to 1 year. An insurer or agent must notify the office or department, as applicable, of such pilot or testing program offered to consumers in this state before commencing the program. The insurer or agent may commence the program unless the office or department, as applicable, objects to the program within 21 days after receiving the notice.

f. An insurer, agent, or representative thereof may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words "free," "no cost," or similar words in an advertisement.

g. The commission may adopt rules to administer this subparagraph to ensure consumer protection. Such rules,

consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

Section 3. This act shall take effect July 1, 2023.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JAY COLLINS
14th District

COMMITTEES:
Agriculture, *Chair*
Appropriations Committee on Education
Appropriations Committee on Transportation, Tourism, and Economic Development
Education Postsecondary
Education Pre-K -12
Fiscal Policy
Military and Veterans Affairs, Space, and Domestic Security

SELECT COMMITTEE:
Select Committee on Resiliency

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

March 9, 2023

Senator Clay Yarborough
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Yarborough,

I respectfully request that SB312- Insurance, be placed on the next available agenda for the Judiciary Committee. This bill is crucial for providing for revising restrictions on the use of genetic information for insurance purposes by life insurers and long-term care insurers.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.
Thank you,

Jay Collins
Senator, District 14

CC: Tom Cibula, Staff Director
Lisa Larson, Committee Administrative Assistant

REPLY TO:
❒ 405 North Reo Street, Suite 170, Tampa, Florida 33609 (813) 281-2538
❒ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 387-4014

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/2023
Meeting Date

Judiciary
Committee

SB 312
Bill Number or Topic

Amendment Barcode (if applicable)

Name Curt Leonard

Phone 850-274-1422

Address 150 S. Monroe St. Suite 206
Street

Email curtleonard@acli.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing:
American Council of Life Insurers

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

312
Bill Number or Topic

Amendment Barcode (if applicable)

Name Daniel Olson

Phone

Address 300 S. Duval
Street

Email

Tallahassee FL 32303
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

Florida Insurance Council

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 610
INTRODUCER:	Senator Yarborough
SUBJECT:	Registration of Residential Child-caring Agencies and Family Foster Homes
DATE:	April 3, 2023
REVISED:	3/28/23

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	**Favorable**
2.	Collazo	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 610 removes the statutory limitation providing that an organization or entity must have been in existence on January 1, 1984 to be considered a "qualified association" under state law.

Qualified associations can register certain faith-based child-caring facilities and foster homes, enabling them to accept children who are voluntarily placed there by their families outside of Florida's child welfare system.

Currently, the Florida Association of Christian Child Caring Agencies, Inc. is the only organization that meets the January 1, 1984 requirement. However, the bill allows other organizations and entities that began operating after January 1, 1984 to also become qualified associations.

Any new organization or entity seeking to become a qualified association after this change will need to comply with all other statutory requirements to become, and maintain its status as, a qualified association.

The bill takes effect on July 1, 2023.

II. Present Situation:

Licensure and Registration of Residential Child-Caring Agencies and Family Foster Homes

Residential child-caring agencies and family foster homes, referred to as "facilities," must be either licensed by the Department of Children and Families under the licensing statute, s. 409.175, F.S., or registered under the registration statute, s. 409.176, F.S.[1]

[1] Facilities licensed under s. 409.175, F.S., are classified as "Type I" facilities, and facilities registered under s. 409.176, F.S., are classified as "Type II" facilities. Section 409.176(4), F.S.

A "residential child-caring agency" is defined as any person, corporation, or agency, public or private, other than the child's parent or legal guardian, which provides staffed, 24-hour care for children in facilities maintained for that purpose. Residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps.[2]

A "family foster home" is defined as a residence licensed by the department in which children who are unattended by a parent or legal guardian are provided 24-hour care, excluding adoptive homes.[3]

Licensure by the Department of Children and Families

Under s. 409.175, F.S., a residential child-caring agency or family foster home may not provide continuing full-time child care or custody unless it has first obtained a license from the department to provide such care.[4]

Licensure of a facility under the statute requires meeting certain minimum standards relating to:

- Operation, conduct, and maintenance.
- Provision of food, clothing, education, services, equipment, and supplies to ensure healthy physical, emotional, and mental development of children.
- Appropriateness, safety, cleanliness, and adequacy of the premises.
- Staff to child ratio for adequate care and supervision and, in the case of family foster homes, the maximum number of children in the home.
- Good moral character of personnel.
- Qualifications with respect to working with children or the developmentally disabled.
- Provision of pre-service and in-service training for foster parents and agency staff.
- Financial ability.
- Maintenance of admission, progress, health, and discharge records.
- Provision of parental involvement to encourage the preservation and strengthening of a child's relationship with the family.
- Transportation safety.
- Provision for safeguarding cultural, religious, and ethnic values.
- Provision for safeguarding the legal rights of children served.[5]

The department must issue licenses to facilities meeting minimum licensure standards,[6] although the receipt of a license by such a facility does not mean that a community-based care lead agency[7] under contract with the department must place a child in that agency or home.[8]

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[2] Section 409.175(2)(l), F.S.
[3] Section 409.175(2)(e), F.S.
[4] Section 409.175(4)(a), F.S.
[5] Section 409.175(5)(b), F.S.
[6] Section 409.175(6)(i), F.S.
[7] A community-based care lead agency is an agency that has contracted with the department to provide child welfare services in local communities for children who have been abused, neglected, or abandoned. *See generally* Florida Department of Children and Families, *Community Based Care*, https://www.myflfamilies.com/services/child-family/child-and-family-well-being/community-based-care (last visited Mar. 31, 2023).
[8] Section 409.175(6)(j), F.S.

Notwithstanding these requirements, the following placements are exempt from licensure:

- With relative caregivers.[9]
- With an adoptive home that has been approved for children up for adoption.[10]
- With boarding schools, recreation and summer camps, nursing homes, hospitals, or persons who care for children of friends or neighbors in their homes for less than 90 days.[11]
- With a religious organization that does not directly receive state or federal funds, or a family foster home associated with such an organization that does not directly receive state or federal funds.[12]

Registration of Exempt Religious Facilities by a Qualified Association

Even if certain facilities are exempt from licensure, they must still be registered with what is known as a "qualified association" before they may receive children for full-time care or custody.[13]

As noted above, certain religious organizations are exempt from licensure requirements. Additionally, facilities operated by an organization that is a qualified association, or facilities that have been issued a certificate of registration by a qualified association, are also not subject to the licensure requirements.[14]

To register these facilities under state law, a qualified association must:

- Be an association certified by a Florida statewide child care organization that was in existence on January 1, 1984.
- Publish its standards, file them with the department, and ensure that registered facilities comply with them.[15]

The published standards of the qualified association must substantially comply with certain minimum regulations published by the department that are similar to the regulations that licensed child-caring agencies or family foster homes are required to meet, but that do not include curricular or religious standards, or standards relating to staffing or financial ability.[16]

The department is required to determine whether the qualified association's registration standards substantially comply with state law, and if they do, the qualified association does not need to resubmit them unless there are changes.[17] Any changes must be provided to the department within 10 days after their adoption.[18]

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[9] Section 409.175(4)(a), F.S. This includes a relative of the child by blood, marriage, or adoption, and a permanent guardian established under law. *Id.*
[10] Section 409.175(2)(e), F.S.
[11] Section 409.175(4)(d), F.S.
[12] Section 409.176(5)(a), F.S.
[13] Section 409.176(1), F.S
[14] Section 409.176(5), F.S.
[15] Sections 409.176(1)(a) and 409.176(5)(b), F.S.
[16] Section 409.176(5)(b), F.S.
[17] *Id.*
[18] *Id.*

Qualified associations are required to notify the department within 24 hours upon finding a violation that threatens harm to a child or constitutes an emergency requiring immediate action.[19] They must also notify the department within 3 calendar days upon finding that a facility is operating without a certificate of registration or license.[20] In turn, the department must notify the state attorney whenever a violation of law is reported and, if necessary, file suit to stop the facility from continuing care.[21]

Additionally, the department retains its more general authority to investigate possible instances of abuse, abandonment, or neglect,[22] and to commence injunctive proceedings in court to enforce statutory requirements or terminate facility operations.[23]

With respect to reporting requirements in connection with their activities, qualified associations must annually report to the department:

- The number of registered facilities during the most recent calendar year, the names and addresses of each facility, and the name of each facility's administrator.
- The total number of children served by each facility during the calendar year.[24]

Florida Association of Christian Child Caring Agencies, Inc.

The Florida Association of Christian Child Caring Agencies, Inc. is a not-for-profit Florida corporation based in Tampa that has been active since 1982.[25]

Under current law, the association is the only organization that meets the requirements to be a qualified association, and is therefore the only qualified association presently responsible for the required standards, registration, and oversight of licensure-exempt faith-based facilities.[26]

The association has registered 23 facilities statewide,[27] including residential care homes, maternity homes, adoption and substitution family homes, and restoration homes as follows:

- *Residential Care Homes* provide 24-hour care in family-structured residential homes. The association registers 8 residential care homes.[28]

[19] Section 409.176(10)(a), F.S.
[20] Section 409.176(10)(b), F.S.
[21] *Id.*
[22] *See generally* ch. 39, F.S.
[23] Section 409.176(10)(c), F.S.
[24] Section 409.176(15), F.S.
[25] Florida Division of Corporations Search Records indicates that the association has been an active organization since February 22, 1982. *See* Florida Division of Corporations, *Search Records: Florida Association of Christian Child-Caring Agencies, Inc.*, https://dos.myflorida.com/sunbiz/search/ (last visited March 31, 2023).
[26] Department of Children and Families, *2023 Agency Legislative Bill Analysis for SB 610*, at 2, Feb. 17, 2023 (on file with the Committee on Children, Families, and Elder Affairs); *see also* Fla. Admin. Code R. 65C-46.001(8) (defining the association as "*the* authority responsible for the registration and oversight of faith-based residential group homes, family foster homes, and adoption agencies" (emphasis added)).
[27] Department of Children and Families, *supra* note 26, at 2. Note that one of Residential Care Members, My Father's Arrows, is also a Restoration Home, which explains the discrepancy between the number of registered members listed in the bill analysis (23), and the number of members on the website (24).
[28] Florida Association of Christian Child Caring Agencies (FACCCA), *Residential Care*, https://www.faccca.com/residential-care (last visited March 31, 2023).

- *Maternity Homes* provide care for pregnant girls in need, of various ages, during and after their pregnancies. The association registers 5 maternity homes.[29]
- *Adoption and Substitute Family Homes* provide adoption services and temporary loving homes for children that are similar to foster homes, until a permanent placement can be made. The association registers 3 agencies that provide adoption and substitute family homes.[30]
- *Restoration Homes* provide homes for troubled children and teens in need of specialized help. The association registers 8 restoration homes.[31]

Note that foster homes and residential child-caring agencies that are registered with a qualified association are not allowed to care for children who are placed in out-of-home care pursuant to the state's child welfare system.[32] One of the requirements of registered facilities and qualified associations is that they are not permitted to directly receive state or federal funds;[33] these are privately-funded facilities in which families voluntarily place their children.

III. Effect of Proposed Changes:

The bill removes the statutory limitation that an organization or entity must have been in existence on January 1, 1984 to be considered a "qualified association" that can register certain faith-based child-caring facilities and foster homes. This change allows organizations and entities that began operating after January 1, 1984 to also become qualified associations.

The Florida Association of Christian Child Caring Agencies, Inc. is the only association that currently meets the statutory requirements of a qualified association and will remain eligible as long as it continues to meet the other statutory requirements.

Any new organization or entity seeking to become a qualified association will need to comply with all other statutory requirements to become, and maintain its status as, a qualified association.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[29] FACCCA, *Maternity Homes*, https://www.faccca.com/maternity-homes (last visited March 31, 2023).
[30] FACCCA, *Adoption & Substitute Family Homes*, https://www.faccca.com/adoption-homes (last visited March 31, 2023).
[31] FACCCA, *Restoration Homes*, https://www.faccca.com/restoration-homes (last visited March 31, 2023).
[32] *See generally* ch. 39, F.S. (governing proceedings relating to children).
[33] Department of Children and Families, *supra* note 26, at 2.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The department states that the bill will not have an impact on state government.[34]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 409.176 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.

[34] *Id.* at 4.

By Senator Yarborough

4-01284-23 2023610__

A bill to be entitled

An act relating to the registration of residential child-caring agencies and family foster homes; amending s. 409.176, F.S.; removing obsolete language; making technical changes; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraph (b) of subsection (5) of section 409.176, Florida Statutes, are amended to read:

409.176 Registration of residential child-caring agencies and family foster homes.—

(1)(a) A residential child-caring agency or family foster home may not receive a child for continuing full-time care or custody, and a residential child-caring agency may not place a child for full-time continuing care or custody in a family foster home, unless it has first registered with an association that is certified by a Florida statewide child care organization which ~~was in existence on January 1, 1984, and which~~ publishes~~,~~ and requires compliance with~~,~~ its standards and files copies thereof with the department as provided in paragraph (5)(b). For purposes of this section, such an association is ~~shall be~~ referred to as the "qualified association."

(5) The licensing provisions of s. 409.175 do not apply to a facility operated by an organization that:

(b) Is certified by a Florida statewide child care organization which ~~was in existence on January 1, 1984, and which~~ publishes~~,~~ and requires compliance with~~,~~ its standards and

4-01284-23 2023610__

files copies thereof with the department. Such standards must ~~shall~~ be in substantial compliance with published minimum standards that similar licensed child-caring agencies or family foster homes are required to meet, as determined by the department, with the exception of those standards of a curricular or religious nature and those relating to staffing or financial stability. Once the department has determined that the standards for child-caring agencies or family foster homes are in substantial compliance with minimum standards that similar facilities are required to meet, the standards do not have to be resubmitted to the department unless a change occurs in the standards. Any changes in the standards must ~~shall~~ be provided to the department within 10 days after ~~of~~ their adoption.

Section 2. This act shall take effect July 1, 2023.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

SB610
Bill Number or Topic

Amendment Barcode (if applicable)

Name Matt Higgins

Phone 8505421776

Address 12094 Anderson Rd
Street

Email director@faccca.com

Tampa FL 33625
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☑ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

4/4/23
Meeting Date

Judiciary
Committee

610
Bill Number or Topic

Amendment Barcode (if applicable)

Name Aaron DiPietro

Phone 904-608-4471

Address 4853 S. Orange Ave.
Street

Email aarond@flfamily.org

Orlando FL 32806
City State Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☑ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☑ I am a registered lobbyist, representing: Florida Family Policy Council

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1458
INTRODUCER:	Commerce and Tourism Committee and Senator Yarborough
SUBJECT:	Roller Skating Rink Safety
DATE:	April 3, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	**Fav/CS**
2.	Bond	Cibula	JU	**Favorable**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1458 creates s. 768.395, F.S., which provides that roller skating rink operators will not be liable to a roller skater or spectator for any damages or personal injuries resulting from the inherent risks of roller skating if certain requirements are met by the operator, which include: signage to be posted on the premises, requiring a roller skating rink supervisor or manager for every 200 skaters, and the maintenance, safety, and lighting of the roller skating rink.

The bill does not limit the liability of any roller skating rink operator for acts of gross negligence by the operator or their employees.

The bill also provides that a roller skater assumes the inherent risks of skating at a roller skating rink. While skating at a rink, roller skaters must maintain control and awareness, obey signage, and refrain from acting in a manner that may cause or contribute to their own personal injury or the personal injury of another.

Failure by a roller skating rink operator to perform their specified duties and responsibilities constitutes negligence, and failure by a roller skater to perform their specified duties and responsibilities constitutes negligence.

The bill takes effect July 1, 2023.

II. Present Situation:

Roller Skating Rinks

There are less than 50 roller skating rinks in Florida, and most rinks are owned by individual owners or operators.[1] These small business owners are currently faced with higher costs associated with real estate prices and liability insurance premiums.[2]

Currently eleven other states have dedicated roller skating liability statutes including Alabama, Georgia, Illinois, Indiana, Maine, Michigan, New Jersey, North Carolina, Ohio, South Carolina, and Texas.

Premises Liability

Premises liability refers to the duty of an individual or entity that owns or controls real property to reasonably operate and maintain such property for the safety of those who enter or remain on the property. Unlike ordinary negligence, which is based upon active negligence, a premises liability claim is based upon passive negligence; that is, a premises liability claim stems from the tortfeasor's failure to act to prevent harm to the injured party and not from any affirmative actions of the tortfeasor.[3]

As to an invitee, a landowner or possessor is liable if he/she/it:

- Negligently failed to maintain the premises in a reasonably safe condition;
- Negligently failed to correct a dangerous condition about which the defendant either knew or should have known, by the use of reasonable care; or
- Negligently failed to warn the claimant of a dangerous condition about which the defendant had, or should have had, knowledge greater than that of claimant, and if so, such negligence was a legal cause of loss, injury, or damage.[4]

Florida Has Addressed Inherently Risky Activities Before

As skateboarding and inline skating gained in popularity in Florida, citizens called for an increase in public skate parks and other facilities. Local government officials, however, declined to create these parks and set-aside areas out of concern for liability exposure. The 1999 Legislature addressed these concerns by providing limited immunity from liability for governmental entities that set aside areas for skateboarding, inline skating, and freestyle bicycling.[5]

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[1] *Florida Roller Skating Rinks*, Skating Fitness, https://www.skatingfitness.com/Roller-Locator-Florida.htm (last visited March 24, 2023).
[2] Kimberly Miller, *Palm Beach County's last roller skating rink closing its doors, with years of memories*, Palm Beach Post, https://www.palmbeachpost.com/story/business/2022/08/18/roller-skating-rink-palm-beach-county-close-under-new-owner/10333462002/ (last visited March 24, 2023).
[3] *Nicholson v. Stonybrook Apts., LLC*, 154 So.3d 490 (Fla. 4th DCA 2015).
[4] Fla. Std. Jury Instr. 401.20 *Issues on Plaintiff's Claim — Premises Liability*.
[5] Chapter 99-133, Laws of Fla., expressly recognizes "that governmental owners or lessees of property have failed to make property available for [skateboarding, inline skating, and freestyle bicycling] because of the exposure to liability from lawsuits and the prohibitive cost of insurance, if insurance can be obtained for such activities."

Today, s. 316.0085, F.S., addresses, and considers as inherently risky, the activities of skateboarding, inline skating, paintball, and freestyle, mountain, and off-road bicycling.[6] According to the statute, a governmental entity, which may include a federal, state, or local governmental entity, that authorizes or permits a person to engage in these inherently risky activities by posting a sign designating an area for a specific activity,[7] is generally immune from liability for damages or injuries to a person 17 years of age or older as a result of the person participating in an inherently risky activity. However, for a participant who is younger than 17 years of age, the governmental entity has the benefit of this limited liability only if it obtains the written consent of a parent of the child.[8]

Although existing law provides liability protections to governmental entities, a governmental entity can be held liable for damages or injuries if it:

- Fails to warn of a dangerous condition which a participant cannot reasonably be expected to notice; or
- Commits gross negligence that is the proximate cause of a participant's injury.[9]

Additionally, s. 316.0085, F.S., does not limit the liability of individuals who are negligent while participating in an inherently dangerous activity. A participant is negligent if he or she fails to:

- Act within the limits of his or her ability and the purpose and design of the equipment used;
- Remain in control of his or her equipment and himself or herself; or
- Refrain from acting in a way that may cause or contribute to death or injury of himself or herself or others.[10]

Assumption of Inherent Risks

Assumption of risk is a concept that can reduce or eliminate the amount that a plaintiff is entitled to recover in a tort claim.[11] There are two primary ways that assumption of risk can be established, through informed participation (implied) or through verbal or written contractual assumption of risk agreements (express).

Where the plaintiff's conduct is properly characterized as implied assumption of the risk, the plaintiff's conduct must be evaluated by the jury under the principles of comparative negligence.[12] For express assumption of risk to be valid, either by contract or by voluntary participation in an activity, it must be clear that the plaintiff understood that plaintiff was assuming the particular conduct by which the defendant caused the plaintiff's injury.[13]

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[6] Section 316.0085(2)(b), F.S.
[7] Section 316.0085(2)(a) and (3), F.S.
[8] Section 316.0085(3), F.S.
[9] Section 316.0085(5), F.S.
[10] Section 316.0085(7)(b), F.S.
[11] *Gorday v. Faris*, 523 So. 2d 1215 (Fla. 1st DCA 1988); *Hall v. Holton*, 330 So. 2d 81 (Fla. 2d DCA 1976); *Parker v. Maule Industries, Inc.*, 321 So. 2d 106 (Fla. 1st DCA 1975), decision approved, 348 So. 2d 287 (Fla. 1977); *Rea v. Leadership Housing, Inc.*, 312 So. 2d 818 (Fla. 4th DCA 1975), decision approved, 348 So. 2d 287 (Fla. 1977).
[12] 38 Fla. Jur 2d Negligence § 118.
[13] 38 Fla. Jur 2d Negligence § 110.

Ordinarily, a minor is liable for personal torts directly committed by the minor that are not connected with and do not arise out of contracts,[14] and likewise, a mentally incompetent person is ordinarily responsible for his or her own torts.[15]

Waiver of Claims on Behalf of Minor Children

Section 744.301(3), F.S., authorizes natural guardians,[16] on behalf of any of their minor children, to waive and release, in advance, any claim or cause of action against a commercial activity provider, or its owners, affiliates, employees, or agents, which would accrue to a minor child for personal injury, including death, and property damage resulting from an inherent risk[17] in the activity. If a waiver or release complies with all of the requirements under s. 744.301, F.S., there is a rebuttable presumption that the waiver or release is valid, and a claimant must demonstrate by a preponderance of the evidence that the waiver or release does not comply with s. 744.301, F.S.

III. Effect of Proposed Changes:

Requirements for Skating Rink Operators

The bill limits liability for skating rink operators provided they meet certain requirements:

- Conspicuously post in at least three areas on the premises the responsibilities of roller skaters and spectators listed in the bill and the responsibilities of the skating rink that are listed in this bill;
- Maintain the stability and legibility of all signs, symbols, and posted notices;
- Have at least one roller skating rink supervisor or manager on duty for every 200 skaters when the roller skating rink is open for business;
- Maintain the skating surface in a reasonably safe condition and clean and inspect the skating surface before each skating session;
- Ensure that all coverings on risers are securely fastened in roller skating rinks with step-up or step-down skating surfaces;
- Install and regularly inspect fire extinguishers;

[14] Fla. Jur. 2d, Family Law § 549.
[15] Fla. Jur. 2d, Incompetent and Incapacitated Persons § 47.
[16] The parents jointly are the natural guardians of their own children and of their adopted children, during minority, unless the parents' parental rights have been terminated. If a child is the subject of any proceeding under chapter 39, the parents may act as natural guardians under this section unless the court division with jurisdiction over guardianship matters finds that it is not in the child's best interests. If one parent dies, the surviving parent remains the sole natural guardian even if he or she remarries. If the marriage between the parents is dissolved, the natural guardianship belongs to the parent to whom sole parental responsibility has been granted, or if the parents have been granted shared parental responsibility, both continue as natural guardians. If the marriage is dissolved and neither parent is given parental responsibility for the child, neither may act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless the court enters an order stating otherwise. *See* 744.301(1), F.S.
[17] The term "inherent risk" means those dangers or conditions, known or unknown, which are characteristic of, intrinsic to, or an integral part of the activity and which are not eliminated even if the activity provider acts with due care in a reasonably prudent manner. The term includes, but is not limited to: (1) The failure by the activity provider to warn the natural guardian or minor child of an inherent risk; and (2) The risk that the minor child or another participant in the activity may act in a negligent or intentional manner and contribute to the injury or death of the minor child. A participant does not include the activity provider or its owners, affiliates, employees, or agents. *See* s. 744.301(3)(a), F.S.

- Inspect emergency lights at least quarterly to ensure the lights are in proper working order;
- Keep exit lights and service area lights on when skating surface lights are turned off during a skating session;
- Inspect and maintain in good mechanical condition roller skating equipment that the operator leases or rents to roller skaters;
- Comply with all applicable state and local safety codes; and
- Take reasonable action to correct a dangerous condition that is known or reasonably should have been known.

Failure to perform these specified duties and responsibilities constitutes negligence.

Requirements for Roller Skater or Spectator

The bill provides that a skating rink operator will not be responsible to roller skaters or spectators for the inherent risks associated with roller skating. Roller skaters and spectators may be considered to be negligent if they do not meet the following requirements:

- Maintain reasonable control of his or her speed and direction of travel at all time;
- Heed all posted signs and warnings;
- Maintain a proper awareness to avoid other roller skaters and objects;
- Accept responsibility for knowing the range of their own abilities to negotiate the intended direction of travel while roller skating and to skate within the limits of that ability; and
- Refrain from acting in a manner that may cause or contribute to his or her own personal injury or the personal injury of another person.
-

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None identified.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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 creates section 768.395 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 Commerce and Tourism on March 27, 2023:
The committee substitute provides that in order to be covered by the limitation on liability, a roller skating rink operator must take reasonable action to correct a dangerous condition that is known or reasonably should have been known.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senator Yarborough

577-03157-23 20231458c1

A bill to be entitled

An act relating to roller skating rink safety; creating s. 768.395, F.S.; providing legislative findings; defining terms; providing that an operator of a roller skating rink is not liable for damages or personal injury resulting from inherent risks of roller skating; providing exceptions; providing that certain persons assume the inherent risk of roller skating; providing that an operator is not required to eliminate, alter, or control the inherent risks in roller skating; establishing the responsibilities of roller skaters; providing that failure to take certain actions or comply with certain responsibilities constitutes negligence; providing an effective date.

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

Section 1. Section 768.395, Florida Statutes, is created to read:

768.395 Roller skating rink safety.—

(1) This section may be cited as the "Roller Skating Rink Safety Act."

(2)(a) The Legislature finds that the recreational activity of roller skating is practiced by a large number of residents of the state, roller skating is a wholesome and healthy family activity that should be encouraged, and the allocation of risks and costs of roller skating is an important matter of public policy.

(b) The Legislature further finds that owners of roller skating rinks face great difficulty in obtaining liability insurance coverage at an affordable cost and that the lack of affordable insurance coverage affects not only owners of roller skating rinks, but also persons who may suffer personal injuries or property damages as a result of accidents that occur on the premises of a roller skating rink. In order to make it more economically feasible for insurance companies to provide coverage to roller skating rinks at an affordable rate to the owners, occurrences resulting in liability to owners should be more predictable by limiting the liability that may be incurred by the owners and encouraging the development and implementation of risk reduction techniques. This section shall be liberally construed to carry out the purposes of this section.

(3) As used in this section, the term:

(a) "Inherent risk" means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of the activity of roller skating.

(b) "Operator" means a person or entity that owns, manages, controls, directs, or has operational responsibility for a roller skating rink.

(c) "Roller skater" means a person who participates in the activity of roller skating while in a roller skating rink.

(d) "Roller skating rink" means a building, facility, or premises that provides an area specifically designed to be used for roller skating.

(e) "Spectator" means a person in a roller skating rink whose participation is limited to observing the activity of roller skating.

(4) An operator is not liable to a roller skater or

spectator for any damages or personal injury resulting from the inherent risks of roller skating.

(5) This section does not limit liability that would otherwise exist if the operator fails to:

(a) Conspicuously post in at least three areas on the premises, the responsibilities of roller skaters and spectators under subsection (6) and the duties of the operator under this subsection.

(b) Maintain the stability and legibility of all signs, symbols, and posted notices required by this section.

(c) Have at least one roller skating rink supervisor or manager on duty for every 200 skaters when the roller skating rink is open for business.

(d) Maintain the skating surface in a reasonably safe condition and clean and inspect the skating surface before each skating session.

(e) Maintain in good condition the railings, kickboards, and walls surrounding the skating surface.

(f) Ensure that all coverings on risers are securely fastened in roller skating rinks with step-up or step-down skating surfaces.

(g) Install and regularly inspect fire extinguishers.

(h) Inspect emergency lights at least quarterly to ensure the lights are in proper working order.

(i) Keep exit lights and service area lights on when skating surface lights are turned off during a skating session.

(j) Inspect and maintain in good mechanical condition roller skating equipment that the operator leases or rents to roller skaters.

(k) Comply with all applicable state and local safety codes.

(l) Take reasonable action to correct a dangerous condition that is known or reasonably should have been known.

(6)(a) A roller skater or spectator at a roller skating rink assumes the inherent risks in the activity of roller skating irrespective of age, and is legally responsible for all damages and injury to himself or herself or other persons or property which result from this activity. An operator is not required to eliminate, alter, or control the inherent risks in this activity.

(b) While engaging in the activity of roller skating at a roller skating rink, a roller skater must:

1. Maintain reasonable control of his or her speed and direction of travel at all times.

2. Heed all posted signs and warnings.

3. Maintain a proper awareness to avoid other roller skaters and objects.

4. Accept the responsibility for knowing the range of his or her own ability to negotiate the intended direction of travel while roller skating and to skate within the limits of that ability.

5. Refrain from acting in a manner that may cause or contribute to his or her own personal injury or the personal injury of another person.

(7)(a) This section does not limit the liability of an operator for personal injuries or damages caused by an act of gross negligence by the operator or his or her employees.

(b) Failure of an operator to take the actions described in

subsection (5) or a roller skater to comply with paragraph (6)(b) constitutes negligence.

Section 2. This act shall take effect July 1, 2023.

4/4/23
Meeting Date

Judiciary
Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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SB 1458
Bill Number or Topic

Amendment Barcode (if applicable)

Name CHANEL BELLOTTO

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Email cbellotto@icloud.com

Lakeland FL 33813
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☑ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by: ROLLER SKATING ASSOC.

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022JointRules.pdf (flsenate.gov)

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S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Senate Judiciary Committee **Judge:**

Started: 4/4/2023 2:05:41 PM
Ends: 4/4/2023 3:15:57 PM Length: 01:10:17

2:05:42 PM Meeting called to order, roll call
2:06:10 PM Quorum is present
2:06:14 PM Chair Burton makes opening remarks
2:06:27 PM Tab 2, SB 12- Relief of Ricardo Medrano-Arzate and Eva Chavez-Medrano, as personal representatives of Hilda Medrano/ Okeechobee County Sheriff Office by Senator Polsky
2:07:14 PM Chair Burton recognizes Senator Polsky
2:07:23 PM Senator Polsky explains the bill
2:07:27 PM Amendment 679014
2:07:32 PM Senator Polsky explains the amendment
2:07:49 PM Senator Polsky waives close
2:07:52 PM Chair Burton reports amendment
2:08:06 PM Chair Burton reads appearance cards waiving
2:08:21 PM Senator Polsky waives close
2:08:26 PM Roll call on CS/SB 12
2:08:56 PM Chair Burton reports the bill
2:08:59 PM Tab 3, SB 828- Grand Juries by Senator Polsky
2:09:10 PM Chair Burton recognizes Senator Polsky
2:09:19 PM Senator Polsky explains the bill
2:10:20 PM Senator Polsky waives close
2:10:24 PM Roll call on SB 828
2:10:52 PM Chair Burton reports the bill
2:11:03 PM Tab 1, SB 2- Relief of the Estate of Molly Parker/Department of Transportation by Senator Hooper
2:11:37 PM Chair Burton recognizes Senator Hooper
2:11:45 PM Senator Hooper explains the bill
2:12:40 PM Chair Burton reads appearance cards waiving
2:12:53 PM Senator Hooper waives close
2:12:58 PM Roll call on SB 2
2:13:24 PM Chair Burton reports the bill
2:13:28 PM Tab 11, SB 582- Withholding Funds from the Return of Cash Bonds by Senator Grall
2:13:44 PM Chair Burton recognizes Senator Grall
2:13:49 PM Senator Grall explains the bill
2:14:29 PM Chair Burton reads appearance cards waiving
2:14:51 PM Senator Grall waives close
2:14:56 PM Roll call on SB 582
2:15:19 PM Chair Burton reports the bill
2:15:26 PM Tab 12, SB 1322- Adoption of Children in Dependency Court by Senator Grall
2:15:46 PM Amendment 583264
2:15:51 PM Senator Grall explains the amendment
2:17:03 PM Questions:
2:17:05 PM Senator Baxley
2:17:22 PM Senator Grall
2:18:35 PM Senator Grall waives close
2:18:40 PM Chair Burton reports the amendment
2:18:55 PM Senator Grall waives close
2:18:58 PM Roll call on CS/SB 1322
2:19:22 PM Chair Burton reports the bill
2:19:33 PM Tab 6, SB 8- Relief of Leonard Cure/ State of Florida by Senator Jones
2:19:54 PM Chair Burton recognizes Senator Thompson
2:20:02 PM Senator Thompson explains the bill
2:20:32 PM Senator Thompson closes on the bill
2:21:05 PM Roll call on SB 8
2:21:34 PM Chair Burton reports the bill

2:21:48 PM Chair Burton passes the gavel back to Chair Yarborough
2:21:56 PM Tab 4, SB 442- Secondhand Dealers by Senator Gruters
2:22:10 PM Chair Yarborough recognizes Senator Gruters
2:22:18 PM Senator Gruters explains the bill
2:22:41 PM Chair Yarborough reads appearance cards waiving
2:22:53 PM Senator Gruters waives close
2:22:57 PM Roll call on SB 442
2:23:13 PM Chair Yarborough reports the bill
2:23:25 PM Tab 5, SB 694- Private Property for Motor Vehicle Parking by Senator Gruters
2:23:45 PM Amendment 528896
2:23:51 PM Senator Gruters explains the amendment
2:24:41 PM Senator Gruters waives close
2:24:46 PM Chair Yarborough reports amendment
2:25:11 PM Public Testimony:
2:25:18 PM David Custin, Asta Parking, Inc.
2:29:18 PM Senator Gruters closes on the bill
2:29:39 PM Roll call on CS/SB 694
2:30:05 PM Chair Yarborough reports the bill
2:30:12 PM Tab 10, SB 1302- Translation Services by Senator Torres
2:30:27 PM Chair Yarborough recognizes Senator Book
2:30:34 PM Senator Book explains the bill
2:30:39 PM Amendment 601620
2:30:44 PM Senator Book explains the amendment
2:31:36 PM Senator Book waives close
2:31:41 PM Chair Yarborough reports the amendment
2:31:50 PM Chair Yarborough reads appearance cards waiving
2:32:07 PM Senator Book closes on the bill
2:32:24 PM Roll call on CS/SB 1302
2:32:43 PM Chair Yarborough reports the bill
2:32:54 PM Tab 13, SB 312- Insurance by Senator Collins
2:33:07 PM Chair Yarborough recognizes Senator Collins
2:33:15 PM Senator Collins explains the bill
2:34:22 PM Chair Yarborough reads appearance cards waiving
2:34:37 PM Senator Collins waives close
2:34:44 PM Roll call on SB 312
2:35:06 PM Chair Yarborough reports the bill
2:35:14 PM Tab 9, SB 1300- Animals Working with Law Enforcement Officers by Senator Burton
2:35:27 PM Chair Yarborough recognizes Senator Burton
2:35:33 PM Senator Burton explains the bill
2:37:01 PM Chair Yarborough reads appearance cards waiving
2:37:18 PM Senator Burton closes on the bill
2:39:02 PM Roll call on SB 1300
2:39:22 PM Chair Yarborough reports the bill
2:39:32 PM Tab 8, SB 1260- Asbestos and Silica Claims by Senator Trumbull
2:39:49 PM Chair Yarborough recognizes Senator Trumbull
2:39:57 PM Senator Trumbull explains the bill
2:40:53 PM Public Testimony:
2:41:08 PM Mark Behrens, U.S. Chamber of Commerce
2:44:07 PM Chair Yarborough reads appearance cards waiving
2:45:06 PM Senator Trumbull waives close
2:45:11 PM Roll call on SB 1260
2:45:32 PM Chair Yarborough reports the bill
2:45:38 PM Chair Yarborough passes the chair to Senator Burton
2:45:50 PM Tab 14, SB 610- Registration of Residential Child-caring Agencies and Family Foster Homes by Senator Yarborough
2:46:27 PM Chair Burton recognizes Senator Yarborough
2:46:34 PM Senator Yarborough explains the bill
2:47:15 PM Public Testimony:
2:47:36 PM Matt Higgins
2:55:21 PM Senator Yarborough
2:55:57 PM Debate:
2:55:59 PM Senator Harrell

2:57:12 PM Senator Baxley
2:58:49 PM Senator Yarborough closes on the bill
2:59:14 PM Roll call on SB 610
2:59:36 PM Chair Burton reports the bill
2:59:49 PM Tab 7, SB 1388- Immunity of Motor Vehicle Dealer Leasing and Rental Affiliates by Senator Wright
3:00:36 PM Chair Burton recognizes Senator Wright
3:00:41 PM Senator Wright explains the bill
3:01:45 PM Chair Burton reads appearance cards waiving
3:01:55 PM Senator Wright waives close
3:02:01 PM Roll call on SB 1388
3:02:18 PM Chair Burton reports the bill
3:02:23 PM Tab 15, CS/SB 1458- Roller Skating Rink Safety by Senator Yarborough
3:02:58 PM Chair Burton recognizes Senator Yarborough
3:03:04 PM Senator Yarborough explains the bill
3:04:24 PM Questions:
3:04:27 PM Senator Thompson
3:04:43 PM Senator Yarborough
3:05:09 PM Senator Thompson
3:05:18 PM Senator Yarborough
3:05:37 PM Public Testimony:
3:05:46 PM Chanel Belloto, Roller Skating Association
3:07:52 PM Senator Thompson
3:08:08 PM Chanel Belloto
3:08:41 PM Senator Thompson
3:08:52 PM Chanel Belloto
3:09:29 PM Senator Book
3:09:42 PM Chanel Belloto
3:10:13 PM Debate:
3:10:15 PM Senator Boyd
3:11:25 PM Senator Stewart
3:12:16 PM Senator Baxley
3:13:54 PM Senator Yarborough closes on the bill
3:14:16 PM Roll call on CS/SB 1458
3:14:29 PM Chair Burton reports the bill
3:14:42 PM Chair Burton passes the chair back to Senator Yarborough
3:15:05 PM Senator Stewart moves to record a missed vote
3:15:24 PM Senator Book moves to record a missed vote
3:15:38 PM Chair Yarborough moves to record a missed vote
3:15:47 PM Meeting adjourned